

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 913
Commerce Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/25/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S913-PCS35358-SU-70

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

20 SECTION 2. G.S. 20-305(30) reads as rewritten:

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

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

26 ...

27 (30) To vary the price charged to any of its franchised new motor vehicle dealers
28 located in this State for new motor vehicles based on the dealer's purchase of
29 new facilities, supplies, tools, equipment, or other merchandise from the
30 manufacturer, the dealer's relocation, remodeling, repair, or renovation of
31 existing dealerships or construction of a new facility, the dealer's
32 participation in training programs sponsored, endorsed, or recommended by



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1 the manufacturer, whether or not the dealer is dualed with one or more other
2 line makes of new motor vehicles, or the dealer's sales penetration. Except as
3 provided in this subdivision, it shall be unlawful for any manufacturer,
4 factory branch, distributor, or distributor branch, or any field representative,
5 officer, agent, or any representative whatsoever of any of them to vary the
6 price charged to any of its franchised new motor vehicle dealers located in
7 this State for new motor vehicles based on the dealer's sales volume, the
8 dealer's level of sales or customer service satisfaction, the dealer's purchase
9 of advertising materials, signage, nondiagnostic computer hardware or
10 software, communications devices, or furnishings, or the dealer's
11 participation in used motor vehicle inspection or certification programs
12 sponsored or endorsed by the manufacturer.

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

17 Notwithstanding the foregoing, nothing in this subdivision shall be
18 deemed to preclude a manufacturer from establishing sales contests or
19 promotions that provide or award dealers or consumers rebates or incentives;
20 provided, however, that the manufacturer complies with all of the following
21 conditions:

- 22 a. With respect to manufacturer to consumer rebates and incentives, the
23 manufacturer's criteria for determining eligibility shall:
- 24 1. Permit all of the manufacturer's franchised new motor vehicle
25 dealers in this State to offer the rebate or incentive; and
 - 26 2. Be uniformly applied and administered to all eligible
27 consumers.
- 28 b. With respect to manufacturer to dealer rebates and incentives, the
29 rebate or incentive program shall:
- 30 1. Be based solely on the dealer's actual or reasonably
31 anticipated sales volume or on a uniform per vehicle sold or
32 leased basis;
 - 33 2. Be uniformly available, applied, and administered to all of the
34 manufacturer's franchised new motor vehicle dealers in this
35 State; and
 - 36 3. Provide that any of the manufacturer's franchised new motor
37 vehicle dealers in this State may, upon written request, obtain
38 the method or formula used by the manufacturer in
39 establishing the sales volumes for receiving the rebates or
40 incentives and the specific calculations for determining the
41 required sales volumes of the inquiring dealer and any of the
42 manufacturer's other franchised new motor vehicle dealers
43 located within 75 miles of the inquiring dealer.

44 Nothing contained in this subdivision shall prohibit a manufacturer from
45 providing assistance or encouragement to a franchised dealer to remodel,
46 renovate, recondition, or relocate the dealer's existing facilities, provided that
47 this assistance, encouragement, or rewards are not determined on a per
48 vehicle basis.

49 It is unlawful for any manufacturer to charge or include the cost of any
50 program or policy prohibited under this subdivision in the price of new

1 motor vehicles that the manufacturer sells to its franchised dealers or
2 purchasers located in this State.

3 In the event that as of October 1, 1999, a manufacturer was operating a
4 program that varied the price charged to its franchised dealers in this State in
5 a manner that would violate this subdivision, or had in effect a documented
6 policy that had been conveyed to its franchised dealers in this State and that
7 varied the price charged to its franchised dealers in this State in a manner
8 that would violate this subdivision, it shall be lawful for that program or
9 policy, including amendments to that program or policy that are consistent
10 with the purpose and provisions of the existing program or policy, or a
11 program or policy similar thereto implemented after October 1, 1999, to
12 continue in effect as to the manufacturer's franchised dealers located in this
13 State until June 30, ~~2010~~2014.

14 In the event that as of June 30, 2001, a manufacturer was operating a
15 program that varied the price charged to its franchised dealers in this State in
16 a manner that would violate this subdivision, or had in effect a documented
17 policy that had been conveyed to its franchised dealers in this State and that
18 varied the price charged to its franchised dealers in this State in a manner
19 that would violate this subdivision, and the program or policy was
20 implemented in this State subsequent to October 1, 1999, and prior to June
21 30, 2001, and provided that the program or policy is in compliance with this
22 subdivision as it existed as of June 30, 2001, it shall be lawful for that
23 program or policy, including amendments to that program or policy that
24 comply with this subdivision as it existed as of June 30, 2001, to continue in
25 effect as to the manufacturer's franchised dealers located in this State until
26 June 30, ~~2010~~2014.

