

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 739*
Committee Substitute Favorable 4/28/97

Short Title: MV Dealers/Manufacturers Lic. Law.

(Public)

Sponsors:

Referred to:

April 1, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND
3 MANUFACTURERS LICENSING LAW.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 20 of the General Statutes is amended by adding a new
6 section to read:

7 **"§ 20-297.1. Prefiling of franchise agreements and amendments.**

8 Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this
9 State shall provide that all terms and conditions in the agreement inconsistent with any of
10 the laws or rules of this State are of no force and effect. On or before January 1, 1998,
11 every manufacturer, factory branch, distributor, or distributor branch licensed by the
12 Commissioner under this Article which uses an identical or substantially similar form
13 franchise for its dealers or distributors in this State shall file with the Commissioner a
14 copy of the franchise and all supplements. Any applicant for licensing by the
15 Commissioner as a manufacturer, factory branch, distributor, or distributor branch
16 licensed under this Article, which would use an identical or substantially similar form
17 franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall,
18 as a condition for the issuance of a license, file with the Commissioner a copy of the
19 franchise and all supplements thereto. Not later than 60 days prior to the date a revision,

1 modification, or addition to a franchise is offered generally to a licensee's franchisees in
2 this State, the licensee shall notify the Commissioner of the proposed revision,
3 modification, or addition to the franchise on file with the Commissioner and include with
4 the notification:

5 (1) A copy of the form franchise which incorporates all of the proposed
6 revisions, modifications, and additions;

7 (2) A separate statement which identifies and provides a detailed
8 description of all substantive revisions, modifications, and additions
9 proposed.

10 It shall be unlawful for a franchise or any addendum or supplement thereto to be offered
11 to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee
12 has complied with all of the requirements of this section. The Commissioner is
13 authorized and directed to investigate and prevent violations of this section, including
14 inconsistencies of any manufacturer's franchise with the provisions of this Article."

15 Section 2. G.S. 20-301 reads as rewritten:

16 "**§ 20-301. Powers of Commissioner.**

17 (a) The Commissioner shall promote the interests of the retail buyer of motor
18 vehicles.

19 (b) The Commissioner shall have power to prevent unfair methods of competition
20 and unfair or deceptive acts or ~~practices~~-practices and other violations of this Article.
21 Any franchised new motor vehicle dealer who believes that a manufacturer, factory
22 branch, distributor, or distributor branch with whom the dealer holds a currently valid
23 franchise has violated or is currently violating any provision of this Article may file a
24 petition before the Commissioner setting forth the factual and legal basis for such
25 violations. The Commissioner shall promptly forward a copy of the petition to the named
26 manufacturer, factory branch, distributor, or distributor branch requesting a reply to the
27 petition within 30 days. Allowing for sufficient time for the parties to conduct discovery,
28 the Commissioner or his designee shall then hold an evidentiary hearing and render
29 findings of fact and conclusions of law based on the evidence presented. Any parties to a
30 hearing by the Commissioner concerning the establishment or relocating of a new motor
31 vehicle dealer shall have a right of review of the decision in a court of competent
32 jurisdiction pursuant to Chapter 150B of the General Statutes.

33 (c) The Commissioner shall have the power in hearings arising under this Article
34 to enter scheduling orders and limit the time and scope of discovery; to determine the
35 date, time, and place where ~~they shall be~~ hearings are to be held; to subpoena witnesses;
36 to take depositions of witnesses; and to administer oaths.

37 (d) The Commissioner may, whenever he shall believe from evidence submitted to
38 him that any person has been or is violating any provision of this Article, in addition to
39 any other ~~remedy~~-remedy, bring an action in the name of the State against ~~such~~-that person
40 and any other persons concerned or in any way participating in, or about to participate in
41 practices or acts so in violation, to enjoin ~~such~~-any persons and ~~such other persons~~ from
42 continuing the ~~same~~-violations.

1 (e) ~~The Commissioner shall limit the time for discovery in any contested~~
2 ~~administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days.~~
3 ~~The Commissioner may extend the time for discovery beyond 60 days either upon the~~
4 ~~consent of all parties to the proceeding or upon application of one or more parties to the~~
5 ~~proceeding for good cause shown.~~ The Commissioner may issue rules and regulations to
6 implement the provisions of this section and to establish procedures related to
7 administrative proceedings commenced under this section."

