

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE BILL 559

Short Title: Clarify MV Dealer Franchise Laws.

(Public)

Sponsors: Senators Hoyle, Swindell, and Berger.

Referred to: Commerce.

March 27, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.
3 The General Assembly of North Carolina enacts:

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

5 "**§ 20-286. Definitions.**

6 The following definitions apply in this Article:

7 ...

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

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

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

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

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

27 b. "Used motor vehicle" means a motor vehicle other than
28 described in paragraph (10)a above."

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

1 **"§ 20-286. Definitions.**

2 The following definitions apply in this Article:

3 ...

4 (13b) Relevant market area or trade area. – The area within a radius of 20
5 miles around an existing dealer or the area of responsibility defined in
6 the franchise, whichever is greater; except that, where a manufacturer
7 is seeking to establish an additional new motor vehicle dealer the
8 relevant market area shall be as follows:

9 a. If the population in an area within a radius of 10 miles around
10 the proposed site is 250,000 or more, the relevant market area
11 shall be that area within the 10 mile ~~radius; radius, together~~
12 with the area of responsibility defined in the franchise of any
13 existing same line-make dealer whose area of responsibility
14 wholly or partially falls within the 10 mile radius; or

15 b. If the population in an area within a radius of 10 miles around
16 the proposed site is less than 250,000, but the population in an
17 area within a radius of 15 miles around the proposed site is
18 150,000 or more, the relevant market area shall be that area
19 within the 15 mile ~~radius; radius, together with the area of~~
20 responsibility defined in the franchise of any existing same line-
21 make dealer whose area of responsibility wholly or partially
22 falls within the 15 mile radius; or

23 c. Except as defined in subparts a. and b., the relevant market area
24 shall be the area within a radius of 20 miles around an existing
25 ~~dealer-dealer, together with the area of responsibility defined in~~
26 the franchise of any existing same line-make dealer whose area
27 of responsibility wholly or partially falls within the 20 mile
28 radius;

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

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

40 **"§ 20-293. Supplemental temporary license for sale of antique and specialty**
41 **vehicles.**

42 Any dealer license as a motor vehicle dealer under this Article may apply to the
43 Commissioner and receive, at no additional charge, a supplemental temporary license
44 authorizing the off-premises sales of antique motor vehicles and specialty motor

1 vehicles for a period not to exceed 10 consecutive calendar days. To obtain a temporary
2 supplemental license for the off-premises sale of antique motor vehicles and specialty
3 motor vehicles the applicant shall:

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

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

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

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

24 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
25 **cancel franchise; preventing transfer of ownership; granting additional**
26 **franchises; terminating franchises without good cause; preventing family**
27 **succession.**

28 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
29 branch, or any field representative, officer, agent, or any representative whatsoever of
30 any of them:

- 31 ...
- 32 (5) To enter into a franchise establishing an additional new motor vehicle
33 dealer or relocating an existing new motor vehicle dealer into a
34 relevant market area where the same line make is then represented
35 without first notifying in writing the Commissioner and each new
36 motor vehicle dealer in that line make in the relevant market area of
37 the intention to establish an additional dealer or to relocate an existing
38 dealer within or into that market area. Within 30 days of receiving
39 such notice or within 30 days after the end of any appeal procedure
40 provided by the manufacturer, any new motor vehicle dealer may file
41 with the Commissioner a protest to the establishing or relocating of the
42 new motor vehicle dealer. When a protest is filed, the Commissioner
43 shall promptly inform the manufacturer that a timely protest has been
44 filed, and that the manufacturer shall not establish or relocate the

1 proposed new motor vehicle dealer until the Commissioner has held a
2 hearing and has determined that there is good cause for permitting the
3 addition or relocation of such new motor vehicle dealer.

4 a. This section does not apply:

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

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

- 1 1. The permanency of the investment of both the existing
- 2 and proposed additional new motor vehicle dealers;
- 3 2. Growth or decline in population, density of population,
- 4 and new car registrations in the relevant market area;
- 5 3. Effect on the consuming public in the relevant market
- 6 area;
- 7 4. Whether it is injurious or beneficial to the public welfare
- 8 for an additional new motor vehicle dealer to be
- 9 established;
- 10 5. Whether the new motor vehicle dealers of the same line
- 11 make in that relevant market area are providing adequate
- 12 competition and convenient customer care for the motor
- 13 vehicles of the same line make in the market area which
- 14 shall include the adequacy of motor vehicle sales and
- 15 service facilities, equipment, supply of motor vehicle
- 16 parts, and qualified service personnel;
- 17 6. Whether the establishment of an additional new motor
- 18 vehicle dealer or relocation of an existing new motor
- 19 vehicle dealer in the relevant market area would increase
- 20 competition in a manner such as to be in the long-term
- 21 public interest; ~~and~~
- 22 7. The effect on the relocating dealer of a denial of its
- 23 relocation into the relevant market ~~area-area~~; and
- 24 8. Whether an existing dealer in whose market the
- 25 proposed additional new motor vehicle dealer would be
- 26 established, has, at the request, encouragement, or with
- 27 the approval of the franchiser: (i) acquired property for
- 28 the construction or replacement facility; (ii) constructed
- 29 a replacement facility; (iii) renovated, remodeled, or
- 30 constructed an addition to an existing facility; or (iv) by
- 31 any other means increased the dealer's investment in
- 32 facilities for the purpose of improving the representation
- 33 of the manufacturer's products or better serving the
- 34 consuming public.
- 35 c. The Commissioner shall try to conduct the hearing and render
- 36 his final determination if possible, within 180 days after a
- 37 protest is filed.
- 38 d. Any parties to a hearing by the Commissioner concerning the
- 39 establishment or relocating of a new motor vehicle dealer shall
- 40 have a right of review of the decision in a court of competent
- 41 jurisdiction pursuant to Chapter 150B of the General Statutes.
- 42 e. In a hearing involving a proposed additional dealership, the
- 43 manufacturer or distributor has the burden of proof under this
- 44 section. In a proceeding involving the relocation of an existing

