

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 420

Short Title: Clarify MV Dealers Licensing Law.

(Public)

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Sponsors: Senators Hoyle; Allran, Ballantine, Carpenter, Carter, Cochrane, Dalton, Dannelly, Forrester, Foxx, Garwood, Gulley, Hagan, Horton, Kerr, Lee, Martin of Pitt, Metcalf, Miller, Moore, Odom, Perdue, Phillips, Plyler, Purcell, Rand, Reeves, Robinson, Rucho, Shaw of Cumberland, Soles, Warren, and Wellons.

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Referred to: Commerce.

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March 18, 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

1 to require that any dealer exhaust any internal grievance or other alternative dispute  
2 process required or established by the manufacturer before seeking redress from the  
3 Commissioner as provided in this Article."

4 Section 2. G.S. 20-305 reads as rewritten:

5 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**  
6 **cancel franchise; preventing transfer of ownership; granting additional**  
7 **franchises; terminating franchises without good cause; preventing family**  
8 **succession.**

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

- 12 (1) To require, coerce, or attempt to coerce any dealer to accept delivery of  
13 any motor vehicle or vehicles, parts or accessories therefor, or any other  
14 commodities, which shall not have been ordered by ~~such dealer;~~ that  
15 dealer, or to accept delivery of any motor vehicle or vehicles which  
16 have been equipped in a manner other than as specified by the dealer.
- 17 (2) To require, coerce, or attempt to coerce any dealer to enter into any  
18 agreement with such manufacturer, factory branch, distributor, or  
19 distributor branch, or representative thereof, or do any other act unfair to  
20 such dealer, by threatening to cancel any franchise existing between  
21 such manufacturer, factory branch, distributor, distributor branch, or  
22 representative thereof, and such dealer;
- 23 (3) Unfairly without due regard to the equities of the dealer, and without  
24 just provocation, to cancel the franchise of such dealer;
- 25 (4) Notwithstanding the terms of any franchise agreement, to prevent or  
26 refuse to approve the sale or transfer of the ownership of a dealership by  
27 the sale of the business, stock transfer, or otherwise, or the transfer, sale  
28 or assignment of a dealer franchise, or a change in the executive  
29 management or principal operator of the dealership, or relocation of the  
30 dealership to another site within the dealership's relevant market area, if  
31 the Commissioner has determined, if requested in writing by the dealer  
32 within 30 days after receipt of an objection to the proposed transfer,  
33 sale, assignment, relocation, or change, and after a hearing on the  
34 matter, that the failure to permit or honor the transfer, sale, assignment,  
35 relocation, or change is unreasonable under the circumstances. No  
36 franchise may be transferred, sold, assigned, relocated, or the executive  
37 management or principal operators changed, unless the franchisor has  
38 been given at least 30 days' prior written notice as to the identity,  
39 financial ability, and qualifications of the proposed transferee, the  
40 identity and qualifications of the persons proposed to be involved in  
41 executive management or as principal operators, and the location and  
42 site plans of any proposed relocation. The franchisor shall send the  
43 dealership notice of objection, by registered or certified mail, return

1 receipt requested, to the proposed transfer, sale, assignment, relocation,  
2 or change within 30 days after receipt of notice from the dealer, as  
3 provided in this section. Failure by the franchisor to send notice of  
4 objection within 30 days shall constitute waiver by the franchisor of any  
5 right to object to the proposed transfer, sale, assignment, relocation, or  
6 change. ~~The manufacturer or distributor has the burden of proving that the~~  
7 ~~proposed transfer, sale, assignment, relocation, or change is unreasonable~~  
8 ~~under the circumstances.~~ With respect to a proposed transfer of  
9 ownership, sale, or assignment, the sole issue for determination by the  
10 Commissioner and the sole issue upon which the Commissioner shall  
11 hear or consider evidence is whether, by reason of poor character or lack  
12 of financial ability, the proposed transferee is unfit to own the  
13 dealership. For purposes of this subdivision, the refusal by the  
14 manufacturer to accept a proposed transferee who is of good moral  
15 character and who otherwise meets the written, reasonable, and  
16 uniformly applied financial requirements, if any, required by the  
17 manufacturer of owners of its franchised automobile dealerships is  
18 presumed to demonstrate the manufacturer's failure to prove that the  
19 proposed transferee is unfit to own the dealership. With respect to a  
20 proposed change in the executive management or principal operator of  
21 the dealership, the sole issue for determination by the Commissioner  
22 and the sole issue on which the Commissioner shall hear or consider  
23 evidence shall be whether, by reason of lack of training, lack of prior  
24 experience, poor past performance, or poor character, the proposed  
25 candidate for a position within the executive management or as  
26 principal operator of the dealership is unfit for the position. For  
27 purposes of this subdivision, the refusal by the manufacturer to accept a  
28 proposed candidate for executive management or as principal operator  
29 who is of good moral character and who otherwise meets the written,  
30 reasonable, and uniformly applied standards or qualifications, if any, of  
31 the manufacturer relating to the business experience and prior  
32 performance of executive management required by the manufacturers of  
33 its dealers is presumed to demonstrate the manufacturer's failure to  
34 prove the proposed candidate for executive management or as principal  
35 operator is unfit to serve the the capacity. With respect to a proposed  
36 relocation or other proposed change, the issue for determination by the  
37 Commissioner is whether the proposed relocation or other change is  
38 unreasonable under the circumstances. For purposes of this subdivision,  
39 the refusal by the manufacturer to agree to a proposed relocation which  
40 meets the written, reasonable, and uniformly applied standards or  
41 criteria, if any, of the manufacturer relating to dealer relocations is  
42 presumed to demonstrate that the manufacturer's failure to prove the  
43 proposed relocation is unreasonable under the circumstances. The

1           manufacturer shall have the burden of proof before the Commissioner  
2           under this subdivision. It is unlawful for a manufacturer to in any way  
3           condition its approval of a proposed transfer, sale, assignment, change  
4           in the dealer's executive management or principal operator on the  
5           existing or proposed dealer's willingness to construct a new facility,  
6           renovate the existing facility, acquire or refrain from acquiring one or  
7           more line-makes of vehicles, separate or divest one or more line-makes  
8           of vehicle, or establish or maintain exclusive facilities, personnel, or  
9           display space. It is unlawful for a manufacturer to, in any way,  
10          condition its approval of a proposed relocation on the existing or  
11          proposed dealer's willingness to acquire or refrain from acquiring one or  
12          more line-makes of vehicles, separate or divest one or more line-makes  
13          of vehicle, or establish or maintain exclusive facilities, personnel, or  
14          display space.

