

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 913
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S913-PCS55448-SU-62

Short Title: Clarify MV Franchise Laws/Termination Assist.

(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 AND DEALER TERMINATION ASSISTANCE RIGHTS.

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



* S 9 1 3 - P C S 5 5 4 4 8 - S U - 6 2 *

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

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

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

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

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

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

14 ...

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

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

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

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

29 ...

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

48 The price of the vehicle, for purposes of this subdivision shall include
49 the manufacturer's use of rebates, credits, or other consideration that has the
50 effect of causing a variance in the price of new motor vehicles offered to its
51 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 (v) termination of a franchise. In any proceeding brought pursuant to
34 this 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.** G.S. 20-305(6) reads as rewritten:

1 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
2 **franchise; preventing transfer of ownership; granting additional franchises;**
3 **terminating franchises without good cause; preventing family succession.**

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

6 ...
7 (6) Notwithstanding the terms, provisions or conditions of any franchise or
8 notwithstanding the terms or provisions of any waiver, to terminate, cancel
9 or fail to renew any franchise with a licensed new motor vehicle dealer
10 unless the manufacturer has satisfied the notice requirements of
11 subparagraph c. and the Commissioner has determined, if requested in
12 writing by the dealer within (i) the time period specified in
13 G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of
14 the franchise termination specified or proposed by the manufacturer in the
15 notice of termination, whichever period of time is longer, and after a hearing
16 on the matter, that there is good cause for the termination, cancellation, or
17 nonrenewal of the franchise and that the manufacturer has acted in good
18 faith as defined in this act regarding the termination, cancellation or
19 nonrenewal. When such a petition is made to the Commissioner by a dealer
20 for determination as to the existence of good cause and good faith for the
21 termination, cancellation or nonrenewal of a franchise, the Commissioner
22 shall promptly inform the manufacturer that a timely petition has been filed,
23 and the franchise in question shall continue in effect pending the
24 Commissioner's decision. The Commissioner shall try to conduct the hearing
25 and render a final determination within 180 days after a petition has been
26 filed. If the termination, cancellation or nonrenewal is pursuant to
27 G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding
28 priority consideration and shall try to render his final determination no later
29 than 90 days after the petition has been filed. Any parties to a hearing by the
30 Commissioner under this section shall have a right of review of the decision
31 in a court of competent jurisdiction pursuant to Chapter 150B of the General
32 Statutes. Any determination of the Commissioner under this section finding
33 that good cause exists for the nonrenewal, cancellation, or termination of any
34 franchise shall automatically be stayed during any period that the affected
35 dealer shall have the right to judicial review or appeal of the determination
36 before the superior court or any other appellate court and during the
37 pendency of any appeal; provided, however, that within 30 days of entry of
38 the Commissioner's order, the affected dealer provide such security as the
39 reviewing court, in its discretion, may deem appropriate for payment of such
40 costs and damages as may be incurred or sustained by the manufacturer by
41 reason of and during the pendency of the stay. Although the right of the
42 affected dealer to such stay is automatic, the procedure for providing such
43 security and for the award of damages, if any, to the manufacturer upon
44 dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and
45 (e). No such security provided by or on behalf of any affected dealer shall be
46 forfeited or damages awarded against a dealer who obtains a stay under this
47 subdivision in the event the ownership of the affected dealership is
48 subsequently transferred, sold, or assigned to a third party in accordance
49 with this subdivision or subdivision (4) of this section and the closing on
50 such transfer, sale, or assignment occurs no later than 180 days after the date
51 of entry of the Commissioner's order. Furthermore, unless and until the

1 termination, cancellation, or nonrenewal of a dealer's franchise shall finally
2 become effective, in light of any stay or any order of the Commissioner
3 determining that good cause exists for the termination, cancellation, or
4 nonrenewal of a dealer's franchise as provided in this paragraph, a dealer
5 who receives a notice of termination, cancellation, or nonrenewal from a
6 manufacturer as provided in this subdivision shall continue to have the same
7 rights to assign, sell, or transfer the franchise to a third party under the
8 franchise and as permitted under G.S. 20-305(4) as if notice of the
9 termination had not been given by the manufacturer. Any franchise under
10 notice or threat of termination, cancellation, or nonrenewal by the
11 manufacturer which is duly transferred in accordance with G.S. 20-305(4)
12 shall not be subject to termination by reason of failure of performance or
13 breaches of the franchise on the part of the transferor.

