

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 585*

Short Title: Clarify MV Dealers Licensing Law.

(Public)

Sponsors: Representatives Owens, Fox, Sherrill (Primary Sponsors); Alexander, Allen, Allred, Arnold, Baddour, Baker, Barbee, Barefoot, Bonner, Bowie, Boyd-McIntyre, Bridgeman, Brown, Brubaker, Buchanan, Cansler, Capps, Cox, Crawford, Culp, Culpepper, Cunningham, Daughtry, Davis, Decker, Dedmon, Eddins, Edwards, Esposito, Gibson, Gillespie, Goodwin, Grady, Haire, Hardaway, Hensley, Hiatt, Hill, Holmes, Horn, Howard, Hunter, Hurley, Jarrell, Jeffus, Justus, Kinney, Kiser, Luebke, McAllister, McComas, McCombs, McCrary, McLawhorn, Melton, Miner, Mitchell, Moore, Morris, Mosley, Nye, Rayfield, Redwine, Rogers, Russell, Saunders, Setzer, Sexton, Smith, Starnes, Sutton, Tallent, Teague, Thomas, Thompson, Tolson, Wainwright, Walend, Warner, Warren, Warwick, G. Wilson, Wood, Wright, and Yongue.

Referred to: Rules, Calendar and Operations of the House.

March 24, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301 is amended by adding a new subsection that reads:

"(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the manufacturer through an appeals board or internal grievance procedure of the manufacturer, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the manufacturer, the applicable period of time for the

dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the manufacturer's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the manufacturer has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the manufacturer before seeking redress from the Commissioner as provided in this Article."

Section 2. 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:

- (1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by ~~such dealer; that dealer,~~ to accept delivery of any motor vehicle or vehicles which have been equipped in a manner other than as specified by the dealer.
- (2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;
- (3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;
- (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, 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. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has

been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. ~~The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.~~ With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of poor character or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. 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 the capacity. With respect to a proposed relocation or other proposed change, the issue for determination by the

Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof before the Commissioner under this subdivision. It is unlawful for a manufacturer to in any way condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management or principal operator 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 divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space.

- (5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a ~~hearing, nor thereafter, if the Commissioner~~ hearing and has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.
- a. This section does not apply:
1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed

- ~~new motor vehicle dealer for the same line make of motor vehicle; vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section; or~~
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
 3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle ~~dealership; dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation; or~~
 4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. ~~The permanency of the investment of both the existing and proposed additional new motor vehicle dealers; dealer;~~
 2. ~~Growth or decline in population, density of population, and new car registrations in the relevant market area;~~
 3. ~~Effect on the consuming public in the relevant market area;~~
 4. ~~Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;~~
 5. 2. Whether the new motor vehicle dealers of the same line make in that ~~relevant~~ market area are providing adequate ~~competition and convenient~~ customer care for the owners of motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales

- and service facilities, equipment, supply of motor vehicle parts, and qualified service ~~personnel~~; personnel. For purposes of this sub-subdivision, the term 'adequate' shall be defined in relation to markets of similar size and demographic makeup within North Carolina and the Commissioner shall not hear or consider evidence of any comparisons to markets outside this State; and
6. ~~Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long term public interest; and~~
- 7.3. The effect on the relocating dealer of a denial of its relocation into the relevant market area.
- c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.
- d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer 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 allowing the establishment of a proposed additional dealership or relocation of an existing dealership shall automatically be stayed during any period that any dealer having standing to appeal the determination under this section 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.
- e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.
- f. If the Commissioner determines, following a hearing, that good cause ~~does not exist for refusing to permit~~ exists for permitting the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years

shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section. If the Commissioner fails to determine that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the manufacturer seeking the proposed additional dealership or dealer seeking to relocate may not again provide notice of its intention or otherwise attempt to establish an additional dealership or relocate to any location within 10 miles of the site of the original proposed additional dealership or relocation site for a minimum of five years from the date of the Commissioner's determination.

- g. **(See editor's note for applicability)** For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.
- (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 subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, 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)c1III 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. 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 paragraph, 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:
 1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within ~~180~~ 90 days after the manufacturer first acquired knowledge of such failure;
 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
- I. The notification stated that notice was provided of failure of performance pursuant to this section;
 - 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.
- b. The manufacturer shall have the burden of proof under this section.
- c. Notification of Termination, Cancellation and Nonrenewal. --
1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:
 - I. In the manner described in G.S. 20-305(6)c2 below; and
 - 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 or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.
- 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 1 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
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
3. Notification provided in G.S. 20-305(6)c1III of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments. --
- 1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
 - I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's

- price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;
- II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;
 - III. ~~Equipment~~ Equipment, signs, and furnishings that have not been 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
 - IV. Special tools that have not been 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 within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.
2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has offered to convey clear title to the inventory and has conveyed title and possession of the same to the manufacturer. The manufacturer shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations under this sub-subparagraph. The manufacturer may not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.
- e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license

revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or ~~one~~ three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for ~~one year~~ three years.
3. ~~Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.~~

In order to be entitled to facilities assistance from the manufacturer, as provided in this paragraph e., no dealer, owner, or lessee, as the case may be, shall have no obligation to mitigate damages under the lease; provided, however, that to the extent that a dealer, owner, or lessee does elect to voluntarily mitigate damages, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this paragraph e. shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.