15          (5) To enter into a franchise establishing an additional new motor vehicle  
16          dealer or relocating an existing new motor vehicle dealer into a relevant  
17          market area where the same line make is then represented without first  
18          notifying in writing the Commissioner and each new motor vehicle  
19          dealer in that line make in the relevant market area of the intention to  
20          establish an additional dealer or to relocate an existing dealer within or  
21          into that market area. Within 30 days of receiving such notice or within  
22          30 days after the end of any appeal procedure provided by the  
23          manufacturer, any new motor vehicle dealer may file with the  
24          Commissioner a protest to the establishing or relocating of the new  
25          motor vehicle dealer. When a protest is filed, the Commissioner shall  
26          promptly inform the manufacturer that a timely protest has been filed,  
27          and that the manufacturer shall not establish or relocate the proposed  
28          new motor vehicle dealer until the Commissioner has held a ~~hearing, nor~~  
29          ~~thereafter, if the Commissioner~~ hearing and has determined that there is  
30          good cause for not permitting the addition or relocation of such new  
31          motor vehicle dealer.

32          a. This section does not apply:

33                 1. To the relocation of an existing new motor vehicle dealer  
34                 within that dealer's relevant market area, provided that the  
35                 relocation not be at a site within 10 miles of a licensed  
36                 new motor vehicle dealer for the same line make of motor  
37                 ~~vehicle;~~ vehicle. If this sub-subdivision is applicable, only  
38                 dealers trading in the same line-make of vehicle that are  
39                 located within the 10-mile radius shall be entitled to notice  
40                 from the manufacturer and have the protest rights afforded  
41                 under this section; or

42                 2. If the proposed additional new motor vehicle dealer is to  
43                 be established at or within two miles of a location at

1 which a former licensed new motor vehicle dealer for the  
2 same line make of new motor vehicle had ceased  
3 operating within the previous two years;

4 3. To the relocation of an existing new motor vehicle dealer  
5 within two miles of the existing site of the new motor  
6 vehicle ~~dealership; dealership~~ if the franchise has been  
7 operating on a regular basis from the existing site for a  
8 minimum of three years immediately preceding the  
9 relocation; or

10 4. To the relocation of an existing new motor vehicle dealer  
11 if the proposed site of the relocated new motor vehicle  
12 dealership is further away from all other new motor  
13 vehicle dealers of the same line make in that relevant  
14 market area.

15 b. In determining whether good cause has been established for not  
16 entering into or relocating an additional new motor vehicle dealer  
17 for the same line make, the Commissioner shall take into  
18 consideration the existing circumstances, including, but not  
19 limited to:

20 1. ~~The permanency of the investment of both the existing and~~  
21 ~~proposed additional new motor vehicle dealers; dealer;~~

22 2. ~~Growth or decline in population, density of population,~~  
23 ~~and new car registrations in the relevant market area;~~

24 3. ~~Effect on the consuming public in the relevant market~~  
25 ~~area;~~

26 4. ~~Whether it is injurious or beneficial to the public welfare~~  
27 ~~for an additional new motor vehicle dealer to be~~  
28 ~~established;~~

29 ~~5.2.~~ Whether the new motor vehicle dealers of the  
30 same line make in that ~~relevant~~ market area are  
31 providing adequate ~~competition and convenient~~  
32 customer care for the owners of motor vehicles of  
33 the same line make in the market area which  
34 shall include the adequacy of motor vehicle sales  
35 and service facilities, equipment, supply of motor  
36 vehicle parts, and qualified service ~~personnel;~~  
37 personnel. For purposes of this sub-subdivision,  
38 the term 'adequate' shall be defined in relation to  
39 markets of similar size and demographic makeup  
40 within North Carolina and the Commissioner  
41 shall not hear or consider evidence of any  
42 comparisons to markets outside this State; and

- 1                   6.     ~~Whether the establishment of an additional new motor~~  
2                   ~~vehicle dealer or relocation of an existing new motor~~  
3                   ~~vehicle dealer in the relevant market area would increase~~  
4                   ~~competition in a manner such as to be in the long-term~~  
5                   ~~public interest; and~~  
6                   7.3.       The effect on the relocating dealer of a denial of  
7                   its relocation into the relevant market area.
- 8                   c.     The Commissioner shall try to conduct the hearing and render his  
9                   final determination if possible, within 180 days after a protest is  
10                  filed.
- 11                  d.     Any parties to a hearing by the Commissioner concerning the  
12                  establishment or relocating of a new motor vehicle dealer shall  
13                  have a right of review of the decision in a court of competent  
14                  jurisdiction pursuant to Chapter 150B of the General Statutes.  
15                  Any determination of the Commissioner under this section  
16                  allowing the establishment of a proposed additional dealership or  
17                  relocation of an existing dealership shall automatically be stayed  
18                  during any period that any dealer having standing to appeal the  
19                  determination under this section shall have the right to judicial  
20                  review or appeal of the determination before the superior court or  
21                  any other appellate court and during the pendency of any appeal.
- 22                  e.     In a hearing involving a proposed additional dealership, the  
23                  manufacturer or distributor has the burden of proof under this  
24                  section. In a proceeding involving the relocation of an existing  
25                  dealership, the dealer seeking to relocate has the burden of proof  
26                  under this section.
- 27                  f.     If the Commissioner determines, following a hearing, that good  
28                  cause ~~does not exist for refusing to permit~~ exists for permitting the  
29                  proposed additional or relocated motor vehicle dealership, the  
30                  dealer seeking the proposed additional or relocated motor vehicle  
31                  dealership must, within two years, obtain a license from the  
32                  Commissioner for the sale of vehicles at the relevant site, and  
33                  actually commence operations at the site selling new motor  
34                  vehicles of all line makes, as permitted by the Commissioner.  
35                  Failure to obtain a permit and commence sales within two years  
36                  shall constitute waiver by the dealer of the dealer's right to the  
37                  additional or relocated dealership, requiring renotification, a new  
38                  hearing, and a new determination as provided in this section. If  
39                  the Commissioner fails to determine that good cause exists for  
40                  permitting the proposed additional or relocated motor vehicle  
41                  dealership, the manufacturer seeking the proposed additional  
42                  dealership or dealer seeking to relocate may not again provide  
43                  notice of its intention or otherwise attempt to establish an