8 Section 3. G.S. 20-305 reads as rewritten:

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

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

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

1 site plans of any proposed relocation. The franchisor shall send the
2 dealership notice of objection, by registered or certified mail, return
3 receipt requested, to the proposed transfer, sale, assignment, relocation,
4 or change within 30 days after receipt of notice from the dealer, as
5 provided in this section. Failure by the franchisor to send notice of
6 objection within 30 days shall constitute waiver by the franchisor of any
7 right to object to the proposed transfer, sale, assignment, relocation, or
8 change. The manufacturer or distributor has the burden of proving that
9 the proposed transfer, sale, assignment, relocation, or change is
10 unreasonable under the circumstances.

11 a. A manufacturer or distributor shall be permitted to exercise a
12 right of first refusal to acquire the new vehicle dealer's assets or
13 ownership in the event of a proposed change of all, or
14 substantially all, ownership or transfer of all, or substantially all,
15 dealership assets, if all of the following requirements are met:

16 1. To exercise its right of first refusal, the manufacturer or
17 distributor must notify the dealer in writing within 30 days
18 after receipt of notice from a dealer of a proposed transfer,
19 sale, or assignment as set forth in sub-subdivision a.
20 above.

21 2. The exercise of the right of first refusal will result in the
22 dealer and dealer's owners receiving the same or greater
23 consideration as they have contracted to receive in
24 connection with the proposed change of all, or
25 substantially all, ownership or transfer of all, or
26 substantially all, dealership assets.

27 3. The proposed change of all, or substantially all, ownership
28 or transfer of all, or substantially all, dealership assets
29 does not involve the transfer of assets or the transfer or
30 issuance of stock by the dealer or one or more dealer
31 owners to a designated successor, the spouse, child or
32 grandchild, spouse of a child or grandchild, brother, sister
33 or parent of the dealer owner, of one or more dealer
34 owners or to a qualified manager or to a partnership or
35 corporation controlled by such persons.

36 4. The manufacturer or distributor agrees to pay the
37 reasonable expenses, including reasonable attorneys' fees
38 which do not exceed the usual, customary and reasonable
39 fees charged for similar work done for other clients,
40 incurred by the existing dealer and the proposed new
41 owner and transferee prior to the manufacturer's or
42 distributor's exercise of its right of first refusal in
43 negotiating and implementing the contract for the

proposed change of all, or substantially all, ownership or transfer of all, or substantially all, dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorneys' fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such an accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

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

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or
2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle

- 1 dealership is further away from all other new motor
2 vehicle dealers of the same line make in that relevant
3 market area.
- 4 b. In determining whether good cause has been established for not
5 entering into or relocating an additional new motor vehicle dealer
6 for the same line make, the Commissioner shall take into
7 consideration the existing circumstances, including, but not
8 limited to:
- 9 1. The permanency of the investment of both the existing
10 and proposed additional new motor vehicle dealers;
 - 11 2. Growth or decline in population, density of population,
12 and new car registrations in the relevant market area;
 - 13 3. Effect on the consuming public in the relevant market
14 area;
 - 15 4. Whether it is injurious or beneficial to the public welfare
16 for an additional new motor vehicle dealer to be
17 established;
 - 18 5. Whether the new motor vehicle dealers of the same line
19 make in that relevant market area are providing adequate
20 competition and convenient customer care for the motor
21 vehicles of the same line make in the market area which
22 shall include the adequacy of motor vehicle sales and
23 service facilities, equipment, supply of motor vehicle
24 parts, and qualified service personnel;
 - 25 6. Whether the establishment of an additional new motor
26 vehicle dealer or relocation of an existing new motor
27 vehicle dealer in the relevant market area would increase
28 competition in a manner such as to be in the long-term
29 public interest; and
 - 30 7. The effect on the relocating dealer of a denial of its
31 relocation into the relevant market area.
- 32 c. The Commissioner ~~must~~ shall try to conduct the hearing and
33 render his final determination ~~as expeditiously as possible, but in~~
34 ~~any event no later than if possible, within~~ 180 days after a protest
35 is filed. ~~Unless waived by the parties, failure to do so shall be deemed~~
36 ~~the equivalent of a determination that good cause does not exist for~~
37 ~~refusing to permit the proposed additional or relocated motor vehicle~~
38 ~~dealer, unless such delay is caused by acts of the manufacturer, or the~~
39 ~~relocating or additional dealer.~~
- 40 d. Any parties to a hearing by the Commissioner concerning the
41 establishment or relocating of a new motor vehicle dealer shall
42 have a right of review of the decision in a court of competent
43 jurisdiction pursuant to Chapter 150B of the General Statutes.

