

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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HOUSE BILL 406
PROPOSED COMMITTEE SUBSTITUTE H406-PCS30357-SU-4

Short Title: Clarify Motor Vehicle Dealer Laws.

(Public)

Sponsors:

Referred to:

March 17, 2025

A BILL TO BE ENTITLED
AN ACT TO CLARIFY VARIOUS MOTOR VEHICLE DEALER LAWS.
The General Assembly of North Carolina enacts:

**PREVENT UNFAIR DEALER FRANCHISE TERMINATIONS AND CLARIFY RV
DEALER TERMINATION ASSISTANCE RIGHTS**

SECTION 1. G.S. 20-305 reads as rewritten:

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

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

...

(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to
approve the sale or transfer of the ownership of a dealership by the sale of the
business, stock transfer, or otherwise, or the transfer, sale or assignment of a
dealer franchise, or a change in the executive management or principal
operator of the dealership, change in use of an existing facility to provide for
the sales or service of one or more additional line-makes of new motor
vehicles, or relocation of the dealership to another site within the dealership's
relevant market area, if the Commissioner has determined, if requested in
writing by the dealer within 30 days after receipt of an objection to the
proposed transfer, sale, assignment, relocation, or change, and after a hearing
on the matter, that the failure to permit or honor the transfer, sale, assignment,
relocation, or change is unreasonable under the circumstances. The following
applies:

...

i. It is unlawful for a manufacturer to, in any way, do any of the
following:

1. Condition its approval of a proposed transfer, sale, assignment,
change in the dealer's executive management, principal
operator, or appointment of a designated successor, on the
existing or proposed dealer's willingness to construct a new
facility, renovate the existing facility, acquire or refrain from
acquiring one or more line-makes of vehicles, separate or



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- divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space.
- ...
4. Condition, directly or indirectly, the approval of the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, succession, or assignment of a dealer's franchise, or a change in the executive management or principal operator of the dealership, or a dealer's proposed relocation of the dealership facility, or a dealer's satisfaction of the terms of any incentive program or contest, upon the existing or proposed dealer's willingness to enter into a right of first refusal in favor of the manufacturer.
5. In determining whether to approve a dealer's proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, to inquire about or consider whether another manufacturer or distributor had previously denied, rejected, or otherwise turned down the application of the applicant, or any person or entity affiliated with the applicant, to acquire a franchise or dealership or become principal operator, part of the executive management, or a successor owner or manager of a dealership.
6. In determining whether to approve a dealer's proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, to inquire about or consider whether the applicant, or any person or entity affiliated with the applicant, had, for any reason, ever previously commenced a civil or administrative proceeding against any manufacturer or distributor.
- j. If a manufacturer or distributor objects to, denies, rejects, or otherwise turns down a dealer's proposed transfer, sale, assignment, change in the dealer's executive management, principal operator, or appointment of a designated successor, the manufacturer or distributor shall reimburse both the dealer and applicant for their respective attorneys' fees, if either of the following is applicable:
1. Both the dealer and applicant elect not to appeal from or otherwise seek civil or administrative redress from the decision of the manufacturer to object to, deny, reject, or otherwise turn down the dealer's application.
2. The decision of the manufacturer or distributor to object to, deny, reject, or otherwise turn down the dealer's application is ultimately overturned by a reviewing court or administrative agency.
- ...
- (6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of sub-subdivision c. of this subdivision and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the

franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this subdivision, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

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

...

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

...

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

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

IV. During the entire performance review period established by the manufacturer, the manufacturer made available to the dealer a sufficient number and model mix of new motor vehicles for the dealer to achieve all elements of the manufacturer's performance criteria.

...

d. Payments.

1. Notwithstanding the terms of any franchise, agreement, or waiver, upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer for all of the following:

I. Each new and unsold motor vehicle, and each motorized or nonmotorized trailer, including, but not limited to, travel trailers, slide-in truck campers, and park models, within the new motor vehicle dealer's inventory that has been acquired within 24 months of the effective date of the termination from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged to the prejudice of the manufacturer or distributor while in the new motor vehicle dealer's possession, and which has been driven less than 1,000 miles or, for purposes of a

recreational vehicle motor home as defined in G.S. 20-4.01(32b)c., less than ~~4,500~~ 2,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued. For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.

