

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 877

Short Title: MV Dealers Licensing Law.

(Public)

Sponsors: Representative Brawley.

Referred to: Judiciary I.

April 18, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PROVISIONS CONTAINED IN THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301(e) reads as rewritten:

"(e) 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; provided, however, that the Commissioner, in his discretion, may extend the time for discovery beyond the 60-day period either upon the consent of all parties to the proceeding, or upon application of one or more parties and upon a showing of good cause for allowing such extension."

Sec. 2. G.S. 20-305(5) reads as rewritten:

"(5) 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

1 protest has been filed, and that the manufacturer shall not establish or
2 relocate the proposed new motor vehicle dealer until the
3 Commissioner has held a hearing, nor thereafter, if the Commissioner
4 has determined that there is good cause for not permitting the addition
5 or relocation of such new motor vehicle dealer.

6 a. This section does not apply:

7 1. To the relocation of an existing new motor vehicle dealer
8 within that dealer's relevant market area, provided that
9 the relocation not be at a site within 10 miles of a
10 licensed new motor vehicle dealer for the same line
11 make of motor vehicle; or

12 2. If the proposed additional new motor vehicle
13 dealer is to be established at or within two miles of a
14 location at which a former licensed new motor vehicle
15 dealer for the same line make of new motor vehicle
16 had ceased operating within the previous two years;

17 3. To the relocation of an existing new motor
18 vehicle dealer within two miles of the existing site of
19 the new motor vehicle dealership;

20 4. To the relocation of an existing new motor
21 vehicle dealer if the proposed site of the relocated new
22 motor vehicle dealership is further away from all other
23 new motor vehicle dealers of the same line make in
24 that relevant market area.

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

30 1. The permanency of the investment of both the existing
31 and proposed additional new motor vehicle dealers;

32 2. Growth or decline in population, density of
33 population, and new car registrations in the relevant
34 market area;

35 3. Effect on the consuming public in the relevant
36 market area;

37 4. Whether it is injurious or beneficial to the
38 public welfare for an additional new motor vehicle
39 dealer to be established;

40 5. Whether the new motor vehicle dealers of the
41 same line make in that relevant market area are
42 providing adequate competition and convenient
43 customer care for the motor vehicles of the same line
44 make in the market area which shall include the

1 adequacy of motor vehicle sales and service facilities,
2 equipment, supply of motor vehicle parts, and
3 qualified service personnel;

4 6. Whether the establishment of an additional
5 new motor vehicle dealer or relocation of an existing
6 new motor vehicle in the relevant market area would
7 increase competition in a manner such as to be in the
8 long-term public interest; and

9 7. The effect on the relocating dealer of a denial
10 of its relocation into the relevant market area.

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

19 d. Any parties to a hearing by the Commissioner concerning the
20 establishment or relocating of a new motor vehicle dealer shall
21 have a right of review of the decision in a court of competent
22 jurisdiction pursuant to Chapter ~~150A~~150B of the General
23 Statutes.

24 e. In a proceeding involving a proposed additional dealership, the
25 manufacturer or distributor shall have the burden of proof under
26 this section; and in a proceeding involving the relocation of an
27 existing dealership, the dealer seeking to relocate shall have the
28 burden of proof under this section.

29 f. If, pursuant to the foregoing procedure, it shall be determined,
30 following a hearing or otherwise, that good does not exist for
31 refusing to permit the proposed additional or relocated motor
32 vehicle dealer, the proposed additional or relocated motor
33 vehicle dealer has not, within two years from the date such
34 determination became final, both (i) obtained a license from the
35 Commissioner for the sale of vehicles at the site at which
36 permission for the additional new motor vehicle dealer or
37 relocated dealer was granted by the Commissioner, and (ii)
38 actually commenced operations at such site selling new motor
39 vehicles of all line-makes for which permission to operate at the
40 additional or relocated site was allowed by the Commissioner,
41 such failure shall constitute a waiver by the proposed additional
42 or relocated motor vehicle dealer to exercise such dealer's rights
43 under this section, requiring renotification, a new hearing, and a
44 new determination pursuant to this section."

