

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE DRH80233-LK-164* (4/8)

Short Title: Clarify MV Dealer Franchise Laws.

(Public)

Sponsors: Representative Cole.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-286(10) reads as rewritten:

"§ 20-286. Definitions.

The following definitions apply in this Article:

...

(10) Motor vehicle. – Any motor propelled vehicle, trailer or semi trailer, required to be registered under the laws of this State.

a. "New motor vehicle" means a motor vehicle which has ~~never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise either:~~

1. Never been the subject of a sale other than between new motor vehicle dealers, or between manufacturer and dealer of the same franchise; or

2. Whose odometer mileage is 1,000 miles or less.

For purposes of this Article, a motor vehicle that has previously been the subject of a sale, whether the sale was conditional or unconditional, whether or not documents transferring title to the vehicle were executed and submitted to the Division, or whether or not the title to the vehicle was transferred, may nonetheless be considered new and represented and sold by a new motor vehicle dealer to the public as such, as long as the vehicle's odometer mileage does not exceed 1,000 miles.

- 1 b. "Used motor vehicle" means a motor vehicle other than
2 described in paragraph (10)a above."

3 **SECTION 2.** G.S. 20-286(13b) reads as rewritten:

4 "**§ 20-286. Definitions.**

5 The following definitions apply in this Article:

6 ...
7 (13b) Relevant market area or trade area. – The area within a radius of 20
8 miles around an existing dealer or the area of responsibility defined in
9 the franchise, whichever is greater; except that, where a manufacturer
10 is seeking to establish an additional new motor vehicle dealer the
11 relevant market area shall be as follows:

- 12 a. If the population in an area within a radius of 10 miles around
13 the proposed site is 250,000 or more, the relevant market area
14 shall be that area within the 10 mile ~~radius;~~ radius, together
15 with the area of responsibility defined in the franchise of any
16 existing same line-make dealer whose area of responsibility
17 wholly or partially falls within the 10 mile radius; or
18 b. If the population in an area within a radius of 10 miles around
19 the proposed site is less than 250,000, but the population in an
20 area within a radius of 15 miles around the proposed site is
21 150,000 or more, the relevant market area shall be that area
22 within the 15 mile ~~radius;~~ radius, together with the area of
23 responsibility defined in the franchise of any existing same line-
24 make dealer whose area of responsibility wholly or partially
25 falls within the 15 mile radius; or
26 c. Except as defined in subparts a. and b., the relevant market area
27 shall be the area within a radius of 20 miles around an existing
28 ~~dealer.~~ dealer, together with the area of responsibility defined in
29 the franchise of any existing same line-make dealer whose area
30 of responsibility wholly or partially falls within the 20 mile
31 radius;

32 In determining population for this definition the most recent census by
33 the U.S. Bureau of the Census or the most recent population update
34 either from Claritas Inc. or other similar recognized source shall be
35 accumulated for all census tracts either wholly or partially within the
36 relevant market area. In accumulating population for this definition,
37 block group and block level data shall be used to apportion the
38 population of census tracts which are only partially within the relevant
39 market area so that population outside of the applicable radius is not
40 included in the count."

41 **SECTION 3.** Article 12 of Chapter 20 is amended by adding a new section
42 to read:

43 "**§ 20-293. Supplemental temporary license for sale of antique and specialty**
44 **vehicles.**

1 Any dealer license as a motor vehicle dealer under this Article may apply to the
2 Commissioner and receive, at no additional charge, a supplemental temporary license
3 authorizing the off-premises sales of antique motor vehicles and specialty motor
4 vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary
5 supplemental license for the off-premises sale of antique motor vehicles and specialty
6 motor vehicles the applicant shall:

- 7 (1) Be licensed as a motor vehicle dealer under this Article.
- 8 (2) Notify the applicable local office of the Division of the specific dates
9 and location for which the license is requested.
- 10 (3) Display a sign at the licensed location clearly identifying the dealer.
- 11 (4) Keep and maintain the records required for the sale of motor vehicles
12 under this Article.
- 13 (5) Provide staff to work at the temporary location for the duration of the
14 off-premises sale.
- 15 (6) Meet any local government permitting requirements.
- 16 (7) Have written permission from the property owner to sell at the
17 location.

