

§ 20-308.21. Civil actions for violations.

(a) Notwithstanding the terms, provisions, or conditions of any agreement or other terms or provisions of any novation, waiver, arbitration agreement, or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to an agreement who is so injured in his business or property by a violation of a provision of this Article relating to that agreement, 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 captive finance source may have the effect of causing a loss of money or property.

(d) Any association that is comprised of a minimum of 400 new motor vehicle dealers, or a minimum of 10 motorcycle 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 file a petition before the Commissioner or a 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. Prior to bringing an action, the association and captive finance source shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought pursuant to this subsection may seek a determination whether one or more captive finance sources 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 captive finance source doing business in this State has engaged in any conduct or taken any action which actually harms or affects all of the franchised new motor vehicle dealers holding agreements with that captive finance source in this State. 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 court enter an award of monetary damages. (2005-409, s. 3.)