

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 914  
Commerce Committee Substitute Adopted 5/12/09  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S914-PCS85278-SU-84

Short Title: Clarify MV Dealer Franchise Rights.

(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 is amended by adding a new subdivision to read:

6 "(42) Notwithstanding the terms, provisions, or conditions of any agreement or  
7 waiver, to directly or indirectly require, coerce, or attempt to coerce an  
8 existing new motor vehicle dealer, a prospective new motor vehicle dealer,  
9 or the owner of any interest in a dealership facility to enter into a site control  
10 agreement or exclusive use agreement. It shall further be unlawful for a  
11 manufacturer, factory branch, distributor, or distributor branch to in any way  
12 condition the awarding of a franchise to a prospective new motor vehicle  
13 dealer, the addition of a line make or franchise to an existing dealer, the  
14 renewal of a franchise of an existing dealer, the approval of the relocation of  
15 an existing dealer's facility, or the approval of the sale or transfer of the  
16 ownership of a franchise, on the willingness of a dealer, proposed new  
17 dealer, or owner of an interest in the dealership facility to enter into a site  
18 control agreement or exclusive use agreement. For purposes of this  
19 subdivision, the terms "site control agreement" and "exclusive use  
20 agreement" include any agreement that has the effect of either: (i) requiring  
21 that the dealer establish or maintain exclusive dealership facilities; or (ii)  
22 restricting the ability of the dealer, or the ability of the dealer's lessor in the  
23 event the dealership facility is being leased, to transfer, sell, lease, or change  
24 the use of the dealership premises, whether by sublease, lease, collateral  
25 pledge of lease, right of first refusal to purchase or lease, option to purchase,  
26 option to lease, or other similar agreement, regardless of the parties to such  
27 agreement. Any provision contained in any agreement that is inconsistent  
28 with the provisions of this subdivision shall be voidable at the election of the  
29 affected dealer, prospective dealer, or owner of an interest in the dealership  
30 facility."

31 **SECTION 2.** G.S. 20-305.2 reads as rewritten:

32 **"§ 20-305.2. Unfair methods of competition.**



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1 (a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
2 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or  
3 affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership  
4 in this State, provided that this section shall not be construed to prohibit:

5 (1) The operation by a manufacturer, factory branch, distributor, distributor  
6 branch, or subsidiary thereof, of a dealership for a temporary period (not to  
7 exceed one year) during the transition from one owner or operator to  
8 another; or

9 (2) The ownership or control of a dealership by a manufacturer, factory branch,  
10 distributor, distributor branch, or subsidiary thereof, while in a bona fide  
11 relationship with an economically disadvantaged or other independent  
12 person, other than a manufacturer, factory branch, distributor, distributor  
13 branch, or an agent or affiliate thereof, who has made a bona fide,  
14 unencumbered initial investment of at least six percent (6%) of the total sales  
15 price that is subject to loss in the dealership and who can reasonably expect  
16 to acquire full ownership of the dealership within a reasonable period of  
17 time, not to exceed 12 years, and on reasonable terms and conditions; or

18 (3) The ownership, operation or control of a dealership by a manufacturer,  
19 factory branch, distributor, distributor branch, or subsidiary thereof, if such  
20 manufacturer, factory branch, distributor, distributor branch, or subsidiary  
21 has been engaged in the retail sale of motor vehicles through such dealership  
22 for a continuous period of three years prior to March 16, 1973, and if the  
23 Commissioner determines, after a hearing on the matter at the request of any  
24 party, that there is no independent dealer available in the relevant market  
25 area to own and operate the franchise in a manner consistent with the public  
26 interest; or

27 (4) The ownership, operation, or control of a dealership by a manufacturer,  
28 factory branch, distributor, distributor branch, or subsidiary thereof, if the  
29 Commissioner determines after a hearing on the matter at the request of any  
30 party, that there is no independent dealer available in the relevant market  
31 area to own and operate the franchise in a manner consistent with the public  
32 interest; or

33 (5) The ownership, operation, or control of any facility (location) of a new  
34 motor vehicle dealer in this State at which the dealer sells only new and used  
35 motor vehicles with a gross weight rating of 8,500 pounds or more, provided  
36 that both of the following conditions have been met:

37 a. The facility is located within 35 miles of manufacturing or  
38 assembling facilities existing as of January 1, 1999, and is owned or  
39 operated by the manufacturer, manufacturing branch, distributor,  
40 distributor branch, or any affiliate or subsidiary thereof which  
41 assembles, manufactures, or distributes new motor vehicles with a  
42 gross weight rating of 8,500 pounds or more by such dealer at said  
43 location; and

44 b. The facility is located in the largest Standard Metropolitan Statistical  
45 Area (SMSA) in the State; or

46 (6) As to any line make of motor vehicle for which there is in aggregate no more  
47 than 13 franchised new motor vehicle dealers (locations) licensed and in  
48 operation within the State as of January 1, 1999, the ownership, operation, or  
49 control of one or more new motor vehicle dealership trading solely in such  
50 line make of vehicle by the manufacturer, factory branch, distributor,

