

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1351*
Commerce, Small Business and Entrepreneurship Committee Substitute Adopted
5/21/07
Third Edition Engrossed 5/23/07
House Committee Substitute Favorable 7/23/07
Fifth Edition Engrossed 7/26/07

Short Title: Clarify MV Franchise Laws/Dealer Termination.

(Public)

Sponsors:

Referred to:

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY MOTOR VEHICLE FRANCHISE LAWS AS THEY
RELATE TO AUTOMOBILE DEALER WARRANTY OBLIGATIONS, CIVIL
ACTIONS FOR VIOLATIONS, COERCION, AND INSTALLMENT SALES;
AND TO REQUIRE THAT FAIR COMPENSATION BE PAID TO
FRANCHISED MOTOR VEHICLE DEALERS TERMINATED AS A RESULT
OF INDUSTRY REORGANIZATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-303 reads as rewritten:

"§ 20-303. **Installment sales to be evidenced by written instrument; statement to be delivered to buyer.**

(a) Every retail installment sale shall be evidenced by ~~an instrument~~ one or more instruments in writing, which shall contain all the agreements of the parties and shall be signed by the buyer.

(b) For every retail installment sale, Prior ~~prior~~ to or about the time of the delivery of the motor vehicle, the seller shall deliver to the buyer a written statement describing clearly the motor vehicle sold to the buyer, the cash sale price thereof, the cash paid down by the buyer, the amount credited the buyer for any trade-in and a description of the motor vehicle traded, the amount of the finance charge, the amount of any other charge specifying its purpose, the net balance due from the buyer, the terms of the payment of such net balance and a summary of any insurance protection to be effected. The written statement shall be signed by the buyer."

SECTION 2. G.S. 20-305(4) reads as rewritten:

"(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership

1 by the sale of the business, stock transfer, or otherwise, or the transfer,
2 sale or assignment of a dealer franchise, or a change in the executive
3 management or principal operator of the dealership, or relocation of
4 the dealership to another site within the dealership's relevant market
5 area, if the Commissioner has determined, if requested in writing by
6 the dealer within 30 days after receipt of an objection to the proposed
7 transfer, sale, assignment, relocation, or change, and after a hearing on
8 the matter, that the failure to permit or honor the transfer, sale,
9 assignment, relocation, or change is unreasonable under the
10 circumstances. No franchise may be transferred, sold, assigned,
11 relocated, or the executive management or principal operators
12 changed, unless the franchisor has been given at least 30 days' prior
13 written notice as to the proposed transferee's name and address,
14 identity, financial ability, and qualifications of the proposed transferee,
15 a copy of the purchase agreement between the dealership and the
16 proposed transferee, the identity and qualifications of the persons
17 proposed to be involved in executive management or as principal
18 operators, and the location and site plans of any proposed relocation.
19 The franchisor shall send the dealership and the proposed transferee
20 notice of objection, by registered or certified mail, return receipt
21 requested, to the proposed transfer, sale, assignment, relocation, or
22 change within 30 days after receipt of notice from the dealer, as
23 provided in this section. The notice of objection shall state in detail all
24 factual and legal bases for the objection on the part of the franchisor to
25 the proposed transfer, sale, assignment, relocation, or change that is
26 specifically referenced in this subdivision. An objection to a proposed
27 transfer, sale, assignment, relocation, or change in the executive
28 management or principal operator of the dealership may only be
29 premised upon the factual and legal bases specifically referenced in
30 this subdivision. A manufacturer's notice of objection which is based
31 upon factual or legal issues that are not specifically referenced in this
32 subdivision as being issues upon which the Commissioner shall base
33 his determination shall not be effective to preserve the franchisor's
34 right to object to the proposed transfer sale, assignment, relocation, or
35 change, provided the dealership or proposed transferee has submitted
36 written notice, as required above, as to the proposed transferee's name
37 and address, financial ability, and qualifications of the proposed
38 transferee, a copy of the purchase agreement between the dealership
39 and the proposed transferee, the identity and qualifications of the
40 persons proposed to be involved in the executive management or as
41 principal operators, and the location and site plans of any proposed
42 relocation. Failure by the franchisor to send notice of objection within
43 30 days shall constitute waiver by the franchisor of any right to object
44 to the proposed transfer, sale, assignment, relocation, or change. If the