14 a. Notwithstanding the terms, provisions or conditions of any franchise
15 or the terms or provisions of any waiver, good cause shall exist for
16 the purposes of a termination, cancellation or nonrenewal when:

17 1. There is a failure by the new motor vehicle dealer to comply
18 with a provision of the franchise which provision is both
19 reasonable and of material significance to the franchise
20 relationship provided that the dealer has been notified in
21 writing of the failure within 180 days after the manufacturer
22 first acquired knowledge of such failure;

23 2. If the failure by the new motor vehicle dealer relates to the
24 performance of the new motor vehicle dealer in sales or
25 service, then good cause shall be defined as the failure of the
26 new motor vehicle dealer to comply with reasonable
27 performance criteria established by the manufacturer if the
28 new motor vehicle dealer was apprised by the manufacturer
29 in writing of the failure; and

30 I. The notification stated that notice was provided of
31 failure of performance pursuant to this section;

32 II. The new motor vehicle dealer was afforded a
33 reasonable opportunity, for a period of not less than
34 180 days, to comply with the criteria; and

35 III. The new motor vehicle dealer failed to demonstrate
36 substantial progress towards compliance with the
37 manufacturer's performance criteria during such
38 period and the new motor vehicle dealer's failure was
39 not primarily due to economic or market factors
40 within the dealer's relevant market area which were
41 beyond the dealer's control.

42 b. The manufacturer shall have the burden of proof under this section.

43 c. Notification of Termination, Cancellation and Nonrenewal. –

44 1. Notwithstanding the terms, provisions or conditions of any
45 franchise prior to the termination, cancellation or nonrenewal
46 of any franchise, the manufacturer shall furnish notification
47 of termination, cancellation or nonrenewal to the new motor
48 vehicle dealer as follows:

49 I. In the manner described in G.S. 20-305(6)c2 below;
50 and

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
- II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
 - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
 - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
 - IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.
 - V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and

- 1 III. The date on which the termination, cancellation or
2 nonrenewal takes effect.
- 3 3. Notification provided in G.S. 20-305(6)c1III of 90 days prior
4 to the effective date of such termination, cancellation or
5 renewal may run concurrent with the 180 days designated in
6 G.S. 20-305(6)a2II provided the notification is clearly
7 designated by a separate written document mailed by certified
8 mail or personally delivered to the new motor vehicle dealer.
- 9 d. Payments.
- 10 1. Notwithstanding the terms of any franchise, agreement, or
11 waiver, upon ~~Upon~~ the termination, nonrenewal or
12 cancellation of any franchise by the manufacturer or
13 distributor, ~~pursuant to this section, the cessation of business~~
14 ~~or the termination, nonrenewal, or cancellation of any~~
15 ~~franchise by any new motor vehicle dealer located in this~~
16 ~~State, or upon any of the occurrences set forth in~~
17 ~~G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall~~
18 ~~purchase from and compensate the new motor vehicle dealer~~
19 ~~shall be allowed fair and reasonable compensation by the~~
20 ~~manufacturer for the all of the following:~~
- 21 I. New Each new and unsold motor vehicle within the
22 new motor vehicle dealer's inventory that has been
23 acquired from the manufacturer within 24 months of
24 the effective date of the termination 18 months, at a
25 price not to exceed the original manufacturer's price to
26 the dealer, and from the manufacturer or distributor or
27 another same line-make dealer in the ordinary course
28 of business, and which has not been substantially
29 altered or damaged,damaged to the prejudice of the
30 manufacturer or distributor while in the new motor
31 vehicle dealer's possession, and which has not been
32 driven more less than 200 miles,1,000 miles or, for
33 purposes of a recreational vehicle motor home as
34 defined in G.S. 20-4.01(32a)a., less than 1,500 miles
35 following the original date of delivery to the dealer,
36 and for which no certificate of title has been
37 issued;issued. For purposes of this sub-subdivision,
38 the term "ordinary course of business" shall include
39 inventory transfers of all new, same line-make
40 vehicles between affiliated dealerships, or otherwise
41 between dealerships having common or interrelated
42 ownership.
- 43 II. Unused, undamaged and unsold supplies and parts
44 purchased from the manufacturer or distributor or
45 sources approved by the manufacturer or distributor,
46 at a price not to exceed the original manufacturer's
47 price to the dealer, provided such supplies and parts
48 are currently offered for sale by the manufacturer or
49 distributor in its current parts catalogs and are in
50 salable ~~condition;~~condition.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
- III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved ~~sources;~~ ~~and sources.~~
- IV. Special tools that have not been altered or ~~damaged~~ damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.
2. ~~Fair and reasonable compensation for the~~ The compensation provided above shall be paid by the manufacturer or distributor ~~within not later than 90 days of the effective date of termination, cancellation or nonrenewal,~~ after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer ~~has~~ has, or can obtain, clear title to the inventory and ~~has conveyed~~ conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the ~~manufacturer's~~ manufacturer's repurchase obligations of the manufacturer or distributor under this sub-subparagraph. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor ~~not~~ charge the dealer any