- 1 e. In a hearing involving a proposed additional dealership, the
2 manufacturer or distributor has the burden of proof under this
3 section. In a proceeding involving the relocation of an existing
4 dealership, the dealer seeking to relocate has the burden of proof
5 under this section.
- 6 f. If the Commissioner determines, following a hearing, that good
7 cause does not exist for refusing to permit the proposed
8 additional or relocated motor vehicle dealership, the dealer
9 seeking the proposed additional or relocated motor vehicle
10 dealership must, within two years, obtain a license from the
11 Commissioner for the sale of vehicles at the relevant site, and
12 actually commence operations at the site selling new motor
13 vehicles of all line makes, as permitted by the Commissioner.
14 Failure to obtain a permit and commence sales within two years
15 shall constitute waiver by the dealer of the dealer's right to the
16 additional or relocated dealership, requiring renotification, a new
17 hearing, and a new determination as provided in this section.
- 18 g. For purposes of this subdivision, the addition, creation, or
19 operation of a 'satellite' or other facility, not physically part of or
20 contiguous to an existing licensed new motor vehicle dealer,
21 whether or not owned or operated by a person or other entity
22 holding a franchise as defined by G.S. 20-286(8a), at which
23 warranty service work authorized or reimbursed by a
24 manufacturer is performed or at which new motor vehicles are
25 offered for sale to the public, shall be considered an additional
26 new motor vehicle dealer requiring a showing of good cause,
27 prior notification to existing new motor vehicle dealers of the
28 same line make of vehicle within the relevant market area by the
29 manufacturer and the opportunity for a hearing before the
30 Commissioner as provided in this subdivision.
- 31 (6) Notwithstanding the terms, provisions or conditions of any franchise or
32 notwithstanding the terms or provisions of any waiver, to terminate,
33 cancel or fail to renew any franchise with a licensed new motor vehicle
34 dealer unless the manufacturer has satisfied the notice requirements of
35 subparagraph c. and the Commissioner has determined, if requested in
36 writing by the dealer within the time period specified in G.S. 20-
37 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
38 that there is good cause for the termination, cancellation, or nonrenewal
39 of the franchise and that the manufacturer has acted in good faith as
40 defined in this act regarding the termination, cancellation or
41 nonrenewal. When such a petition is made to the Commissioner by a
42 dealer for determination as to the existence of good cause and good faith
43 for the termination, cancellation or nonrenewal of a franchise, the

1 Commissioner shall promptly inform the manufacturer that a timely
2 petition has been filed, and the franchise in question shall continue in
3 effect pending the Commissioner's decision. The Commissioner ~~must~~
4 shall try to conduct the hearing and render a final determination ~~no later~~
5 ~~than within~~ 180 days after a petition has been filed; ~~provided, however,~~
6 ~~that the Commissioner may extend such period of time upon application of a~~
7 ~~party and for good cause shown, or upon the consent of all parties to the~~
8 ~~proceeding filed.~~ If the termination, cancellation or nonrenewal is
9 pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the
10 proceeding priority consideration and shall try to render his final
11 determination no later than 90 days after the petition has been filed. Any
12 parties to a hearing by the Commissioner under this section shall have a
13 right of review of the decision in a court of competent jurisdiction
14 pursuant to Chapter 150B of the General Statutes.

15 a. Notwithstanding the terms, provisions or conditions of any
16 franchise or the terms or provisions of any waiver, good cause
17 shall exist for the purposes of a termination, cancellation or
18 nonrenewal when:

19 1. There is a failure by the new motor vehicle dealer to
20 comply with a provision of the franchise which provision
21 is both reasonable and of material significance to the
22 franchise relationship provided that the dealer has been
23 notified in writing of the failure within 180 days after the
24 manufacturer first acquired knowledge of such failure;

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

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

34 II. The new motor vehicle dealer was afforded a
35 reasonable opportunity, for a period of not less than
36 180 days, to comply with the criteria; and

37 III. The new motor vehicle dealer failed to demonstrate
38 substantial progress towards compliance with the
39 manufacturer's performance criteria during such
40 period and the new motor vehicle dealer's failure
41 was not primarily due to economic or market
42 factors within the dealer's relevant market area
43 which were beyond the dealer's control.

