

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 913
Commerce Committee Substitute Adopted 5/12/09
House Committee Substitute Favorable 6/25/09

Short Title: Clarify MV Franchise Laws/Termination Assist.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS
LICENSING LAWS AND DEALER TERMINATION ASSISTANCE RIGHTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-305(4) reads as rewritten:

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

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

...

- (4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, the relocation or addition of a different line-make franchise to the dealership facility, or the relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, addition, relocation, or other change is unreasonable under the circumstances; fails to meet the standards specified in this section. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the proposed transferee's name and address, financial ability, and qualifications of the proposed transferee, a copy of the purchase agreement between the dealership and the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed addition of a different line-make or relocation. The franchisor shall send the dealership and the proposed transferee notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, addition of a different line-make, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this



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1 section. The notice of objection shall state in detail all factual and legal bases
2 for the objection on the part of the franchisor to the proposed transfer, sale,
3 assignment, addition of a different line-make, relocation, or change that is
4 specifically referenced in this subdivision. An objection to a proposed
5 transfer, sale, assignment, addition of a different line-make, relocation, or
6 change in the executive management or principal operator of the dealership
7 may only be premised upon the factual and legal bases specifically
8 referenced in this subdivision. A manufacturer's notice of objection which is
9 based upon factual or legal issues that are not specifically referenced in this
10 subdivision as being issues upon which the Commissioner shall base his
11 determination shall not be effective to preserve the franchisor's right to
12 object to the proposed transfer sale, assignment, relocation, or change,
13 provided the dealership or proposed transferee has submitted written notice,
14 as required above, as to the proposed transferee's name and address,
15 financial ability, and qualifications of the proposed transferee, a copy of the
16 purchase agreement between the dealership and the proposed transferee, the
17 identity and qualifications of the persons proposed to be involved in the
18 executive management or as principal operators, and the location and site
19 plans of any proposed addition of a different line-make or relocation. Failure
20 by the franchisor to send notice of objection within 30 days shall constitute
21 waiver by the franchisor of any right to object to the proposed transfer, sale,
22 assignment, addition of a different line-make, relocation, or change. If the
23 franchisor requires additional information to complete its review, the
24 franchisor shall notify the dealership within 15 days after receipt of the
25 proposed transferee's name and address, financial ability, and qualifications,
26 a copy of the purchase agreement between the dealership and the proposed
27 transferee, the identity and qualifications of the persons proposed to be
28 involved in executive management or as principal operators, and the location
29 and site plans of any proposed addition of a different line-make or
30 relocation. If the franchisor fails to request additional information from the
31 dealer or proposed transferee within 15 days of receipt of this initial
32 information, the 30-day time period within which the franchisor may provide
33 notice of objection shall be deemed to run from the initial receipt date.
34 Otherwise, the 30-day time period within which the franchisor may provide
35 notice of objection shall run from the date the franchisor has received the
36 supplemental information requested from the dealer or proposed transferee;
37 provided, however, that failure by the franchisor to send notice of objection
38 within 60 days of the franchisor's receipt of the initial information from the
39 dealer shall constitute waiver by the franchisor of any right to object to the
40 proposed transfer, sale, assignment, relocation, or change. With respect to a
41 proposed transfer of ownership, sale, or assignment, the sole issue for
42 determination by the Commissioner and the sole issue upon which the
43 Commissioner shall hear or consider evidence is whether, by reason of lack
44 of good moral character, lack of general business experience, or lack of
45 financial ability, the proposed transferee is unfit to own the dealership. For
46 purposes of this subdivision, the refusal by the manufacturer to accept a
47 proposed transferee who is of good moral character and who otherwise
48 meets the written, reasonable, and uniformly applied business experience
49 and financial requirements, if any, required by the manufacturer of owners
50 of its franchised automobile dealerships is presumed to demonstrate the
51 manufacturer's failure to prove that the proposed transferee is unfit to own

