

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 913
Commerce Committee Substitute Adopted 5/12/09

Short Title: Clarify Motor Vehicle Franchise Laws.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS
3 LICENSING LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-305(4) reads as rewritten:

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

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

11 ...

12 (4) Notwithstanding the terms of any franchise agreement, to prevent or refuse
13 to approve the sale or transfer of the ownership of a dealership by the sale of
14 the business, stock transfer, or otherwise, or the transfer, sale or assignment
15 of a dealer franchise, or a change in the executive management or principal
16 operator of the dealership, the relocation or addition of a different line-make
17 franchise to the dealership facility, or the relocation of the dealership to
18 another site within the dealership's relevant market area, if the
19 Commissioner has determined, if requested in writing by the dealer within
20 30 days after receipt of an objection to the proposed transfer, sale,
21 assignment, relocation, or change, and after a hearing on the matter, that the
22 failure to permit or honor the transfer, sale, assignment, addition, relocation,
23 or other change is ~~unreasonable under the circumstances~~ fails to meet the
24 standards specified in this section. No franchise may be transferred, sold,
25 assigned, relocated, or the executive management or principal operators
26 changed, unless the franchisor has been given at least 30 days' prior written
27 notice as to the proposed transferee's name and address, financial ability, and
28 qualifications of the proposed transferee, a copy of the purchase agreement
29 between the dealership and the proposed transferee, the identity and
30 qualifications of the persons proposed to be involved in executive
31 management or as principal operators, and the location and site plans of any
32 proposed addition of a different line-make or relocation. The franchisor shall
33 send the dealership and the proposed transferee notice of objection, by
34 registered or certified mail, return receipt requested, to the proposed transfer,
35 sale, assignment, addition of a different line-make, relocation, or change
36 within 30 days after receipt of notice from the dealer, as provided in this
37 section. The notice of objection shall state in detail all factual and legal bases



1 for the objection on the part of the franchisor to the proposed transfer, sale,
2 assignment, addition of a different line-make, relocation, or change that is
3 specifically referenced in this subdivision. An objection to a proposed
4 transfer, sale, assignment, addition of a different line-make, relocation, or
5 change in the executive management or principal operator of the dealership
6 may only be premised upon the factual and legal bases specifically
7 referenced in this subdivision. A manufacturer's notice of objection which is
8 based upon factual or legal issues that are not specifically referenced in this
9 subdivision as being issues upon which the Commissioner shall base his
10 determination shall not be effective to preserve the franchisor's right to
11 object to the proposed transfer sale, assignment, relocation, or change,
12 provided the dealership or proposed transferee has submitted written notice,
13 as required above, as to the proposed transferee's name and address,
14 financial ability, and qualifications of the proposed transferee, a copy of the
15 purchase agreement between the dealership and the proposed transferee, the
16 identity and qualifications of the persons proposed to be involved in the
17 executive management or as principal operators, and the location and site
18 plans of any proposed addition of a different line-make or relocation. Failure
19 by the franchisor to send notice of objection within 30 days shall constitute
20 waiver by the franchisor of any right to object to the proposed transfer, sale,
21 assignment, addition of a different line-make, relocation, or change. If the
22 franchisor requires additional information to complete its review, the
23 franchisor shall notify the dealership within 15 days after receipt of the
24 proposed transferee's name and address, financial ability, and qualifications,
25 a copy of the purchase agreement between the dealership and the proposed
26 transferee, the identity and qualifications of the persons proposed to be
27 involved in executive management or as principal operators, and the location
28 and site plans of any proposed addition of a different line-make or
29 relocation. If the franchisor fails to request additional information from the
30 dealer or proposed transferee within 15 days of receipt of this initial
31 information, the 30-day time period within which the franchisor may provide
32 notice of objection shall be deemed to run from the initial receipt date.
33 Otherwise, the 30-day time period within which the franchisor may provide
34 notice of objection shall run from the date the franchisor has received the
35 supplemental information requested from the dealer or proposed transferee;
36 provided, however, that failure by the franchisor to send notice of objection
37 within 60 days of the franchisor's receipt of the initial information from the
38 dealer shall constitute waiver by the franchisor of any right to object to the
39 proposed transfer, sale, assignment, relocation, or change. With respect to a
40 proposed transfer of ownership, sale, or assignment, the sole issue for
41 determination by the Commissioner and the sole issue upon which the
42 Commissioner shall hear or consider evidence is whether, by reason of lack
43 of good moral character, lack of general business experience, or lack of
44 financial ability, the proposed transferee is unfit to own the dealership. For
45 purposes of this subdivision, the refusal by the manufacturer to accept a
46 proposed transferee who is of good moral character and who otherwise
47 meets the written, reasonable, and uniformly applied business experience
48 and financial requirements, if any, required by the manufacturer of owners
49 of its franchised automobile dealerships is presumed to demonstrate the
50 manufacturer's failure to prove that the proposed transferee is unfit to own
51 the dealership. With respect to a proposed change in the executive

