

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 913
PROPOSED COMMITTEE SUBSTITUTE S913-PCS55395-SU-46

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,



* S 9 1 3 - P C S 5 5 3 9 5 - S U - 4 6 *

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

1 of its franchised automobile dealerships is presumed to demonstrate the
2 manufacturer's failure to prove that the proposed transferee is unfit to own
3 the dealership. With respect to a proposed change in the executive
4 management or principal operator of the dealership, the sole issue for
5 determination by the Commissioner and the sole issue on which the
6 Commissioner shall hear or consider evidence shall be whether, by reason of
7 lack of training, lack of prior experience, poor past performance, or poor
8 character, the proposed candidate for a position within the executive
9 management or as principal operator of the dealership is unfit for the
10 position. For purposes of this subdivision, the refusal by the manufacturer to
11 accept a proposed candidate for executive management or as principal
12 operator who is of good moral character and who otherwise meets the
13 written, reasonable, and uniformly applied standards or qualifications, if any,
14 of the manufacturer relating to the business experience and prior
15 performance of executive management required by the manufacturers of its
16 dealers is presumed to demonstrate the manufacturer's failure to prove the
17 proposed candidate for executive management or as principal operator is
18 unfit to serve the capacity. With respect to a proposed addition or relocation
19 of a different line-make franchise to the dealership facility, the only issues
20 for determination by the Commissioner are whether the dealership's sales,
21 service, and parts facilities would be sufficient to handle the reasonably
22 expected demands of the multi-franchise dealership and whether the
23 dealership possesses sufficient working capital and line of credit to handle
24 the reasonably expected needs of the multi-franchise facility. With respect to
25 a proposed relocation or other proposed change, the issue for determination
26 by the Commissioner is whether the proposed relocation or other change is
27 unreasonable under the circumstances. For purposes of this subdivision, the
28 refusal by the manufacturer to agree to a proposed relocation which meets
29 the written, reasonable, and uniformly applied standards or criteria, if any,
30 of the manufacturer relating to dealer relocations is presumed to demonstrate
31 that the manufacturer's failure to prove the proposed relocation is
32 unreasonable under the circumstances. The manufacturer shall have the
33 burden of proof before the Commissioner under this subdivision. It is
34 unlawful for a manufacturer to, in any way, condition its approval of a
35 proposed transfer, sale, assignment, change in the dealer's executive
36 management, principal operator, or appointment of a designated successor,
37 on the existing or proposed dealer's willingness to construct a new facility,
38 renovate the existing facility, acquire or refrain from acquiring one or more
39 line-makes of vehicles, separate or divest one or more line-makes of vehicle,
40 or establish or maintain exclusive facilities, personnel, or display space. It is
41 unlawful for a manufacturer to, in any way, condition its approval of a
42 proposed relocation on the existing or proposed dealer's willingness to
43 acquire or refrain from acquiring one or more line-makes of vehicles,
44 separate or divest one or more line-makes of vehicle, or establish or maintain
45 exclusive facilities, personnel, or display space. The opinion or
46 determination of a franchisor that the continued existence of one of its
47 franchised dealers situated in this State is not viable, or that the dealer holds
48 or fails to hold licensing rights for the sale of other line-makes of vehicles in
49 a manner consistent with the franchisor's existing or future distribution or
50 marketing plans, shall not constitute a lawful basis for the franchisor to fail
51 or refuse to approve a dealer's proposed relocation: provided, however, that

1 nothing contained in this subdivision shall be deemed to prevent or prohibit
2 a franchisor from failing to approve a dealer's proposed relocation on
3 grounds that the specific site or facility proposed by the dealer is otherwise
4 unreasonable under the circumstances. Approval of a relocation pursuant to
5 this subdivision shall not in itself constitute the franchisor's representation or
6 assurance of the dealer's viability at that location."

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

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

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

13 ...

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

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

23 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
24 **franchise; preventing transfer of ownership; granting additional franchises;**
25 **terminating franchises without good cause; preventing family succession.**

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

28 ...

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

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

1 Notwithstanding the foregoing, nothing in this subdivision shall be
2 deemed to preclude a manufacturer from establishing sales contests or
3 promotions that provide or award dealers or consumers rebates or incentives;
4 provided, however, that the manufacturer complies with all of the following
5 conditions:

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

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

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

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

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

1 varied the price charged to its franchised dealers in this State in a manner
2 that would violate this subdivision, and the program or policy was
3 implemented in this State subsequent to October 1, 1999, and prior to June
4 30, 2001, and provided that the program or policy is in compliance with this
5 subdivision as it existed as of June 30, 2001, it shall be lawful for that
6 program or policy, including amendments to that program or policy that
7 comply with this subdivision as it existed as of June 30, 2001, to continue in
8 effect as to the manufacturer's franchised dealers located in this State until
9 June 30, ~~2010~~2014.

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

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

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

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

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

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

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

50 **SECTION 7.** If any provision of this act or its application is held invalid, the
51 invalidity does not affect other provisions or applications of this act that can be given effect

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