

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 939

Short Title: Combined MV Franchises.

(Public)

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Sponsors: Senator Sands.

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Referred to: Transportation.

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April 21, 1993

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE RIGHT OF MOTOR VEHICLE DEALERS IN NORTH  
CAROLINA TO COMBINE FRANCHISES AT A SINGLE LOCATION.

The General Assembly of North Carolina enacts:

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

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

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

- (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;
- (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) **(See note)** Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;

- 1           (4)   Notwithstanding the terms of any franchise agreement, to prevent or  
2           refuse to approve the sale or transfer of the ownership of a dealership  
3           by the sale of the business, stock transfer, or otherwise, or the transfer,  
4           sale or assignment of a dealer franchise, or a change in the executive  
5           management or principal operator of the dealership, or relocation of  
6           the dealership to another site within the dealership's relevant market  
7           area, if the Commissioner has determined, if requested in writing by  
8           the dealer within 30 days after receipt of an objection to the proposed  
9           transfer, sale, assignment, relocation, or change, and after a hearing on  
10          the matter, that the failure to permit or honor the transfer, sale,  
11          assignment, relocation, or change is unreasonable under the  
12          circumstances. No franchise may be transferred, sold, assigned,  
13          relocated, or the executive management or principal operators  
14          changed, unless the franchisor has been given at least 30 days' prior  
15          written notice as to the identity, financial ability, and qualifications of  
16          the proposed transferee, the identity and qualifications of the persons  
17          proposed to be involved in executive management or as principal  
18          operators, and the location and site plans of any proposed relocation.  
19          The franchisor shall send the dealership notice of objection, by  
20          registered or certified mail, return receipt requested, to the proposed  
21          transfer, sale, assignment, relocation, or change within 30 days after  
22          receipt of notice from the dealer, as provided in this section. Failure  
23          by the franchisor to send notice of objection within 30 days shall  
24          constitute waiver by the franchisor of any right to object to the  
25          proposed transfer, sale, assignment, relocation, or change. The  
26          manufacturer or distributor has the burden of proving that the proposed  
27          transfer, sale, assignment, relocation, or change is unreasonable under  
28          the circumstances.
- 29          (5)   To enter into a franchise establishing an additional new motor vehicle  
30          dealer or relocating an existing new motor vehicle dealer into a  
31          relevant market area where the same line make is then represented  
32          without first notifying in writing the Commissioner and each new  
33          motor vehicle dealer in that line make in the relevant market area of  
34          the intention to establish an additional dealer or to relocate an existing  
35          dealer within or into that market area. Within 30 days of receiving  
36          such notice or within 30 days after the end of any appeal procedure  
37          provided by the manufacturer, any new motor vehicle dealer may file  
38          with the Commissioner a protest to the establishing or relocating of the  
39          new motor vehicle dealer. When a protest is filed, the Commissioner  
40          shall promptly inform the manufacturer that a timely protest has been  
41          filed, and that the manufacturer shall not establish or relocate the  
42          proposed new motor vehicle dealer until the Commissioner has held a  
43          hearing, nor thereafter, if the Commissioner has determined that there

1 is good cause for not permitting the addition or relocation of such new  
2 motor vehicle dealer.

3 a. This section does not apply:

4 1. To the relocation of an existing new motor vehicle dealer  
5 within that dealer's relevant market area, provided that  
6 the relocation not be at a site within 10 miles of a  
7 licensed new motor vehicle dealer for the same line  
8 make of motor vehicle; or

9 2. If the proposed additional new motor vehicle  
10 dealer is to be established at or within two miles of a  
11 location at which a former licensed new motor vehicle  
12 dealer for the same line make of new motor vehicle  
13 had ceased operating within the previous two years;

14 3. To the relocation of an existing new motor  
15 vehicle dealer within two miles of the existing site of  
16 the new motor vehicle dealership;

17 4. To the relocation of an existing new motor  
18 vehicle dealer if the proposed site of the relocated new  
19 motor vehicle dealership is further away from all other  
20 new motor vehicle dealers of the same line make in  
21 that relevant market area.