1           additional dealership or relocate to any location within 10 miles  
2           of the site of the original proposed additional dealership or  
3           relocation site for a minimum of five years from the date of the  
4           Commissioner's determination.

5           g. **(See editor's note for applicability)** For purposes of this  
6           subdivision, the addition, creation, or operation of a "satellite" or  
7           other facility, not physically part of or contiguous to an existing  
8           licensed new motor vehicle dealer, whether or not owned or  
9           operated by a person or other entity holding a franchise as  
10          defined by G.S. 20-286(8a), at which warranty service work  
11          authorized or reimbursed by a manufacturer is performed or at  
12          which new motor vehicles are offered for sale to the public, shall  
13          be considered an additional new motor vehicle dealer requiring a  
14          showing of good cause, prior notification to existing new motor  
15          vehicle dealers of the same line make of vehicle within the  
16          relevant market area by the manufacturer and the opportunity for  
17          a hearing before the Commissioner as provided in this  
18          subdivision.

19          (6) Notwithstanding the terms, provisions or conditions of any franchise or  
20          notwithstanding the terms or provisions of any waiver, to terminate,  
21          cancel or fail to renew any franchise with a licensed new motor vehicle  
22          dealer unless the manufacturer has satisfied the notice requirements of  
23          subparagraph c. and the Commissioner has determined, if requested in  
24          writing by the dealer within the time period specified in G.S. 20-  
25          305(6)c1II, III or IV, as applicable, and after a hearing on the matter,  
26          that there is good cause for the termination, cancellation, or nonrenewal  
27          of the franchise and that the manufacturer has acted in good faith as  
28          defined in this act regarding the termination, cancellation or  
29          nonrenewal. When such a petition is made to the Commissioner by a  
30          dealer for determination as to the existence of good cause and good faith  
31          for the termination, cancellation or nonrenewal of a franchise, the  
32          Commissioner shall promptly inform the manufacturer that a timely  
33          petition has been filed, and the franchise in question shall continue in  
34          effect pending the Commissioner's decision. The Commissioner shall  
35          try to conduct the hearing and render a final determination within 180  
36          days after a petition has been filed. If the termination, cancellation or  
37          nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner  
38          shall give the proceeding priority consideration and shall try to render  
39          his final determination no later than 90 days after the petition has been  
40          filed. Any parties to a hearing by the Commissioner under this section  
41          shall have a right of review of the decision in a court of competent  
42          jurisdiction pursuant to Chapter 150B of the General Statutes. Any  
43          determination of the Commissioner under this section finding that good

1           cause exists for the nonrenewal, cancellation, or termination of any  
2           franchise shall automatically be stayed during any period that the  
3           affected dealer shall have the right to judicial review or appeal of the  
4           determination before the superior court or any other appellate court and  
5           during the pendency of any appeal. Furthermore, unless and until the  
6           termination, cancellation, or nonrenewal of a dealer's franchise shall  
7           finally become effective, in light of any stay or any order of the  
8           commissioner determining that good cause exists for the termination,  
9           cancellation, or nonrenewal of a dealer's franchise as provided in this  
10           paragraph, a dealer who receives a notice of termination, cancellation,  
11           or nonrenewal from a manufacturer as provided in this subdivision shall  
12           continue to have the same rights to assign, sell, or transfer the franchise  
13           to a third party under the franchise and as permitted under G.S. 20-  
14           305(4) as if notice of the termination had not been given by the  
15           manufacturer. Any franchise under notice or threat of termination,  
16           cancellation, or nonrenewal by the manufacturer which is duly  
17           transferred in accordance with G.S. 20-305(4) shall not be subject to  
18           termination by reason of failure of performance or breaches of the  
19           franchise on the part of the transferor.

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

24           1.     There is a failure by the new motor vehicle dealer to  
25           comply with a provision of the franchise which provision  
26           is both reasonable and of material significance to the  
27           franchise relationship provided that the dealer has been  
28           notified in writing of the failure within ~~180~~90 days after  
29           the manufacturer first acquired knowledge of such failure;

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

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

39           II.    The new motor vehicle dealer was afforded a  
40           reasonable opportunity, for a period of not less than  
41           180 days, to comply with the criteria; and

42           III.   The new motor vehicle dealer failed to demonstrate  
43           substantial progress towards compliance with the