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

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

1 immediately preceding the termination, nonrenewal
2 or cancellation of the franchise.

- 3 2. Fair and reasonable compensation for the above shall be
4 paid by the manufacturer within 90 days of the effective
5 date of termination, cancellation or nonrenewal, provided
6 the new motor vehicle dealer has clear title to the
7 inventory and has conveyed title and possession to the
8 manufacturer.

- 9 e. Dealership Facilities Assistance upon Termination, Cancellation
10 or Nonrenewal. –

11 In the event of the termination, cancellation or nonrenewal by the
12 manufacturer or distributor under this section, except termination,
13 cancellation or nonrenewal for insolvency, license revocation,
14 conviction of a crime involving moral turpitude, or fraud by a dealer-
15 owner:

- 16 1. Subject to paragraph 3, if the new motor vehicle dealer is
17 leasing the dealership facilities from a lessor other than
18 the manufacturer, the manufacturer shall pay the new
19 motor vehicle dealer a sum equivalent to the rent for the
20 unexpired term of the lease or one year's rent, whichever
21 is less, or such longer term as is provided in the franchise
22 agreement between the dealer and manufacturer; or
- 23 2. Subject to paragraph 3, if the new motor vehicle dealer
24 owns the dealership facilities, the manufacturer shall pay
25 the new motor vehicle dealer a sum equivalent to the
26 reasonable rental value of the dealership facilities for one
27 year.
- 28 3. Provided nothing in this paragraph e. shall relieve a lessee
29 or owner, as the case may be, from the obligation to
30 mitigate damages under the lease, nor prevent a
31 manufacturer from occupying and using the dealership
32 facilities while paying rent under subsections 1 and 2, nor
33 prevent a manufacturer from obligations by negotiating a
34 lease termination, a sublease or a new lease. Any amounts
35 recovered by the lessee or owner resulting from mitigation
36 of damages shall be deducted from the amount due from
37 the manufacturer.

- 38 f. The provisions of paragraphs d. and e. above shall not be
39 applicable when the termination, nonrenewal or cancellation of
40 the franchise agreement is the result of the voluntary act of the
41 dealer.

- 42 (7) Notwithstanding the terms of any contract or agreement, to prevent or
43 refuse to honor the succession to a dealership, including the franchise,

1 by a motor vehicle dealer's designated successor as provided for under
2 this subsection.

3 a. Any owner of a new motor vehicle dealership may appoint by
4 will, or any other written instrument, a designated family
5 member successor to succeed in the ownership interest of the
6 said owner in the new motor vehicle dealership, including the
7 franchise, upon the death or incapacity of the owner.

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

11 1. Within 30 days after receiving written notice of the
12 identity of the owner's designated successor and general
13 information as to the financial ability and qualifications of
14 the designated successor, the franchisor shall send the
15 owner and designated successor notice of objection, by
16 registered or certified mail, return receipt requested, to the
17 appointment of the designated successor. The notice of
18 objection shall state in detail all facts which constitute the
19 basis for the contention on the part of the manufacturer or
20 distributor that good cause, as defined in this sub-
21 subdivision below, exists for rejection of the designated
22 ~~family member~~ successor. Failure by the franchisor to send
23 notice of objection within 30 days and otherwise as
24 provided in this sub-subdivision shall constitute waiver by
25 the franchisor of any right to object to the appointment of
26 the designated successor.

27 2. Any time within 30 days of receipt of the manufacturer's
28 notice of objection the owner or the designated successor
29 may file a request in writing with the Commissioner that
30 the Commissioner hold an evidentiary hearing and
31 determine whether good cause exists for rejection of the
32 designated successor. When such a request is filed, the
33 Commissioner shall promptly inform the affected
34 manufacturer or distributor that a timely request has been
35 filed.

36 3. The Commissioner shall endeavor to hold the evidentiary
37 hearing required under this sub-subdivision and render a
38 determination within 180 days after receipt of the written
39 request from the owner or designated successor. In
40 determining whether good cause exists for rejection of the
41 owner's appointed designated successor, the manufacturer
42 or distributor has the burden of proving that the designated
43 successor is a person who is not of good moral character

1 or does not meet the franchisor's existing and reasonable
2 standards and, considering the volume of sales and service
3 of the new motor vehicle dealer, uniformly applied
4 minimum business experience standards in the market
5 area.