18 For purposes of this section, the term 'antique motor vehicle' shall mean any motor
19 vehicle for private use manufactured at least 25 years prior to the current model year,
20 and the term 'specialty motor vehicle' shall mean any mode or series of motor vehicle
21 for private use manufactured at least three years prior to the current model year of
22 which no more than 5,000 vehicles were sold within the United States during the model
23 year the vehicle was manufactured.

24 This section does not apply to a nonselling motor vehicle show or public display of
25 new motor vehicles."

26 **SECTION 4.** G.S. 20-305(5) reads as rewritten:

27 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
28 **cancel franchise; preventing transfer of ownership; granting additional**
29 **franchises; terminating franchises without good cause; preventing family**
30 **succession.**

31 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
32 branch, or any field representative, officer, agent, or any representative whatsoever of
33 any of them:

- 34 ...
- 35 (5) To enter into a franchise establishing an additional new motor vehicle
36 dealer or relocating an existing new motor vehicle dealer into a
37 relevant market area where the same line make is then represented
38 without first notifying in writing the Commissioner and each new
39 motor vehicle dealer in that line make in the relevant market area of
40 the intention to establish an additional dealer or to relocate an existing
41 dealer within or into that market area. Within 30 days of receiving
42 such notice or within 30 days after the end of any appeal procedure
43 provided by the manufacturer, any new motor vehicle dealer may file
44 with the Commissioner a protest to the establishing or relocating of the

1 new motor vehicle dealer. When a protest is filed, the Commissioner
2 shall promptly inform the manufacturer that a timely protest has been
3 filed, and that the manufacturer shall not establish or relocate the
4 proposed new motor vehicle dealer until the Commissioner has held a
5 hearing and has determined that there is good cause for permitting the
6 addition or relocation of such new motor vehicle dealer.

7 a. This section does not apply:

- 8 1. To the relocation of an existing new motor vehicle dealer
9 within that dealer's relevant market area, provided that
10 the relocation not be at a site within 10 miles of a
11 licensed new motor vehicle dealer for the same line
12 make of motor vehicle. If this sub-subdivision is
13 applicable, only dealers trading in the same line-make of
14 vehicle that are located within the 10-mile radius shall be
15 entitled to notice from the manufacturer and have the
16 protest rights afforded under this section; or
- 17 2. If the proposed additional new motor vehicle dealer is to
18 be established at or within two miles of a location at
19 which a former licensed new motor vehicle dealer for the
20 same line make of new motor vehicle had ceased
21 operating within the previous two years;
- 22 3. To the relocation of an existing new motor vehicle dealer
23 within two miles of the existing site of the new motor
24 vehicle dealership if the ~~franchise-line make~~ has been
25 operating on a regular basis from the existing site for a
26 minimum of three years immediately preceding the
27 ~~relocation;~~ relocation and the relocation not be at a site
28 within five miles of another licensed new motor vehicle
29 dealer for the same line make of motor vehicle; or
- 30 4. To the relocation of an existing new motor vehicle dealer
31 if the proposed site of the relocated new motor vehicle
32 dealership is further away from all other new motor
33 vehicle dealers of the same line make in that relevant
34 market ~~area~~.area; or
- 35 5. To the relocation of an existing new motor vehicle dealer
36 within four miles of the existing site of the new motor
37 vehicle dealership if the line make has been operating on
38 a regular basis from the existing site for a minimum of
39 50 years immediately preceding the relocation and the
40 relocation not be at a site within 4.5 miles of another
41 licensed new motor vehicle dealer for the same line
42 make of motor vehicle.