1 the dealership. With respect to a proposed change in the executive
2 management or principal operator of the dealership, the sole issue for
3 determination by the Commissioner and the sole issue on which the
4 Commissioner shall hear or consider evidence shall be whether, by reason of
5 lack of training, lack of prior experience, poor past performance, or poor
6 character, the proposed candidate for a position within the executive
7 management or as principal operator of the dealership is unfit for the
8 position. For purposes of this subdivision, the refusal by the manufacturer to
9 accept a proposed candidate for executive management or as principal
10 operator who is of good moral character and who otherwise meets the
11 written, reasonable, and uniformly applied standards or qualifications, if any,
12 of the manufacturer relating to the business experience and prior
13 performance of executive management required by the manufacturers of its
14 dealers is presumed to demonstrate the manufacturer's failure to prove the
15 proposed candidate for executive management or as principal operator is
16 unfit to serve the capacity. With respect to a proposed addition or relocation
17 of a different line-make franchise to the dealership facility, the only issues
18 for determination by the Commissioner are whether the dealership's sales,
19 service, and parts facilities would be sufficient to handle the reasonably
20 expected demands of the multifranchise dealership and whether the
21 dealership possesses sufficient working capital and line of credit to handle
22 the reasonably expected needs of the multifranchise facility. With respect to
23 a proposed relocation or other proposed change, the issue for determination
24 by the Commissioner is whether the proposed relocation or other change is
25 unreasonable under the circumstances. For purposes of this subdivision, the
26 refusal by the manufacturer to agree to a proposed relocation which meets
27 the written, reasonable, and uniformly applied standards or criteria, if any, of
28 the manufacturer relating to dealer relocations is presumed to demonstrate
29 that the manufacturer's failure to prove the proposed relocation is
30 unreasonable under the circumstances. The manufacturer shall have the
31 burden of proof before the Commissioner under this subdivision. It is
32 unlawful for a manufacturer to, in any way, condition its approval of a
33 proposed transfer, sale, assignment, change in the dealer's executive
34 management, principal operator, or appointment of a designated successor,
35 on the existing or proposed dealer's willingness to construct a new facility,
36 renovate the existing facility, acquire or refrain from acquiring one or more
37 line-makes of vehicles, separate or divest one or more line-makes of vehicle,
38 or establish or maintain exclusive facilities, personnel, or display space. It is
39 unlawful for a manufacturer to, in any way, condition its approval of a
40 proposed relocation on the existing or proposed dealer's willingness to
41 acquire or refrain from acquiring one or more line-makes of vehicles,
42 separate or divest one or more line-makes of vehicle, or establish or maintain
43 exclusive facilities, personnel, or display space. The opinion or
44 determination of a franchisor that the continued existence of one of its
45 franchised dealers situated in this State is not viable, or that the dealer holds
46 or fails to hold licensing rights for the sale of other line-makes of vehicles in
47 a manner consistent with the franchisor's existing or future distribution or
48 marketing plans, shall not constitute a lawful basis for the franchisor to fail
49 or refuse to approve a dealer's proposed relocation: provided, however, that
50 nothing contained in this subdivision shall be deemed to prevent or prohibit
51 a franchisor from failing to approve a dealer's proposed relocation on

1 grounds that the specific site or facility proposed by the dealer is otherwise
2 unreasonable under the circumstances. Approval of a relocation pursuant to
3 this subdivision shall not in itself constitute the franchisor's representation or
4 assurance of the dealer's viability at that location."

5 **SECTION 2.** G.S. 20-305(28) reads as rewritten:

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

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

11 ...

12 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
13 purchase or order any new motor vehicle as a precondition to purchasing,
14 ordering, or receiving any other new motor vehicle or vehicles. Nothing
15 herein shall prevent a manufacturer from requiring that a new motor vehicle
16 dealer fairly represent and inventory the full line current model year new
17 motor vehicles which are covered by the franchise ~~agreement~~agreement,
18 provided that such inventory representation requirements are not
19 unreasonable under the circumstances."

20 **SECTION 3.** G.S. 20-305(30) reads as rewritten:

21 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
22 **franchise; preventing transfer of ownership; granting additional franchises;**
23 **terminating franchises without good cause; preventing family succession.**

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

26 ...