1 franchisor requires additional information to complete its review, the
2 franchisor shall notify the dealership within 15 days after receipt of the
3 proposed transferee's name and address, financial ability, and
4 qualifications, a copy of the purchase agreement between the
5 dealership and the proposed transferee, the identity and qualifications
6 of the persons proposed to be involved in executive management or as
7 principal operators, and the location and site plans of any proposed
8 relocation. If the franchisor fails to request additional information from
9 the dealer or proposed transferee within 15 days of receipt of this
10 initial information, the 30-day time period within which the franchisor
11 may provide notice of objection shall be deemed to run from the initial
12 receipt date. Otherwise, the 30-day time period within which the
13 franchisor may provide notice of objection shall run from the date the
14 franchisor has received the supplemental information requested from
15 the dealer or proposed transferee; provided, however, that failure by
16 the franchisor to send notice of objection within 60 days of the
17 franchisor's receipt of the initial information from the dealer shall
18 constitute waiver by the franchisor of any right to object to the
19 proposed transfer, sale, assignment, relocation, or change. With respect
20 to a proposed transfer of ownership, sale, or assignment, the sole issue
21 for determination by the Commissioner and the sole issue upon which
22 the Commissioner shall hear or consider evidence is whether, by
23 reason of lack of good moral character, lack of general business
24 experience, or lack of financial ability, the proposed transferee is unfit
25 to own the dealership. For purposes of this subdivision, the refusal by
26 the manufacturer to accept a proposed transferee who is of good moral
27 character and who otherwise meets the written, reasonable, and
28 uniformly applied business experience and financial requirements, if
29 any, required by the manufacturer of owners of its franchised
30 automobile dealerships is presumed to demonstrate the manufacturer's
31 failure to prove that the proposed transferee is unfit to own the
32 dealership. With respect to a proposed change in the executive
33 management or principal operator of the dealership, the sole issue for
34 determination by the Commissioner and the sole issue on which the
35 Commissioner shall hear or consider evidence shall be whether, by
36 reason of lack of training, lack of prior experience, poor past
37 performance, or poor character, the proposed candidate for a position
38 within the executive management or as principal operator of the
39 dealership is unfit for the position. For purposes of this subdivision,
40 the refusal by the manufacturer to accept a proposed candidate for
41 executive management or as principal operator who is of good moral
42 character and who otherwise meets the written, reasonable, and
43 uniformly applied standards or qualifications, if any, of the
44 manufacturer relating to the business experience and prior

1 performance of executive management required by the manufacturers
2 of its dealers is presumed to demonstrate the manufacturer's failure to
3 prove the proposed candidate for executive management or as
4 principal operator is unfit to serve the capacity. With respect to a
5 proposed relocation or other proposed change, the issue for
6 determination by the Commissioner is whether the proposed relocation
7 or other change is unreasonable under the circumstances. For purposes
8 of this subdivision, the refusal by the manufacturer to agree to a
9 proposed relocation which meets the written, reasonable, and
10 uniformly applied standards or criteria, if any, of the manufacturer
11 relating to dealer relocations is presumed to demonstrate that the
12 manufacturer's failure to prove the proposed relocation is unreasonable
13 under the circumstances. The manufacturer shall have the burden of
14 proof before the Commissioner under this subdivision. It is unlawful
15 for a manufacturer to, in any way, condition its approval of a proposed
16 transfer, sale, assignment, change in the dealer's executive
17 ~~management~~ or management, principal operator, or
18 appointment of a designated successor, on the existing or proposed
19 dealer's willingness to construct a new facility, renovate the existing
20 facility, acquire or refrain from acquiring one or more line-makes of
21 vehicles, separate or divest one or more line-makes of vehicle, or
22 establish or maintain exclusive facilities, personnel, or display space. It
23 is unlawful for a manufacturer to, in any way, condition its approval of
24 a proposed relocation on the existing or proposed dealer's willingness
25 to acquire or refrain from acquiring one or more line-makes of
26 vehicles, separate or divest one or more line-makes of vehicle, or
27 establish or maintain exclusive facilities, personnel, or display space.
28 The opinion or determination of a franchisor that the continued
29 existence of one of its franchised dealers situated in this State is not
30 viable, or that the dealer holds or fails to hold licensing rights for the
31 sale of other line-makes of vehicles in a manner consistent with the
32 franchisor's existing or future distribution or marketing plans, shall not
33 constitute a lawful basis for the franchisor to fail or refuse to approve a
34 dealer's proposed relocation: provided, however, that nothing
35 contained in this subdivision shall be deemed to prevent or prohibit a
36 franchisor from failing to approve a dealer's proposed relocation on
37 grounds that the specific site or facility proposed by the dealer is
38 otherwise unreasonable under the circumstances. Approval of a
39 relocation pursuant to this subdivision shall not in itself constitute the
40 franchisor's representation or assurance of the dealer's viability at that
41 location."

42 **SECTION 3.** G.S. 20-305(7)c. reads as rewritten:

43 "c. Except as otherwise provided in sub-subdivision d. of this
44 subdivision, any designated successor of a deceased or

1 incapacitated owner or principal operator of a new motor
2 vehicle dealership appointed by such owner in substantial
3 compliance with this section shall, by operation of law, succeed
4 at the time of such death or incapacity to all of the rights and
5 obligations of the owner or principal operator in the new motor
6 vehicle dealership and under either the existing
7 ~~franchise-franchise~~ or any other successor, renewal, or
8 replacement franchise."

9 **SECTION 4.** G.S. 20-305(18) reads as rewritten:

10 "(18) To prevent or attempt to prevent a dealer from receiving fair and
11 reasonable compensation for the value of the franchised business
12 transferred in accordance with G.S. 20-305(4) above, or to prevent or
13 attempt to prevent, through the exercise of any contractual right of first
14 refusal or otherwise, a dealer located in this State from transferring the
15 franchised business to such persons or other entities as the dealer shall
16 designate in accordance with G.S. 20-305(4). The opinion or
17 determination of a manufacturer that the existence or location of one of
18 its franchised dealers situated in this State is not viable or is not
19 consistent with the manufacturer's distribution or marketing forecast or
20 plans shall not constitute a lawful basis for the manufacturer to fail or
21 refuse to approve a dealer's proposed transfer of ownership submitted
22 in accordance with G.S. 20-305(4), or "good cause" for the
23 termination, cancellation, or nonrenewal of the franchise under
24 G.S. 20-305(6) or ~~for the rejection of grounds for the objection to an~~
25 ~~owner's designated successor appointed pursuant to G.S. 20-305(7).~~
26 ~~No manufacturer shall owe any duty to any actual or potential~~
27 ~~purchaser of a motor vehicle franchise located in this State to disclose~~
28 ~~to such actual or potential purchaser its own opinion or determination~~
29 ~~that the franchise being sold or otherwise transferred is not viable or is~~
30 ~~not consistent with the manufacturer's distribution or marketing~~
31 ~~forecast or plans."~~

