

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 840
Judiciary II Committee Substitute Adopted 5/12/93

Short Title: Dealer Franch. Term. Decision.

(Public)

Sponsors:

Referred to:

April 13, 1993

A BILL TO BE ENTITLED

1 AN ACT TO EXTEND THE TIME FOR THE COMMISSIONER TO RENDER A
2 FINAL DETERMINATION IN CONTESTED FRANCHISE TERMINATION,
3 CANCELLATION, OR FAILURE TO RENEW MATTERS, BASED ON
4 BANKRUPTCY, FAILURE TO STAY OPEN, LOSS OF LICENSES, OR
5 CONVICTION OF FELONY INVOLVING MORAL TURPITUDE, UNDER THE
6 MOTOR VEHICLES DEALERS AND MANUFACTURERS LICENSING LAW.
7

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 20-305(6) reads as rewritten:

10 "(6) Notwithstanding the terms, provisions or conditions of any franchise
11 or notwithstanding the terms or provisions of any waiver, to terminate,
12 cancel or fail to renew any franchise with a licensed new motor vehicle
13 dealer unless the manufacturer has satisfied the notice requirements of
14 subparagraph c. and the Commissioner has determined, if requested in
15 writing by the dealer within the time period specified in G.S. 20-
16 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
17 that there is good cause for the termination, cancellation, or
18 nonrenewal of the franchise and that the manufacturer has acted in
19 good faith as defined in this act regarding the termination, cancellation
20 or nonrenewal. When such a petition is made to the Commissioner by
21 a dealer for determination as to the existence of good cause and good
22 faith for the termination, cancellation or nonrenewal of a franchise, the
23 Commissioner shall promptly inform the manufacturer that a timely

1 petition has been filed, and the franchise in question shall continue in
2 effect pending the Commissioner's decision. The Commissioner must
3 conduct the hearing and render a final determination no later than 180
4 days after a petition has been filed; provided, however, that the
5 Commissioner may extend such period of time upon application of a
6 party and for good cause shown, or upon the consent of all parties to
7 the proceeding. If the termination, cancellation or nonrenewal is
8 pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the
9 proceeding priority consideration and shall render his final
10 determination no later than ~~60~~90 days after the petition has been filed.
11 Any parties to a hearing by the Commissioner under this section shall
12 have a right of review of the decision in a court of competent
13 jurisdiction pursuant to Chapter 150B of the General Statutes.

14 a. Notwithstanding the terms, provisions or conditions of any
15 franchise or the terms or provisions of any waiver, good cause
16 shall exist for the purposes of a termination, cancellation or
17 nonrenewal when:

18 1. There is a failure by the new motor vehicle dealer to
19 comply with a provision of the franchise which provision
20 is both reasonable and of material significance to the
21 franchise relationship provided that the dealer has been
22 notified in writing of the failure within 180 days after the
23 manufacturer first acquired knowledge of such failure;

24 2. If the failure by the new motor vehicle dealer
25 relates to the performance of the new motor vehicle
26 dealer in sales or service, then good cause shall be
27 defined as the failure of the new motor vehicle dealer
28 to comply with reasonable performance criteria
29 established by the manufacturer if the new motor
30 vehicle dealer was apprised by the manufacturer in
31 writing of the failure; and

32 I. The notification stated that notice was provided of
33 failure of performance pursuant to this section;

34 II. The new motor vehicle dealer was
35 afforded a reasonable opportunity, for a period
36 of not less than 180 days, to comply with the
37 criteria; and

38 III. The new motor vehicle dealer failed to
39 demonstrate substantial progress towards
40 compliance with the manufacturer's
41 performance criteria during such period and the
42 new motor vehicle dealer's failure was not
43 primarily due to economic or market factors

- 1 within the dealer's relevant market area which
2 were beyond the dealer's control.
- 3 b. The manufacturer shall have the burden of proof under this
4 section.
- 5 c. Notification of Termination, Cancellation and
6 Nonrenewal. –
- 7 1. Notwithstanding the terms, provisions or conditions of
8 any franchise prior to the termination, cancellation or
9 nonrenewal of any franchise, the manufacturer shall
10 furnish notification of termination, cancellation or
11 nonrenewal to the new motor vehicle dealer as follows:
- 12 I. In the manner described in G.S. 20-305(6)c2
13 below; and
- 14 II. Not less than 90 days prior to the
15 effective date of such termination, cancellation
16 or nonrenewal; or
- 17 III. Not less than 15 days prior to the
18 effective date of such termination, cancellation
19 or nonrenewal with respect to any of the
20 following:
- 21 A. Insolvency of the new motor vehicle
22 dealer, or filing of any petition by or
23 against the new motor vehicle dealer
24 under any bankruptcy or receivership
25 law;
- 26 B. Failure of the new motor vehicle
27 dealer to conduct its customary sales and
28 service operations during its customary
29 business hours for seven consecutive
30 business days, except for acts of God or
31 circumstances beyond the direct control
32 of the new motor vehicle dealer;
- 33 C. Revocation of any license which
34 the new motor vehicle dealer is required
35 to have to operate a dealership;
- 36 D. Conviction of a felony involving
37 moral turpitude, under the laws of this
38 State or any other state, or territory, or
39 the District of Columbia.
- 40 IV. Not less than 180 days prior to the effective date
41 of such termination or cancellation where the
42 manufacturer or distributor is discontinuing the
43 sale of the product line.