27 (30) To vary the price charged to any of its franchised new motor vehicle dealers
28 located in this State for new motor vehicles based on the dealer's purchase of
29 new facilities, supplies, tools, equipment, or other merchandise from the
30 manufacturer, the dealer's relocation, remodeling, repair, or renovation of
31 existing dealerships or construction of a new facility, the dealer's
32 participation in training programs sponsored, endorsed, or recommended by
33 the manufacturer, whether or not the dealer is dualled with one or more other
34 line makes of new motor vehicles, or the dealer's sales penetration. Except as
35 provided in this subdivision, it shall be unlawful for any manufacturer,
36 factory branch, distributor, or distributor branch, or any field representative,
37 officer, agent, or any representative whatsoever of any of them to vary the
38 price charged to any of its franchised new motor vehicle dealers located in
39 this State for new motor vehicles based on the dealer's sales volume, the
40 dealer's level of sales or customer service satisfaction, the dealer's purchase
41 of advertising materials, signage, nondiagnostic computer hardware or
42 software, communications devices, or furnishings, or the dealer's
43 participation in used motor vehicle inspection or certification programs
44 sponsored or endorsed by the manufacturer.

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

49 Notwithstanding the foregoing, nothing in this subdivision shall be
50 deemed to preclude a manufacturer from establishing sales contests or
51 promotions that provide or award dealers or consumers rebates or incentives;

1 provided, however, that the manufacturer complies with all of the following
2 conditions:

- 3 a. With respect to manufacturer to consumer rebates and incentives, the
4 manufacturer's criteria for determining eligibility shall:
- 5 1. Permit all of the manufacturer's franchised new motor vehicle
6 dealers in this State to offer the rebate or incentive; and
 - 7 2. Be uniformly applied and administered to all eligible
8 consumers.
- 9 b. With respect to manufacturer to dealer rebates and incentives, the
10 rebate or incentive program shall:
- 11 1. Be based solely on the dealer's actual or reasonably
12 anticipated sales volume or on a uniform per vehicle sold or
13 leased basis;
 - 14 2. Be uniformly available, applied, and administered to all of the
15 manufacturer's franchised new motor vehicle dealers in this
16 State; and
 - 17 3. Provide that any of the manufacturer's franchised new motor
18 vehicle dealers in this State may, upon written request, obtain
19 the method or formula used by the manufacturer in
20 establishing the sales volumes for receiving the rebates or
21 incentives and the specific calculations for determining the
22 required sales volumes of the inquiring dealer and any of the
23 manufacturer's other franchised new motor vehicle dealers
24 located within 75 miles of the inquiring dealer.

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

30 It is unlawful for any manufacturer to charge or include the cost of any
31 program or policy prohibited under this subdivision in the price of new
32 motor vehicles that the manufacturer sells to its franchised dealers or
33 purchasers located in this State.

34 In the event that as of October 1, 1999, a manufacturer was operating a
35 program that varied the price charged to its franchised dealers in this State in
36 a manner that would violate this subdivision, or had in effect a documented
37 policy that had been conveyed to its franchised dealers in this State and that
38 varied the price charged to its franchised dealers in this State in a manner
39 that would violate this subdivision, it shall be lawful for that program or
40 policy, including amendments to that program or policy that are consistent
41 with the purpose and provisions of the existing program or policy, or a
42 program or policy similar thereto implemented after October 1, 1999, to
43 continue in effect as to the manufacturer's franchised dealers located in this
44 State until June 30, ~~2010~~2014.

45 In the event that as of June 30, 2001, a manufacturer was operating a
46 program that varied the price charged to its franchised dealers in this State in
47 a manner that would violate this subdivision, or had in effect a documented
48 policy that had been conveyed to its franchised dealers in this State and that
49 varied the price charged to its franchised dealers in this State in a manner
50 that would violate this subdivision, and the program or policy was
51 implemented in this State subsequent to October 1, 1999, and prior to June

1 30, 2001, and provided that the program or policy is in compliance with this
2 subdivision as it existed as of June 30, 2001, it shall be lawful for that
3 program or policy, including amendments to that program or policy that
4 comply with this subdivision as it existed as of June 30, 2001, to continue in
5 effect as to the manufacturer's franchised dealers located in this State until
6 June 30, ~~2010~~2014.

7 Any manufacturer shall be required to pay or otherwise compensate any
8 franchise dealer who has earned the right to receive payment or other
9 compensation under a program in accordance with the manufacturer's
10 program or policy.