22 b. In determining whether good cause has been established for not  
23 entering into or relocating an additional new motor vehicle  
24 dealer for the same line make, the Commissioner shall take into  
25 consideration the existing circumstances, including, but not  
26 limited to:

27 1. The permanency of the investment of both the existing  
28 and proposed additional new motor vehicle dealers;

29 2. Growth or decline in population, density of  
30 population, and new car registrations in the relevant  
31 market area;

32 3. Effect on the consuming public in the relevant  
33 market area;

34 4. Whether it is injurious or beneficial to the  
35 public welfare for an additional new motor vehicle  
36 dealer to be established;

37 5. Whether the new motor vehicle dealers of the  
38 same line make in that relevant market area are  
39 providing adequate competition and convenient  
40 customer care for the motor vehicles of the same line  
41 make in the market area which shall include the  
42 adequacy of motor vehicle sales and service facilities,  
43 equipment, supply of motor vehicle parts, and  
44 qualified service personnel;

1                                   6.       Whether the establishment of an additional  
2                                   new motor vehicle dealer or relocation of an existing  
3                                   new motor vehicle in the relevant market area would  
4                                   increase competition in a manner such as to be in the  
5                                   long-term public interest; and

6                                   7.       The effect on the relocating dealer of a denial  
7                                   of its relocation into the relevant market area.

- 8                   c.     The Commissioner must conduct the hearing and render his  
9                   final determination as expeditiously as possible, but in any  
10                  event no later than 180 days after a protest is filed. Unless  
11                  waived by the parties, failure to do so shall be deemed the  
12                  equivalent of a determination that good cause does not exist for  
13                  refusing to permit the proposed additional or relocated motor  
14                  vehicle dealer, unless such delay is caused by acts of the  
15                  manufacturer, or the relocating or additional dealer.
- 16                  d.     Any parties to a hearing by the Commissioner concerning the  
17                  establishment or relocating of a new motor vehicle dealer shall  
18                  have a right of review of the decision in a court of competent  
19                  jurisdiction pursuant to Chapter 150B of the General Statutes.
- 20                  e.     In a hearing involving a proposed additional dealership, the  
21                  manufacturer or distributor has the burden of proof under this  
22                  section. In a proceeding involving the relocation of an existing  
23                  dealership, the dealer seeking to relocate has the burden of  
24                  proof under this section.
- 25                  f.     If the Commissioner determines, following a hearing, that good  
26                  cause does not exist for refusing to permit the proposed  
27                  additional or relocated motor vehicle dealership, the dealer  
28                  seeking the proposed additional or relocated motor vehicle  
29                  dealership must, within two years, obtain a license from the  
30                  Commissioner for the sale of vehicles at the relevant site, and  
31                  actually commence operations at the site selling new motor  
32                  vehicles of all line makes, as permitted by the Commissioner.  
33                  Failure to obtain a permit and commence sales within two years  
34                  shall constitute waiver by the dealer of the dealer's right to the  
35                  additional or relocated dealership, requiring renotification, a  
36                  new hearing, and a new determination as provided in this  
37                  section.

38                  (6)    Notwithstanding the terms, provisions or conditions of any franchise  
39                  or notwithstanding the terms or provisions of any waiver, to terminate,  
40                  cancel or fail to renew any franchise with a licensed new motor vehicle  
41                  dealer unless the manufacturer has satisfied the notice requirements of  
42                  subparagraph c. and the Commissioner has determined, if requested in  
43                  writing by the dealer within the time period specified in G.S. 20-  
44                  305(6)c1II, III or IV, as applicable, and after a hearing on the matter,

1 that there is good cause for the termination, cancellation, or  
2 nonrenewal of the franchise and that the manufacturer has acted in  
3 good faith as defined in this act regarding the termination, cancellation  
4 or nonrenewal. When such a petition is made to the Commissioner by  
5 a dealer for determination as to the existence of good cause and good  
6 faith for the termination, cancellation or nonrenewal of a franchise, the  
7 Commissioner shall promptly inform the manufacturer that a timely  
8 petition has been filed, and the franchise in question shall continue in  
9 effect pending the Commissioner's decision. The Commissioner must  
10 conduct the hearing and render a final determination no later than 180  
11 days after a petition has been filed; provided, however, that the  
12 Commissioner may extend such period of time upon application of a  
13 party and for good cause shown, or upon the consent of all parties to  
14 the proceeding. If the termination, cancellation or nonrenewal is  
15 pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the  
16 proceeding priority consideration and shall render his final  
17 determination no later than 60 days after the petition has been filed.  
18 Any parties to a hearing by the Commissioner under this section shall  
19 have a right of review of the decision in a court of competent  
20 jurisdiction pursuant to Chapter 150B of the General Statutes.