...

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

...."

DEALER COMPENSATION FOR THE SALE OF OVER-THE-AIR PRODUCTS AND SERVICES

SECTION 2. G.S. 20-305(57) reads as rewritten:

"(57) To sell, or activate for a fee, any permanent or temporary motor vehicle accessory, option, add-on, service, feature, improvement, or upgrade on or to any motor vehicle owned or leased by a retail customer located in this State, through over-the-air or remote means, unless the manufacturer or distributor complies with all of the following requirements:

...

- c. If the sale or activation of the permanent or temporary motor vehicle accessory, option, add-on, service, upgrade, feature, or improvement by either the manufacturer or the direct involvement of the dealer who sells or leases the vehicle to the retail customer occurs at the time of the new motor vehicle sale or lease, or within the 12-month period immediately following the sale or lease of the new motor vehicle by a North Carolina franchised motor vehicle dealer, the manufacturer or distributor provides the franchised motor vehicle dealer that sold the new motor vehicle reasonable compensation in an amount not less than twenty percent (20%) of the gross compensation that was collected from the customer for the sale or activation of the accessory, option, add-on, service, upgrade, feature, or improvement to the original North Carolina vehicle owner or lessee when the cost of which would equal or exceed (i) fifty dollars (\$50.00), if the cost or purchase price to the

1 retail customer involves a single, one-time payment, or (ii)
2 seventy-five dollars (\$75.00) in cumulative cost or purchase price over
3 any 12-month period, if the retail customer is making multiple or
4 periodic payments.

5 d. If the sale or activation of the permanent or temporary motor vehicle
6 accessory, option, add-on, service, upgrade, feature, or improvement
7 did not occur as provided in sub-subdivision c. of this subdivision, and
8 a North Carolina franchised new motor vehicle dealer of the
9 manufacturer or distributor was directly involved in the sale of the
10 feature or improvement, the manufacturer or distributor provides
11 ~~reasonable compensation~~ in an amount not less than twenty percent
12 (20%) of the gross compensation that was collected from the customer
13 to the North Carolina franchised new motor vehicle dealer that sold
14 the accessory, option, add-on, service, upgrade, feature, or
15 improvement to a North Carolina resident when the cost of which
16 would equal or exceed (i) fifty dollars (\$50.00), if the cost or purchase
17 price to the retail customer involves a single, one-time payment, or (ii)
18 seventy-five dollars (\$75.00) in cumulative cost or purchase price over
19 any 12-month period, if the retail customer is making multiple or
20 periodic payments.

21 ...

22 f. When providing a new motor vehicle to a dealer for offer or sale to the
23 public, the manufacturer or distributor shall provide to the dealer a
24 written disclosure that may be furnished by the dealer to a potential
25 purchaser or lessee of the new motor vehicle identifying each
26 permanent or temporary motor vehicle accessory, option, add-on,
27 service, upgrade, feature, or improvement of the vehicle that may be
28 initiated, updated, changed, or maintained by the manufacturer or
29 distributor through over-the-air or remote means, the cost to the retail
30 customer at the time of the new motor vehicle sale or lease, and the
31 fact that all such accessories, options, add-ons, services, upgrades,
32 features, or improvements may be purchased directly from the dealer.
33 Every manufacturer or distributor that, through over-the-air or remote
34 means, provides any permanent or temporary motor vehicle accessory,
35 option, add-on, service, feature, improvement, or upgrade on or to any
36 motor vehicle owned or leased by a retail customer located in this State
37 shall provide to each of its franchised dealers within this State, on a
38 basis no less frequently than monthly, a statement itemizing the type,
39 volume, and gross receipts generated from the sales of over-the-air or
40 remotely activated products and services that were sold to the dealer's
41 customers and calculating the fees and commissions to which the
42 dealer is entitled pursuant to this sub-subdivision. A manufacturer or
43 distributor may comply with this sub-subdivision by notifying the
44 dealer that such information is available on a website or by other
45 digital means."