32 **SECTION 5.** G.S. 20-305.1(b) reads as rewritten:

33 "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any
34 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to
35 perform any of its warranty obligations with respect to a motor vehicle, to fail to fully
36 compensate its motor vehicle dealers licensed in this State for warranty parts other than
37 parts used to repair the living facilities of recreational vehicles, at the prevailing retail
38 rate according to the factors in subsection (a) of this section, or, in service in accordance
39 with the schedule of compensation provided the dealer pursuant to subsection (a) above,
40 or to otherwise recover all or any portion of its costs for compensating its motor vehicle
41 dealers licensed in this State for warranty parts and service either by reduction in the
42 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to
43 fail to indemnify and hold harmless its franchised dealers licensed in this State against
44 any judgment for damages or settlements agreed to by the manufacturer, including, but

1 not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer,
2 arising out of complaints, claims or lawsuits including, but not limited to, strict liability,
3 negligence, misrepresentation, express or implied warranty, or rescission or revocation of
4 acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that
5 the judgment or settlement relates to the alleged defective negligent manufacture,
6 assembly or design of new motor vehicles, parts or accessories or other functions by the
7 manufacturer, factory branch, distributor or distributor branch, beyond the control of the
8 dealer. Any audit for warranty parts or service compensation shall only be for the
9 12-month period immediately following the date of the payment of the claim by the
10 manufacturer, factory branch, distributor, or distributor branch. Any audit for sales
11 incentives, service incentives, rebates, or other forms of incentive compensation shall
12 only be for the 12-month period immediately following the date of the ~~termination of~~
13 ~~the payment of the claim by the manufacturer, factory branch, distributor, or distributor~~
14 branch pursuant to a sales incentives program, service incentives program, rebate
15 program, or other form of incentive compensation program. Provided, however, these
16 limitations shall not be effective in the case of fraudulent claims."

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

18 "(b1) All claims made by motor vehicle dealers pursuant to this section for
19 compensation for delivery, preparation, warranty and recall work including labor, parts,
20 and other expenses, shall be paid by the manufacturer within 30 days after receipt of
21 claim from the dealer. When any claim is disapproved, the dealer shall be notified in
22 writing of the grounds for disapproval. Any claim not specifically disapproved in
23 writing within 30 days after receipt shall be considered approved and payment is due
24 immediately. No claim which has been approved and paid may be charged back to the
25 dealer unless it can be shown that the claim was false or fraudulent, that the repairs were
26 not properly made or were unnecessary to correct the defective condition, or the dealer
27 failed to reasonably substantiate the ~~claim~~ claim either in accordance with the
28 manufacturer's reasonable written procedures or by other reasonable means. A
29 manufacturer or distributor shall not deny a claim or reduce the amount to be
30 reimbursed to the dealer as long as the dealer has provided reasonably sufficient
31 documentation that the dealer:

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

35 Notwithstanding the foregoing, a manufacturer shall not fail to fully compensate a
36 dealer for warranty or recall work or make any chargeback to the dealer's account based
37 on the dealer's failure to comply with the manufacturer's claim documentation procedure
38 or procedures unless both of the following requirements have been met:

- 39 (1) The dealer has, within the previous 12 months, failed to comply with
40 the same specific claim documentation procedure or procedures; and
41 (2) The manufacturer has, within the previous 12 months, provided a
42 written warning to the dealer by certified United States mail, return
43 receipt requested, identifying the specific claim documentation
44 procedure or procedures violated by the dealer.

1 Nothing contained in this subdivision shall be deemed to prevent or prohibit a
2 manufacturer from adopting or implementing a policy or procedure which provides or
3 allows for the self-audit of dealers, provided, however, that if any such self-audit
4 procedure contains provisions relating to claim documentation, such claim
5 documentation policies or procedures shall be subject to the prohibitions and
6 requirements contained in this subdivision. Notices sent by a manufacturer under a bona
7 fide self-audit procedure shall be deemed sufficient notice to meet the requirements of
8 this subsection provided that the dealer is given reasonable opportunity through
9 self-audit to identify and correct any out-of-line procedures for a period of at least 60
10 days before the manufacturer conducts its own audit of the dealer warranty operations
11 and procedures. A manufacturer may further not charge a dealer back subsequent to the
12 payment of the claim unless a representative of the manufacturer has met in person at
13 the dealership, or by telephone, with an officer or employee of the dealer designated by
14 the dealer and explained in detail the basis for each of the proposed charge-backs and
15 thereafter given the dealer's representative a reasonable opportunity at the meeting, or
16 during the telephone call, to explain the dealer's position relating to each of the
17 proposed charge-backs. In the event the dealer was selected for audit or review on the
18 basis that some or all of the dealer's claims were viewed as excessive in comparison to
19 average, mean, or aggregate data accumulated by the manufacturer, or in relation to
20 claims submitted by a group of other franchisees of the manufacturer, the manufacturer
21 shall, at or prior to the meeting or telephone call with the dealer's representative, provide
22 the dealer with a written statement containing the basis or methodology upon which the
23 dealer was selected for audit or review."