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

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

35 **SECTION 3.** G.S. 20-305.1 is amended by adding a new subsection to read:

36 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any
37 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to
38 take or threaten to take any adverse action against a dealer located in this State, or to otherwise
39 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a
40 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold
41 the vehicle to a third party, unless the dealer knew or reasonably should have known that the
42 customer intended to export or resell the motor vehicle prior to the customer's purchase of the
43 vehicle from the dealer. The conduct prohibited under this subsection includes, but is not
44 limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver
45 motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of
46 vehicles; or (iii) charging back or withholding payments or other compensation or
47 consideration for which a dealer is otherwise eligible for warranty reimbursement or under a
48 sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from
49 participating in or discrimination against any dealer relating to any sales promotion, incentive
50 program, or contest; or (v) termination of a franchise. In any proceeding brought pursuant to
51 this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's

1 purchase of the vehicle, did not know nor should have reasonably known that the customer
2 intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled,
3 registered, and, where applicable, taxes paid in any state or territory within the United States in
4 the name of a customer who was physically present at the dealership at or prior to the time of
5 sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle
6 would be shipped to a foreign country."

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

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

15 **SECTION 5.** G.S. 20-305(6) reads as rewritten:

16 **§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
17 **franchise; preventing transfer of ownership; granting additional franchises;**
18 **terminating franchises without good cause; preventing family succession.**

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

21 ...

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

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

- 29 a. Notwithstanding the terms, provisions or conditions of any franchise
30 or the terms or provisions of any waiver, good cause shall exist for
31 the purposes of a termination, cancellation or nonrenewal when:
- 32 1. There is a failure by the new motor vehicle dealer to comply
33 with a provision of the franchise which provision is both
34 reasonable and of material significance to the franchise
35 relationship provided that the dealer has been notified in
36 writing of the failure within 180 days after the manufacturer
37 first acquired knowledge of such failure;
 - 38 2. If the failure by the new motor vehicle dealer relates to the
39 performance of the new motor vehicle dealer in sales or
40 service, then good cause shall be defined as the failure of the
41 new motor vehicle dealer to comply with reasonable
42 performance criteria established by the manufacturer if the
43 new motor vehicle dealer was apprised by the manufacturer
44 in writing of the failure; and
 - 45 I. The notification stated that notice was provided of
46 failure of performance pursuant to this section;
 - 47 II. The new motor vehicle dealer was afforded a
48 reasonable opportunity, for a period of not less than
49 180 days, to comply with the criteria; and
 - 50 III. The new motor vehicle dealer failed to demonstrate
51 substantial progress towards compliance with the

- 1 manufacturer's performance criteria during such
2 period and the new motor vehicle dealer's failure was
3 not primarily due to economic or market factors
4 within the dealer's relevant market area which were
5 beyond the dealer's control.
- 6 b. The manufacturer shall have the burden of proof under this section.
7 c. Notification of Termination, Cancellation and Nonrenewal. –
- 8 1. Notwithstanding the terms, provisions or conditions of any
9 franchise prior to the termination, cancellation or nonrenewal
10 of any franchise, the manufacturer shall furnish notification
11 of termination, cancellation or nonrenewal to the new motor
12 vehicle dealer as follows:
- 13 I. In the manner described in G.S. 20-305(6)c2 below;
14 and
- 15 II. Not less than 90 days prior to the effective date of
16 such termination, cancellation or nonrenewal; or
- 17 III. Not less than 15 days prior to the effective date of
18 such termination, cancellation or nonrenewal with
19 respect to any of the following:
- 20 A. Insolvency of the new motor vehicle dealer, or
21 filing of any petition by or against the new
22 motor vehicle dealer under any bankruptcy or
23 receivership law;
- 24 B. Failure of the new motor vehicle dealer to
25 conduct its customary sales and service
26 operations during its customary business hours
27 for seven consecutive business days, except
28 for acts of God or circumstances beyond the
29 direct control of the new motor vehicle dealer;
- 30 C. Revocation of any license which the new
31 motor vehicle dealer is required to have to
32 operate a dealership;
- 33 D. Conviction of a felony involving moral
34 turpitude, under the laws of this State or any
35 other state, or territory, or the District of
36 Columbia.
- 37 IV. Not less than 180 days prior to the effective date of
38 such termination, cancellation, or nonrenewal which
39 occurs as a result of any change in ownership,
40 operation, or control of all or any part of the business
41 of the manufacturer, factory branch, distributor, or
42 distributor branch whether by sale or transfer of
43 assets, corporate stock or other equity interest,
44 assignment, merger, consolidation, combination, joint
45 venture, redemption, operation of law or otherwise; or
46 the termination, suspension, or cessation of a part or
47 all of the business operations of the manufacturers,
48 factory branch, distributor, or distributor branch; or
49 discontinuance of the sale of the product line or a
50 change in distribution system by the manufacturer
51 whether through a change in distributors or the