1 management or principal operator of the dealership, the sole issue for
2 determination by the Commissioner and the sole issue on which the
3 Commissioner shall hear or consider evidence shall be whether, by reason of
4 lack of training, lack of prior experience, poor past performance, or poor
5 character, the proposed candidate for a position within the executive
6 management or as principal operator of the dealership is unfit for the
7 position. For purposes of this subdivision, the refusal by the manufacturer to
8 accept a proposed candidate for executive management or as principal
9 operator who is of good moral character and who otherwise meets the
10 written, reasonable, and uniformly applied standards or qualifications, if any,
11 of the manufacturer relating to the business experience and prior
12 performance of executive management required by the manufacturers of its
13 dealers is presumed to demonstrate the manufacturer's failure to prove the
14 proposed candidate for executive management or as principal operator is
15 unfit to serve the capacity. With respect to a proposed addition or relocation
16 of a different line-make franchise to the dealership facility, the only issues
17 for determination by the Commissioner are whether the dealership's sales,
18 service, and parts facilities would be sufficient to handle the reasonably
19 expected demands of the multi-franchise dealership and whether the
20 dealership possesses sufficient working capital and line of credit to handle
21 the reasonably expected needs of the multi-franchise facility. With respect to
22 a proposed relocation or other proposed change, the issue for determination
23 by the Commissioner is whether the proposed relocation or other change is
24 unreasonable under the circumstances. For purposes of this subdivision, the
25 refusal by the manufacturer to agree to a proposed relocation which meets
26 the written, reasonable, and uniformly applied standards or criteria, if any, of
27 the manufacturer relating to dealer relocations is presumed to demonstrate
28 that the manufacturer's failure to prove the proposed relocation is
29 unreasonable under the circumstances. The manufacturer shall have the
30 burden of proof before the Commissioner under this subdivision. It is
31 unlawful for a manufacturer to, in any way, condition its approval of a
32 proposed transfer, sale, assignment, change in the dealer's executive
33 management, principal operator, or appointment of a designated successor,
34 on the existing or proposed dealer's willingness to construct a new facility,
35 renovate the existing facility, acquire or refrain from acquiring one or more
36 line-makes of vehicles, separate or divest one or more line-makes of vehicle,
37 or establish or maintain exclusive facilities, personnel, or display space. It is
38 unlawful for a manufacturer to, in any way, condition its approval of a
39 proposed relocation on the existing or proposed dealer's willingness to
40 acquire or refrain from acquiring one or more line-makes of vehicles,
41 separate or divest one or more line-makes of vehicle, or establish or maintain
42 exclusive facilities, personnel, or display space. The opinion or
43 determination of a franchisor that the continued existence of one of its
44 franchised dealers situated in this State is not viable, or that the dealer holds
45 or fails to hold licensing rights for the sale of other line-makes of vehicles in
46 a manner consistent with the franchisor's existing or future distribution or
47 marketing plans, shall not constitute a lawful basis for the franchisor to fail
48 or refuse to approve a dealer's proposed relocation: provided, however, that
49 nothing contained in this subdivision shall be deemed to prevent or prohibit
50 a franchisor from failing to approve a dealer's proposed relocation on
51 grounds that the specific site or facility proposed by the dealer is otherwise

1 unreasonable under the circumstances. Approval of a relocation pursuant to
2 this subdivision shall not in itself constitute the franchisor's representation or
3 assurance of the dealer's viability at that location."