6 4. Any parties to a hearing by the Commissioner concerning
7 whether good cause exists for the rejection of the dealer's
8 designated successor shall have a right of review of the
9 decision in a court of competent jurisdiction pursuant to
10 Chapter 150B of the General Statutes.

11 5. Nothing in this sub-subdivision shall preclude a
12 manufacturer or distributor from, upon its receipt of
13 written notice from a dealer of identity of the dealer's
14 designated successor, requiring that the designated
15 successor promptly provide personal and financial data
16 that is reasonably necessary to determine the financial
17 ability and qualifications of the designated successor;
18 provided, however, that such a request for additional
19 information shall not delay any of the time periods or
20 constraints contained herein.

21 6. In the event death or incapacity of the owner occurs prior
22 to the time a manufacturer or distributor receives notice of
23 the owner's appointment of a designated successor or
24 before the Commissioner has rendered a determination as
25 provided above, the existing franchise shall remain in
26 effect and the designated successor shall be deemed to
27 have succeeded to all of the owner's rights and obligations
28 in the dealership and under the franchise until a
29 determination is made by the Commissioner or the rights
30 of the parties have otherwise become fixed in accordance
31 with this sub-subdivision.

32 c. Except as otherwise provided in sub-subdivision d. of this
33 subdivision, any designated successor of a deceased or
34 incapacitated owner of a new motor vehicle dealership appointed
35 by such owner in substantial compliance with this section shall,
36 by operation of law, succeed at the time of such death or
37 incapacity to all of the ownership rights and obligations of the
38 owner in the new motor vehicle dealership and under the existing
39 franchise.

40 d. Within 60 days after the death or incapacity of the owner, a
41 designated successor appointed in substantial compliance with
42 this section shall give the affected manufacturer or distributor
43 written notice of his or her succession to the ownership of the

1 new motor vehicle dealership; provided, however, that the failure
2 of the designated successor to give the manufacturer or
3 distributor written notice as provided above within 60 days of the
4 owner's death or incapacity shall not result in the waiver or
5 termination of the designated successor's right to succeed to the
6 ownership of the new motor vehicle dealership unless the
7 manufacturer or distributor gives written notice of this provision
8 to either the designated successor or the deceased or
9 incapacitated owner's executor, administrator, guardian or other
10 fiduciary by certified or registered mail, return receipt requested,
11 and said written notice grants not less than 30 days time within
12 which the designated successor may give the notice required
13 hereunder, provided the designated successor or the deceased or
14 incapacitated owner's executor, administrator, guardian or other
15 fiduciary has given the manufacturer reasonable notice of death
16 or incapacity. Within 30 days of receipt of the notice by the
17 manufacturer or distributor from the designated successor
18 provided in this paragraph, the manufacturer or distributor may
19 request that the designated successor complete the application
20 forms generally utilized by the manufacturer or distributor to
21 review the designated successor's qualifications to establish a
22 successor dealership. Within 30 days of receipt of the completed
23 forms, the manufacturer or distributor shall send a letter by
24 certified or registered mail, return receipt requested, advising the
25 designated successor of facts and circumstances which have
26 changed since the manufacturer's or distributor's original
27 approval of the designated successor, and which have caused the
28 manufacturer or distributor to object to the designated successor.
29 Upon receipt of such notice, the designated successor may either
30 designate an alternative successor or may file a request for
31 evidentiary hearing in accordance with the procedures provided
32 in sub-subdivisions b. 2.-5. of this subdivision. In any such
33 hearing, the manufacturer or distributor shall be limited to facts
34 and circumstances which did not exist at the time the designated
35 successor was originally approved or evidence which was
36 originally requested to be produced by the designated successor
37 at the time of the original request and was either not produced or
38 the material which was produced was incorrect.

- 39 e. The designated successor shall agree to be bound by all terms
40 and conditions of the franchise in effect between the
41 manufacturer or distributor and the owner at the time of the
42 owner's death or incapacity, if so requested in writing by the