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

- 1 V. Unless the failure by the new motor vehicle dealer  
2 relates to the performance of the new motor vehicle  
3 dealer in sales or service, not more than 1 year after  
4 the manufacturer first acquired knowledge of the  
5 basic facts comprising the failure.
- 6 2. Notification under this section shall be in writing; shall be  
7 by certified mail or personally delivered to the new motor  
8 vehicle dealer; and shall contain:
- 9 I. A statement of intention to terminate, cancel or not  
10 to renew the franchise;
- 11 II. A detailed statement of all of the material reasons  
12 for the termination, cancellation or nonrenewal;  
13 and
- 14 III. The date on which the termination, cancellation or  
15 nonrenewal takes effect.
- 16 3. Notification provided in G.S. 20-305(6)c1II of 90 days  
17 prior to the effective date of such termination, cancellation  
18 or renewal may run concurrent with the 180 days  
19 designated in G.S. 20-305(6)a2II provided the notification  
20 is clearly designated by a separate written document  
21 mailed by certified mail or personally delivered to the new  
22 motor vehicle dealer.
- 23 d. Payments. –
- 24 1. Upon the termination, nonrenewal or cancellation of any  
25 franchise by the manufacturer or distributor, pursuant to  
26 this section, the new motor vehicle dealer shall be allowed  
27 fair and reasonable compensation by the manufacturer for  
28 the:
- 29 I. New motor vehicle inventory that has been  
30 acquired from the manufacturer within 18 months,  
31 at a price not to exceed the original manufacturer's  
32 price to the dealer, and which has not been altered  
33 or damaged, and which has not been driven more  
34 than 200 miles, and for which no certificate of title  
35 has been issued;
- 36 II. Unused, undamaged and unsold supplies and parts  
37 purchased from the manufacturer, at a price not to  
38 exceed the original manufacturer's price to the  
39 dealer, provided such supplies and parts are  
40 currently offered for sale by the manufacturer or  
41 distributor in its current parts catalogs and are in  
42 salable condition;

- 1                                    III. ~~Equipment~~ Equipment, signs, and furnishings that  
2                                    have not been altered or damaged and that have  
3                                    been required by the manufacturer or distributor to  
4                                    be purchased by the new motor vehicle dealer from  
5                                    the manufacturer or distributor, or their approved  
6                                    sources; and
- 7                                    IV. Special tools that have not been altered or damaged  
8                                    and that have been required by the manufacturer or  
9                                    distributor to be purchased by the new motor  
10                                   vehicle dealer from the manufacturer or distributor,  
11                                   or their approved sources within five years  
12                                   immediately preceding the termination, nonrenewal  
13                                   or cancellation of the franchise.
- 14                                   2. Fair and reasonable compensation for the above shall be  
15                                   paid by the manufacturer within 90 days of the effective  
16                                   date of termination, cancellation or nonrenewal, provided  
17                                   the new motor vehicle dealer has offered to convey clear  
18                                   title to the inventory and has conveyed title and possession of  
19                                   the same to the manufacturer. The manufacturer shall be  
20                                   obligated to pay or reimburse the dealer for any  
21                                   transportation charges associated with the manufacturer's  
22                                   repurchase obligations under this sub-subparagraph. The  
23                                   manufacturer may not charge the dealer any handling,  
24                                   restocking, or other similar costs or fees associated with  
25                                   items repurchased by the manufacturer under this sub-  
26                                   subparagraph.
- 27                                   e. Dealership Facilities Assistance upon Termination, Cancellation  
28                                   or Nonrenewal. –
- 29                                          In the event of the termination, cancellation or nonrenewal by  
30                                   the manufacturer or distributor under this section, except  
31                                   termination, cancellation or nonrenewal for insolvency, license  
32                                   revocation, conviction of a crime involving moral turpitude, or  
33                                   fraud by a dealer-owner:
- 34                                   1. Subject to paragraph 3, if the new motor vehicle dealer is  
35                                   leasing the dealership facilities from a lessor other than  
36                                   the manufacturer, the manufacturer shall pay the new  
37                                   motor vehicle dealer a sum equivalent to the rent for the  
38                                   unexpired term of the lease or ~~one~~ three year's rent,  
39                                   whichever is less, or such longer term as is provided in the  
40                                   franchise agreement between the dealer and manufacturer;  
41                                   or
- 42                                   2. Subject to paragraph 3, if the new motor vehicle dealer  
43                                   owns the dealership facilities, the manufacturer shall pay

1 the new motor vehicle dealer a sum equivalent to the  
2 reasonable rental value of the dealership facilities for ~~one~~  
3 ~~year.~~ three years.

- 4 3. ~~Provided nothing in this paragraph e. shall relieve a lessee~~  
5 ~~or owner, as the case may be, from the obligation to~~  
6 ~~mitigate damages under the lease, nor prevent a~~  
7 ~~manufacturer from occupying and using the dealership~~  
8 ~~facilities while paying rent under subsections 1 and 2, nor~~  
9 ~~prevent a manufacturer from obligations by negotiating a~~  
10 ~~lease termination, a sublease or a new lease. Any amounts~~  
11 ~~recovered by the lessee or owner resulting from mitigation~~  
12 ~~of damages shall be deducted from the amount due from~~  
13 ~~the manufacturer.~~

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

- 30 4. In the event the termination relates to fewer than all of the  
31 franchises operated by the dealer at a single location, the  
32 amount of facilities assistance which the manufacturer is  
33 required to pay the dealer under this sub-subdivision shall  
34 be based on the proportion of gross revenue received from  
35 the sale and lease of new vehicles by the dealer and from  
36 the dealer's parts and service operations during the three  
37 years immediately preceding the effective date of the  
38 termination (or any shorter period that the dealer may  
39 have held these franchises) of the line-makes being  
40 terminated, in relation to the gross revenue received from  
41 the sale and lease of all line-makes of new vehicles by the  
42 dealer and from the total of the dealer's and parts and

1 service operations from this location during the same  
2 three-year period.

3 5. The compensation required for facilities assistance under  
4 this paragraph e. shall be paid by the manufacturer within  
5 90 days of the effective date of termination, cancellation,  
6 or nonrenewal.

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

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

16 (7) Notwithstanding the terms of any contract or agreement, to prevent or  
17 refuse to honor the succession to a dealership, including the franchise,  
18 by a motor vehicle dealer's designated successor as provided for under  
19 this subsection.