- 1 manufacturer's decision to cease conducting business
2 through a distributor altogether.
- 3 V. Unless the failure by the new motor vehicle dealer
4 relates to the performance of the new motor vehicle
5 dealer in sales or service, not more than one year after
6 the manufacturer first acquired knowledge of the basic
7 facts comprising the failure.
- 8 2. Notification under this section shall be in writing; shall be by
9 certified mail or personally delivered to the new motor
10 vehicle dealer; and shall contain:
- 11 I. A statement of intention to terminate, cancel or not to
12 renew the franchise;
- 13 II. A detailed statement of all of the material reasons for
14 the termination, cancellation or nonrenewal; and
- 15 III. The date on which the termination, cancellation or
16 nonrenewal takes effect.
- 17 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior
18 to the effective date of such termination, cancellation or
19 renewal may run concurrent with the 180 days designated in
20 G.S. 20-305(6)a2II provided the notification is clearly
21 designated by a separate written document mailed by certified
22 mail or personally delivered to the new motor vehicle dealer.
- 23 d. Payments.
- 24 1. Notwithstanding the terms of any franchise, agreement, or
25 waiver, upon ~~Upon~~ the termination, nonrenewal or
26 cancellation of any franchise by the manufacturer or
27 distributor, ~~pursuant to this section,~~ the cessation of business
28 or the termination, nonrenewal, or cancellation of any
29 franchise by any new motor vehicle dealer located in this
30 State, or upon any of the occurrences set forth in
31 G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall
32 purchase from and compensate the new motor vehicle dealer
33 shall be allowed fair and reasonable compensation by the
34 manufacturer for the all of the following:
- 35 I. New Each new and unsold motor vehicle within the
36 new motor vehicle dealer's inventory that has been
37 acquired from the manufacturer within 24 months of
38 the effective date of the termination 18 months, at a
39 price not to exceed the original manufacturer's price to
40 the dealer, and from the manufacturer or distributor or
41 another same line-make dealer in the ordinary course
42 of business, and which has not been substantially
43 altered or ~~damaged,~~ damaged to the prejudice of the
44 manufacturer or distributor while in the new motor
45 vehicle dealer's possession, and which has ~~not~~ been
46 driven ~~more~~ less than 200 miles, 1,000 miles or, for
47 purposes of a recreational vehicle motor home as
48 defined in G.S. 20-4.01(32a)a., less than 1,500 miles
49 following the original date of delivery to the dealer,
50 and for which no certificate of title has been
51 issued; issued. For purposes of this sub-subdivision,