- 1 manufacturer or distributor subsequent to the owner's death or
2 incapacity.
- 3 f. This section does not preclude an owner of a new motor vehicle
4 dealership from designating any person as his successor by
5 written instrument filed with the manufacturer or distributor, and,
6 in the event there is an inconsistency between the successor
7 named in such written instrument and the designated successor
8 otherwise appointed by the owner consistent with the provisions
9 of this section, and that written instrument has not been revoked
10 by the owner of the new motor vehicle dealership in writing to
11 the manufacturer or distributor, then the written instrument filed
12 with the manufacturer or distributor shall govern as to the
13 appointment of the successor.
- 14 (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in
15 this State to order or accept delivery of any new motor vehicle with
16 special features, accessories or equipment not included in the list price
17 of such motor vehicles as publicly advertised by the manufacturer or
18 distributor.
- 19 (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in
20 this State to participate monetarily in an advertising campaign or
21 contest, or to purchase unnecessary or unreasonable quantities of any
22 promotional materials, training materials, training programs, showroom
23 or other display decorations or materials at the expense of the new
24 motor vehicle dealer, provided that nothing in this subsection shall
25 preclude a manufacturer or distributor from including an unitemized
26 uniform charge in the base price of the new motor vehicle charged to the
27 dealer where such charge is attributable to advertising costs incurred or
28 to be incurred by the manufacturer or distributor in the ordinary courses
29 of its business.
- 30 (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in
31 this State to change the capital structure of the new motor vehicle dealer
32 or the means by or through which the new motor vehicle dealer finances
33 the operation of the dealership provided that the new motor vehicle
34 dealer at all times meets any reasonable capital standards determined by
35 the manufacturer in accordance with uniformly applied criteria; and also
36 provided that no change in the capital structure shall cause a change in
37 the principal management or have the effect of a sale of the franchise
38 without the consent of the manufacturer or distributor, provided that
39 said consent shall not be unreasonably withheld.
- 40 (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in
41 this State to refrain from participation in the management of, investment
42 in, or the acquisition of any other line of new motor vehicle or related
43 products; Provided, however, that this subsection does not apply unless

1 the new motor vehicle dealer maintains a reasonable line of credit for
2 each make or line of new motor vehicle, and the new motor vehicle
3 dealer remains in compliance with any reasonable capital standards and
4 facilities requirements of the manufacturer. The reasonable facilities
5 requirements shall not include any requirement that a new motor vehicle
6 dealer establish or maintain exclusive facilities, personnel, or display
7 space, when such requirements, or any of them, would be unreasonable
8 in light of current economic conditions and would not otherwise be
9 justified by reasonable business considerations.

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

16 (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in
17 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 motor
20 vehicle dealer and a manufacturer, distributor, or representative, to be
21 referred to any person other than the duly constituted courts of the State
22 or the United States of America, or to the Commissioner, if such referral
23 would be binding upon the new motor vehicle dealer.

24 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts
25 or accessories in reasonable quantities relative to the new motor vehicle
26 dealer's facilities and sales potential in the new motor vehicle dealer's
27 relevant market area, and within a reasonable time, after receipt of an
28 order from a dealer having a franchise for the retail sale of any new
29 motor vehicle sold or distributed by the manufacturer or distributor, any
30 new vehicle, parts or accessories to new vehicles as are covered by such
31 franchise, and such vehicles, parts or accessories as are publicly
32 advertised as being available or actually being delivered. The delivery to
33 another dealer of a motor vehicle of the same model and similarly
34 equipped as the vehicle ordered by a motor vehicle dealer who has not
35 received delivery thereof, but who has placed his written order for the
36 vehicle prior to the order of the dealer receiving the vehicle, shall be
37 evidence of a delayed delivery of, or refusal to deliver, a new motor
38 vehicle to a motor vehicle dealer within a reasonable time, without
39 cause. This subsection is not violated, however, if such failure is caused
40 by acts or causes beyond the control of the manufacturer, distributor,
41 factory branch, or factory 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 motor
5 vehicle dealership employee, either directly or indirectly, unless such
6 benefit is promptly accounted for, and transmitted to, or approved by,
7 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 the
11 new motor vehicle dealer's receipt of the written official price increase
12 notification. A sales contract signed by a private retail consumer shall
13 constitute evidence of each such order provided that the vehicle is in
14 fact delivered to that customer. Price differences applicable to new
15 model or series shall not be considered a price increase or price
16 decrease. Price changes caused by either: (i) the addition to a new motor
17 vehicle of required or optional equipment; or (ii) revaluation of the
18 United States dollar, in the case of foreign-make vehicles or
19 components; or (iii) an increase in transportation charges due to
20 increased rates imposed by carriers; or (iv) new tariffs or duties imposed
21 by the United States of America or any other governmental authority,
22 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 the
27 purchase of new motor vehicles of a certain line make to be sold to the
28 State or any political subdivision thereof without making the same offer
29 available upon request to all other new motor vehicle dealers in the
30 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, any
34 confidential business, financial, or personal information which may be
35 from time to time provided by the new motor vehicle dealer to the
36 manufacturer, without the express written consent of the new motor
37 vehicle dealer.
- 38 (21) To deny any new motor vehicle dealer the right of free association with
39 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.