- 1 distributor branch, or subsidiary or affiliate thereof, provided however, that  
2 all of the following conditions are met:
- 3 a. The manufacturer, factory branch, distributor, distributor branch, or  
4 subsidiary or affiliate thereof does not own directly or indirectly, in  
5 aggregate, in excess of forty-five percent (45%) interest in the  
6 dealership;
- 7 b. At the time the manufacturer, factory branch, distributor, distributor  
8 branch, or subsidiary or affiliate thereof first acquires ownership or  
9 assumes operation or control with respect to any such dealership, the  
10 distance between the dealership thus owned, operated, or controlled  
11 and the nearest other new motor vehicle dealership trading in the  
12 same line make of vehicle, is no less than 35 miles;
- 13 c. All the manufacturer's franchise agreements confer rights on the  
14 dealer of the line make to develop and operate within a defined  
15 geographic territory or area, as many dealership facilities as the  
16 dealer and manufacturer shall agree are appropriate; and
- 17 d. That as of July 1, 1999, not fewer than half of the dealers of the line  
18 make within the State own and operate two or more dealership  
19 facilities in the geographic territory or area covered by the franchise  
20 agreement with the manufacturer.
- 21 (7) The ownership, operation, or control of a dealership that sells primarily  
22 recreational vehicles as defined in G.S. 20-4.01 by a manufacturer, factory  
23 branch, distributor, or distributor branch, or subsidiary thereof, if the  
24 manufacturer, factory branch, distributor, or distributor branch, or subsidiary  
25 thereof, owned, operated, or controlled the dealership as of October 1, 2001.
- 26 (b) ~~This section~~ Subsection (a) of this section does not apply to manufacturers or  
27 distributors of trailers or semitrailers that are not recreational vehicles as defined in  
28 G.S. 20-4.01.
- 29 (c) For purposes of subsection (d) of this section, the following definitions apply:
- 30 (1) Successor manufacturer. – Any motor vehicle manufacturer, as defined in  
31 G.S. 20-286(8e), that acquires, succeeds to, or assumes any part of the  
32 business of another manufacturer, referred to as the "predecessor  
33 manufacturer," as the result of any of the following:
- 34 a. A change in ownership, operation, or control of the predecessor  
35 manufacturer by sale or transfer of assets, corporate stock or other  
36 equity interest, assignment, merger, consolidation, combination, joint  
37 venture, redemption, court-approved sale, operation of law or  
38 otherwise.
- 39 b. The termination, suspension, or cessation of a part or all of the  
40 business operations of the predecessor manufacturer.
- 41 c. The discontinuance of the sale of the product line.
- 42 d. A change in distribution system by the predecessor manufacturer,  
43 whether through a change in distributor or the predecessor  
44 manufacturer's decision to cease conducting business through a  
45 distributor altogether.
- 46 (2) Relevant market area. – The area within 10, 15, or 20 air miles around the  
47 site of the previous franchisee's dealership facility, as determined in the same  
48 manner that the relevant market area is determined under G.S. 20-286(13b)  
49 when a manufacturer is seeking to establish an additional new motor vehicle  
50 dealer.

1       (d) For a period of five years from the date that a successor manufacturer acquires,  
2 succeeds to, or assumes any part of the business of a predecessor manufacturer, it shall be  
3 unlawful for such successor manufacturer to offer a franchise, as defined in G.S. 20-286(8a), to  
4 any person, as defined in G.S. 20-4.01(28), or to permit the relocation of any existing franchise,  
5 for a line make of the predecessor manufacturer that would be located or relocated within the  
6 relevant market area in which the predecessor manufacturer previously cancelled, terminated,  
7 noncontinued, failed to renew, or otherwise ended a franchise with a new motor vehicle dealer,  
8 as defined in G.S. 20-286(13), who owned or leased a dealership facility in that relevant market  
9 area without first offering the additional or relocated franchise to the former franchisee, or the  
10 designated successor of such former franchisee in the event the former franchisee is deceased  
11 or disabled, at no cost and without any requirements or restrictions other than those imposed  
12 generally on the manufacturer's other franchisees at that time, unless one of the following  
13 applies:

- 14           (1) Within 30 days of the former franchisee's cancellation, termination,  
15 noncontinuance, or nonrenewal, the predecessor manufacturer had  
16 consolidated the line make with another of its line makes for which the  
17 predecessor manufacturer had a franchisee with a then-existing dealership  
18 facility located within that relevant market area.
- 19           (2) The successor manufacturer has paid the former franchisee, or the  
20 designated successor of such former franchisee in the event the former  
21 franchisee is deceased or disabled, the fair market value of the former  
22 franchisee's franchise calculated as prescribed in G.S. 20-305(6)d.3.
- 23           (3) The successor manufacturer proves that the former franchisee, or the  
24 designated successor of such former franchisee in the event the former  
25 franchisee is deceased or disabled, by reason of lack of training, lack of prior  
26 experience, poor past performance, lack of financial ability, or poor  
27 character, is unfit to own or manage the dealership. A successor  
28 manufacturer who seeks to assert that a former franchisee is unfit to own or  
29 manage the dealership must file a petition seeking a hearing on this issue  
30 before the Commissioner and shall have the burden of proving lack of fitness  
31 at such hearing. No successor dealer, other than the former franchisee, may  
32 be appointed or franchised by the successor manufacturer within the relevant  
33 market area until the Commissioner has held a hearing and rendered a  
34 determination on the issue of the fitness of the previous franchisee to own or  
35 manage the dealership."

36       **SECTION 3.** The terms and provisions of this act shall be applicable to all  
37 franchises and other agreements in existence between any new motor vehicle dealer located in  
38 this State and a manufacturer or distributor as of the effective date of this act and to all future  
39 franchises and other agreements.

40       **SECTION 4.** If any provision of this act or its application is held invalid, the  
41 invalidity does not affect other provisions or applications of this act that can be given effect  
42 without the invalid provisions or application, and to this end the provisions of this act are  
43 severable.

44       **SECTION 5.** This act is effective when it becomes law.