20 a. Any owner of a new motor vehicle dealership may appoint by  
21 will, or any other written instrument, a designated successor to  
22 succeed in the respective ownership interest or interest as  
23 principal operator of the said—owner in the new motor vehicle  
24 dealership, including the franchise, upon the death or incapacity  
25 of the ~~owner.~~ owner or principal operator. In order for succession  
26 to the position of principal operator to occur by operation of law  
27 in accordance with sub-subdivision c. below, the owner's choice  
28 of a successor must be approved by the dealer, in accordance  
29 with the dealer's bylaws, if applicable, either prior or subsequent  
30 to the death or incapacity of the existing principal operator.

31 b. Any objections by a manufacturer or distributor to an owner's  
32 appointment of a designated successor shall be asserted in  
33 accordance with the following procedure:

34 1. Within 30 days after receiving written notice of the  
35 identity of the owner's designated successor and general  
36 information as to the financial ability and qualifications of  
37 the designated successor, the franchisor shall send the  
38 owner and designated successor notice of objection, by  
39 registered or certified mail, return receipt requested, to the  
40 appointment of the designated successor. The notice of  
41 objection shall state in detail all facts which constitute the  
42 basis for the contention on the part of the manufacturer or  
43 distributor that good cause, as defined in this sub-

1 subdivision below, exists for rejection of the designated  
2 successor. Failure by the franchisor to send notice of  
3 objection within 30 days and otherwise as provided in this  
4 sub-subdivision shall constitute waiver by the franchisor  
5 of any right to object to the appointment of the designated  
6 successor.

7 2. Any time within 30 days of receipt of the manufacturer's  
8 notice of objection the owner or the designated successor  
9 may file a request in writing with the Commissioner that  
10 the Commissioner hold an evidentiary hearing and  
11 determine whether good cause exists for rejection of the  
12 designated successor. When such a request is filed, the  
13 Commissioner shall promptly inform the affected  
14 manufacturer or distributor that a timely request has been  
15 filed.

16 3. The Commissioner shall endeavor to hold the evidentiary  
17 hearing required under this sub-subdivision and render a  
18 determination within 180 days after receipt of the written  
19 request from the owner or designated successor. In  
20 determining whether good cause exists for rejection of the  
21 owner's appointed designated successor, the manufacturer  
22 or distributor has the burden of proving that the designated  
23 successor is a person who is not of good moral character  
24 or does not meet the franchisor's existing written and  
25 reasonable standards and, considering the volume of sales  
26 and service of the new motor vehicle dealer, uniformly  
27 applied minimum business experience standards in the  
28 market area.

29 4. Any parties to a hearing by the Commissioner concerning  
30 whether good cause exists for the rejection of the dealer's  
31 designated successor shall have a right of review of the  
32 decision in a court of competent jurisdiction pursuant to  
33 Chapter 150B of the General Statutes.

34 5. Nothing in this sub-subdivision shall preclude a  
35 manufacturer or distributor from, upon its receipt of  
36 written notice from ~~a dealer~~ an owner of the identity of the  
37 ~~dealer's~~ owner's designated successor, requiring that the  
38 designated successor promptly provide personal and  
39 financial data that is reasonably necessary to determine  
40 the financial ability and qualifications of the designated  
41 successor; provided, however, that such a request for  
42 additional information shall not delay any of the time  
43 periods or constraints contained herein.

- 1                   6.     In the event death or incapacity of the owner or principal  
2                   operator occurs prior to the time a manufacturer or  
3                   distributor receives notice of the owner's appointment of a  
4                   designated successor or before the Commissioner has  
5                   rendered a determination as provided above, the existing  
6                   franchise shall remain in effect and the designated  
7                   successor shall be deemed to have succeeded to all of the  
8                   owner's or principal operator's rights and obligations in the  
9                   dealership and under the franchise until a determination is  
10                  made by the Commissioner or the rights of the parties  
11                  have otherwise become fixed in accordance with this sub-  
12                  subdivision.
- 13                c.     Except as otherwise provided in sub-subdivision d. of this  
14                subdivision, any designated successor of a deceased or  
15                incapacitated owner or principal operator of a new motor vehicle  
16                dealership appointed by such owner in substantial compliance  
17                with this section shall, by operation of law, succeed at the time of  
18                such death or incapacity to all of the ~~ownership~~ rights and  
19                obligations of the owner or principal operator in the new motor  
20                vehicle dealership and under the existing franchise.
- 21                d.     Within 60 days after the death or incapacity of the ~~owner,~~ owner  
22                or principal operator, a designated successor appointed in  
23                substantial compliance with this section shall give the affected  
24                manufacturer or distributor written notice of his or her succession  
25                to the ~~ownership~~ position of owner or principal operator of the  
26                new motor vehicle dealership; provided, however, that the failure  
27                of the designated successor to give the manufacturer or  
28                distributor written notice as provided above within 60 days of the  
29                ~~owner's~~ death or incapacity of the owner or principal operator  
30                shall not result in the waiver or termination of the designated  
31                successor's right to succeed to the ownership of the new motor  
32                vehicle dealership unless the manufacturer or distributor gives  
33                written notice of this provision to either the designated successor  
34                or the deceased or incapacitated owner's executor, administrator,  
35                guardian or other fiduciary by certified or registered mail, return  
36                receipt requested, and said written notice grants not less than 30  
37                days time within which the designated successor may give the  
38                notice required hereunder, provided the designated successor or  
39                the deceased or incapacitated owner's executor, administrator,  
40                guardian or other fiduciary has given the manufacturer  
41                reasonable notice of death or incapacity. Within 30 days of  
42                receipt of the notice by the manufacturer or distributor from the  
43                designated successor provided in this paragraph, the