43 b. In determining whether good cause has been established for not
44 entering into or relocating an additional new motor vehicle

1 dealer for the same line make, the Commissioner shall take into
2 consideration the existing circumstances, including, but not
3 limited to:

- 4 1. The permanency of the investment of both the existing
5 and proposed additional new motor vehicle dealers;
- 6 2. Growth or decline in population, density of population,
7 and new car registrations in the relevant market area;
- 8 3. Effect on the consuming public in the relevant market
9 area;
- 10 4. Whether it is injurious or beneficial to the public welfare
11 for an additional new motor vehicle dealer to be
12 established;
- 13 5. Whether the new motor vehicle dealers of the same line
14 make in that relevant market area are providing adequate
15 competition and convenient customer care for the motor
16 vehicles of the same line make in the market area which
17 shall include the adequacy of motor vehicle sales and
18 service facilities, equipment, supply of motor vehicle
19 parts, and qualified service personnel;
- 20 6. Whether the establishment of an additional new motor
21 vehicle dealer or relocation of an existing new motor
22 vehicle dealer in the relevant market area would increase
23 competition in a manner such as to be in the long-term
24 public interest; ~~and~~
- 25 7. The effect on the relocating dealer of a denial of its
26 relocation into the relevant market ~~area~~; and
- 27 8. Whether an existing dealer in whose market the
28 proposed additional new motor vehicle dealer would be
29 established, has, at the request, encouragement, or with
30 the approval of the franchiser: (i) acquired property for
31 the construction or replacement facility; (ii) constructed
32 a replacement facility; (iii) renovated, remodeled, or
33 constructed an addition to an existing facility; or (iv) by
34 any other means increased the dealer's investment in
35 facilities for the purpose of improving the representation
36 of the manufacturer's products or better serving the
37 consuming public.

38 c. The Commissioner shall try to conduct the hearing and render
39 his final determination if possible, within 180 days after a
40 protest is filed.

41 d. Any parties to a hearing by the Commissioner concerning the
42 establishment or relocating of a new motor vehicle dealer shall
43 have a right of review of the decision in a court of competent
44 jurisdiction pursuant to Chapter 150B of the General Statutes.

- 1 e. In a hearing involving a proposed additional dealership, the
2 manufacturer or distributor has the burden of proof under this
3 section. In a proceeding involving the relocation of an existing
4 dealership, the dealer seeking to relocate has the burden of
5 proof under this section.
- 6 f. If the Commissioner determines, following a hearing, that good
7 cause exists for permitting the proposed additional or relocated
8 motor vehicle dealership, the dealer seeking the proposed
9 additional or relocated motor vehicle dealership must, within
10 two years, obtain a license from the Commissioner for the sale
11 of vehicles at the relevant site, and actually commence
12 operations at the site selling new motor vehicles of all line
13 makes, as permitted by the Commissioner. Failure to obtain a
14 permit and commence sales within two years shall constitute
15 waiver by the dealer of the dealer's right to the additional or
16 relocated dealership, requiring renotification, a new hearing,
17 and a new determination as provided in this section. If the
18 Commissioner fails to determine that good cause exists for
19 permitting the proposed additional or relocated motor vehicle
20 dealership, the manufacturer seeking the proposed additional
21 dealership or dealer seeking to relocate may not again provide
22 notice of its intention or otherwise attempt to establish an
23 additional dealership or relocate to any location within 10 miles
24 of the site of the original proposed additional dealership or
25 relocation site for a minimum of three years from the date of the
26 Commissioner's determination.
- 27 g. For purposes of this subdivision, the addition, creation, or
28 operation of a "satellite" or other facility, not physically part of
29 or contiguous to an existing licensed new motor vehicle dealer,
30 whether or not owned or operated by a person or other entity
31 holding a franchise as defined by G.S. 20-286(8a), at which
32 warranty service work authorized or reimbursed by a
33 manufacturer is performed or at which new motor vehicles are
34 offered for sale to the public, shall be considered an additional
35 new motor vehicle dealer requiring a showing of good cause,
36 prior notification to existing new motor vehicle dealers of the
37 same line make of vehicle within the relevant market area by
38 the manufacturer and the opportunity for a hearing before the
39 Commissioner as provided in this subdivision.
- 40 h. Notwithstanding the terms of any contract or agreement, and
41 not waiving or excusing the obligation of a manufacturer to
42 provide timely notice of termination as provided in this
43 subdivision, the announced decision or determination of the
44 manufacturer to discontinue or phase out a product line in its