11 The provisions of this subdivision shall not be applicable to multiple or
12 repeated sales of new motor vehicles made by a new motor vehicle dealer to
13 a single purchaser under a bona fide fleet sales policy of a manufacturer,
14 factory branch, distributor, or distributor branch."

15 **SECTION 4.** G.S. 20-305.1 is amended by adding a new subsection to read:

16 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any
17 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to
18 take or threaten to take any adverse action against a dealer located in this State, or to otherwise
19 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a
20 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold
21 the vehicle to a third party, unless the dealer knew or reasonably should have known that the
22 customer intended to export or resell the motor vehicle prior to the customer's purchase of the
23 vehicle from the dealer. The conduct prohibited under this subsection includes, but is not
24 limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver
25 motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of
26 vehicles; or (iii) charging back or withholding payments or other compensation or
27 consideration for which a dealer is otherwise eligible for warranty reimbursement or under a
28 sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from
29 participating in or discrimination against any dealer relating to any sales promotion, incentive
30 program, or contest; or (v) termination of a franchise. In any proceeding brought pursuant to
31 this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's
32 purchase of the vehicle, did not know nor should have reasonably known that the customer
33 intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled,
34 registered, and, where applicable, taxes paid in any state or territory within the United States in
35 the name of a customer who was physically present at the dealership at or prior to the time of
36 sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle
37 would be shipped to a foreign country."

38 **SECTION 5.** G.S. 20-305.1 is amended by adding a new subsection to read:

39 "(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to
40 a motor vehicle manufacturer shall also apply to a component parts manufacturer. For
41 purposes of this section, a component parts manufacturer means a person, resident, or
42 nonresident of this State who manufactures or assembles new motor vehicle "component parts"
43 and directly warrants the component parts to the consumer. For purposes of this section,
44 component parts means an engine, power train, rear axle, or other part of a motor vehicle that is
45 not warranted by the final manufacturer of the motor vehicle."

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

47 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**
48 **franchise; preventing transfer of ownership; granting additional franchises;**
49 **terminating franchises without good cause; preventing family succession.**

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

1 ...
2 (6) Notwithstanding the terms, provisions or conditions of any franchise or
3 notwithstanding the terms or provisions of any waiver, to terminate, cancel
4 or fail to renew any franchise with a licensed new motor vehicle dealer
5 unless the manufacturer has satisfied the notice requirements of
6 subparagraph c. and the Commissioner has determined, if requested in
7 writing by the dealer within (i) the time period specified in
8 G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of
9 the franchise termination specified or proposed by the manufacturer in the
10 notice of termination, whichever period of time is longer, and after a hearing
11 on the matter, that there is good cause for the termination, cancellation, or
12 nonrenewal of the franchise and that the manufacturer has acted in good
13 faith as defined in this act regarding the termination, cancellation or
14 nonrenewal. When such a petition is made to the Commissioner by a dealer
15 for determination as to the existence of good cause and good faith for the
16 termination, cancellation or nonrenewal of a franchise, the Commissioner
17 shall promptly inform the manufacturer that a timely petition has been filed,
18 and the franchise in question shall continue in effect pending the
19 Commissioner's decision. The Commissioner shall try to conduct the hearing
20 and render a final determination within 180 days after a petition has been
21 filed. If the termination, cancellation or nonrenewal is pursuant to
22 G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding
23 priority consideration and shall try to render his final determination no later
24 than 90 days after the petition has been filed. Any parties to a hearing by the
25 Commissioner under this section shall have a right of review of the decision
26 in a court of competent jurisdiction pursuant to Chapter 150B of the General
27 Statutes. Any determination of the Commissioner under this section finding
28 that good cause exists for the nonrenewal, cancellation, or termination of any
29 franchise shall automatically be stayed during any period that the affected
30 dealer shall have the right to judicial review or appeal of the determination
31 before the superior court or any other appellate court and during the
32 pendency of any appeal; provided, however, that within 30 days of entry of
33 the Commissioner's order, the affected dealer provide such security as the
34 reviewing court, in its discretion, may deem appropriate for payment of such
35 costs and damages as may be incurred or sustained by the manufacturer by
36 reason of and during the pendency of the stay. Although the right of the
37 affected dealer to such stay is automatic, the procedure for providing such
38 security and for the award of damages, if any, to the manufacturer upon
39 dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and
40 (e). No such security provided by or on behalf of any affected dealer shall be
41 forfeited or damages awarded against a dealer who obtains a stay under this
42 subdivision in the event the ownership of the affected dealership is
43 subsequently transferred, sold, or assigned to a third party in accordance
44 with this subdivision or subdivision (4) of this section and the closing on
45 such transfer, sale, or assignment occurs no later than 180 days after the date
46 of entry of the Commissioner's order. Furthermore, unless and until the
47 termination, cancellation, or nonrenewal of a dealer's franchise shall finally
48 become effective, in light of any stay or any order of the Commissioner
49 determining that good cause exists for the termination, cancellation, or
50 nonrenewal of a dealer's franchise as provided in this paragraph, a dealer
51 who receives a notice of termination, cancellation, or nonrenewal from a