- 1 the term "ordinary course of business" shall include
 2 inventory transfers of all new, same line-make
 3 vehicles between affiliated dealerships, or otherwise
 4 between dealerships having common or interrelated
 5 ownership.
- 6 II. Unused, undamaged and unsold supplies and parts
 7 purchased from the manufacturer or distributor or
 8 sources approved by the manufacturer or distributor,
 9 at a price not to exceed the original manufacturer's
 10 price to the dealer, provided such supplies and parts
 11 are currently offered for sale by the manufacturer or
 12 distributor in its current parts catalogs and are in
 13 salable condition; condition.
- 14 III. Equipment, signs, and furnishings that have not been
 15 substantially altered or damaged and that have been
 16 required by the manufacturer or distributor to be
 17 purchased by the new motor vehicle dealer from the
 18 manufacturer or distributor, or their approved sources;
 19 and sources.
- 20 IV. Special tools that have not been altered or damaged
 21 damaged, normal wear and tear excepted, and that
 22 have been required by the manufacturer or distributor
 23 to be purchased by the new motor vehicle dealer from
 24 the manufacturer or distributor, or their approved
 25 sources within five years immediately preceding the
 26 termination, nonrenewal or cancellation of the
 27 franchise. The amount of compensation which shall be
 28 paid to the new motor vehicle dealer by the
 29 manufacturer or distributor shall be the net acquisition
 30 price if the item was acquired in the 12 months
 31 preceding the date of receipt of the dealer's request for
 32 compensation; seventy-five percent (75%) of the net
 33 acquisition price if the item was acquired between 13
 34 and 24 months preceding the dealer's request for
 35 compensation; fifty percent (50%) of the net
 36 acquisition price if the item was acquired between 25
 37 and 36 months preceding the dealer's request for
 38 compensation; twenty-five percent (25%) of the net
 39 acquisition price if the item was acquired between 37
 40 and 60 months preceding the dealer's request for
 41 compensation.
- 42 2. Fair and reasonable compensation for the The compensation
 43 provided above shall be paid by the manufacturer or
 44 distributor within not later than 90 days of the effective date
 45 of termination, cancellation or nonrenewal, after the
 46 manufacturer or distributor has received notice in writing
 47 from or on behalf of the new motor vehicle dealer specifying
 48 the elements of compensation requested by the dealer;
 49 provided the new motor vehicle dealer has has, or can obtain,
 50 clear title to the inventory and has conveyed-conveyed, or can
 51 convey, title and possession of the same to the manufacturer

1 or distributor. Within 15 days after receipt of the dealer's
2 written request for compensation, the manufacturer or
3 distributor shall send the dealer detailed written instructions
4 and forms required by the manufacturer or distributor to
5 effectuate the receipt of the compensation requested by the
6 dealer. The manufacturer or distributor shall be obligated to
7 pay or reimburse the dealer for any transportation charges
8 associated with the ~~manufacturer's~~ repurchase obligations of
9 the manufacturer or distributor under this sub-subparagraph.
10 The manufacturer or distributor shall also compensate the
11 dealer for any handling, packing, or similar payments
12 contemplated in the franchise. In no event may the
13 manufacturer or distributor ~~not~~ charge the dealer any
14 handling, restocking, or other similar costs or fees associated
15 with items repurchased by the manufacturer under this
16 sub-subparagraph.

- 17 3. In addition to the other payments set forth in this section, if a
18 termination, cancellation, or nonrenewal is premised upon
19 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then
20 the manufacturer or distributor shall be liable to the dealer for
21 an amount at least equivalent to the fair market value of the
22 franchise on (i) the date the franchisor announces the action
23 which results in termination, cancellation, or nonrenewal; or
24 (ii) the date the action which results in termination,
25 cancellation, or nonrenewal first became general knowledge;
26 or (iii) the day 12 months prior to the date on which the
27 notice of termination, cancellation, or nonrenewal is issued,
28 whichever amount is higher. Payment is due ~~within~~ not later
29 than 90 days of the effective date of the termination,
30 cancellation, or nonrenewal after the manufacturer or
31 distributor has received notice in writing from, or on behalf
32 of, the new motor vehicle dealer specifying the elements of
33 compensation requested by the dealer. If the termination,
34 cancellation, or nonrenewal is due to a manufacturer's change
35 in distributors, the manufacturer may avoid paying fair
36 market value to the dealer if the new distributor or the
37 manufacturer offers the dealer a franchise agreement with
38 terms acceptable to the dealer.

- 39 e. Dealership Facilities Assistance upon Termination, Cancellation or
40 Nonrenewal.

