

GENERAL ASSEMBLY OF NORTH CAROLINA  
1983 SESSION

CHAPTER 704  
SENATE BILL 424

AN ACT RELATING TO THE MOTOR VEHICLE DEALERS AND  
MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-285 is amended in the last line following "citizens" and before the "." by adding the following words "and to protect and preserve the investments and properties of the citizens of this State".

Sec. 2. G.S. 20-286(3) is amended in the last line following "State" and before the "." by adding the following words and punctuation ", or who controls any person, firm, association, corporation or trust, resident or nonresident, who in whole or in part offers for sale, sells or distributes any motor vehicle to any motor vehicle dealer in this State".

Sec. 3. G.S. 20-286 is amended by adding the following new subsections:

"(17) 'Good faith' means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in G.S. 25-2-103(1)(b).

(18) 'Designated family member' means the spouse, child, grandchild, parent, brother, or sister of a dealer, who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who under the laws of intestate succession of this State is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer.

(19) 'Relevant market area' or 'trade area' means the area within a radius of 20 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer the relevant market area shall be as follows:

- a. If the population in an area within a radius of 10 miles around the proposed site is 250,000 or more, the relevant market area shall be that area within the 10 mile radius; or

- b. If the population in an area within a radius of 10 miles around the proposed site is less than 250,000, but the population in an area within a radius of 15 miles around the proposed site is 150,000 or more, the relevant market area shall be that area within the 15 mile radius; or
- c. Except as defined in subsections (a) and (b) above, the relevant market area shall be the area within a radius of 20 miles around an existing dealer.

In determining population for this definition the most recent census by the U.S. Bureau of the Census or the most recent population update either from the National Planning Data Corporation or other similar recognized source shall be accumulated for all census tracts either wholly or partially within the relevant market area.

- (20) 'Manufacturer' means any person, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said motor vehicles. Additionally, the term 'manufacturer' shall include the terms 'distributor' and 'factory branch' which have been defined above.
- (21) 'Dealership facilities' means the real estate, buildings, fixtures and improvements which have been devoted to the conduct of business under the franchise by the new motor vehicle dealer.
- (22) 'Franchise' means the written agreement or contract between any new motor vehicle manufacturer, and any new motor vehicle dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract, and pursuant to which the dealer purchases and resells the franchised product or leases or rents the dealership premises.
- (23) 'Person' means every natural person, partnership, corporation, association, trust or estate or other legal entity."

Sec. 4. G.S. 20-294(9) is amended following the word "application" and before the "." by adding the following "; or conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia".

Sec. 5. G.S. 20-305(1) is amended in the first line after the word "To" and before the word "coerce" by adding the words and punctuation "require,".

Sec. 6. G.S. 20-305(2) is amended in the first line after the word "To" and before the word "coerce" by adding the words and punctuation "require,".

Sec. 7. G.S. 20-305(5) is rewritten to read:

"To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in such line make in the relevant market area of the

intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any such new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When such a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

(a) This section does not apply:

- (i) To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
- (ii) If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
- (iii) To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
- (iv) To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

(b) In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:

- (i) The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
- (ii) Growth or decline in population, density of population, and new car registrations in the relevant market area;
- (iii) Effect on the consuming public in the relevant market area;
- (iv) Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
- (v) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
- (vi) Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle in the relevant market

area would increase competition in a manner such as to be in the long-term public interest; and

- (vii) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

(c) The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a protest is filed. Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.

(d) Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150A of the General Statutes."

Sec. 8. G.S. 20-305(6) is rewritten to read:

"Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has:

satisfied the notice requirements of subparagraph (c); and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)(c)(i)b, c or d, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)(c)(i)c then the Commissioner shall give the proceeding priority consideration and shall render his final determination no later than 60 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150A of the General Statutes.

(a) Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

- (i) There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

- (ii) If the failure by the new motor vehicle dealer, defined in (i) above, relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of such failure; and
    - a. Said notification stated that notice was provided of failure of performance pursuant to this section;
    - b. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with such criteria; and
    - c. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.
- (b) The manufacturer shall have the burden of proof under this section.
- (c) Notification of Termination, Cancellation and Nonrenewal.
  - (i) Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of such termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
    - a. In the manner described in G.S. 20- 305(6)(c)(ii) below; and
    - b. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
    - c. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
      - 1. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
      - 2. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
      - 3. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

4. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
  - d. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.
- (ii) Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- a. A statement of intention to terminate, cancel or not to renew the franchise;
  - b. A statement of the reasons for the termination, cancellation or nonrenewal; and
  - c. The date on which such termination, cancellation or nonrenewal takes effect.
- (iii) Notification provided in G.S. 20-305(6)(c)(i)b. of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20- 305(6)(a)(ii)b. provided such notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- (d) Payments.
- (i) Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
    - a. New motor vehicle inventory which has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;
    - b. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;
    - c. Equipment and furnishings which have not been altered or damaged and which have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

- d. Special tools which have not been altered or damaged and which have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.
- (ii) Such fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

(e) Dealership Facilities Assistance Upon Termination, Cancellation or Nonrenewal.