- 1 handling, restocking, or other similar costs or fees associated
2 with items repurchased by the manufacturer under this
3 sub-subparagraph.
- 4 3. In addition to the other payments set forth in this section, if a
5 termination, cancellation, or nonrenewal is premised upon
6 any of the occurrences set forth in
7 ~~G.S. 20-305(6)c.1.IV., G.S. 20-305(6)c.1.IV.~~ or
8 G.S. 20-305(6)f., then the manufacturer or distributor shall be
9 liable to the dealer for an amount at least equivalent to the fair
10 market value of the franchise on (i) the date the franchisor
11 announces the action which results in termination,
12 cancellation, or nonrenewal; or (ii) the date the action which
13 results in termination, cancellation, or nonrenewal first
14 became general knowledge; or (iii) the day 12 months prior to
15 the date on which the notice of termination, cancellation, or
16 nonrenewal is issued, whichever amount is higher. Payment is
17 due ~~within not later than 90 days of the effective date of the~~
18 ~~termination, cancellation, or nonrenewal~~ after the
19 manufacturer or distributor has received notice in writing
20 from, or on behalf of, the new motor vehicle dealer specifying
21 the elements of compensation requested by the dealer. If the
22 termination, cancellation, or nonrenewal is due to a
23 manufacturer's change in distributors, the manufacturer may
24 avoid paying fair market value to the dealer if the new
25 distributor or the manufacturer offers the dealer a franchise
26 agreement with terms acceptable to the dealer.
- 27 e. Dealership Facilities Assistance upon Termination, Cancellation or
28 Nonrenewal.
- 29 In the event of the occurrence of any of the events specified in
30 G.S. 20-305(6)d.1. above, termination, cancellation or nonrenewal by
31 ~~the manufacturer or distributor under this section,~~ except termination,
32 cancellation or nonrenewal for ~~insolvency,~~ license revocation,
33 conviction of a crime involving moral turpitude, or fraud by a
34 dealer-owner:
- 35 1. Subject to paragraph 3, if the new motor vehicle dealer is
36 leasing the dealership facilities from a lessor other than the
37 manufacturer or distributor, the manufacturer or distributor
38 shall pay the new motor vehicle dealer a sum equivalent to
39 the rent for the unexpired term of the lease or three year's
40 rent, whichever is less, or such longer term as is provided in
41 the franchise agreement between the dealer and manufacturer;
42 except that, in the case of motorcycle dealerships, the
43 manufacturer shall pay the new motor vehicle dealer the sum
44 equivalent to the rent for the unexpired term of the lease or
45 one year's rent, whichever is less, or such longer term as
46 provided in the franchise agreement between the dealer and
47 manufacturer; or
- 48 2. Subject to paragraph 3, if the new motor vehicle dealer owns
49 the dealership facilities, the manufacturer or distributor shall
50 pay the new motor vehicle dealer a sum equivalent to the