1 manufacturer as provided in this subdivision shall continue to have the same
2 rights to assign, sell, or transfer the franchise to a third party under the
3 franchise and as permitted under G.S. 20-305(4) as if notice of the
4 termination had not been given by the manufacturer. Any franchise under
5 notice or threat of termination, cancellation, or nonrenewal by the
6 manufacturer which is duly transferred in accordance with G.S. 20-305(4)
7 shall not be subject to termination by reason of failure of performance or
8 breaches of the franchise on the part of the transferor.

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

12 1. There is a failure by the new motor vehicle dealer to comply
13 with a provision of the franchise which provision is both
14 reasonable and of material significance to the franchise
15 relationship provided that the dealer has been notified in
16 writing of the failure within 180 days after the manufacturer
17 first acquired knowledge of such failure;

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

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

27 II. The new motor vehicle dealer was afforded a
28 reasonable opportunity, for a period of not less than
29 180 days, to comply with the criteria; and

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

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

38 c. Notification of Termination, Cancellation and Nonrenewal. –

39 1. Notwithstanding the terms, provisions or conditions of any
40 franchise prior to the termination, cancellation or nonrenewal
41 of any franchise, the manufacturer shall furnish notification
42 of termination, cancellation or nonrenewal to the new motor
43 vehicle dealer as follows:

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

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

48 III. Not less than 15 days prior to the effective date of
49 such termination, cancellation or nonrenewal with
50 respect to any of the following:

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- A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
- IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.
- V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
- I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in

1 G.S. 20-305(6)a2II provided the notification is clearly
2 designated by a separate written document mailed by certified
3 mail or personally delivered to the new motor vehicle dealer.

4 d. Payments.

5 1. ~~Notwithstanding the terms of any franchise, agreement, or~~
6 ~~waiver, upon~~ Upon the termination, nonrenewal or
7 cancellation of any franchise by the manufacturer or
8 distributor, ~~pursuant to this section,~~ the cessation of business
9 or the termination, nonrenewal, or cancellation of any
10 franchise by any new motor vehicle dealer located in this
11 State, or upon any of the occurrences set forth in
12 G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall
13 purchase from and compensate the new motor vehicle dealer
14 shall be allowed fair and reasonable compensation by the
15 manufacturer for the all of the following:

16 I. ~~New~~ Each new and unsold motor vehicle within the
17 new motor vehicle dealer's inventory that has been
18 acquired from the manufacturer within 24 months of
19 the effective date of the termination 18 months, at a
20 price not to exceed the original manufacturer's price to
21 the dealer, and from the manufacturer or distributor or
22 another same line-make dealer in the ordinary course
23 of business, and which has not been substantially
24 altered or ~~damaged,~~ damaged to the prejudice of the
25 manufacturer or distributor while in the new motor
26 vehicle dealer's possession, and which has ~~not~~ been
27 driven ~~more~~ less than 200 miles, 1,000 miles or, for
28 purposes of a recreational vehicle motor home as
29 defined in G.S. 20-4.01(32a)a., less than 1,500 miles
30 following the original date of delivery to the dealer,
31 and for which no certificate of title has been
32 issued; issued. For purposes of this sub-subdivision,
33 the term "ordinary course of business" shall include
34 inventory transfers of all new, same line-make
35 vehicles between affiliated dealerships, or otherwise
36 between dealerships having common or interrelated
37 ownership.