46 FACILITATE DEALER TRANSFER OF OWNERSHIP TO QUALIFIED BUYERS

47 SECTION 3. G.S. 20-305(4) reads as rewritten:

48 "(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to
49 approve the sale or transfer of the ownership of a dealership by the sale of the
50 business, stock transfer, or otherwise, or the transfer, sale or assignment of a
51

dealer franchise, or a change in the executive management or principal operator of the dealership, change in use of an existing facility to provide for the sales or service of one or more additional line-makes of new motor vehicles, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. The following applies:

...

e. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. If the manufacturer is in any part basing its decision to object to the proposed change in the executive management or principal operator of the dealership on the candidate's alleged poor past performance, the manufacturer shall have the burden of proving that, during the immediately preceding three calendar-year period, the average overall sales performance or average overall customer satisfaction performance of all of the dealerships owned or operated by the candidate, when considering all line-makes of new motor vehicles sold by the franchised dealerships owned or operated by the candidate, was below the national average as measured by each such line-make. In its notice of objection, the manufacturer is required to cite and provide the specific data and calculations upon which the manufacturer bases its contention that during the immediately preceding three calendar-year period, the candidate's overall sales performance or average overall customer satisfaction performance of all of the dealerships owned or operated by the candidate, when considering all line-makes of new motor vehicles sold by the franchised dealerships owned or operated by the candidate, was below the national average as measured by each such line-make. For purposes of this subdivision, the sales performance or customer satisfaction performance of a dealership that has been owned by the candidate for less than two years prior to the date the existing dealer notified the manufacturer or distributor of the proposed change in the executive management or principal operator of the dealership may not

be used in whole or in part as a basis for rejecting the candidate's application.

...."

CLARIFY DEFINITION OF MOTOR VEHICLE DEALER

SECTION 4. G.S. 20-286(11) reads as rewritten:

"(11) Motor vehicle dealer or dealer. –

a. A person who does any of the following:

...

6. For commission, money, or other thing of value, or on behalf of another person sharing ten percent (10%) or more common ownership, offers new vehicles as part of a subscription program. ~~This sub-sub-subdivision shall not apply to any person providing a vehicle subscription or monthly rental program on or after January 1, 2025.~~

7. Performs any warranty service or recall work on motor vehicles; provided, however, that this sub-sub-subdivision shall not be applicable with respect to a commercial fleet customer that has a designation as such by the manufacturer or distributor.

...."

DEFINITION OF SELLING

SECTION 5. G.S. 20-286 reads as rewritten:

"§ 20-286. Definitions.

The following definitions apply in this Article:

...

(15a) Sell. – The terms "sell," "exchange," "retail sales," "selling activities," and "lease" and their cognates are synonymous. Selling includes all of the following:

a. Directly, or indirectly, offering or advertising for sale, taking deposits or down payments, or receiving payment of any kind for the ordering, reservation, purchase, lease, exchange, subscription, or use of a motor vehicle.

b. Accepting a reservation for a specific motor vehicle identified by Vehicle Identification Number or other product identifier from a retail consumer.

c. Setting the retail price for the purchase, lease, or exchange of a motor vehicle.

d. Offering or negotiating terms for the purchase, lease, finance, or exchange of a motor vehicle with a retail consumer.

e. Negotiating directly with a retail consumer the value of a motor vehicle being traded in as part of the purchase, lease, exchange, subscription, or use of a motor vehicle.

f. Offering or negotiating directly with a retail consumer any service contract, extended warranty, vehicle maintenance contract, guaranteed asset protection agreement, or any other vehicle-related products and services in connection with the purchase, lease, or exchange of a motor vehicle.

g. Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer.