- 1 reasonable rental value of the dealership facilities for three
2 years, or for one year in the case of motorcycle dealerships.
- 3 3. In order to be entitled to facilities assistance from the
4 manufacturer or distributor, as provided in this paragraph e.,
5 the dealer, owner, or lessee, as the case may be, shall have the
6 obligation to mitigate damages by listing the demised
7 premises for lease or sublease with a licensed real estate agent
8 within 30 days after the effective date of the termination of
9 the franchise and thereafter by reasonably cooperating with
10 said real estate agent in the performance of the agent's duties
11 and responsibilities. In the event that the dealer, owner, or
12 lessee is able to lease or sublease the demised premises, the
13 dealer shall be obligated to pay the manufacturer the net
14 revenue received from such mitigation up to the total amount
15 of facilities assistance which the dealer has received from the
16 manufacturer pursuant to sub-subdivisions 1. and 2. To the
17 extent and for such uses and purposes as may be consistent
18 with the terms of the lease, a manufacturer who pays facilities
19 assistance to a dealer under this paragraph e. shall be entitled
20 to occupy and use the dealership facilities during the years for
21 which the manufacturer shall have paid rent under
22 sub-subdivisions 1. and 2.
- 23 4. In the event the termination relates to fewer than all of the
24 franchises operated by the dealer at a single location, the
25 amount of facilities assistance which the manufacturer or
26 distributor is required to pay the dealer under this
27 sub-subdivision shall be based on the proportion of gross
28 revenue received from the sale and lease of new vehicles by
29 the dealer and from the dealer's parts and service operations
30 during the three years immediately preceding the effective
31 date of the termination (or any shorter period that the dealer
32 may have held these franchises) of the line-makes being
33 terminated, in relation to the gross revenue received from the
34 sale and lease of all line-makes of new vehicles by the dealer
35 and from the total of the dealer's and parts and service
36 operations from this location during the same three-year
37 period.
- 38 5. The compensation required for facilities assistance under this
39 paragraph e. shall be paid by the manufacturer or distributor
40 within 90 days of the effective date of termination,
41 cancellation, or nonrenewal. after the manufacturer or
42 distributor has received notice in writing from, or on behalf
43 of, a new motor vehicle dealer specifying the elements of
44 compensation requested by the dealer.
- 45 f. ~~The provisions of sub-subdivisions d. and e. above shall not be~~
46 ~~applicable when the termination, nonrenewal or cancellation of the~~
47 ~~franchise agreement is the result of the voluntary act of the dealer.~~
48 The provisions of sub-subdivision e. above shall not be applicable
49 when the termination, nonrenewal, or cancellation of the franchise
50 agreement by a new motor vehicle dealer is the result of the sale of
51 assets or stock of the motor vehicle dealership. The provisions of

1 sub-subdivisions d. and e. above shall not be applicable when the
2 termination, nonrenewal, or cancellation of the franchise agreement
3 is at the initiation of a new motor vehicle dealer of recreational
4 vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided
5 that at the time of the termination, nonrenewal, or cancellation, the
6 recreational vehicle manufacturer or distributor has paid to the dealer
7 all claims for warranty or recall work, including payments for labor,
8 parts, and other expenses, which were submitted by the dealer 30
9 days or more prior to the date of termination, nonrenewal, or
10 cancellation.

11 ~~Notwithstanding the terms of any contract or agreement, any dealer's~~
12 ~~termination or resignation shall not be deemed to be voluntary if that~~
13 ~~termination or resignation occurred under the manufacturer's threat of~~
14 ~~nonrenewal, cancellation, or termination of the franchise.~~

- 15 g. A franchise shall continue in full force and operation notwithstanding
16 a change, in whole or in part, of an established plan or system of
17 distribution of the motor vehicles offered for sale under the franchise.
18 The appointment of a new manufacturer, factory branch, distributor,
19 or distributor branch for motor vehicles offered for sale under the
20 franchise agreement shall be deemed to be a change of an established
21 plan or system of distribution.

22 Upon the occurrence of the change, the Division shall deny an application of a
23 manufacturer, factory branch, distributor, or distributor branch for a license or license renewal
24 unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor
25 branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a
26 new franchise agreement containing substantially the same provisions which were contained in
27 the previous franchise agreement or files an affidavit with the Division acknowledging its
28 undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the
29 previous franchise agreement."

30 **SECTION 7.** The terms and provisions of this act shall be applicable to all
31 franchises and other agreements in existence between any new motor vehicle dealer located in
32 this State and a manufacturer or distributor as of the effective date of this act, and to all future
33 franchises and other agreements.

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

38 **SECTION 9.** This act is effective when it becomes law.