- 1 2. Notification under this section shall be in writing; shall
2 be by certified mail or personally delivered to the new
3 motor vehicle dealer; and shall contain:
 - 4 I. A statement of intention to terminate,
5 cancel or not to renew the franchise;
 - 6 II. A statement of the reasons for the
7 termination, cancellation or nonrenewal; and
 - 8 III. The date on which the termination,
9 cancellation or nonrenewal takes effect.
 - 10 3. Notification provided in G.S. 20-305(6)c1III of 90 days
11 prior to the effective date of such termination,
12 cancellation or renewal may run concurrent with the 180
13 days designated in G.S. 20-305(6)a2II provided the
14 notification is clearly designated by a separate written
15 document mailed by certified mail or personally
16 delivered to the new motor vehicle dealer.
- 17 d. Payments. –
- 18 1. Upon the termination, nonrenewal or cancellation of any
19 franchise by the manufacturer or distributor, pursuant to
20 this section, the new motor vehicle dealer shall be
21 allowed fair and reasonable compensation by the
22 manufacturer for the:
 - 23 I. New motor vehicle inventory that has been
24 acquired from the manufacturer within 18 months,
25 at a price not to exceed the original
26 manufacturer's price to the dealer, and which has
27 not been altered or damaged, and which has not
28 been driven more than 200 miles, and for which
29 no certificate of title has been issued;
 - 30 II. Unused, undamaged and unsold supplies and parts
31 purchased from the manufacturer, at a price not to
32 exceed the original manufacturer's price to the
33 dealer, provided such supplies and parts are
34 currently offered for sale by the manufacturer or
35 distributor in its current parts catalogs and are in
36 salable condition;
 - 37 III. Equipment and furnishings that have
38 not been altered or damaged and that have been
39 required by the manufacturer or distributor to be
40 purchased by the new motor vehicle dealer from
41 the manufacturer or distributor, or their
42 approved sources; and
 - 43 IV. Special tools that have not been altered
44 or damaged and that have been required by the

- 1 manufacturer or distributor to be purchased by
2 the new motor vehicle dealer from the
3 manufacturer or distributor, or their approved
4 sources within five years immediately
5 preceding the termination, nonrenewal or
6 cancellation of the franchise.
- 7 2. Fair and reasonable compensation for the above shall be
8 paid by the manufacturer within 90 days of the effective
9 date of termination, cancellation or nonrenewal,
10 provided the new motor vehicle dealer has clear title to
11 the inventory and has conveyed title and possession to
12 the manufacturer.
- 13 e. Dealership Facilities Assistance upon Termination,
14 Cancellation or Nonrenewal. –
15 In the event of the termination, cancellation or nonrenewal by
16 the manufacturer or distributor under this section, except
17 termination, cancellation or nonrenewal for insolvency, license
18 revocation, conviction of a crime involving moral turpitude, or
19 fraud by a dealer-owner:
- 20 1. Subject to paragraph 3, if the new motor vehicle dealer is
21 leasing the dealership facilities from a lessor other than
22 the manufacturer, the manufacturer shall pay the new
23 motor vehicle dealer a sum equivalent to the rent for the
24 unexpired term of the lease or one year's rent, whichever
25 is less, or such longer term as is provided in the franchise
26 agreement between the dealer and manufacturer; or
- 27 2. Subject to paragraph 3, if the new motor
28 vehicle dealer owns the dealership facilities, the
29 manufacturer shall pay the new motor vehicle dealer a
30 sum equivalent to the reasonable rental value of the
31 dealership facilities for one year.
- 32 3. Provided nothing in this paragraph e. shall relieve a
33 lessee or owner, as the case may be, from the obligation
34 to mitigate damages under the lease, nor prevent a
35 manufacturer from occupying and using the dealership
36 facilities while paying rent under subsections 1 and 2,
37 nor prevent a manufacturer from obligations by
38 negotiating a lease termination, a sublease or a new
39 lease. Any amounts recovered by the lessee or owner
40 resulting from mitigation of damages shall be deducted
41 from the amount due from the manufacturer.
- 42 f. The provisions of paragraphs d. and e. above shall not be
43 applicable when the termination, nonrenewal or cancellation of

1 the franchise agreement is the result of the voluntary act of the
2 dealer."

3 Sec. 2. This act becomes effective October 1, 1993, and shall only apply to
4 petitions filed on or after that date.