24 **SECTION 7.** G.S. 20-305.1(b2) reads as rewritten:

25 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales
26 incentives, service incentives, rebates, or other forms of incentive compensation, reduce
27 the amount to be paid to the dealer, or charge a dealer back subsequent to the payment
28 of the claim unless it can be shown that the claim was false or fraudulent or that the
29 dealer failed to reasonably substantiate the claim either in accordance with the
30 manufacturer's reasonable written procedures or by other reasonable means."

31 **SECTION 8.** G.S. 20-308.1 reads as rewritten:

32 "**§ 20-308.1. Civil actions for violations.**

33 (a) Notwithstanding the terms, provisions or conditions of any agreement or
34 franchise or other terms or provisions of any novation, waiver or other written
35 instrument, any ~~person~~ motor vehicle dealer who is or may be injured by a violation of a
36 provision of this Article, or any party to a franchise who is so injured in his business or
37 property by a violation of a provision of this Article relating to that franchise, or an
38 arrangement which, if consummated, would be in violation of this Article may,
39 notwithstanding the initiation or pendency of, or failure to initiate an administrative
40 proceeding before the Commissioner concerning the same parties or subject matter,
41 bring an action for damages and equitable relief, including injunctive relief, in any court
42 of competent jurisdiction with regard to any matter not within the jurisdiction of the
43 Commissioner or that seeks relief wholly outside the authority or jurisdiction of the
44 Commissioner to award.

1 (b) Where the violation of a provision of this Article can be shown to be willful,
2 malicious, or wanton, or if continued multiple violations of a provision or provisions of
3 this Article occur, the court may award punitive damages, attorneys' fees and costs in
4 addition to any other damages under this Article.

5 (c) A new motor vehicle dealer, if he has not suffered any loss of money or
6 property, may obtain final equitable relief if it can be shown that the violation of a
7 provision of this Article by a manufacturer or distributor may have the effect of causing
8 a loss of money or property.

9 (d) Any association that is comprised of a minimum of 400 new motor vehicle
10 dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new
11 motor vehicle dealers located within North Carolina, and which represents the collective
12 interests of its members, shall have standing to file a petition before the Commissioner
13 or a cause of action in any court of competent jurisdiction for itself, or on behalf of any
14 or all of its members, seeking declaratory and injunctive relief. Prior to bringing an
15 action, the association and manufacturer, factory branch, distributor, or distributor
16 branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought
17 pursuant to this subsection may seek a determination whether one or more
18 manufacturers, factory branches, distributors, or distributor branches doing business in
19 this State have violated any of the provisions of this Article, or for the determination of
20 any rights created or defined by this Article, so long as the association alleges an injury
21 to the collective interest of its members cognizable under this section. A cognizable
22 injury to the collective interest of the members of the association shall be deemed to
23 occur if a manufacturer, factory branch, distributor, or distributor branch doing business
24 in this State has engaged in any conduct or taken any action which actually harms or
25 affects all of the franchised new motor vehicle dealers holding franchises with that
26 manufacturer, factory branch, distributor, or distributor branch in this State. With
27 respect to any administrative or civil action filed by an association pursuant to this
28 subsection, the relief granted shall be limited to declaratory and injunctive relief and in
29 no event shall the Commissioner or court enter an award of monetary damages."

30 **SECTION 9.** G.S. 20-305 is amended by adding a new subdivision to read:

31 "(41) Notwithstanding the terms, provisions, or conditions of any agreement
32 or franchise, to use or consider the performance of any of its
33 franchised new motor vehicle dealers located in this State relating to
34 the sale of the manufacturer's new motor vehicles or ability to satisfy
35 any minimum sales or market share quota or responsibility relating to
36 the sale of the manufacturer's new motor vehicles in determining:

37 a. The dealer's eligibility to purchase program, certified, or other
38 used motor vehicles from the manufacturer;

39 b. The volume, type, or model of program, certified, or other used
40 motor vehicles the dealer shall be eligible to purchase from the
41 manufacturer;

42 c. The price or prices of any program, certified, or other used
43 motor vehicles that the dealer shall be eligible to purchase from
44 the manufacturer; or

1 d. The availability or amount of any discount, credit, rebate, or
2 sales incentive the dealer shall be eligible to receive from the
3 manufacturer for the purchase of any program, certified, or
4 other used motor vehicles offered for sale by the manufacturer."

