

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 559
Commerce Committee Substitute Adopted 4/17/03

Short Title: Clarify MV Dealer Franchise Laws.

(Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE MOTOR VEHICLE DEALER FRANCHISE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 12 of Chapter 20 is amended by adding a new section to read:

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

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

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

For purposes of this section, the term 'antique motor vehicle' shall mean any motor vehicle for private use manufactured at least 25 years prior to the current model year, and the term 'specialty motor vehicle' shall mean any model or series of motor vehicle for private use manufactured at least three years prior to the current model year of

1 which no more than 5,000 vehicles were sold within the United States during the model
2 year the vehicle was manufactured.

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

5 **SECTION 2.** G.S. 20-305(38) reads as rewritten:

6 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
7 **cancel franchise; preventing transfer of ownership; granting additional**
8 **franchises; terminating franchises without good cause; preventing family**
9 **succession.**

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

13 ...

14 (38) Notwithstanding the terms, provisions, or conditions of any agreement,
15 franchise, novation, waiver, or other written instrument, to assign or
16 change a franchised new motor vehicle dealer's area of responsibility
17 under the franchise arbitrarily or without due regard to the present or
18 projected future pattern of motor vehicle sales and registrations within
19 the dealer's ~~market.~~ market, and without having provided the affected
20 dealer with written notice of the change in the dealer's area of
21 responsibility and a detailed description of the change in writing by
22 registered or certified mail, return receipt requested. A franchised new
23 motor vehicle dealer who believes that a manufacturer, factory branch,
24 distributor, or distributor branch with whom the dealer has entered into
25 a franchise has violated this subdivision may file a petition before the
26 Commissioner as provided in G.S. 20-301(b) contesting the franchised
27 new motor vehicle dealer's assigned area of responsibility. At the
28 hearing before the Commissioner, the affected manufacturer, factory
29 branch, distributor, or distributor branch shall have the burden of
30 proving that all portions of its current or proposed area of
31 responsibility for the petitioning franchised new motor vehicle dealer
32 are reasonable in light of the present or projected future pattern of
33 motor vehicle sales and registrations within the franchised new motor
34 vehicle dealer's market. If a protest is or has been filed under G.S.
35 20-305(5) and the franchised new motor vehicle dealer's area of
36 responsibility is included in the relevant market area under the protest,
37 any protest filed under this subdivision shall be consolidated with that
38 protest for hearing and joint disposition of all of the protests."

39 **SECTION 3.** G.S. 20-305(39) reads as rewritten:

40 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
41 **cancel franchise; preventing transfer of ownership; granting additional**
42 **franchises; terminating franchises without good cause; preventing family**
43 **succession.**

1 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
2 branch, or any field representative, officer, agent, or any representative whatsoever of
3 any of them:

4 ...

5 (39) Notwithstanding the terms, provisions, or conditions of any agreement,
6 franchise, novation, waiver, or other written instrument, to require,
7 coerce, or attempt to coerce any of its franchised motor vehicle dealers
8 in this State to purchase or lease one or more signs displaying the
9 name of the manufacturer or franchised motor vehicle dealer upon
10 unreasonable ~~and~~or onerous terms or conditions or if installation of
11 the additional signage would violate local signage or zoning laws to
12 which the franchised motor vehicle dealer is subject. Any term,
13 provision, or condition of any agreement, franchise, waiver, novation,
14 or any other written instrument which is in violation of this
15 subdivision shall be deemed null and void and without force and
16 effect."

17 **SECTION 4.** G.S. 20-305 is amended by adding a new subdivision to read:

18 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
19 **cancel franchise; preventing transfer of ownership; granting additional**
20 **franchises; terminating franchises without good cause; preventing family**
21 **succession.**

22 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
23 branch, or any field representative, officer, agent, or any representative whatsoever of
24 any of them:

25 ...

26 (40) Notwithstanding the terms, provisions, or conditions of any agreement
27 or franchise, to require any dealer to floor plan any of the dealer's
28 inventory or finance the acquisition, construction, or renovation of any
29 of the dealer's property or facilities by or through any financial source
30 or sources designated by the manufacturer, factory branch, distributor,
31 or distributor branch, including any financial source or sources that is
32 or are directly, or indirectly, owned, operated, or controlled by the
33 manufacturer, factory branch, distributor, or distributor branch."

34 **SECTION 5.** G.S. 20-305.1(b1) reads as rewritten:

35 "(b1) All claims made by motor vehicle dealers pursuant to this section for
36 compensation for delivery, preparation, warranty and recall work including labor, parts,
37 and other expenses, shall be paid by the manufacturer within 30 days after receipt of
38 claim from the dealer. When any claim is disapproved, the dealer shall be notified in
39 writing of the grounds for disapproval. Any claim not specifically disapproved in
40 writing within 30 days after receipt shall be considered approved and payment is due
41 immediately. No claim which has been approved and paid may be charged back to the
42 dealer unless it can be shown that the claim was false or fraudulent, that the repairs were
43 not properly made or were unnecessary to correct the defective condition, or the dealer
44 failed to reasonably substantiate the claim. A manufacturer or distributor shall not deny

1 a claim or reduce the amount to be reimbursed to the dealer as long as the dealer has
2 provided reasonably sufficient documentation that the dealer:

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

6 A manufacturer may further not charge a dealer back subsequent to the payment of the
7 claim unless a representative of the manufacturer has met in person at the dealership, or
8 by telephone, with an officer or employee of the dealer designated by the dealer and
9 explained in detail the basis for each of the proposed charge backs and thereafter given
10 the dealer's representative a reasonable opportunity at the meeting, or during the
11 telephone call, to explain the dealer's position relating to each of the proposed charge
12 backs. In the event the dealer was selected for audit or review on the basis that some or
13 all of the dealer's claims were viewed as excessive in comparison to average, mean, or
14 aggregate data accumulated by the manufacturer, or in relation to claims submitted by a
15 group of other franchisees of the manufacturer, the manufacturer shall, at or prior to the
16 meeting or telephone call with the dealer's representative, provide the dealer with a
17 written statement containing the basis or methodology upon which the dealer was
18 selected for audit or review."

19 **SECTION 6.** If any provision of this act or its application is held invalid, the
20 invalidity does not affect other provisions or applications of this act that can be given
21 effect without the invalid provisions or application, and to this end the provisions of this
22 act are severable.

23 **SECTION 7.** This act is effective when it becomes law.