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

- (i) Subject to paragraph (iii), if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
- (ii) Subject to paragraph (iii), if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
- (iii) Provided nothing in this section (e) shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections (i) and (ii), nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

(f) The provisions of paragraphs (d) and (e) above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer."

Sec. 9. G.S. 20-305(7) is rewritten to read:

"Notwithstanding the terms of any franchise agreement, to prevent or refuse to honor the succession to a dealership by the designated family member as provided for under this subsection.

(a) Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member to succeed in the ownership interest of the said owner in the new motor vehicle dealership.

(b) Unless there exists good cause for refusal to honor succession on the part of the manufacturer or distributor, any designated family member of a deceased or incapacitated owner of a new motor vehicle dealership may succeed to the ownership of the new motor vehicle dealership under the existing franchise provided that:

(i) The designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the new motor vehicle dealership within 60 days of the owner's death or incapacity; provided, however, that the failure of the designated family member to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated family member's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated family member or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated family member may give the notice required hereunder, provided the designated family member or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity; and

(ii) The designated family member agrees to be bound by all terms and conditions of the franchise.

(c) The manufacturer or distributor may request, and the designated family member shall provide, promptly upon said request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

(d) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealership by a family member of a deceased or incapacitated owner of a new motor vehicle dealership under the existing franchise agreement, the manufacturer or distributor may, not more than 60 days following receipt of:

(i) Notice of the designated family member's intent to succeed to the ownership of the new motor vehicle dealer; or

(ii) Any personal or financial data which it has requested, serve upon the designated family member and the Commissioner notice of its refusal to honor the succession and of its intent to discontinue the existing franchise with the dealer.

(e) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise with the new motor vehicle dealer no sooner than 90 days from the date such notice is served.



(f) If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted by this act.

(g) Within 30 days of receiving the manufacturer's or distributor's notice of its intent to discontinue the existing franchise as provided in subsection (d) above, the designated family member may file a written protest of the manufacturer's or distributor's decision with the Commissioner. When such a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the franchise shall continue in effect until the Commissioner has held a hearing, and thereafter, unless the Commissioner has determined that there is good cause for the manufacturer's or distributor's refusal to honor the succession. The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a protest is filed. Any parties to a hearing by the Commissioner concerning whether good cause exists for the refusal to honor the succession shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150A of the General Statutes.

(h) In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.

(i) This section does not preclude the owner of a new motor vehicle dealership from designating any person as his successor by written instrument filed with the manufacturer or distributor, and, in the event there is a conflict between such written instrument and the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument shall govern."

Sec. 10. G.S. 20-305 is amended by adding the following new subdivisions to read:

"(8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising

costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

- (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.
- (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer.
- (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.
- (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.
- (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's relevant market area, and within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model

and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

- (15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.
- (16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.
- (17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (1) the addition to a new motor vehicle of required or optional equipment; or (2) revaluation of the United States dollar, in the case of foreign- make vehicles or components; or (3) an increase in transportation charges due to increased rates imposed by carriers; or (4) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.
- (18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.
- (19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.
- (20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to

the manufacturer, without the express written consent of the new motor vehicle dealer.

- (21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.
- (22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.
- (23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.
- (24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.
- (25) To require, coerce, or attempt to coerce a new motor vehicle dealer to either establish or maintain exclusive facilities, personnel, or display space when such requirements would not be justified by reasonable business considerations.
- (26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.
- (27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and which induces any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.
- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement."

Sec. 11. G.S. 20-305.1(b) is rewritten to read:

"(b) Notwithstanding the terms of any franchise agreement, 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 compensate its motor vehicle dealers licensed in this State for warranty parts, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories

or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer."

Sec. 12. G.S. 20-305.1(c) is amended following the word "above" and before the "," in the third line by adding the following "and subsection (d) below".

Sec. 13. G.S. 20-305.1 is further amended by adding following subsection (c) new subsection (d), to read as follows:

"(d) Transportation damages.