5 **SECTION 10.** G.S. 20-305.7(b) reads as rewritten:

6 "(b) No manufacturer, factory branch, distributor, distributor branch, dealer
7 management computer system vendor, or any third party acting on behalf of any
8 manufacturer, factory branch, distributor, distributor branch, or dealer management
9 computer system vendor may access or utilize customer or prospect information
10 maintained in a dealer management computer system utilized by a motor vehicle dealer
11 located in this State for purposes of soliciting any such customer or prospect on behalf
12 of, or directing such customer or prospect to, any other dealer. The limitations in this
13 subsection do not apply to:

- 14 (1) A customer that requests a reference to another dealership;
15 (2) A customer that moves more than 60 miles away from the dealer
16 whose data was accessed;
17 (3) Customer or prospect information that was provided to the dealer by
18 the manufacturer, factory branch, distributor, or distributor branch; or
19 (4) Customer or prospect information obtained by the manufacturer,
20 factory branch, distributor, or distributor branch where the dealer
21 agrees to allow the manufacturer, factory branch, distributor,
22 distributor branch, dealer management computer system vendor, or
23 any third party acting on behalf of any manufacturer, factory branch,
24 distributor, distributor branch, or dealer management computer system
25 vendor the right to access and utilize the customer or prospect
26 information maintained in the dealer's dealer management computer
27 system for purposes of soliciting any customer or prospect of the
28 dealer on behalf of, or directing such customer or prospect to, any
29 other dealer in a separate, stand-alone written instrument dedicated
30 solely to such authorization.

31 No manufacturer, factory branch, distributor, distributor branch, dealer management
32 computer system vendor, or any third party acting on behalf of any manufacturer,
33 factory branch, distributor, distributor branch, or dealer management computer system
34 vendor, may provide access to customer or dealership information maintained in a
35 dealer management computer system utilized by a motor vehicle dealer located in this
36 State, without first obtaining the dealer's prior express written consent, revocable by the
37 dealer upon five business days written notice, to provide such access. Prior to obtaining
38 said consent and prior to entering into an initial contract or renewal of a contract with a
39 dealer located in this State, the manufacturer, factory branch, distributor, distributor
40 branch, dealer management computer system vendor, or any third party acting on behalf
41 of, or through any manufacturer, factory branch, distributor, distributor branch, or dealer
42 management computer system vendor shall provide to the dealer a written list of all
43 third parties to whom any North Carolina dealer management computer system data has
44 been provided within the 12-month period ending November 1 of the prior year. The list

1 shall further describe the scope of the data provided. In addition to the initial list, a
2 dealer management computer system vendor or any third party acting on behalf of, or
3 through a dealer management computer system vendor shall provide to the dealer an
4 annual list of third parties to whom said data is being provided on November 1 of each
5 year and to whom said data has been provided in the preceding 12 months and describe
6 the scope of the data provided. Such list shall be provided to the dealer by January 1 of
7 each year. Any dealer management computer system vendor's contract that directly
8 relates to the transfer or accessing of dealer or dealer customer information must
9 conspicuously state, "NOTICE TO DEALER: THIS AGREEMENT RELATES TO
10 THE TRANSFER AND ACCESSING OF CONFIDENTIAL INFORMATION AND
11 CONSUMER RELATED DATA". Such consent does not change any such person's
12 obligations to comply with the terms of this section and any additional State or federal
13 laws (and any rules or regulations promulgated thereunder) applicable to them with
14 respect to such access. In addition, no dealer management computer system vendor may
15 refuse to provide a dealer management computer system to a motor vehicle dealer
16 located in this State if the dealer refuses to provide any consent under this subsection,
17 except to the extent that consent is deemed by the parties to be reasonably necessary in
18 order for the vendor to provide the system to the dealer."

19 **SECTION 11.** G.S. 20-305.1 is amended by adding a new subsection to
20 read:

21 "(g) Truck Dealer Cost Reimbursement. – Every manufacturer, manufacturer
22 branch, distributor, or distributor branch of new motor vehicles, or any affiliate or
23 subsidiary thereof, which manufactures or distributes new motor vehicles with a gross
24 vehicle weight rating of 16,000 pounds or more shall compensate its new motor vehicle
25 dealers located in this State for the cost of special tools, equipment, and training for
26 which its dealers are liable when the applicable manufacturer, manufacturer branch,
27 distributor, or distributor branch sells a portion of its vehicle inventory to converters and
28 other nondealer retailers. The purpose of this reimbursement is to compensate truck
29 dealers for special additional costs these dealers are required to pay for servicing these
30 vehicles when the dealers are excluded from compensation for these expenses at the
31 point of sale. The compensation which shall be paid pursuant to this subsection shall be
32 applicable only with respect to new motor vehicles with a gross vehicle weight rating of
33 16,000 pounds or more which are registered to end users within this State and that are
34 sold by a manufacturer, manufacturer branch, distributor, or distributor branch to either:

35 (1) Persons or entities other than new motor vehicle dealers with whom
36 the manufacturer, manufacturer branch, distributor, or distributor
37 branch has entered into franchises; or

38 (2) Persons or entities that install custom bodies on truck chassis,
39 including, but not limited to, mounted equipment or specialized bodies
40 for concrete distribution, firefighting equipment, waste disposal,
41 recycling, garbage disposal, buses, utility service, street sweepers,
42 wreckers, and rollback bodies for vehicle recovery; provided, however,
43 that no compensation shall be required to be paid pursuant to this

1 subdivision with respect to vehicles sold for purposes of
2 manufacturing or assembling school buses.

3 The amount of compensation which shall be payable by the applicable manufacturer,
4 manufacturer branch, distributor, or distributor branch shall be six hundred dollars
5 (\$600.00) per new motor vehicle registered in this State whose chassis has a gross
6 vehicle weight rating of 16,000 pounds or more. The compensation required pursuant to
7 this subsection shall be paid by the applicable manufacturer, manufacturer branch,
8 distributor, or distributor branch to its franchised new motor vehicle dealer in closest
9 proximity to the registered address of the end user to whom the motor vehicle has been
10 registered within 30 days after such registration. Upon receiving a request in writing
11 from one of its franchised dealers located in this State, a manufacturer, manufacturer
12 branch, distributor, or distributor branch shall promptly make available to such dealer its
13 records relating to the registered addresses of its new motor vehicles registered in this
14 State for the previous 12 months and its payment of compensation to dealers as
15 provided in this subsection."