1 manufacturer or distributor may request that the designated  
2 successor complete the application forms generally utilized by  
3 the manufacturer or distributor to review the designated  
4 successor's qualifications to establish a successor dealership.  
5 Within 30 days of receipt of the completed forms, the  
6 manufacturer or distributor shall send a letter by certified or  
7 registered mail, return receipt requested, advising the designated  
8 successor of facts and circumstances which have changed since  
9 the manufacturer's or distributor's original approval of the  
10 designated successor, and which have caused the manufacturer or  
11 distributor to object to the designated successor. Upon receipt of  
12 such notice, the designated successor may either designate an  
13 alternative successor or may file a request for evidentiary hearing  
14 in accordance with the procedures provided in sub-subdivisions  
15 b. 2.-5. of this subdivision. In any such hearing, the manufacturer  
16 or distributor shall be limited to facts and circumstances which  
17 did not exist at the time the designated successor was originally  
18 approved or evidence which was originally requested to be  
19 produced by the designated successor at the time of the original  
20 request and was ~~either not produced or the material which was~~  
21 ~~produced was incorrect, fraudulent.~~

22 e. The designated successor shall agree to be bound by all terms  
23 and conditions of the franchise in effect between the  
24 manufacturer or distributor and the owner at the time of the  
25 owner's or principal operator's death or incapacity, if so requested  
26 in writing by the manufacturer or distributor subsequent to the  
27 owner's or principal operator's death or incapacity.

28 f. This section does not preclude an owner of a new motor vehicle  
29 dealership from designating any person as his or her successor by  
30 written instrument filed with the manufacturer or distributor, and,  
31 in the event there is an inconsistency between the successor  
32 named in such written instrument and the designated successor  
33 otherwise appointed by the owner consistent with the provisions  
34 of this section, and that written instrument has not been revoked  
35 by the owner of the new motor vehicle dealership in writing to  
36 the manufacturer or distributor, then the written instrument filed  
37 with the manufacturer or distributor shall govern as to the  
38 appointment of the successor.

39 (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in  
40 this State to order or accept delivery of any new motor vehicle with  
41 special features, options, accessories or equipment which are either:



- 1           a.     ~~not~~ Not included in the list price of such those motor vehicles as  
2                     publicly advertised by the manufacturer or ~~distributor.~~ distributor;  
3                     or  
4           b.     Added by the manufacturer or distributor at port or at any other  
5                     time subsequent to the time assembly of the vehicle has been  
6                     completed at the manufacturer's factory.
- 7           (9)    To require, coerce, or attempt to coerce any new motor vehicle dealer in  
8                     this State to participate monetarily in an advertising campaign or  
9                     contest, or to purchase unnecessary or unreasonable quantities of any  
10                    promotional materials, training materials, ~~training programs,~~ showroom  
11                    or other display ~~decorations or materials~~ decorations, materials, computer  
12                    equipment or programs, or special tools at the expense of the new motor  
13                    vehicle dealer, provided that nothing in this subsection shall preclude a  
14                    manufacturer or distributor from including an unitemized uniform  
15                    charge in the base price of the new motor vehicle charged to the dealer  
16                    where such charge is attributable to advertising costs incurred or to be  
17                    incurred by the manufacturer or distributor in the ordinary courses of its  
18                    business.
- 19           (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in  
20                    this State to change the capital structure of the new motor vehicle dealer  
21                    or the means by or through which the new motor vehicle dealer finances  
22                    the operation of the dealership provided that the new motor vehicle  
23                    dealer at all times meets any reasonable capital standards determined by  
24                    the manufacturer in accordance with uniformly applied criteria; and also  
25                    provided that no change in the capital structure shall cause a change in  
26                    the principal management or have the effect of a sale of the franchise  
27                    without the consent of the manufacturer or distributor, provided that  
28                    said consent shall not be unreasonably withheld.
- 29           (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in  
30                    this State to refrain from participation in the management of, investment  
31                    in, or the acquisition of any other line of new motor vehicle or related  
32                    products; Provided, however, that this subsection does not apply unless  
33                    the new motor vehicle dealer maintains a reasonable line of credit for  
34                    each make or line of new motor vehicle, and the new motor vehicle  
35                    dealer remains in compliance with any reasonable capital standards and  
36                    facilities requirements of the manufacturer. The reasonable facilities  
37                    requirements shall not include any requirement that a new motor vehicle  
38                    dealer establish or maintain exclusive facilities, personnel, or display  
39                    ~~space, when such requirements, or any of them, would be unreasonable in~~  
40                    ~~light of current economic conditions and would not otherwise be justified by~~  
41                    ~~reasonable business considerations.~~ space.
- 42           (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in  
43                    this State to change location of the dealership, or to make any

1 substantial alterations to the dealership premises or facilities, when to do  
2 so would be unreasonable, or without written assurance of a sufficient  
3 supply of new motor vehicles so as to justify such an expansion, in light  
4 of the current market and economic conditions.

5 (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in  
6 this State to prospectively assent to a release, assignment, novation,  
7 waiver or estoppel which would relieve any person from liability to be  
8 imposed by this law or to require any controversy between a new motor  
9 vehicle dealer and a manufacturer, distributor, or representative, to be  
10 referred to any person other than the duly constituted courts of the State  
11 or the United States of America, or to the Commissioner, if such referral  
12 would be binding upon the new motor vehicle dealer.

13 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts  
14 or accessories in reasonable quantities relative to the new motor vehicle  
15 dealer's facilities and sales potential in the new motor vehicle dealer's  
16 relevant market area, and area as determined in accordance with  
17 reasonably applied economic principles, or within a reasonable time,  
18 after receipt of an order from a dealer having a franchise for the retail  
19 sale of any new motor vehicle sold or distributed by the manufacturer or  
20 distributor, any new vehicle, parts or accessories to new vehicles as are  
21 covered by such franchise, and such vehicles, parts or accessories as are  
22 publicly advertised as being available or actually being delivered. The  
23 delivery to another dealer of a motor vehicle of the same model and  
24 similarly equipped as the vehicle ordered by a motor vehicle dealer who  
25 has not received delivery thereof, but who has placed his written order  
26 for the vehicle prior to the order of the dealer receiving the vehicle, shall  
27 be evidence of a delayed delivery of, or refusal to deliver, a new motor  
28 vehicle to a motor vehicle dealer within a reasonable time, without  
29 cause. This subsection is not violated, however, if such failure is caused  
30 by acts or causes beyond the control of the manufacturer, distributor,  
31 factory branch, or factory representative.

