

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 88
SENATE BILL 261

AN ACT TO AMEND THE MOTOR VEHICLE DEALERS AND MANUFACTURERS
LICENSING LAW WITH REGARD TO REGULATION OF BUSINESS PRACTICES
BETWEEN DEALERS AND MANUFACTURERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-305(3) is hereby repealed.

Sec. 2. Chapter 20 of the General Statutes is hereby amended by rewriting G.S. 20-305(3) and by adding new subdivisions G.S. 20-305(4) through G.S. 20-305(6) as follows:

- "(3) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed sale, transfer or change, and after a hearing on the matter, that the failure to permit or honor such sale, transfer, assignment, or change is unreasonable under the circumstances; provided, however, that no franchise may be sold or assigned or transferred unless (1) the franchisor has been given at least 30 days prior written notice as to the identity, financial ability and qualifications of the proposed transferee, and (2) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business;
- (4) To grant an additional franchise for a particular line-make of motor vehicle in a trade area already served by a dealer or dealers in that line-make unless the franchisor has first advised in writing such other dealers in the line-make in the trade area; provided that no such additional franchise may be established in the trade area if the Commissioner has determined, if requested by any party within 30 days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that there is reasonable evidence that after the grant of the new franchise, the market will not support all of the dealerships in that line-make in the trade area; trade areas are those areas specified in the franchise agreement or determined by the Motor Vehicle Dealers' Advisory Board.
- (5) Notwithstanding the terms of any franchise agreement to terminate, cancel, or refuse to renew the franchise of any dealer, without good cause, and unless (1) the dealer and the Commissioner have received written notice of the franchisor's intentions at least 60 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting forth the specific grounds for such action, and (2) the Commissioner has determined, if requested in writing by the dealer within such 60-day period, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise, except in the event of fraud,

- insolvency, closed doors, or failure to function in the ordinary course of business, 15 days notice shall suffice; provided that in any case where a petition is made to the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision; or
- (6) Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated dealer if the Commissioner determines, if requested in writing by such member of the family within 30 days after the death or incapacity of the dealer, and after a hearing on the matter, that the failure to permit or honor such succession is unreasonable under the circumstances; provided, however, that no member of the family may succeed to a franchise unless (1) the franchisor has been given written notice as to the identity, financial ability and qualifications of the member of the family in question, and (2) the succession to the franchise will not involve, without the franchisor's consent, a relocation of the business."

Sec. 3. Chapter 20 of the General Statutes is hereby amended by adding G.S. 20-305.1 through G.S. 20-305.4 as follows:

"§ 20-305.1. Automobile dealer warranty obligations. — (a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such schedule of compensation fail to include reasonable compensation for diagnostic work as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the factors to be given consideration shall include, among others, the compensation being paid by other manufactureres to their dealers, the prevailing wage rates being paid by dealers, and the prevailing labor rate being charged by dealers, in the community in which the dealer is doing business.

(b) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to assume all responsibility for any liability resulting from structural or production defects, or to fail to compensate its motor vehicle dealers licensed in this State for warranty parts, work, and service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor or distributor branch is legally responsible.

(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in subsections (a) and (b) above, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Article 33 of Chapter 143 of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty.

"§ 20-305.2. Unfair methods of competition. — It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any motor vehicle dealership in a trade area of this State already served by a motor vehicle dealer under a franchise for the same line-make from such manufacturer, factory

branch, distributor, or distributor branch, or subsidiary, provided that this section shall not be construed to prohibit (1) the operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to another, or (2) the ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, during a period while such dealership is being sold under a bona fide contract or purchase option to the operator of the dealership, or (3) the ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to the effective date of this section, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the trade area to own and operate the franchise in a manner consistent with the public interest, or, (4), the ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after a hearing on the matter at the request of any party, that there is no independent dealer available in the trade area to own and operate the franchise in a manner consistent with the public interest. Trade area is that area specified in the franchise agreement or determined by the Motor Vehicle Dealers' Advisory Board. Provided, this section shall not apply to manufacturers or distributors of trailers or semi-trailers.

"§ 20-305.3. Hearing notice. — In every case of a hearing before the Commissioner authorized under this Article, the Commissioner shall give reasonable notice of each such hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Article 33 of Chapter 143 of the General Statutes. The costs of such hearings shall be assessed by the Commissioner.

"§ 20-305.4. Motor Vehicle Dealers' Advisory Board — (a) The Motor Vehicle Dealers' Advisory Board shall consist of six members; three of which shall be appointed by the Speaker of the House of Representatives, and three of which shall be appointed by the Lieutenant Governor to consult with and advise the Commissioner with respect to matters brought before the Commissioner under the provisions of G.S. 20-304 through G.S. 20-305.4.

(b) Each member of the Motor Vehicle Dealers' Advisory Board shall be a resident of North Carolina. Three members of the board shall be franchised dealers in new automobiles or trucks, duly licensed and engaged in business as such in North Carolina, provided that no two of such dealers may be franchised to sell automobiles or trucks manufactured or distributed by the same person or a subsidiary or affiliate of the same person. Three members of the board shall not be motor vehicle dealers or employees of a motor vehicle dealer.

(c) The Speaker shall appoint two of the dealer members and one of the public members and shall fill any vacancy in said positions and the Lieutenant Governor shall appoint one of the dealer members and two of the public members and shall fill any vacancy in said positions. In making the initial appointments the Speaker shall designate that the two dealer members shall serve for one and three years respectively and the public member shall serve for two years, and in making the initial appointments the Lieutenant Governor shall designate that the dealer member shall serve for two years and the two public members shall serve for one and three years respectively.

(d) Two members of the first board appointed shall serve for a period of three years, two members of the first board shall serve for a period of two years, and two members of the first board shall serve for a period of one year. Subsequent appointments shall be for terms of three years, except appointments to fill vacancies which shall be for the unexpired terms. Members of the board shall meet at the call of the Commissioner and shall receive as compensation for their services seven dollars (\$7.00) for each day actually engaged in the

exercise of the duties of the board and such travel expenses and subsistence allowances as are generally allowed other State commissions and boards."

Sec. 4. The provisions of this act shall not apply to manufacturers of, or dealers in, mobile or manufactured type housing or recreational trailers.

Sec. 5. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 16th day of March, 1973.