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

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

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

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

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

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

9 b. The manufacturer shall have the burden of proof under this  
10 section.

11 c. Notification of Termination, Cancellation and  
12 Nonrenewal. –

13 1. Notwithstanding the terms, provisions or conditions of  
14 any franchise prior to the termination, cancellation or  
15 nonrenewal of any franchise, the manufacturer shall  
16 furnish notification of termination, cancellation or  
17 nonrenewal to the new motor vehicle dealer as follows:

18 I. In the manner described in G.S. 20-305(6)c2  
19 below; and

20 II. Not less than 90 days prior to the  
21 effective date of such termination, cancellation  
22 or nonrenewal; or

23 III. Not less than 15 days prior to the  
24 effective date of such termination, cancellation  
25 or nonrenewal with respect to any of the  
26 following:

27 A. Insolvency of the new motor vehicle  
28 dealer, or filing of any petition by or  
29 against the new motor vehicle dealer  
30 under any bankruptcy or receivership  
31 law;

32 B. Failure of the new motor vehicle  
33 dealer to conduct its customary sales and  
34 service operations during its customary  
35 business hours for seven consecutive  
36 business days, except for acts of God or  
37 circumstances beyond the direct control  
38 of the new motor vehicle dealer;

39 C. Revocation of any license which  
40 the new motor vehicle dealer is required  
41 to have to operate a dealership;

42 D. Conviction of a felony involving  
43 moral turpitude, under the laws of this

- 1 State or any other state, or territory, or  
2 the District of Columbia.
- 3 IV. Not less than 180 days prior to the effective date  
4 of such termination or cancellation where the  
5 manufacturer or distributor is discontinuing the  
6 sale of the product line.
- 7 2. Notification under this section shall be in writing; shall  
8 be by certified mail or personally delivered to the new  
9 motor vehicle dealer; and shall contain:
- 10 I. A statement of intention to terminate,  
11 cancel or not to renew the franchise;
- 12 II. A statement of the reasons for the  
13 termination, cancellation or nonrenewal; and
- 14 III. The date on which the termination,  
15 cancellation or nonrenewal takes effect.
- 16 3. Notification provided in G.S. 20-305(6)c1III of 90 days  
17 prior to the effective date of such termination,  
18 cancellation or renewal may run concurrent with the 180  
19 days designated in G.S. 20-305(6)a2II provided the  
20 notification is clearly designated by a separate written  
21 document mailed by certified mail or personally  
22 delivered to the new 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  
27 allowed fair and reasonable compensation by the  
28 manufacturer for 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  
32 manufacturer's price to the dealer, and which has  
33 not been altered or damaged, and which has not  
34 been driven more than 200 miles, and for which  
35 no certificate of title 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;
- 43 III. Equipment and furnishings that have  
44 not been altered or damaged and that have been

1 required by the manufacturer or distributor to be  
2 purchased by the new motor vehicle dealer from  
3 the manufacturer or distributor, or their  
4 approved sources; and

5 IV. Special tools that have not been altered  
6 or damaged and that have been required by the  
7 manufacturer or distributor to be purchased by  
8 the new motor vehicle dealer from the  
9 manufacturer or distributor, or their approved  
10 sources within five years immediately  
11 preceding the termination, nonrenewal or  
12 cancellation of the franchise.

- 13 2. Fair and reasonable compensation for the above shall be  
14 paid by the manufacturer within 90 days of the effective  
15 date of termination, cancellation or nonrenewal,  
16 provided the new motor vehicle dealer has clear title to  
17 the inventory and has conveyed title and possession to  
18 the manufacturer.

19 e. Dealership Facilities Assistance upon Termination,  
20 Cancellation or Nonrenewal. –

21 In the event of the termination, cancellation or nonrenewal by the  
22 manufacturer or distributor under this section, except termination,  
23 cancellation or nonrenewal for insolvency, license revocation,  
24 conviction of a crime involving moral turpitude, or fraud by a dealer-  
25 owner:

- 26 1. Subject to paragraph 3, if the new motor vehicle dealer is  
27 leasing the dealership facilities from a lessor other than  
28 the manufacturer, the manufacturer shall pay the new  
29 motor vehicle dealer a sum equivalent to the rent for the  
30 unexpired term of the lease or one year's rent, whichever  
31 is less, or such longer term as is provided in the franchise  
32 agreement between the dealer and manufacturer; or  
33 2. Subject to paragraph 3, if the new motor  
34 vehicle dealer owns the dealership facilities, the  
35 manufacturer shall pay the new motor vehicle dealer a  
36 sum equivalent to the reasonable rental value of the  
37 dealership facilities for one year.  
38 3. Provided nothing in this paragraph e. shall relieve a  
39 lessee or owner, as the case may be, from the obligation  
40 to mitigate damages under the lease, nor prevent a  
41 manufacturer from occupying and using the dealership  
42 facilities while paying rent under subsections 1 and 2,  
43 nor prevent a manufacturer from obligations by  
44 negotiating a lease termination, a sublease or a new



- 1 lease. Any amounts recovered by the lessee or owner  
2 resulting from mitigation of damages shall be deducted  
3 from the amount due from the manufacturer.
- 4 f. The provisions of paragraphs d. and e. above shall not be  
5 applicable when the termination, nonrenewal or cancellation of  
6 the franchise agreement is the result of the voluntary act of the  
7 dealer.
- 8 (7) Notwithstanding the terms of any franchise agreement, to prevent or  
9 refuse to honor the succession to a dealership by the designated family  
10 member as provided for under this subsection.
- 11 a. Any owner of a new motor vehicle dealership may appoint by  
12 will, or any other written instrument, a designated family  
13 member to succeed in the ownership interest of the said owner  
14 in the new motor vehicle dealership.
- 15 b. Unless there exists good cause for refusal to honor succession  
16 on the part of the manufacturer or distributor, any designated  
17 family member of a deceased or incapacitated owner of a new  
18 motor vehicle dealership may succeed to the ownership of the  
19 new motor vehicle dealership under the existing franchise  
20 provided that:
- 21 1. The designated family member gives the manufacturer or  
22 distributor written notice of his or her intention to  
23 succeed to the ownership of the new motor vehicle  
24 dealership within 60 days of the owner's death or  
25 incapacity; Provided, however, that the failure of the  
26 designated family member to give the manufacturer or  
27 distributor written notice as provided above within 60  
28 days of the owner's death or incapacity shall not result in  
29 the waiver or termination of the designated family  
30 member's right to succeed to the ownership of the new  
31 motor vehicle dealership unless the manufacturer or  
32 distributor gives written notice of this provision to either  
33 the designated family member or the deceased or  
34 incapacitated owner's executor, administrator, guardian  
35 or other fiduciary by certified or registered mail, return  
36 receipt requested, and said written notice grants not less  
37 than 30 days time within which the designated family  
38 member may give the notice required hereunder,  
39 provided the designated family member or the deceased  
40 or incapacitated owner's executor, administrator,  
41 guardian or other fiduciary has given the manufacturer  
42 reasonable notice of death or incapacity; and
- 43 2. The designated family member agrees to be bound by all  
44 terms and conditions of the franchise.

- 1 c. The manufacturer or distributor may request, and the designated  
2 family member shall provide, promptly upon said request,  
3 personal and financial data that is reasonably necessary to  
4 determine whether the succession should be honored.
- 5 d. If a manufacturer or distributor believes that good cause exists  
6 for refusing to honor the succession to the ownership of a new  
7 motor vehicle dealership by a family member of a deceased or  
8 incapacitated owner of a new motor vehicle dealership under  
9 the existing franchise agreement, the manufacturer or  
10 distributor may, not more than 60 days following receipt of:
- 11 1. Notice of the designated family member's intent to  
12 succeed to the ownership of the new motor vehicle  
13 dealer; or
  - 14 2. Any personal or financial data which it has requested,  
15 serve upon the designated family member and the  
16 Commissioner notice of its refusal to honor the  
17 succession and of its intent to discontinue the existing  
18 franchise with the dealer.
- 19 e. The notice must state the specific grounds for the refusal to  
20 honor the succession and of its intent to discontinue the existing  
21 franchise with the new motor vehicle dealer no sooner than 90  
22 days from the date such notice is served.
- 23 f. If notice of refusal and discontinuance is not timely served upon  
24 the family member, the franchise shall continue in effect subject  
25 to termination only as otherwise permitted by this act.
- 26 g. Within 30 days of receiving the manufacturer's or distributor's  
27 notice of its intent to discontinue the existing franchise as  
28 provided in subsection d. above, the designated family member  
29 may file a written protest of the manufacturer's or distributor's  
30 decision with the Commissioner. When such a protest is filed,  
31 the Commissioner shall promptly inform the manufacturer that  
32 a timely protest has been filed, and that the franchise shall  
33 continue in effect until the Commissioner has held a hearing,  
34 and thereafter, unless the Commissioner has determined that  
35 there is good cause for the manufacturer's or distributor's refusal  
36 to honor the succession. The Commissioner must conduct the  
37 hearing and render his final determination as expeditiously as  
38 possible, but in any event no later than 180 days after a protest  
39 is filed. Any parties to a hearing by the Commissioner  
40 concerning whether good cause exists for the refusal to honor  
41 the succession shall have a right of review of the decision in a  
42 court of competent jurisdiction pursuant to Chapter 150A of the  
43 General Statutes.