1 entirety or to discontinue or phase out any portion for a product
2 line substantial enough that the discontinued or scaled down
3 franchise held by its franchisees would either have no
4 significant long-term value or be unmarketable, shall constitute
5 a termination of the franchise under this subdivision effective as
6 of the date the decision or determination is communicated by
7 the manufacturer to its franchisees or otherwise becomes public
8 knowledge."

9 **SECTION 5.** G.S. 20-305(38) reads as rewritten:

10 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
11 **cancel franchise; preventing transfer of ownership; granting additional**
12 **franchises; terminating franchises without good cause; preventing family**
13 **succession.**

14 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
15 branch, or any field representative, officer, agent, or any representative whatsoever of
16 any of them:

17 ...

18 (38) Notwithstanding the terms, provisions, or conditions of any agreement,
19 franchise, novation, waiver, or other written instrument, to assign or
20 change a franchised new motor vehicle dealer's area of responsibility
21 under the franchise arbitrarily or without due regard to the present or
22 projected future pattern of motor vehicle sales and registrations within
23 the dealer's ~~market~~-market, and without first having provided the
24 affected dealer with prior notice of the proposed change in the dealer's
25 area of responsibility and a detailed description of the change in
26 writing by registered or certified mail, return receipt requested. Unless
27 and until the Commissioner has, pursuant to G.S. 20-305(5),
28 determined that good cause exists for the establishment of an
29 additional dealer at a location such that there would be one or more
30 existing dealers trading in the same line make of motor vehicle within
31 the additional dealer's relevant market area, it shall be unlawful for a
32 manufacturer, factory branch, distributor, or distributor branch to
33 change any existing dealer's area of responsibility for the purpose of
34 justifying the establishment of an additional dealer. A franchised new
35 motor vehicle dealer who believes that a manufacturer, factory branch,
36 distributor, or distributor branch with whom the dealer has entered into
37 a franchise has violated this subdivision may file a petition before the
38 Commissioner as provided in G.S. 20-301(b) contesting the franchised
39 new motor vehicle dealer's assigned area of responsibility. Upon the
40 filing of a petition, the manufacturer shall not change, put into effect,
41 use, or rely on those portions of the petitioning dealer's area of
42 responsibility contested by the dealer, until after a hearing has been
43 held and a determination rendered on the merits of the petition by the
44 Commissioner. At the hearing before the Commissioner, the affected

1 manufacturer, factory branch, distributor, or distributor branch shall
2 have the burden of proving that all portions of its current or proposed
3 area of responsibility for the petitioning franchised new motor vehicle
4 dealer are reasonable in light of the present or projected future pattern
5 of motor vehicle sales and registrations within the franchised new
6 motor vehicle dealer's market. If a protest is or has been filed under
7 G.S. 20-305(5) and the franchised new motor vehicle dealer's area of
8 responsibility is included in the relevant market area under the protest,
9 any protest filed under this subdivision shall be consolidated with that
10 protest for hearing and joint disposition of all of the protests."

11 **SECTION 6.** G.S. 20-305(39) reads as rewritten:

12 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
13 **cancel franchise; preventing transfer of ownership; granting additional**
14 **franchises; terminating franchises without good cause; preventing family**
15 **succession.**

16 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
17 branch, or any field representative, officer, agent, or any representative whatsoever of
18 any of them:

19 ...