- 1 h. Any retail lease transaction where a retail consumer leases a vehicle
2 for a period of at least 12 months.
3 ~~(15a)~~(15b) Special tool or essential tool. – A tool designed and required by the
4 manufacturer or distributor and not readily available from another source that
5 is utilized for the purpose of performing service repairs on a motor vehicle
6 sold by a manufacturer or distributor to its franchised new motor vehicle
7 dealers in this State.
8 "

10 CLARIFY DEALERSHIP SUCCESSION

11 **SECTION 6.** G.S. 20-305(7) reads as rewritten:

- 12 "(7) Notwithstanding the terms of any contract or agreement, to prevent or refuse
13 to honor the succession to a dealership, including the franchise, by a motor
14 vehicle dealer's designated successor as provided for under this subsection.
15 The following applies:
16 a. Any owner of a new motor vehicle dealership may appoint by will, or
17 any other written instrument, a designated successor to succeed in the
18 respective ownership interest or interest as principal operator of the
19 owner in the new motor vehicle dealership, including the franchise,
20 upon the retirement, death or incapacity of the owner or principal
21 operator. In order for succession to the position of principal operator
22 to occur by operation of law in accordance with sub-subdivision c.
23 below, the owner's choice of a successor must be approved by the
24 dealer, in accordance with the dealer's bylaws, if applicable, either
25 prior or subsequent to the death or incapacity of the existing principal
26 operator.
27 "

29 UNFINISHED VEHICLES AND COST OF TRAINING REQUIREMENTS

30 **SECTION 7.** G.S. 20-305 reads as rewritten:

31 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
32 **franchise; preventing transfer of ownership; granting additional franchises;**
33 **terminating franchises without good cause; preventing family succession.**

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

- 36 ...
37 (58) To sell, transfer to floor plan, assign a certificate of origin, or otherwise require
38 a dealer to accept ownership or possession of a new motor vehicle that either
39 (i) cannot be immediately sold at retail due to the existence of an open recall,
40 missing or inoperable part or component, or stop sale order or (ii) has not
41 actually been delivered to a dealer within 90 days after the manufacturer or
42 distributor has represented to the dealer that the vehicle was shipped.
43 (59) To vary the price charged to a dealer for any training, software, equipment, or
44 tools that is in any way based upon a dealer's compliance with a facility image
45 program or requirement."

47 LOANER VEHICLE COST REIMBURSEMENT

48 **SECTION 8.** G.S. 20-305(33) reads as rewritten:

- 49 "(33) To fail to reimburse a dealer located in this State in full for the actual cost,
50 including applicable taxes and third-party fees, of providing a loaner or rental
51 vehicle to any customer who is having a vehicle serviced at the dealership if

1 the provision of such a loaner or rental vehicle is required or approved by the
2 manufacturer. It is unlawful for a manufacturer to fail to reimburse the dealer
3 in full as provided above (i) whether or not the dealer provides the customer
4 with a model vehicle similar to the vehicle the customer brought in for service,
5 in the event the dealer does not have a similar model loaner or rental vehicle
6 available, or (ii) if the provision of a rental or loaner vehicle to a customer is
7 required or approved by the manufacturer or distributor and further provided
8 that all or any portion of the time the dealer has provided the customer with a
9 loaner or rental vehicle is due to the unavailability of one or more parts sold
10 or distributed by the manufacturer or through a supplier designated or
11 approved by the ~~manufacturer~~ manufacturer, or whether or not the
12 manufacturer has its own loaner program in which the dealer has elected not
13 to participate. The manufacturer shall allow a dealer to submit a claim for
14 rental vehicle reimbursement as required pursuant to this subdivision, in
15 30-day increments, prior to the end of the rental vehicle period if the repair
16 for which the rental vehicle is associated is open due to a delay in parts or
17 repair information from the manufacturer, factory branch, distributor, or
18 distributor branch."
19

20 SEVERABILITY CLAUSE

21 **SECTION 9.** If any provision of this act or its application is held invalid, the
22 invalidity does not affect other provisions or applications of this act that can be given effect
23 without the invalid provisions or application and, to this end, the provisions of this act are
24 severable.
25

26 EFFECTIVE DATE

27 **SECTION 10.** This act is effective when it becomes law and applies to all current
28 and future franchises and other agreements in existence between any new motor vehicle dealer
29 located in this State and a manufacturer or distributor as of the effective date of this act.