- (1) Notwithstanding the terms, provisions or conditions of any agreement or franchise, the manufacturer is liable for all damages to motor vehicles before delivery to a carrier or transporter.
- (2) If a new motor vehicle dealer determines the method of transportation, the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.
- (3) In every other instance, the risk of loss remains with the manufacturer until such time as the new motor vehicle dealer or his designee accepts the vehicle from the carrier.
- (4) Whenever a motor vehicle is damaged while in transit when the carrier or the means of transportation is designated by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the dealer, the dealer must:
  - a. Notify the manufacturer or distributor of such damage within three working days or within such additional time as authorized by the franchise agreement of the occurrence of the delivery of the motor vehicle as defined in subsection (1) of this section; and
  - b. Must request from the manufacturer or distributor authorization to repair the damages sustained or to replace the parts or accessories damaged.
- (5) In the event the manufacturer or distributor refuses or fails to authorize repair or replacement of any such damage within ten working days after receipt of notification of damage by the dealer, ownership of the motor vehicle shall revert to the manufacturer or distributor, and the dealer shall incur no obligation, financial or otherwise, for such damage to the motor vehicle.
- (6) Nothing in this section (d) shall relieve the dealer of the obligation to cooperate with the manufacturer as necessary in filing any transportation damage claim with the carrier."

Sec. 14. G.S. 20-305.2 is amended by replacing the words "trade area" with the words "relevant market area" each place the phrase appears.

Sec. 15. G.S. 20-305.2 is further amended in the second paragraph by deleting the sentence "Trade area is that area specified in the franchise agreement or determined by the Motor Vehicle Dealers' Advisory Board."

Sec. 16. G.S. 20-309 is added to read:

**"§ 20-309. 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 person 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 any person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency of 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.

(b) Where the violation of a provision of this Article can be shown to be 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 such loss of money or property.

(d) Where there are continued violations of a provision or provisions of this Article and it can be shown that the violations are willful or wanton, the court, in addition to any other remedy or awards of damages under this Article may assess monetary penalties."

Sec. 17. G.S. 20-310 is added to read:

**"§ 20-310. Applicability of this Article.** – (a) Any person who engages directly or indirectly in purposeful contacts within this State in connection with the offering or advertising for sale, or has business dealings, with respect to a new motor vehicle sale within this State, shall be subject to the provisions of this Article and shall be subject to the jurisdiction of the courts of this State.

(b) The applicability of this Article shall not be affected by a choice of law clause in any franchise, agreement, waiver, novation, or any other written instrument.

(c) Any provision of any agreement, franchise, waiver, novation or any other written instrument which is in violation of any section of this Article shall be deemed null and void and without force and effect.

(d) It shall be unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association or person to accomplish what would otherwise be illegal conduct under this Article on the part of the manufacturer or distributor."

Sec. 18. G.S. 20-305.5 is amended by deleting the statutory citation "G.S. 20-305(4), (5), (6), and (7)" and inserting in lieu thereof the statutory citation "G.S. 20-305(4) through G.S. 20-305(28)".

Sec. 19. In the event any of the provisions of this act are held to be invalid, such invalidity shall not affect the validity of any remaining sections of the act.

Sec. 20. The provisions of this act shall be applicable to all franchises and contracts existing between dealers, manufacturers, factory branches, and distributors at the time of its ratification, and to all such future franchises and contracts.

Sec. 21. G.S. 20-286(11) is amended by adding after the word "vehicles" and before the "." the following:

", and who holds or held at the time a cause of action under this Article accrued, a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles."

Sec. 22. As an interim provision, in addition to G.S. 20-305(5)(a)(ii) if the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicles has ceased operating since June 1, 1980, the new motor vehicle dealer may be established by the manufacturer by giving notice to the Commissioner and obtaining a license for an approved new motor vehicle dealer who must commence business operation within 90 days thereafter.

Sec. 23. G.S. 20-301 is amended by adding a new subsection (d) as follows:

"(d) The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days."

Sec. 24. G.S. 20-307.1 is added following G.S. 20-307 as follows:

**"§ 20-307.1. Jurisdiction.** – A franchisee who is substantially and primarily engaged in the sale of motor vehicles or parts, materials, or components of motor vehicles, including batteries, tires, transmissions, mufflers, painting, lubrication or tune-ups may bring suit against any franchisor, engaged in commerce, in the General Court of Justice in the State of North Carolina that has proper venue."

Sec. 25. Section 22 of this act shall expire on June 1, 1984. This act shall become effective 30 days after ratification, and shall not affect pending litigation.

In the General Assembly read three times and ratified, this the 7th day of July, 1983.