4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service operations from this location during the same three-year period.
5. The compensation required for facilities assistance under this paragraph e. shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation, or nonrenewal.
- f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

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

- (7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.
 - a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated successor to succeed in the respective ownership interest or interest as principal operator of the ~~said~~ owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the ~~owner.~~ owner or principal operator. In order for succession to the position of principal operator to occur by operation of law in accordance with sub-subdivision c. below, the owner's choice of a successor must be approved by the dealer, in accordance with the dealer's bylaws, if applicable, either prior

or subsequent to the death or incapacity of the existing principal operator.

- b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:
 1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.
 2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
 3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing written and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer,

- uniformly applied minimum business experience standards in the market area.
4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from ~~a dealer~~ an owner of the identity of the dealer's owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
 6. In the event death or incapacity of the owner or principal operator occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's or principal operator's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.
- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner or principal operator of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ~~ownership~~ rights and obligations of the owner or principal operator in the new motor vehicle dealership and under the existing franchise.
 - d. Within 60 days after the death or incapacity of the ~~owner~~ owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ~~ownership~~ position of owner or principal operator of the

new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the ~~owner's~~ death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor or may file a request for evidentiary hearing in accordance with the procedures provided in sub-subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was ~~either not produced or the material which was produced was incorrect.~~ fraudulent.

- e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the

- owner's or principal operator's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's or principal operator's death or incapacity.
- f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.
- (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, options, accessories or equipment which are either:
- a. ~~not~~ Not included in the list price of ~~such~~ those motor vehicles as publicly advertised by the manufacturer or ~~distributor.~~ distributor; or
- b. Added by the manufacturer or distributor at port or at any other time subsequent to the time assembly of the vehicle has been completed at the manufacturer's factory.
- (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, ~~training programs,~~ showroom or other display decorations or materials decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.
- (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in

the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.

- (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, ~~when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.~~ space.
- (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.
- (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.
- (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's ~~relevant market area, and area as determined in accordance with~~ reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who

has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.

- (15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.
- (16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.
- (17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.
- (18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.
- (19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.
- (20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the

manufacturer, without the express written consent of the new motor vehicle dealer.

- (21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.
- (22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.
- (23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.
- (24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as one on whose expertise and abilities the manufacturer relied in the granting of the franchise.
- (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display space, ~~when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.~~ space.
- (26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.
- (27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading ~~and or conceal any material facts~~ which ~~induces~~ induce any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.
- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.
- (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.
- (30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, computers, tools, equipment, or other merchandise from the manufacturer or any other person or entity

designated, endorsed, or approved by the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility—facility; the dealer's willingness or commitment to either establish or maintain exclusive facilities, personnel, or display space; the dealer's success in achieving certain scores or levels of customer satisfaction under a program or system for measuring customer satisfaction established or endorsed by the manufacturer; the dealer's willingness to provide loaner vehicles in whole or in part at the dealer's expense to customers who are having a vehicle serviced at the dealership; or upon the dealer's participation in training programs or employment or association of one or more consultants which are sponsored, endorsed, or recommended by the manufacturer. manufacturer, the payment for which is in any part the responsibility of the dealer.

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

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

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

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or policy to continue in effect as to the manufacturer's franchised dealers located in this State until December 31, 1999. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program as of December 31, 1999, in accordance with the manufacturer's program or policy.

- (31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.
- (32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary

quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles.

(33) To fail to reimburse a dealer located in this State in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the manufacturer.

(34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in any training program whose subject matter is not expressly limited to specific information necessary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that manufacturer. Examples of training programs with respect to which a manufacturer is prohibited from requiring the dealer's monetary participation include, but are not limited to, those which purport to teach morale-boosting employee motivation, teamwork, or general principles of customer relations. A manufacturer is further prohibited from requiring the personal attendance of an owner or dealer principal of any dealership located in this State at any meeting or training program at which it is reasonably possible for another member of the dealer's management to attend and later relate the subject matter of the meeting or training program to the dealership's owners or principal operator."

Section 3. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or

revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Provided, however, these limitations shall not be effective in the case of fraudulent claims."

Section 4. G.S. 20-305.1(c) reads as rewritten:

"(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in ~~subsections~~ subsection (a), (b), (b1), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner."

Section 5. G.S. 20-305.2 reads as rewritten:

"§ 20-305.2. Unfair methods of competition.

It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, own, own any ownership interest in, operate, or control any motor vehicle dealership in a relevant market area of this State already served by a motor vehicle dealer under a franchise for the same line make from such manufacturer, factory branch, distributor, or distributor branch, or subsidiary, in this State, provided that this section shall not be construed to prohibit (i) the operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to another, or (ii) the ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, ~~during a period while such dealership is being sold under a bona fide contract or purchase option to the operator of the dealership,~~ while in a bona fide relationship with any independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or

affiliate thereof, who has made a significant investment that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable period of time and on reasonable terms and conditions, or (iii) the ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to March 16, 1973, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest, or (iv) the ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public interest.

Provided, this section shall not apply to manufacturers or distributors of trailers or semitrailers."

Section 6. Section 5 of this act shall not apply to manufacturers or distributors of trailers or semitrailers.

Section 7. This act becomes effective October 1, 1999.