20 (39) Notwithstanding the terms, provisions, or conditions of any agreement,
21 franchise, novation, waiver, or other written instrument, to require,
22 coerce, or attempt to coerce any of its franchised motor vehicle dealers
23 in this State to purchase or lease one or more signs displaying the
24 name of the manufacturer or franchised motor vehicle dealer upon
25 unreasonable ~~and~~or onerous terms or conditions or if installation of
26 the additional signage would violate local signage or zoning laws to
27 which the franchised motor vehicle dealer is subject. Any term,
28 provision, or condition of any agreement, franchise, waiver, novation,
29 or any other written instrument which is in violation of this
30 subdivision shall be deemed null and void and without force and
31 effect."

32 **SECTION 7.** G.S. 20-305 is amended by adding a new subdivision to read:

33 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
34 **cancel franchise; preventing transfer of ownership; granting additional**
35 **franchises; terminating franchises without good cause; preventing family**
36 **succession.**

37 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
38 branch, or any field representative, officer, agent, or any representative whatsoever of
39 any of them:

40 ...

41 (40) Notwithstanding the terms, provision, or conditions of any agreement
42 or franchise or other terms or provisions of any novation, waiver, or
43 other written instrument, to require, coerce, or attempt to coerce any
44 dealer to floor plan any of the dealer's inventory, finance the sale or

1 lease of any motor vehicles purchased or leased by any of the dealer's
2 customers, or finance the acquisition, construction, or renovation of
3 any of the dealer's property or facilities, by or through any financial
4 source or sources designated by the manufacturer, factory branch,
5 distributor, or distributor branch, including but not limited to any
6 financial source or sources that is or are directly, or indirectly, owned,
7 operated, or controlled by the manufacturer, factory branch,
8 distributor, or distributor branch."

9 **SECTION 8.** G.S. 20-305.1(b1) reads as rewritten:

10 "(b1) All claims made by motor vehicle dealers pursuant to this section for
11 compensation for delivery, preparation, warranty and recall work including labor, parts,
12 and other expenses, shall be paid by the manufacturer within 30 days after receipt of
13 claim from the dealer. When any claim is disapproved, the dealer shall be notified in
14 writing of the grounds for disapproval. Any claim not specifically disapproved in
15 writing within 30 days after receipt shall be considered approved and payment is due
16 immediately. No claim which has been approved and paid may be charged back to the
17 dealer unless it can be shown that the claim was false or fraudulent, that the repairs were
18 not properly made or were unnecessary to correct the defective condition, or the dealer
19 failed to reasonably substantiate the claim. A manufacturer or distributor shall not deny
20 a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has
21 provided reasonably sufficient documentation that the dealer:

- 22 (1) Made a good faith attempt to perform the work in compliance with the
23 written policies and procedures of the manufacturer; and
24 (2) Actually performed the work.

25 A manufacturer may further not charge a dealer back subsequent to the payment of the
26 claim unless a representative of the manufacturer has met in person at the dealership
27 with an officer or employee of the dealer designated by the dealer and explained in
28 detail the basis for each of the proposed charge backs and thereafter given the dealer's
29 representative a reasonable opportunity at the meeting to explain the dealer's position
30 relating to each of the proposed charge backs. In the event the dealer was selected for
31 audit or review on the basis that some or all of the dealer's claims were viewed as
32 excessive in comparison to average, mean, or aggregate data accumulated by the
33 manufacturer, or in relation to the claims submitted by a group of other franchisees of
34 the manufacturer, the manufacturer shall, at or prior to the meeting with the dealer's
35 representative, provide the dealer with a written statement containing:

- 36 (1) All grounds upon which the dealer was selected for audit or review.
37 (2) The average, mean, or aggregate data upon which the dealer was
38 selected for audit or review and a comparison of that data with relevant
39 data from the dealer.
40 (3) The name and location of all dealers comprising any group of dealers
41 against whom the dealer's claims were compared in selecting the
42 dealer for audit or review."

43 **SECTION 9.** If any provision of this act or its application is held invalid, the
44 invalidity does not affect other provisions or applications of this act that can be given

1 effect without the invalid provisions or application, and to this end the provisions of this
2 act are severable.

3 **SECTION 10.** This act is effective when it becomes law.