

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 939
Transportation Committee Substitute Adopted 5/11/93

Short Title: Combined MV Franchises.

(Public)

Sponsors:

Referred to:

April 21, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE RIGHT OF MOTOR VEHICLE DEALERS IN NORTH
3 CAROLINA TO COMBINE FRANCHISES AT A SINGLE LOCATION.

4 The General Assembly of North Carolina enacts:

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

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

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

- 13 (1) To require, coerce, or attempt to coerce any dealer to accept delivery
14 of any motor vehicle or vehicles, parts or accessories therefor, or any
15 other commodities, which shall not have been ordered by such dealer;
- 16 (2) To require, coerce, or attempt to coerce any dealer to enter into any
17 agreement with such manufacturer, factory branch, distributor, or
18 distributor branch, or representative thereof, or do any other act unfair
19 to such dealer, by threatening to cancel any franchise existing between
20 such manufacturer, factory branch, distributor, distributor branch, or
21 representative thereof, and such dealer;
- 22 (3) (**See note**) Unfairly without due regard to the equities of the dealer,
23 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, when such requirements, or any
10 of them, would be unreasonable in light of current economic
11 conditions and would not otherwise be justified by reasonable business
12 considerations.

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

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

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

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

- 1 (23) To engage in any predatory practice against or unfairly compete with a
2 new motor vehicle dealer located in this State.
- 3 (24) To terminate any franchise solely because of the death or incapacity of
4 an owner who is not listed in the franchise as one on whose expertise
5 and abilities the manufacturer relied in the granting of the franchise.
- 6 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in
7 this State to either establish or maintain exclusive facilities, personnel,
8 or display space ~~when such requirements would not be justified by~~
9 ~~reasonable business considerations.~~ space, when such requirements, or
10 any of them, would be unreasonable in light of current economic
11 conditions and would not otherwise be justified by reasonable business
12 considerations.
- 13 (26) To resort to or to use any false or misleading advertisement in the
14 conducting of its business as a manufacturer or distributor in this State.
- 15 (27) To knowingly make, either directly or through any agent or employee,
16 any material statement which is false or misleading and which induces
17 any new motor vehicle dealer to enter into any agreement or franchise
18 or to take any action which is materially prejudicial to that new motor
19 vehicle dealer or his business.
- 20 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer
21 to purchase or order any new motor vehicle as a precondition to
22 purchasing, ordering, or receiving any other new motor vehicle or
23 vehicles. Nothing herein shall prevent a manufacturer from requiring
24 that a new motor vehicle dealer fairly represent and inventory the full
25 line of new motor vehicles which are covered by the franchise
26 agreement."
- 27 Sec. 2. This act shall not apply to manufacturers of or dealers in mobile or
28 manufactured type housing or recreational trailers.
- 29 Sec. 3. This act becomes effective July 1, 1993.