4 **SECTION 2.** G.S. 20-305(28) reads as rewritten:

5 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
6 **franchise; preventing transfer of ownership; granting additional franchises;**
7 **terminating franchises without good cause; preventing family succession.**

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

10 ...

11 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
12 purchase or order any new motor vehicle as a precondition to purchasing,
13 ordering, or receiving any other new motor vehicle or vehicles. Nothing
14 herein shall prevent a manufacturer from requiring that a new motor vehicle
15 dealer fairly represent and inventory the full line current model year new
16 motor vehicles which are covered by the franchise ~~agreement~~agreement,
17 provided that such inventory representation requirements are not
18 unreasonable under the circumstances."

19 **SECTION 3.** G.S. 20-305(30) reads as rewritten:

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

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

25 ...

26 (30) To vary the price charged to any of its franchised new motor vehicle dealers
27 located in this State for new motor vehicles based on the dealer's purchase of
28 new facilities, supplies, tools, equipment, or other merchandise from the
29 manufacturer, the dealer's relocation, remodeling, repair, or renovation of
30 existing dealerships or construction of a new facility, the dealer's
31 participation in training programs sponsored, endorsed, or recommended by
32 the manufacturer, whether or not the dealer is dualed with one or more other
33 line makes of new motor vehicles, or the dealer's sales penetration. Except as
34 provided in this subdivision, it shall be unlawful for any manufacturer,
35 factory branch, distributor, or distributor branch, or any field representative,
36 officer, agent, or any representative whatsoever of any of them to vary the
37 price charged to any of its franchised new motor vehicle dealers located in
38 this State for new motor vehicles based on the dealer's sales volume, the
39 dealer's level of sales or customer service satisfaction, the dealer's purchase
40 of advertising materials, signage, nondiagnostic computer hardware or
41 software, communications devices, or furnishings, or the dealer's
42 participation in used motor vehicle inspection or certification programs
43 sponsored or endorsed by the manufacturer.

44 The price of the vehicle, for purposes of this subdivision shall include
45 the manufacturer's use of rebates, credits, or other consideration that has the
46 effect of causing a variance in the price of new motor vehicles offered to its
47 franchised dealers located in the State.

48 Notwithstanding the foregoing, nothing in this subdivision shall be
49 deemed to preclude a manufacturer from establishing sales contests or
50 promotions that provide or award dealers or consumers rebates or incentives;

1 provided, however, that the manufacturer complies with all of the following
2 conditions:

- 3 a. With respect to manufacturer to consumer rebates and incentives, the
4 manufacturer's criteria for determining eligibility shall:
- 5 1. Permit all of the manufacturer's franchised new motor vehicle
6 dealers in this State to offer the rebate or incentive; and
 - 7 2. Be uniformly applied and administered to all eligible
8 consumers.
- 9 b. With respect to manufacturer to dealer rebates and incentives, the
10 rebate or incentive program shall:
- 11 1. Be based solely on the dealer's actual or reasonably
12 anticipated sales volume or on a uniform per vehicle sold or
13 leased basis;
 - 14 2. Be uniformly available, applied, and administered to all of the
15 manufacturer's franchised new motor vehicle dealers in this
16 State; and
 - 17 3. Provide that any of the manufacturer's franchised new motor
18 vehicle dealers in this State may, upon written request, obtain
19 the method or formula used by the manufacturer in
20 establishing the sales volumes for receiving the rebates or
21 incentives and the specific calculations for determining the
22 required sales volumes of the inquiring dealer and any of the
23 manufacturer's other franchised new motor vehicle dealers
24 located within 75 miles of the inquiring dealer.