32 (15) To refuse to disclose to any new motor vehicle dealer, handling the  
33 same line make, the manner and mode of distribution of that line make  
34 within the State.

35 (16) To award money, goods, services, or any other benefit to any new motor  
36 vehicle dealership employee, either directly or indirectly, unless such  
37 benefit is promptly accounted for, and transmitted to, or approved by,  
38 the new motor vehicle dealer.

39 (17) To increase prices of new motor vehicles which the new motor vehicle  
40 dealer had ordered and which the manufacturer or distributor has  
41 accepted for immediate delivery for private retail consumers prior to the  
42 new motor vehicle dealer's receipt of the written official price increase  
43 notification. A sales contract signed by a private retail consumer shall

1 constitute evidence of each such order provided that the vehicle is in  
2 fact delivered to that customer. Price differences applicable to new  
3 model or series shall not be considered a price increase or price  
4 decrease. Price changes caused by either: (i) the addition to a new motor  
5 vehicle of required or optional equipment; or (ii) revaluation of the  
6 United States dollar, in the case of foreign-make vehicles or  
7 components; or (iii) an increase in transportation charges due to  
8 increased rates imposed by carriers; or (iv) new tariffs or duties imposed  
9 by the United States of America or any other governmental authority,  
10 shall not be subject to the provisions of this subsection.

11 (18) To prevent or attempt to prevent a dealer from receiving fair and  
12 reasonable compensation for the value of the franchised business  
13 transferred in accordance with G.S. 20-305(4) above.

14 (19) To offer any refunds or other types of inducements to any person for the  
15 purchase of new motor vehicles of a certain line make to be sold to the  
16 State or any political subdivision thereof without making the same offer  
17 available upon request to all other new motor vehicle dealers in the  
18 same line make within the State.

19 (20) To release to any outside party, except under subpoena or as otherwise  
20 required by law or in an administrative, judicial or arbitration  
21 proceeding involving the manufacturer or new motor vehicle dealer, any  
22 confidential business, financial, or personal information which may be  
23 from time to time provided by the new motor vehicle dealer to the  
24 manufacturer, without the express written consent of the new motor  
25 vehicle dealer.

26 (21) To deny any new motor vehicle dealer the right of free association with  
27 any other new motor vehicle dealer for any lawful purpose.

28 (22) To unfairly discriminate among its new motor vehicle dealers with  
29 respect to warranty reimbursements or authority granted its new motor  
30 vehicle dealers to make warranty adjustments with retail customers.

31 (23) To engage in any predatory practice against or unfairly compete with a  
32 new motor vehicle dealer located in this State.

33 (24) To terminate any franchise solely because of the death or incapacity of  
34 an owner who is not listed in the franchise as one on whose expertise  
35 and abilities the manufacturer relied in the granting of the franchise.

36 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in  
37 this State to either establish or maintain exclusive facilities, personnel,  
38 or display space, when such requirements, or any of them, would be  
39 unreasonable in light of current economic conditions and would not otherwise  
40 be justified by reasonable business considerations. space.

41 (26) To resort to or to use any false or misleading advertisement in the  
42 conducting of its business as a manufacturer or distributor in this State.

- 1 (27) To knowingly make, either directly or through any agent or employee,  
2 any material statement which is false or misleading ~~and or conceal~~ any  
3 material facts which ~~induces~~ induce any new motor vehicle dealer to  
4 enter into any agreement or franchise or to take any action which is  
5 materially prejudicial to that new motor vehicle dealer or his business.
- 6 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to  
7 purchase or order any new motor vehicle as a precondition to  
8 purchasing, ordering, or receiving any other new motor vehicle or  
9 vehicles. Nothing herein shall prevent a manufacturer from requiring  
10 that a new motor vehicle dealer fairly represent and inventory the full  
11 line of new motor vehicles which are covered by the franchise  
12 agreement.
- 13 (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to  
14 sell, transfer, or otherwise issue stock or other ownership interest in the  
15 dealership corporation to a general manager or any other person  
16 involved in the management of the dealership other than the dealer  
17 principal or dealer operator named in the franchise, unless the dealer  
18 principal or dealer operator is an absentee owner who is not involved in  
19 the operation of the dealership on a regular basis.
- 20 (30) To vary the price charged to any of its franchised new motor vehicle  
21 dealers located in this State for new motor vehicles based on the dealer's  
22 purchase of new facilities, supplies, computers, tools, equipment, or  
23 other merchandise from the manufacturer or any other person or entity  
24 designated, endorsed, or approved by the manufacturer, the dealer's  
25 relocation, remodeling, repair, or renovation of existing dealerships or  
26 construction of a new ~~facility~~ facility; the dealer's willingness or  
27 commitment to either establish or maintain exclusive facilities,  
28 personnel, or display space; the dealer's success in achieving certain  
29 scores or levels of customer satisfaction under a program or system for  
30 measuring customer satisfaction established or endorsed by the  
31 manufacturer; the dealer's willingness to provide loaner vehicles in  
32 whole or in part at the dealer's expense to customers who are having a  
33 vehicle serviced at the dealership; or upon the dealer's participation in  
34 training programs or employment or association of one or more  
35 consultants which are sponsored, endorsed, or recommended by the  
36 ~~manufacturer.~~ manufacturer, the payment for which is in any part the  
37 responsibility of the dealer.

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

42 Notwithstanding the foregoing, nothing in this subdivision shall be  
43 deemed to preclude a manufacturer from establishing sales contests or

1 promotions which provide or award dealers or consumers rebates or  
2 incentives.

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

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

18 (31) Notwithstanding the terms of any contract, franchise, agreement,  
19 release, or waiver, to require that in any civil or administrative  
20 proceeding in which a new motor vehicle dealer asserts any claims,  
21 rights, or defenses arising under this Article or under the franchise, that  
22 the dealer or any nonprevailing party compensate the manufacturer or  
23 prevailing party for any court costs, attorneys' fees, or other expenses  
24 incurred in the litigation.