38 II. Unused, undamaged and unsold supplies and parts
39 purchased from the manufacturer or distributor or
40 sources approved by the manufacturer or distributor,
41 at a price not to exceed the original manufacturer's
42 price to the dealer, provided such supplies and parts
43 are currently offered for sale by the manufacturer or
44 distributor in its current parts catalogs and are in
45 salable ~~condition;~~ condition.

46 III. Equipment, signs, and furnishings that have not been
47 substantially altered or damaged and that have been
48 required by the manufacturer or distributor to be
49 purchased by the new motor vehicle dealer from the
50 manufacturer or distributor, or their approved ~~sources;~~
51 and sources.

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- IV. Special tools that have not been altered or damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.
2. ~~Fair and reasonable compensation for the~~ The compensation provided above shall be paid by the manufacturer or distributor within not later than 90 days of the effective date of termination, cancellation or nonrenewal, after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has has, or can obtain, clear title to the inventory and has conveyed conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations of the manufacturer or distributor under this sub-subparagraph. The manufacturer or distributor shall also compensate the dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.
3. In addition to the other payments set forth in this section, if a termination, cancellation, or nonrenewal is premised upon any of the occurrences set forth in

1 ~~G.S. 20-305(6)c.1.IV.,~~ G.S. 20-305(6)c.1.IV. or
2 G.S. 20-305(6)f., then the manufacturer or distributor shall be
3 liable to the dealer for an amount at least equivalent to the fair
4 market value of the franchise on (i) the date the franchisor
5 announces the action which results in termination,
6 cancellation, or nonrenewal; or (ii) the date the action which
7 results in termination, cancellation, or nonrenewal first
8 became general knowledge; or (iii) the day 12 months prior to
9 the date on which the notice of termination, cancellation, or
10 nonrenewal is issued, whichever amount is higher. Payment is
11 due ~~within not later than 90 days of the effective date of the~~
12 ~~termination, cancellation, or nonrenewal after the~~
13 manufacturer or distributor has received notice in writing
14 from, or on behalf of, the new motor vehicle dealer specifying
15 the elements of compensation requested by the dealer. If the
16 termination, cancellation, or nonrenewal is due to a
17 manufacturer's change in distributors, the manufacturer may
18 avoid paying fair market value to the dealer if the new
19 distributor or the manufacturer offers the dealer a franchise
20 agreement with terms acceptable to the dealer.

- 21 e. Dealership Facilities Assistance upon Termination, Cancellation or
22 Nonrenewal.

23 In the event of the occurrence of any of the events specified in
24 G.S. 20-305(6)d.1. above, termination, cancellation or nonrenewal by
25 ~~the manufacturer or distributor under this section,~~ except termination,
26 cancellation or nonrenewal for ~~insolvency,~~ license revocation,
27 conviction of a crime involving moral turpitude, or fraud by a
28 dealer-owner:

- 29 1. Subject to paragraph 3, if the new motor vehicle dealer is
30 leasing the dealership facilities from a lessor other than the
31 manufacturer or distributor, the manufacturer or distributor
32 shall pay the new motor vehicle dealer a sum equivalent to
33 the rent for the unexpired term of the lease or three year's
34 rent, whichever is less, or such longer term as is provided in
35 the franchise agreement between the dealer and manufacturer;
36 except that, in the case of motorcycle dealerships, the
37 manufacturer shall pay the new motor vehicle dealer the sum
38 equivalent to the rent for the unexpired term of the lease or
39 one year's rent, whichever is less, or such longer term as
40 provided in the franchise agreement between the dealer and
41 manufacturer; or
- 42 2. Subject to paragraph 3, if the new motor vehicle dealer owns
43 the dealership facilities, the manufacturer or distributor shall
44 pay the new motor vehicle dealer a sum equivalent to the
45 reasonable rental value of the dealership facilities for three
46 years, or for one year in the case of motorcycle dealerships.
- 47 3. In order to be entitled to facilities assistance from the
48 manufacturer or distributor, as provided in this paragraph e.,
49 the dealer, owner, or lessee, as the case may be, shall have the
50 obligation to mitigate damages by listing the demised
51 premises for lease or sublease with a licensed real estate agent