1 Sec. 3. G.S. 20-305(6) reads as rewritten:

2 "(6) Notwithstanding the terms, provisions or conditions of any franchise
3 or notwithstanding the terms or provisions of any waiver, to terminate,
4 cancel or fail to renew any franchise with a licensed new motor vehicle
5 dealer unless the manufacturer has: satisfied the notice requirements of
6 subparagraph c.; and the Commissioner has determined, if requested in
7 writing by the dealer within the time period specified in G.S. 20-
8 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
9 that there is good cause for the termination, cancellation, or
10 nonrenewal of the franchise and that the manufacturer has acted in
11 good faith as defined in this act regarding the termination, cancellation
12 or nonrenewal. When such a petition is made to the Commissioner by
13 a dealer for determination as to the existence of good cause and good
14 faith for the termination, cancellation or nonrenewal of a franchise, the
15 Commissioner shall promptly inform the manufacturer that a timely
16 petition has been filed, and the franchise in question shall continue in
17 effect pending the Commissioner's decision. The Commissioner must
18 conduct the hearing and render his final determination as ~~expeditiously~~
19 ~~as possible, but in any event~~ no later than 180 days after a petition has
20 ~~been filed.~~ filed; provided, however, that the Commissioner may
21 extend such period of time upon application of a party and for good
22 cause shown, or upon the consent of all parties to the proceeding. If
23 the termination, cancellation or nonrenewal is pursuant to G.S. 20-
24 305(6)c1III then the Commissioner shall give the proceeding priority
25 consideration and shall render his final determination no later than 60
26 days after the petition has been filed. Any parties to a hearing by the
27 Commissioner under this section shall have a right of review of the
28 decision in a court of competent jurisdiction pursuant to Chapter 150A
29 of the General Statutes.

30 a. Notwithstanding the terms, provisions or conditions of any
31 franchise or the terms or provisions of any waiver, good cause
32 shall exist for the purposes of a termination, cancellation or
33 nonrenewal when:

34 1. There is a failure by the new motor vehicle dealer to
35 comply with a provision of the franchise which provision
36 is both reasonable and of material significance to the
37 franchise relationship provided that the dealer has been
38 notified in writing of the failure within 180 days after the
39 manufacturer first acquired knowledge of such failure;

40 2. If the failure by the new motor vehicle dealer,
41 defined in 1 above, relates to the performance of the
42 new motor vehicle dealer in sales or service, then good
43 cause shall be defined as the failure of the new motor
44 vehicle dealer to comply with reasonable performance

1 criteria established by the manufacturer if the new
2 motor vehicle dealer was apprised by the manufacturer
3 in writing of such failure; and

4 I. Said notification stated that notice was provided
5 of failure of performance pursuant to this section;

6 II. The new motor vehicle dealer was
7 afforded a reasonable opportunity, for a period
8 of not less than 180 days, to comply with such
9 criteria; and

10 III. The new motor vehicle dealer failed to
11 demonstrate substantial progress towards
12 compliance with the manufacturer's
13 performance criteria during such period and the
14 new motor vehicle dealer's failure was not
15 primarily due to economic or market factors
16 within the dealer's relevant market area which
17 were beyond the dealer's control.

18 b. The manufacturer shall have the burden of proof under this
19 section.

20 c. Notification of Termination, Cancellation and
21 Nonrenewal.

22 1. Notwithstanding the terms, provisions or conditions of
23 any franchise prior to the termination, cancellation or
24 nonrenewal of any franchise, the manufacturer shall
25 furnish notification of such termination, cancellation or
26 nonrenewal to the new motor vehicle dealer as follows:

27 I. In the manner described in G.S. 20-305(6)c2
28 below; and

29 II. Not less than 90 days prior to the
30 effective date of such termination, cancellation
31 or nonrenewal; or

32 III. Not less than 15 days prior to the
33 effective date of such termination, cancellation
34 or nonrenewal with respect to any of the
35 following:

36 A. Insolvency of the new motor vehicle
37 dealer, or filing of any petition by or
38 against the new motor vehicle dealer
39 under any bankruptcy or receivership
40 law;

41 B. Failure of the new motor vehicle
42 dealer to conduct its customary sales and
43 service operations during its customary
44 business hours for seven consecutive

- 1 business days, except for acts of God or
2 circumstances beyond the direct control
3 of the new motor vehicle dealer;
4 C. Revocation of any license which
5 the new motor vehicle dealer is required
6 to have to operate a dealership;
7 D. Conviction of a felony involving
8 moral turpitude, under the laws of this
9 State or any other state, or territory, or
10 the District of Columbia.
- 11 IV. Not less than 180 days prior to the effective date
12 of such termination or cancellation where the
13 manufacturer or distributor is discontinuing the
14 sale of the product line.
- 15 2. Notification under this section shall be in writing; shall
16 be by certified mail or personally delivered to the new
17 motor vehicle dealer; and shall contain:
- 18 I. A statement of intention to terminate,
19 cancel or not to renew the franchise;
20 II. A statement of the reasons for the
21 termination, cancellation or nonrenewal; and
22 III. The date on which such termination,
23 cancellation or nonrenewal takes effect.
- 24 3. Notification provided in G.S. 20-305(6)c1III of 90 days
25 prior to the effective date of such termination,
26 cancellation or renewal may run concurrent with the 180
27 days designated in G.S. 20-305(6)a2II provided such
28 notification is clearly designated by a separate written
29 document mailed by certified mail or personally
30 delivered to the new motor vehicle dealer.
- 31 d. Payments. –
- 32 1. Upon the termination, nonrenewal or cancellation of any
33 franchise by the manufacturer or distributor, pursuant to
34 this section, the new motor vehicle dealer shall be
35 allowed fair and reasonable compensation by the
36 manufacturer for the:
- 37 I. New motor vehicle inventory which has been
38 acquired from the manufacturer within 18 months,
39 at a price not to exceed the original
40 manufacturer's price to the dealer, and which has
41 not been altered or damaged, and which has not
42 been driven more than 200 miles, and for which
43 no certificate of title has been issued;

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- II. 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;
 - III. 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
 - IV. 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.
 2. 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:

 1. Subject to paragraph 3, 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
 2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the

1 manufacturer shall pay the new motor vehicle dealer a
2 sum equivalent to the reasonable rental value of the
3 dealership facilities for one year.

4 3. Provided nothing in this section e shall relieve a lessee or
5 owner, as the case may be, from the obligation to
6 mitigate damages under the lease, nor prevent a
7 manufacturer from occupying and using the dealership
8 facilities while paying rent under subsections 1 and 2,
9 nor prevent a manufacturer from obligations by
10 negotiating a lease termination, a sublease or a new
11 lease. Any amounts recovered by the lessee or owner
12 resulting from mitigation of damages shall be deducted
13 from the amount due from the manufacturer.

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

18 Sec. 4. G.S. 20-308.1(a) reads as rewritten:

19 "(a) Notwithstanding the terms, provisions or conditions of any agreement or
20 franchise or other terms or provisions of any novation, waiver or other written
21 instrument, any person who is or may be injured by a violation of a provision of this
22 Article, or any party to a franchise who is so injured in his business or property by a
23 violation of a provision of this Article relating to that franchise, ~~or any person so injured~~
24 ~~because he refuses to accede to a proposal for or~~ an arrangement which, if consummated,
25 would be in violation of this Article may, notwithstanding the initiation or pendency of
26 an administrative proceeding before the Commissioner concerning the same parties or
27 subject matter, bring an action for damages and equitable relief, including injunctive
28 relief, in any court of competent jurisdiction with regard to any matter not within the
29 jurisdiction of the ~~Commissioner.~~ Commissioner or which seeks relief wholly outside the
30 authority or jurisdiction of the Commissioner to award."

31 Sec. 5. This act is effective upon ratification and affects any pending
32 administrative proceeding or litigation.