16 **SECTION 12.** G.S. 20-305(6) reads as rewritten:

17 "(6) Notwithstanding the terms, provisions or conditions of any franchise
18 or notwithstanding the terms or provisions of any waiver, to terminate,
19 cancel or fail to renew any franchise with a licensed new motor vehicle
20 dealer unless the manufacturer has satisfied the notice requirements of
21 subparagraph c. and the Commissioner has determined, if requested in
22 writing by the dealer within (i) the time period specified in
23 G.S. 20-305(6)c.II, III or IV, G.S. 20-305(6)c.1.II., III., or IV., as
24 applicable, or (ii) the effective date of the franchise termination
25 specified or proposed by the manufacturer in the notice of termination,
26 whichever period of time is longer, and after a hearing on the matter,
27 that there is good cause for the termination, cancellation, or
28 nonrenewal of the franchise and that the manufacturer has acted in
29 good faith as defined in this act regarding the termination, cancellation
30 or nonrenewal. When such a petition is made to the Commissioner by
31 a dealer for determination as to the existence of good cause and good
32 faith for the termination, cancellation or nonrenewal of a franchise, the
33 Commissioner shall promptly inform the manufacturer that a timely
34 petition has been filed, and the franchise in question shall continue in
35 effect pending the Commissioner's decision. The Commissioner shall
36 try to conduct the hearing and render a final determination within 180
37 days after a petition has been filed. If the termination, cancellation or
38 nonrenewal is pursuant to G.S. 20-305(6)c.III-G.S. 20-305(6)c.1.III.
39 then the Commissioner shall give the proceeding priority consideration
40 and shall try to render his final determination no later than 90 days
41 after the petition has been filed. Any parties to a hearing by the
42 Commissioner under this section shall have a right of review of the
43 decision in a court of competent jurisdiction pursuant to Chapter 150B
44 of the General Statutes. Any determination of the Commissioner under

1 this section finding that good cause exists for the nonrenewal,
2 cancellation, or termination of any franchise shall automatically be
3 stayed during any period that the affected dealer shall have the right to
4 judicial review or appeal of the determination before the superior court
5 or any other appellate court and during the pendency of any appeal;
6 provided, however, that within 30 days of entry of the Commissioner's
7 order, the affected dealer provide such security as the reviewing court,
8 in its discretion, may deem appropriate for payment of such costs and
9 damages as may be incurred or sustained by the manufacturer by
10 reason of and during the pendency of the stay. Although the right of
11 the affected dealer to such stay is automatic, the procedure for
12 providing such security and for the award of damages, if any, to the
13 manufacturer upon dissolution of the stay shall be in accordance with
14 G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on
15 behalf of any affected dealer shall be forfeited or damages awarded
16 against a dealer who obtains a stay under this subdivision in the event
17 the ownership of the affected dealership is subsequently transferred,
18 sold, or assigned to a third party in accordance with this subdivision or
19 subdivision (4) of this section and the closing on such transfer, sale, or
20 assignment occurs no later than 180 days after the date of entry of the
21 Commissioner's order. Furthermore, unless and until the termination,
22 cancellation, or nonrenewal of a dealer's franchise shall finally become
23 effective, in light of any stay or any order of the Commissioner
24 determining that good cause exists for the termination, cancellation, or
25 nonrenewal of a dealer's franchise as provided in this paragraph, a
26 dealer who receives a notice of termination, cancellation, or
27 nonrenewal from a manufacturer as provided in this subdivision shall
28 continue to have the same rights to assign, sell, or transfer the
29 franchise to a third party under the franchise and as permitted under
30 G.S. 20-305(4) as if notice of the termination had not been given by
31 the manufacturer. Any franchise under notice or threat of termination,
32 cancellation, or nonrenewal by the manufacturer which is duly
33 transferred in accordance with G.S. 20-305(4) shall not be subject to
34 termination by reason of failure of performance or breaches of the
35 franchise on the part of the transferor.

36 a. Notwithstanding the terms, provisions or conditions of any
37 franchise or the terms or provisions of any waiver, good cause
38 shall exist for the purposes of a termination, cancellation or
39 nonrenewal when:

- 40 1. There is a failure by the new motor vehicle dealer to
41 comply with a provision of the franchise which provision
42 is both reasonable and of material significance to the
43 franchise relationship provided that the dealer has been