1 dealership, the dealer seeking to relocate has the burden of
2 proof under this section.

3 f. If the Commissioner determines, following a hearing, that good
4 cause exists for permitting the proposed additional or relocated
5 motor vehicle dealership, the dealer seeking the proposed
6 additional or relocated motor vehicle dealership must, within
7 two years, obtain a license from the Commissioner for the sale
8 of vehicles at the relevant site, and actually commence
9 operations at the site selling new motor vehicles of all line
10 makes, as permitted by the Commissioner. Failure to obtain a
11 permit and commence sales within two years shall constitute
12 waiver by the dealer of the dealer's right to the additional or
13 relocated dealership, requiring renotification, a new hearing,
14 and a new determination as provided in this section. If the
15 Commissioner fails to determine that good cause exists for
16 permitting the proposed additional or relocated motor vehicle
17 dealership, the manufacturer seeking the proposed additional
18 dealership or dealer seeking to relocate may not again provide
19 notice of its intention or otherwise attempt to establish an
20 additional dealership or relocate to any location within 10 miles
21 of the site of the original proposed additional dealership or
22 relocation site for a minimum of three years from the date of the
23 Commissioner's determination.

24 g. For purposes of this subdivision, the addition, creation, or
25 operation of a "satellite" or other facility, not physically part of
26 or contiguous to an existing licensed new motor vehicle dealer,
27 whether or not owned or operated by a person or other entity
28 holding a franchise as defined by G.S. 20-286(8a), at which
29 warranty service work authorized or reimbursed by a
30 manufacturer is performed or at which new motor vehicles are
31 offered for sale to the public, shall be considered an additional
32 new motor vehicle dealer requiring a showing of good cause,
33 prior notification to existing new motor vehicle dealers of the
34 same line make of vehicle within the relevant market area by
35 the manufacturer and the opportunity for a hearing before the
36 Commissioner as provided in this subdivision.

37 h. Notwithstanding the terms of any contract or agreement, and
38 not waiving or excusing the obligation of a manufacturer to
39 provide timely notice of termination as provided in this
40 subdivision, the announced decision or determination of the
41 manufacturer to discontinue or phase out a product line in its
42 entirety or to discontinue or phase out any portion for a product
43 line substantial enough that the discontinued or scaled down
44 franchise held by its franchisees would either have no

1 significant long-term value or be unmarketable, shall constitute
2 a termination of the franchise under this subdivision effective as
3 of the date the decision or determination is communicated by
4 the manufacturer to its franchisees or otherwise becomes public
5 knowledge."

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

7 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
8 **cancel franchise; preventing transfer of ownership; granting additional**
9 **franchises; terminating franchises without good cause; preventing family**
10 **succession.**

11 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
12 branch, or any field representative, officer, agent, or any representative whatsoever of
13 any of them:

14 ...

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

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

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

9 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
10 **cancel franchise; preventing transfer of ownership; granting additional**
11 **franchises; terminating franchises without good cause; preventing family**
12 **succession.**

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

16 ...

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

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

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

34 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
35 branch, or any field representative, officer, agent, or any representative whatsoever of
36 any of them:

37 ...

38 (40) Notwithstanding the terms, provision, or conditions of any agreement
39 or franchise or other terms or provisions of any novation, waiver, or
40 other written instrument, to require, coerce, or attempt to coerce any
41 dealer to floor plan any of the dealer's inventory, finance the sale or
42 lease of any motor vehicles purchased or leased by any of the dealer's
43 customers, or finance the acquisition, construction, or renovation of
44 any of the dealer's property or facilities, by or through any financial

1 source or sources designated by the manufacturer, factory branch,
2 distributor, or distributor branch, including but not limited to any
3 financial source or sources that is or are directly, or indirectly, owned,
4 operated, or controlled by the manufacturer, factory branch,
5 distributor, or distributor branch."

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

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

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

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

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

40 **SECTION 9.** If any provision of this act or its application is held invalid, the
41 invalidity does not affect other provisions or applications of this act that can be given
42 effect without the invalid provisions or application, and to this end the provisions of this
43 act are severable.

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