- 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, or any of them, would be
9 unreasonable in light of current economic conditions and would not
10 otherwise be justified by reasonable business considerations.
- 11 (26) To resort to or to use any false or misleading advertisement in the
12 conducting of its business as a manufacturer or distributor in this State.
- 13 (27) To knowingly make, either directly or through any agent or employee,
14 any material statement which is false or misleading and which induces
15 any new motor vehicle dealer to enter into any agreement or franchise
16 or to take any action which is materially prejudicial to that new motor
17 vehicle dealer or his business.
- 18 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
19 purchase or order any new motor vehicle as a precondition to
20 purchasing, ordering, or receiving any other new motor vehicle or
21 vehicles. Nothing herein shall prevent a manufacturer from requiring
22 that a new motor vehicle dealer fairly represent and inventory the full
23 line of new motor vehicles which are covered by the franchise
24 agreement.
- 25 (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to
26 sell, transfer, or otherwise issue stock or other ownership interest in the
27 dealership corporation to a general manager or any other person
28 involved in the management of the dealership other than the dealer
29 principal or dealer operator named in the franchise.
- 30 (30) To vary the price charged to any of its franchised new motor vehicle
31 dealers located in this State for new motor vehicles based on any of the
32 following factors:
- 33 a. The dealer's purchase of new facilities, supplies, tools,
34 equipment, or other merchandise;
- 35 b. The dealer's relocation, remodeling, repair, or renovation of
36 existing dealership facilities;
- 37 c. The dealer's participation in training programs sponsored,
38 endorsed, or recommended by the manufacturer; or
- 39 d. Achievement by the new motor vehicle dealer of one or more
40 levels of customer satisfaction in sales or service specified by the
41 manufacturer.
- 42 Such unlawful price variation shall include not only
43 differentiation by a manufacturer in the base price of new motor

1 vehicles, but a manufacturer's use of rebates, credits, or other
2 consideration which has the effect of causing variance in the
3 price of new motor vehicles offered to its franchised dealers
4 located in this State.

5 Notwithstanding the foregoing, nothing in this subdivision
6 shall be deemed to preclude a manufacturer from establishing
7 sales contests or promotions which provide or award dealers or
8 consumers rebates or incentives; provided, however, that the
9 awarding or amount of any rebates or incentives shall not be
10 based on a violation of sub-subdivisions a., b., c., or d. of this
11 subdivision.

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

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

31 Section 4. G.S. 20-305.1 reads as rewritten:

32 "**§ 20-305.1. Automobile dealer warranty obligations.**

33 (a) Each motor vehicle manufacturer, factory branch, distributor or distributor
34 branch, shall specify in writing to each of its motor vehicle dealers licensed in this State
35 the dealer's obligations for preparation, delivery and warranty service on its products, the
36 schedule of compensation to be paid such dealers for parts, work, and service in
37 connection with warranty service, and the time allowances for the performance of such
38 work and service. In no event shall such schedule of compensation fail to include
39 reasonable compensation for diagnostic work and associated administrative requirements
40 as well as repair service and labor. Time allowances for the performance of warranty
41 work and service shall be reasonable and adequate for the work to be performed. The
42 compensation which must be paid under this section must be reasonable, provided,
43 however, that under no circumstances may the reasonable compensation under this

1 section be in an amount less than the dealer's current retail labor rate and the amount
2 charged to retail customers for the manufacturer's or distributor's original parts for
3 nonwarranty work of like kind, provided such amount is competitive with other
4 franchised dealers within the dealer's market.