- 1 notified in writing of the failure within 180 days after the
2 manufacturer first acquired knowledge of such failure;
- 3 2. If the failure by the new motor vehicle dealer relates to
4 the performance of the new motor vehicle dealer in sales
5 or service, then good cause shall be defined as the failure
6 of the new motor vehicle dealer to comply with
7 reasonable performance criteria established by the
8 manufacturer if the new motor vehicle dealer was
9 apprised by the manufacturer in writing of the failure;
10 and
- 11 I. The notification stated that notice was provided of
12 failure of performance pursuant to this section;
- 13 II. The new motor vehicle dealer was afforded a
14 reasonable opportunity, for a period of not less
15 than 180 days, to comply with the criteria; and
- 16 III. The new motor vehicle dealer failed to
17 demonstrate substantial progress towards
18 compliance with the manufacturer's performance
19 criteria during such period and the new motor
20 vehicle dealer's failure was not primarily due to
21 economic or market factors within the dealer's
22 relevant market area which were beyond the
23 dealer's control.
- 24 b. The manufacturer shall have the burden of proof under this
25 section.
- 26 c. Notification of Termination, Cancellation and Nonrenewal. –
- 27 1. Notwithstanding the terms, provisions or conditions of
28 any franchise prior to the termination, cancellation or
29 nonrenewal of any franchise, the manufacturer shall
30 furnish notification of termination, cancellation or
31 nonrenewal to the new motor vehicle dealer as follows:
- 32 I. In the manner described in G.S. 20-305(6)c2
33 below; and
- 34 II. Not less than 90 days prior to the effective date of
35 such termination, cancellation or nonrenewal; or
- 36 III. Not less than 15 days prior to the effective date of
37 such termination, cancellation or nonrenewal with
38 respect to any of the following:
- 39 A. Insolvency of the new motor vehicle
40 dealer, or filing of any petition by or
41 against the new motor vehicle dealer under
42 any bankruptcy or receivership law;
- 43 B. Failure of the new motor vehicle dealer to
44 conduct its customary sales and service

- 1 operations during its customary business
2 hours for seven consecutive business days,
3 except for acts of God or circumstances
4 beyond the direct control of the new motor
5 vehicle dealer;
- 6 C. Revocation of any license which the new
7 motor vehicle dealer is required to have to
8 operate a dealership;
- 9 D. Conviction of a felony involving moral
10 turpitude, under the laws of this State or
11 any other state, or territory, or the District
12 of Columbia.
- 13 IV. Not less than 180 days prior to the effective date
14 of such ~~termination or cancellation where the~~
15 ~~manufacturer or distributor is discontinuing the~~
16 ~~sale of the product line.~~ termination, cancellation,
17 or nonrenewal which occurs as a result of any
18 change in ownership, operation, or control of all
19 or any part of the business of the manufacturer,
20 factory branch, distributor, or distributor branch
21 whether by sale or transfer of assets, corporate
22 stock or other equity interest, assignment, merger,
23 consolidation, combination, joint venture,
24 redemption, operation of law or otherwise; or the
25 termination, suspension, or cessation of a part or
26 all of the business operations of the
27 manufacturers, factory branch, distributor, or
28 distributor branch; or discontinuance of the sale of
29 the product line or a change in distribution system
30 by the manufacturer whether through a change in
31 distributors or the manufacturer's decision to
32 cease conducting business through a distributor
33 altogether.
- 34 V. Unless the failure by the new motor vehicle dealer
35 relates to the performance of the new motor
36 vehicle dealer in sales or service, not more than
37 one year after the manufacturer first acquired
38 knowledge of the basic facts comprising the
39 failure.
- 40 2. Notification under this section shall be in writing; shall
41 be by certified mail or personally delivered to the new
42 motor vehicle dealer; and shall contain:
- 43 I. A statement of intention to terminate, cancel or
44 not to renew the franchise;

- 1 II. A detailed statement of all of the material reasons
2 for the termination, cancellation or nonrenewal;
3 and
4 III. The date on which the termination, cancellation or
5 nonrenewal takes effect.
- 6 3. Notification provided in G.S. 20-305(6)c1II of 90 days
7 prior to the effective date of such termination,
8 cancellation or renewal may run concurrent with the 180
9 days designated in G.S. 20-305(6)a2II provided the
10 notification is clearly designated by a separate written
11 document mailed by certified mail or personally
12 delivered to the new motor vehicle dealer.
- 13 d. Payments.
- 14 1. Upon the termination, nonrenewal or cancellation of any
15 franchise by the manufacturer or distributor, pursuant to
16 this section, the new motor vehicle dealer shall be
17 allowed fair and reasonable compensation by the
18 manufacturer for the:
- 19 I. New motor vehicle inventory that has been
20 acquired from the manufacturer within 18 months,
21 at a price not to exceed the original
22 manufacturer's price to the dealer, and which has
23 not been altered or damaged, and which has not
24 been driven more than 200 miles, and for which
25 no certificate of title has been issued;
- 26 II. Unused, undamaged and unsold supplies and parts
27 purchased from the manufacturer, at a price not to
28 exceed the original manufacturer's price to the
29 dealer, provided such supplies and parts are
30 currently offered for sale by the manufacturer or
31 distributor in its current parts catalogs and are in
32 salable condition;
- 33 III. Equipment, signs, and furnishings that have not
34 been altered or damaged and that have been
35 required by the manufacturer or distributor to be
36 purchased by the new motor vehicle dealer from
37 the manufacturer or distributor, or their approved
38 sources; and
- 39 IV. Special tools that have not been altered or
40 damaged and that have been required by the
41 manufacturer or distributor to be purchased by the
42 new motor vehicle dealer from the manufacturer
43 or distributor, or their approved sources within

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five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. 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 of the same to the manufacturer. The manufacturer shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations under this sub-subparagraph. The manufacturer may not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.