- 1 within 30 days after the effective date of the termination of
2 the franchise and thereafter by reasonably cooperating with
3 said real estate agent in the performance of the agent's duties
4 and responsibilities. In the event that the dealer, owner, or
5 lessee is able to lease or sublease the demised premises, the
6 dealer shall be obligated to pay the manufacturer the net
7 revenue received from such mitigation up to the total amount
8 of facilities assistance which the dealer has received from the
9 manufacturer pursuant to sub-subdivisions 1. and 2. To the
10 extent and for such uses and purposes as may be consistent
11 with the terms of the lease, a manufacturer who pays facilities
12 assistance to a dealer under this paragraph e. shall be entitled
13 to occupy and use the dealership facilities during the years for
14 which the manufacturer shall have paid rent under
15 sub-subdivisions 1. and 2.
- 16 4. In the event the termination relates to fewer than all of the
17 franchises operated by the dealer at a single location, the
18 amount of facilities assistance which the manufacturer or
19 distributor is required to pay the dealer under this
20 sub-subdivision shall be based on the proportion of gross
21 revenue received from the sale and lease of new vehicles by
22 the dealer and from the dealer's parts and service operations
23 during the three years immediately preceding the effective
24 date of the termination (or any shorter period that the dealer
25 may have held these franchises) of the line-makes being
26 terminated, in relation to the gross revenue received from the
27 sale and lease of all line-makes of new vehicles by the dealer
28 and from the total of the dealer's and parts and service
29 operations from this location during the same three-year
30 period.
- 31 5. The compensation required for facilities assistance under this
32 paragraph e. shall be paid by the manufacturer or distributor
33 within 90 days of the effective date of termination,
34 cancellation, or nonrenewal. after the manufacturer or
35 distributor has received notice in writing from, or on behalf
36 of, a new motor vehicle dealer specifying the elements of
37 compensation requested by the dealer.
- 38 f. ~~The provisions of sub subdivisions d. and e. above shall not be~~
39 ~~applicable when the termination, nonrenewal or cancellation of the~~
40 ~~franchise agreement is the result of the voluntary act of the dealer.~~
41 The provisions of sub-subdivision e. above shall not be applicable
42 when the termination, nonrenewal, or cancellation of the franchise
43 agreement by a new motor vehicle dealer is the result of the sale of
44 assets or stock of the motor vehicle dealership. The provisions of
45 sub-subdivisions d. and e. above shall not be applicable when the
46 termination, nonrenewal, or cancellation of the franchise agreement
47 is at the initiation of a new motor vehicle dealer of recreational
48 vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided
49 that at the time of the termination, nonrenewal, or cancellation, the
50 recreational vehicle manufacturer or distributor has paid to the dealer
51 all claims for warranty or recall work, including payments for labor,

1 parts, and other expenses, which were submitted by the dealer 30
2 days or more prior to the date of termination, nonrenewal, or
3 cancellation.

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

- 8 g. A franchise shall continue in full force and operation notwithstanding
9 a change, in whole or in part, of an established plan or system of
10 distribution of the motor vehicles offered for sale under the franchise.
11 The appointment of a new manufacturer, factory branch, distributor,
12 or distributor branch for motor vehicles offered for sale under the
13 franchise agreement shall be deemed to be a change of an established
14 plan or system of distribution.

15 Upon the occurrence of the change, the Division shall deny an application of a
16 manufacturer, factory branch, distributor, or distributor branch for a license or license renewal
17 unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor
18 branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a
19 new franchise agreement containing substantially the same provisions which were contained in
20 the previous franchise agreement or files an affidavit with the Division acknowledging its
21 undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the
22 previous franchise agreement."

23 **SECTION 7.** The terms and provisions of this act shall be applicable to all
24 franchises and other agreements in existence between any new motor vehicle dealer located in
25 this State and a manufacturer or distributor as of the effective date of this act, and to all future
26 franchises and other agreements.

27 **SECTION 8.** If any provision of this act or its application is held invalid, the
28 invalidity does not affect other provisions or applications of this act that can be given effect
29 without the invalid provisions or application, and to this end the provisions of this act are
30 severable.

31 **SECTION 9.** This act is effective when it becomes law.