1 h. In determining whether good cause for the refusal to honor the  
2 succession exists, the manufacturer, distributor, factory branch,  
3 or importer has the burden of proving that the successor is a  
4 person who is not of good moral character or does not meet the  
5 franchisor's existing and reasonable standards and, considering  
6 the volume of sales and service of the new motor vehicle dealer,  
7 uniformly applied minimum business experience standards in  
8 the market area.

9 i. This section does not preclude the owner of a new motor  
10 vehicle dealership from designating any person as his successor  
11 by written instrument filed with the manufacturer or distributor,  
12 and, in the event there is a conflict between such written  
13 instrument and the provisions of this section, and that written  
14 instrument has not been revoked by the owner of the new motor  
15 vehicle dealership in writing to the manufacturer or distributor,  
16 then the written instrument shall govern.

17 (8) To require, coerce, or attempt to coerce any new motor vehicle dealer  
18 in this State to order or accept delivery of any new motor vehicle with  
19 special features, accessories or equipment not included in the list price  
20 of such motor vehicles as publicly advertised by the manufacturer or  
21 distributor.

22 (9) To require, coerce, or attempt to coerce any new motor vehicle dealer  
23 in this State to participate monetarily in an advertising campaign or  
24 contest, or to purchase unnecessary or unreasonable quantities of any  
25 promotional materials, training materials, training programs,  
26 showroom or other display decorations or materials at the expense of  
27 the new motor vehicle dealer, provided that nothing in this subsection  
28 shall preclude a manufacturer or distributor from including an  
29 unitemized uniform charge in the base price of the new motor vehicle  
30 charged to the dealer where such charge is attributable to advertising  
31 costs incurred or to be incurred by the manufacturer or distributor in  
32 the ordinary courses of its business.

33 (10) To require, coerce, or attempt to coerce any new motor vehicle dealer  
34 in this State to change the capital structure of the new motor vehicle  
35 dealer or the means by or through which the new motor vehicle dealer  
36 finances the operation of the dealership provided that the new motor  
37 vehicle dealer at all times meets any reasonable capital standards  
38 determined by the manufacturer in accordance with uniformly applied  
39 criteria; and also provided that no change in the capital structure shall  
40 cause a change in the principal management or have the effect of a sale  
41 of the franchise without the consent of the manufacturer or distributor,  
42 provided that said consent shall not be unreasonably withheld.

43 (11) To require, coerce, or attempt to coerce any new motor vehicle dealer  
44 in this State to refrain from participation in the management of,

1 investment in, or the acquisition of any other line of new motor vehicle  
2 or related products; Provided, however, that this subsection does not  
3 apply unless the new motor vehicle dealer maintains a reasonable line  
4 of credit for each make or line of new motor vehicle, and the new  
5 motor vehicle dealer remains in compliance with any reasonable  
6 capital standards and facilities requirements of the manufacturer. The  
7 reasonable facilities requirements shall not include any requirement  
8 that a new motor vehicle dealer establish or maintain exclusive  
9 facilities, personnel, or display space.

10 (12) To require, coerce, or attempt to coerce any new motor vehicle dealer  
11 in this State to change location of the dealership, or to make any  
12 substantial alterations to the dealership premises or facilities, when to  
13 do so would be unreasonable, or without written assurance of a  
14 sufficient supply of new motor vehicles so as to justify such an  
15 expansion, in light of the current market and economic conditions.