25 (32) To require that any of its franchised new motor vehicle dealers located  
26 in this State pay any extra fee, purchase unreasonable or unnecessary  
27 quantities of advertising displays or other materials, or remodel,  
28 renovate, or recondition the dealers' existing facilities in order to receive  
29 any particular model or series of vehicles manufactured or distributed  
30 by the manufacturer for which the dealers have a valid franchise.  
31 Notwithstanding the foregoing, nothing contained in this subdivision  
32 shall be deemed to prohibit or prevent a manufacturer from requiring  
33 that its franchised dealers located in this State purchase special tools or  
34 equipment, stock reasonable quantities of certain parts, or participate in  
35 training programs which are reasonably necessary for those dealers to  
36 sell or service any model or series of vehicles.

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

41 (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in  
42 this State to participate monetarily in any training program whose  
43 subject matter is not expressly limited to specific information necessary

1           to sell or service the models of vehicles the dealer is authorized to sell  
2           or service under the dealer's franchise with that manufacturer.  
3           Examples of training programs with respect to which a manufacturer is  
4           prohibited from requiring the dealer's monetary participation include,  
5           but are not limited to, those which purport to teach morale-boosting  
6           employee motivation, teamwork, or general principles of customer  
7           relations. A manufacturer is further prohibited from requiring the  
8           personal attendance of an owner or dealer principal of any dealership  
9           located in this State at any meeting or training program at which it is  
10           reasonably possible for another member of the dealer's management to  
11           attend and later relate the subject matter of the meeting or training  
12           program to the dealership's owners or principal operator."

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

14           "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any  
15 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to  
16 perform any of its warranty obligations with respect to a motor vehicle, to fail to  
17 compensate its motor vehicle dealers licensed in this State for warranty parts other than  
18 parts used to repair the living facilities of recreational vehicles, at the prevailing retail  
19 rate according to the factors in subsection (a) of this section, or, in service in accordance  
20 with the schedule of compensation provided the dealer pursuant to subsection (a) above,  
21 and to fail to indemnify and hold harmless its franchised dealers licensed in this State  
22 against any judgment for damages or settlements agreed to by the manufacturer,  
23 including, but not limited to, court costs and reasonable attorneys' fees of the motor  
24 vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to,  
25 strict liability, negligence, misrepresentation, express or implied warranty, or rescision or  
26 revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the  
27 extent that the judgment or settlement relates to the alleged defective negligent  
28 manufacture, assembly or design of new motor vehicles, parts or accessories or other  
29 functions by the manufacturer, factory branch, distributor or distributor branch, beyond  
30 the control of the dealer. Any audit for warranty parts or service compensation shall only  
31 be for the 12-month period immediately following the date of the payment of the claim  
32 by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales  
33 incentives, service incentives, rebates, or other forms of incentive compensation shall  
34 only be for the ~~24-month~~ 12-month period immediately following the date of the payment  
35 of the claim by the manufacturer, factory branch, distributor, or distributor branch.  
36 Provided, however, these limitations shall not be effective in the case of fraudulent  
37 claims."

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

39           "(c) In the event there is a dispute between the manufacturer, factory branch,  
40 distributor, or distributor branch, and the dealer with respect to any matter referred to in  
41 ~~subsections~~ subsection (a), (b), ~~(b1)~~, or (d) of this section, either party may petition the  
42 Commissioner in writing, within 30 days after either party has given written notice of the  
43 dispute to the other, for a hearing on the subject and the decision of the Commissioner

1 shall be binding on the parties, subject to rights of judicial review and appeal as provided  
2 in Chapter 150B of the General Statutes; provided, however, that nothing contained  
3 herein shall give the Commissioner any authority as to the content of any manufacturer's  
4 or distributor's warranty. Upon the filing of a petition before the Commissioner under this  
5 subsection, any chargeback to or any payment required of a dealer by a manufacturer  
6 relating to warranty parts or service compensation, or to sales incentives, service  
7 incentives, rebates, or other forms of incentive compensation, shall be stayed during the  
8 pendency of the determination by the Commissioner."

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

10 **"§ 20-305.2. Unfair methods of competition.**

11 It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
12 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary  
13 or affiliated entity, own, own any ownership interest in, operate, or control any motor  
14 vehicle dealership in a relevant market area of this State already served by a motor vehicle  
15 dealer under a franchise for the same line make from such manufacturer, factory branch,  
16 distributor, or distributor branch, or subsidiary, in this State, provided that this section shall  
17 not be construed to prohibit (i) the operation by a manufacturer, factory branch,  
18 distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary  
19 period (not to exceed one year) during the transition from one owner or operator to  
20 another, or (ii) the ownership or control of a dealership by a manufacturer, factory  
21 branch, distributor, distributor branch, or subsidiary thereof, during a period while such  
22 dealership is being sold under a bona fide contract or purchase option to the operator of the  
23 dealership, while in a bona fide relationship with any independent person, other than a  
24 manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate  
25 thereof, who has made a significant investment that is subject to loss in the dealership and  
26 who can reasonably expect to acquire full ownership of the dealership within a  
27 reasonable period of time and on reasonable terms and conditions, or (iii) the ownership,  
28 operation or control of a dealership by a manufacturer, factory branch, distributor,  
29 distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor,  
30 distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles  
31 through such dealership for a continuous period of three years prior to March 16, 1973,  
32 and if the Commissioner determines, after a hearing on the matter at the request of any  
33 party, that there is no independent dealer available in the relevant market area to own and  
34 operate the franchise in a manner consistent with the public interest, or (iv) the  
35 ownership, operation, or control of a dealership by a manufacturer, factory branch,  
36 distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after  
37 a hearing on the matter at the request of any party, that there is no independent dealer  
38 available in the relevant market area to own and operate the franchise in a manner  
39 consistent with the public interest.

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

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

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