41 In the event of the occurrence of any of the events specified in
42 G.S. 20-305(6)d.1. above, termination, cancellation or nonrenewal by
43 the manufacturer or distributor under this section, except termination,
44 cancellation or nonrenewal for ~~insolvency,~~ license revocation,
45 conviction of a crime involving moral turpitude, or fraud by a
46 dealer-owner:

- 47 1. Subject to paragraph 3, if the new motor vehicle dealer is
48 leasing the dealership facilities from a lessor other than the
49 manufacturer or distributor, the manufacturer or distributor
50 shall pay the new motor vehicle dealer a sum equivalent to
51 the rent for the unexpired term of the lease or three year's

- 1 rent, whichever is less, or such longer term as is provided in
2 the franchise agreement between the dealer and manufacturer;
3 except that, in the case of motorcycle dealerships, the
4 manufacturer shall pay the new motor vehicle dealer the sum
5 equivalent to the rent for the unexpired term of the lease or
6 one year's rent, whichever is less, or such longer term as
7 provided in the franchise agreement between the dealer and
8 manufacturer; or
- 9 2. Subject to paragraph 3, if the new motor vehicle dealer owns
10 the dealership facilities, the manufacturer or distributor shall
11 pay the new motor vehicle dealer a sum equivalent to the
12 reasonable rental value of the dealership facilities for three
13 years, or for one year in the case of motorcycle dealerships.
- 14 3. In order to be entitled to facilities assistance from the
15 manufacturer or distributor, as provided in this paragraph e.,
16 the dealer, owner, or lessee, as the case may be, shall have the
17 obligation to mitigate damages by listing the demised
18 premises for lease or sublease with a licensed real estate agent
19 within 30 days after the effective date of the termination of
20 the franchise and thereafter by reasonably cooperating with
21 said real estate agent in the performance of the agent's duties
22 and responsibilities. In the event that the dealer, owner, or
23 lessee is able to lease or sublease the demised premises, the
24 dealer shall be obligated to pay the manufacturer the net
25 revenue received from such mitigation up to the total amount
26 of facilities assistance which the dealer has received from the
27 manufacturer pursuant to sub-subdivisions 1. and 2. To the
28 extent and for such uses and purposes as may be consistent
29 with the terms of the lease, a manufacturer who pays facilities
30 assistance to a dealer under this paragraph e. shall be entitled
31 to occupy and use the dealership facilities during the years for
32 which the manufacturer shall have paid rent under
33 sub-subdivisions 1. and 2.
- 34 4. In the event the termination relates to fewer than all of the
35 franchises operated by the dealer at a single location, the
36 amount of facilities assistance which the manufacturer or
37 distributor is required to pay the dealer under this
38 sub-subdivision shall be based on the proportion of gross
39 revenue received from the sale and lease of new vehicles by
40 the dealer and from the dealer's parts and service operations
41 during the three years immediately preceding the effective
42 date of the termination (or any shorter period that the dealer
43 may have held these franchises) of the line-makes being
44 terminated, in relation to the gross revenue received from the
45 sale and lease of all line-makes of new vehicles by the dealer
46 and from the total of the dealer's and parts and service
47 operations from this location during the same three-year
48 period.
- 49 5. The compensation required for facilities assistance under this
50 paragraph e. shall be paid by the manufacturer or distributor
51 within 90 days of ~~the effective date of termination,~~

1 ~~cancellation, or nonrenewal. after the manufacturer or~~
2 ~~distributor has received notice in writing from, or on behalf~~
3 ~~of, a new motor vehicle dealer specifying the elements of~~
4 ~~compensation requested by the dealer.~~

5 f. ~~The provisions of sub-subdivisions d. and e. above shall not be~~
6 ~~applicable when the termination, nonrenewal or cancellation of the~~
7 ~~franchise agreement is the result of the voluntary act of the dealer.~~

8 The provisions of sub-subdivision e. above shall not be applicable
9 when the termination, nonrenewal, or cancellation of the franchise
10 agreement by a new motor vehicle dealer is the result of the sale of
11 assets or stock of the motor vehicle dealership. The provisions of
12 sub-subdivisions d. and e. above shall not be applicable when the
13 termination, nonrenewal, or cancellation of the franchise agreement
14 is at the initiation of a new motor vehicle dealer of recreational
15 vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided
16 that at the time of the termination, nonrenewal, or cancellation, the
17 recreational vehicle manufacturer or distributor has paid to the dealer
18 all claims for warranty or recall work, including payments for labor,
19 parts, and other expenses, which were submitted by the dealer 30
20 days or more prior to the date of termination, nonrenewal, or
21 cancellation.

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

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

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

41 **SECTION 6.** The terms and provisions of this act shall be applicable to all
42 franchises and other agreements in existence between any new motor vehicle dealer located in
43 this State and a manufacturer or distributor as of the effective date of this act, and to all future
44 franchises and other agreements.

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

49 **SECTION 8.** This act is effective when it becomes law.