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

29 (b1) All claims made by motor vehicle dealers pursuant to this section for
30 compensation for delivery, preparation, warranty and recall work including labor, parts,
31 and other expenses, shall be paid by the manufacturer within 30 days after receipt of
32 claim from the dealer. When any claim is disapproved, the dealer shall be notified in
33 writing of the grounds for disapproval. Any claim not specifically disapproved in writing
34 within 30 days after receipt shall be considered approved and payment is due
35 immediately. No claim which has been approved and paid may be charged back to the
36 dealer unless it can be shown that the claim was false or fraudulent, that the repairs were
37 not properly made or were unnecessary to correct the defective condition, or the dealer
38 failed to reasonably substantiate the ~~claim in accordance with the written requirements of the~~
39 ~~manufacturer or distributor in effect at the time the claim arose.~~ claim. A manufacturer or
40 distributor shall not deny a claim or reduce the amount to be reimbursed to the dealer as
41 long as the dealer has provided reasonably sufficient documentation that the dealer
42 actually performed the work and that the work performed was diagnosed as reasonably
43 necessary as determined in accordance with accepted standards in the industry.

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

15 (d) Transportation damages. –

16 (1) Notwithstanding the terms, provisions or conditions of any agreement or
17 franchise, the manufacturer is liable for all damages to motor vehicles
18 before delivery to a carrier or transporter.

19 (2) If a new motor vehicle dealer determines the method of transportation,
20 the risk of loss passes to the dealer upon delivery of the vehicle to the
21 carrier.

22 (3) In every other instance, the risk of loss remains with the manufacturer
23 until such time as the new motor vehicle dealer or his designee accepts
24 the vehicle from the carrier.

25 (4) Whenever a motor vehicle is damaged while in transit when the carrier
26 or the means of transportation is designated by the manufacturer or
27 distributor, or whenever a motor vehicle is otherwise damaged prior to
28 delivery to the dealer, the dealer must:

29 a. Notify the manufacturer or distributor of such damage within
30 three working days or within such additional time as authorized
31 by the franchise agreement of the occurrence of the delivery of
32 the motor vehicle as defined in subsection (1) of this section; and

33 b. Must request from the manufacturer or distributor authorization
34 to repair the damages sustained or to replace the parts or
35 accessories damaged.

36 (5) In the event the manufacturer or distributor refuses or fails to authorize
37 repair or replacement of any such damage within ten working days after
38 receipt of notification of damage by the dealer, ownership of the motor
39 vehicle shall revert to the manufacturer or distributor, and the dealer
40 shall incur no obligation, financial or otherwise, for such damage to the
41 motor vehicle.

42 (5a) No manufacturer shall fail to disclose in writing to a new motor vehicle
43 dealer, at the time of delivery of a new motor vehicle, the nature and

1 extent of any and all damage and post-manufacturing repairs made to
2 such motor vehicle while in the possession or under the control of the
3 manufacturer if the cost of such post-manufacturing repairs exceeds
4 three percent (3%) of the manufacturer's suggested retail price. A
5 manufacturer is not required to disclose to a new motor vehicle dealer
6 that any glass, tires or bumper of a new motor vehicle was damaged at
7 any time if the damaged item has been replaced with original or
8 comparable equipment.

9 (6) Nothing in this subsection (d) shall relieve the dealer of the obligation to
10 cooperate with the manufacturer as necessary in filing any
11 transportation damage claim with the carrier.

12 (e) Damage/Repair Disclosure. – Notwithstanding the provisions of subdivision
13 (d)(4) of this section and in supplementation thereof, a new motor vehicle dealer shall
14 disclose in writing to a purchaser of the new motor vehicle prior to entering into a sales
15 contract any damage and repair to the new motor vehicle if the damage exceeds five
16 percent (5%) of the manufacturer's suggested retail price as calculated at the rate of the
17 dealer's authorized warranty rate for labor and parts.

18 (1) A new motor vehicle dealer is not required to disclose to a purchaser
19 that any glass, tires or bumper of a new motor vehicle was damaged at
20 any time if the damaged item has been replaced with original or
21 comparable equipment.

22 (2) If disclosure is not required under this section, a purchaser may not
23 revoke or rescind a sales contract due solely to the fact that the new
24 motor vehicle was damaged and repaired prior to completion of the sale.

25 (3) For purposes of this section, 'manufacturer's suggested retail price'
26 means the retail price of the new motor vehicle suggested by the
27 manufacturer including the retail delivered price suggested by the
28 manufacturer for each accessory or item of optional equipment
29 physically attached to the new motor vehicle at the time of delivery to
30 the new motor vehicle dealer which is not included within the retail
31 price suggested by the manufacturer for the new motor vehicle.

32 (f) The provisions of subsections (a), (b), (b1), (d) and (e) shall not apply to
33 manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

34 Section 5. This act becomes effective October 1, 1997.