16 (13) To require, coerce, or attempt to coerce any new motor vehicle dealer  
17 in this State to prospectively assent to a release, assignment, novation,  
18 waiver or estoppel which would relieve any person from liability to be  
19 imposed by this law or to require any controversy between a new  
20 motor vehicle dealer and a manufacturer, distributor, or representative,  
21 to be referred to any person other than the duly constituted courts of  
22 the State or the United States of America, or to the Commissioner, if  
23 such referral would be binding upon the new motor vehicle dealer.

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

- 1 (15) To refuse to disclose to any new motor vehicle dealer, handling the  
2 same line make, the manner and mode of distribution of that line make  
3 within the State.
- 4 (16) To award money, goods, services, or any other benefit to any new  
5 motor vehicle dealership employee, either directly or indirectly, unless  
6 such benefit is promptly accounted for, and transmitted to, or approved  
7 by, the new motor vehicle dealer.
- 8 (17) To increase prices of new motor vehicles which the new motor vehicle  
9 dealer had ordered and which the manufacturer or distributor has  
10 accepted for immediate delivery for private retail consumers prior to  
11 the new motor vehicle dealer's receipt of the written official price  
12 increase notification. A sales contract signed by a private retail  
13 consumer shall constitute evidence of each such order provided that  
14 the vehicle is in fact delivered to that customer. Price differences  
15 applicable to new model or series shall not be considered a price  
16 increase or price decrease. Price changes caused by either: (i) the  
17 addition to a new motor vehicle of required or optional equipment; or  
18 (ii) revaluation of the United States dollar, in the case of foreign-make  
19 vehicles or components; or (iii) an increase in transportation charges  
20 due to increased rates imposed by carriers; or (iv) new tariffs or duties  
21 imposed by the United States of America or any other governmental  
22 authority, shall not be subject to the provisions of this subsection.
- 23 (18) To prevent or attempt to prevent a dealer from receiving fair and  
24 reasonable compensation for the value of the franchised business  
25 transferred in accordance with G.S. 20-305(4) above.
- 26 (19) To offer any refunds or other types of inducements to any person for  
27 the purchase of new motor vehicles of a certain line make to be sold to  
28 the State or any political subdivision thereof without making the same  
29 offer available upon request to all other new motor vehicle dealers in  
30 the same line make within the State.
- 31 (20) To release to any outside party, except under subpoena or as otherwise  
32 required by law or in an administrative, judicial or arbitration  
33 proceeding involving the manufacturer or new motor vehicle dealer,  
34 any confidential business, financial, or personal information which  
35 may be from time to time provided by the new motor vehicle dealer to  
36 the manufacturer, without the express written consent of the new  
37 motor vehicle dealer.
- 38 (21) To deny any new motor vehicle dealer the right of free association  
39 with any other new motor vehicle dealer for any lawful purpose.
- 40 (22) To unfairly discriminate among its new motor vehicle dealers with  
41 respect to warranty reimbursements or authority granted its new motor  
42 vehicle dealers to make warranty adjustments with retail customers.
- 43 (23) To engage in any predatory practice against or unfairly compete with a  
44 new motor vehicle dealer located in this State.

- 1 (24) To terminate any franchise solely because of the death or incapacity of  
2 an owner who is not listed in the franchise as one on whose expertise  
3 and abilities the manufacturer relied in the granting of the franchise.
- 4 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in  
5 this State to either establish or maintain exclusive facilities, personnel,  
6 or display space when such requirements would not be justified by  
7 reasonable business considerations. space.
- 8 (26) To resort to or to use any false or misleading advertisement in the  
9 conducting of its business as a manufacturer or distributor in this State.
- 10 (27) To knowingly make, either directly or through any agent or employee,  
11 any material statement which is false or misleading and which induces  
12 any new motor vehicle dealer to enter into any agreement or franchise  
13 or to take any action which is materially prejudicial to that new motor  
14 vehicle dealer or his business.
- 15 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer  
16 to purchase or order any new motor vehicle as a precondition to  
17 purchasing, ordering, or receiving any other new motor vehicle or  
18 vehicles. Nothing herein shall prevent a manufacturer from requiring  
19 that a new motor vehicle dealer fairly represent and inventory the full  
20 line of new motor vehicles which are covered by the franchise  
21 agreement."

22 Sec. 2. This act shall not apply to manufacturers of or dealers in mobile or  
23 manufactured type housing or recreational trailers.

24 Sec. 3. This act becomes effective July 1, 1993.