25 Nothing contained in this subdivision shall prohibit a manufacturer from
26 providing assistance or encouragement to a franchised dealer to remodel,
27 renovate, recondition, or relocate the dealer's existing facilities, provided that
28 this assistance, encouragement, or rewards are not determined on a per
29 vehicle basis.

30 It is unlawful for any manufacturer to charge or include the cost of any
31 program or policy prohibited under this subdivision in the price of new
32 motor vehicles that the manufacturer sells to its franchised dealers or
33 purchasers located in this State.

34 In the event that as of October 1, 1999, a manufacturer was operating a
35 program that varied the price charged to its franchised dealers in this State in
36 a manner that would violate this subdivision, or had in effect a documented
37 policy that had been conveyed to its franchised dealers in this State and that
38 varied the price charged to its franchised dealers in this State in a manner
39 that would violate this subdivision, it shall be lawful for that program or
40 policy, including amendments to that program or policy that are consistent
41 with the purpose and provisions of the existing program or policy, or a
42 program or policy similar thereto implemented after October 1, 1999, to
43 continue in effect as to the manufacturer's franchised dealers located in this
44 State until June 30, ~~2010~~2014.

45 In the event that as of June 30, 2001, a manufacturer was operating a
46 program that varied the price charged to its franchised dealers in this State in
47 a manner that would violate this subdivision, or had in effect a documented
48 policy that had been conveyed to its franchised dealers in this State and that
49 varied the price charged to its franchised dealers in this State in a manner
50 that would violate this subdivision, and the program or policy was
51 implemented in this State subsequent to October 1, 1999, and prior to June

1 30, 2001, and provided that the program or policy is in compliance with this
2 subdivision as it existed as of June 30, 2001, it shall be lawful for that
3 program or policy, including amendments to that program or policy that
4 comply with this subdivision as it existed as of June 30, 2001, to continue in
5 effect as to the manufacturer's franchised dealers located in this State until
6 June 30, ~~2010~~2014.

7 Any manufacturer shall be required to pay or otherwise compensate any
8 franchise dealer who has earned the right to receive payment or other
9 compensation under a program in accordance with the manufacturer's
10 program or policy.

11 The provisions of this subdivision shall not be applicable to multiple or
12 repeated sales of new motor vehicles made by a new motor vehicle dealer to
13 a single purchaser under a bona fide fleet sales policy of a manufacturer,
14 factory branch, distributor, or distributor branch."

15 **SECTION 4.** G.S. 20-305.1 is amended by adding a new subsection to read:

16 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any
17 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to
18 take or threaten to take any adverse action against a dealer located in this State, or to otherwise
19 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a
20 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold
21 the vehicle to a third party, unless the dealer knew or reasonably should have known that the
22 customer intended to export or resell the motor vehicle prior to the customer's purchase of the
23 vehicle from the dealer. The conduct prohibited under this subsection includes, but is not
24 limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver
25 motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of
26 vehicles; or (iii) charging back or withholding payments or other compensation or
27 consideration for which a dealer is otherwise eligible for warranty reimbursement or under a
28 sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from
29 participating in or discrimination against any dealer relating to any sales promotion, incentive
30 program, or contest; or termination of a franchise. In any proceeding brought pursuant to this
31 subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's
32 purchase of the vehicle, did not know nor should have reasonably known that the customer
33 intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled,
34 registered, and, where applicable, taxes paid in any state or territory within the United States in
35 the name of a customer who was physically present at the dealership at or prior to the time of
36 sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle
37 would be shipped to a foreign country."

38 **SECTION 5.** G.S. 20-305.1 is amended by adding a new subsection to read:

39 "(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to
40 a motor vehicle manufacturer shall also apply to a component parts manufacturer. For
41 purposes of this section, a component parts manufacturer means a person, resident, or
42 nonresident of this State, who manufactures or assembles new motor vehicle "component parts"
43 and directly warrants the component parts to the consumer. For purposes of this section,
44 component parts means an engine, power train, rear axle, or other part of a motor vehicle that is
45 not warranted by the final manufacturer of the motor vehicle."

46 **SECTION 6.** This act is effective when it becomes law.

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