3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then the manufacturer shall be liable to the dealer for an amount at least equivalent to the fair market value of the franchise on (i) the date the franchisor announces the action which results in termination, cancellation, or nonrenewal; or (ii) the date the action which results in termination, cancellation, or nonrenewal first became general knowledge; or (iii) the day 12 months prior to the date on which the notice of termination, cancellation, or nonrenewal is issued, whichever amount is higher. Payment is due within 90 days of the effective date of the termination, cancellation, or nonrenewal. If the termination, cancellation, or nonrenewal is due to a manufacturer's change in distributors, the manufacturer may avoid paying fair market value to the dealer if the new distributor or the manufacturer offers the dealer a franchise agreement with terms acceptable to the dealer.

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

- 1 the manufacturer, the manufacturer shall pay the new
2 motor vehicle dealer a sum equivalent to the rent for the
3 unexpired term of the lease or three year's rent,
4 whichever is less, or such longer term as is provided in
5 the franchise agreement between the dealer and
6 manufacturer; except that, in the case of motorcycle
7 dealerships, the manufacturer shall pay the new motor
8 vehicle dealer the sum equivalent to the rent for the
9 unexpired term of the lease or one year's rent, whichever
10 is less, or such longer term as provided in the franchise
11 agreement between the dealer and manufacturer; or
- 12 2. Subject to paragraph 3, if the new motor vehicle dealer
13 owns the dealership facilities, the manufacturer shall pay
14 the new motor vehicle dealer a sum equivalent to the
15 reasonable rental value of the dealership facilities for
16 three years, or for one year in the case of motorcycle
17 dealerships.
- 18 3. In order to be entitled to facilities assistance from the
19 manufacturer, as provided in this paragraph e., the
20 dealer, owner, or lessee, as the case may be, shall have
21 the obligation to mitigate damages by listing the demised
22 premises for lease or sublease with a licensed real estate
23 agent within 30 days after the effective date of the
24 termination of the franchise and thereafter by reasonably
25 cooperating with said real estate agent in the
26 performance of the agent's duties and responsibilities. In
27 the event that the dealer, owner, or lessee is able to lease
28 or sublease the demised premises, the dealer shall be
29 obligated to pay the manufacturer the net revenue
30 received from such mitigation up to the total amount of
31 facilities assistance which the dealer has received from
32 the manufacturer pursuant to sub-subdivisions 1. and 2.
33 To the extent and for such uses and purposes as may be
34 consistent with the terms of the lease, a manufacturer
35 who pays facilities assistance to a dealer under this
36 paragraph e. shall be entitled to occupy and use the
37 dealership facilities during the years for which the
38 manufacturer shall have paid rent under sub-subdivisions
39 1. and 2.
- 40 4. In the event the termination relates to fewer than all of
41 the franchises operated by the dealer at a single location,
42 the amount of facilities assistance which the
43 manufacturer is required to pay the dealer under this
44 sub-subdivision shall be based on the proportion of gross

1 revenue received from the sale and lease of new vehicles
2 by the dealer and from the dealer's parts and service
3 operations during the three years immediately preceding
4 the effective date of the termination (or any shorter
5 period that the dealer may have held these franchises) of
6 the line-makes being terminated, in relation to the gross
7 revenue received from the sale and lease of all
8 line-makes of new vehicles by the dealer and from the
9 total of the dealer's and parts and service operations from
10 this location during the same three-year period.

11 5. The compensation required for facilities assistance under
12 this paragraph e. shall be paid by the manufacturer
13 within 90 days of the effective date of termination,
14 cancellation, or nonrenewal.

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

19 Notwithstanding the terms of any contract or agreement, any
20 dealer's termination or resignation shall not be deemed to be
21 voluntary if that termination or resignation occurred under the
22 manufacturer's threat of nonrenewal, cancellation, or
23 termination of the franchise.

24 g. A franchise shall continue in full force and operation
25 notwithstanding a change, in whole or in part, of an established
26 plan or system of distribution of the motor vehicles offered for
27 sale under the franchise. The appointment of a new
28 manufacturer, factory branch, distributor, or distributor branch
29 for motor vehicles offered for sale under the franchise
30 agreement shall be deemed to be a change of an established
31 plan or system of distribution.

32 Upon the occurrence of the change, the Division shall deny an
33 application of a manufacturer, factory branch, distributor, or
34 distributor branch for a license or license renewal unless the
35 applicant for a license as a manufacturer, factory branch,
36 distributor, or distributor branch offers to each motor vehicle
37 dealer who is a party to a franchise for that line-make a new
38 franchise agreement containing substantially the same
39 provisions which were contained in the previous franchise
40 agreement or files an affidavit with the Division acknowledging
41 its undertaking to assume and fulfill the rights, duties, and
42 obligations of its predecessor under the previous franchise
43 agreement."

1 **SECTION 13.** This act shall be applicable to all franchises and other
2 contracts and agreements existing between motor vehicle dealers, on the one part, and
3 manufacturers, factory branches, distributors, and distributor branches, on the other part,
4 at the time of its ratification, and to all future franchises, contracts, and other
5 agreements.

6 **SECTION 14.** If any provision of this act or its application is held invalid,
7 the invalidity does not affect other provisions or applications of this act that can be
8 given effect without the invalid provisions or application, and to this end the provisions
9 of this act are severable.

10 **SECTION 15.** This act becomes effective August 1, 2007, or when it
11 becomes law, whichever is later. Nothing in this act applies to any administrative
12 proceeding pending before the Commissioner of Motor Vehicles or any case pending in
13 a court on or before the effective date of this act.