

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

**H**

**D**

**HOUSE DRH50302-MA-315A\* (3/12)**

Short Title: Clarify MV Dealer Termination Assistance.

(Public)

Sponsors: Representative Cole.

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY DEALER TERMINATION ASSISTANCE RIGHTS.

3 The General Assembly of North Carolina enacts:

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

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

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

10                   ...

11                   (6) Notwithstanding the terms, provisions or conditions of any franchise or  
12                   notwithstanding the terms or provisions of any waiver, to terminate, cancel  
13                   or fail to renew any franchise with a licensed new motor vehicle dealer  
14                   unless the manufacturer has satisfied the notice requirements of  
15                   subparagraph c. and the Commissioner has determined, if requested in  
16                   writing by the dealer within (i) the time period specified in  
17                   G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of  
18                   the franchise termination specified or proposed by the manufacturer in the  
19                   notice of termination, whichever period of time is longer, and after a hearing  
20                   on the matter, that there is good cause for the termination, cancellation, or  
21                   nonrenewal of the franchise and that the manufacturer has acted in good  
22                   faith as defined in this act regarding the termination, cancellation or  
23                   nonrenewal. When such a petition is made to the Commissioner by a dealer  
24                   for determination as to the existence of good cause and good faith for the  
25                   termination, cancellation or nonrenewal of a franchise, the Commissioner  
26                   shall promptly inform the manufacturer that a timely petition has been filed,  
27                   and the franchise in question shall continue in effect pending the  
28                   Commissioner's decision. The Commissioner shall try to conduct the hearing  
29                   and render a final determination within 180 days after a petition has been  
30                   filed. If the termination, cancellation or nonrenewal is pursuant to  
31                   G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding  
32                   priority consideration and shall try to render his final determination no later  
33                   than 90 days after the petition has been filed. Any parties to a hearing by the  
34                   Commissioner under this section shall have a right of review of the decision  
35                   in a court of competent jurisdiction pursuant to Chapter 150B of the General



1 Statutes. Any determination of the Commissioner under this section finding  
2 that good cause exists for the nonrenewal, cancellation, or termination of any  
3 franchise shall automatically be stayed during any period that the affected  
4 dealer shall have the right to judicial review or appeal of the determination  
5 before the superior court or any other appellate court and during the  
6 pendency of any appeal; provided, however, that within 30 days of entry of  
7 the Commissioner's order, the affected dealer provide such security as the  
8 reviewing court, in its discretion, may deem appropriate for payment of such  
9 costs and damages as may be incurred or sustained by the manufacturer by  
10 reason of and during the pendency of the stay. Although the right of the  
11 affected dealer to such stay is automatic, the procedure for providing such  
12 security and for the award of damages, if any, to the manufacturer upon  
13 dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and  
14 (e). No such security provided by or on behalf of any affected dealer shall be  
15 forfeited or damages awarded against a dealer who obtains a stay under this  
16 subdivision in the event the ownership of the affected dealership is  
17 subsequently transferred, sold, or assigned to a third party in accordance  
18 with this subdivision or subdivision (4) of this section and the closing on  
19 such transfer, sale, or assignment occurs no later than 180 days after the date  
20 of entry of the Commissioner's order. Furthermore, unless and until the  
21 termination, cancellation, or nonrenewal of a dealer's franchise shall finally  
22 become effective, in light of any stay or any order of the Commissioner  
23 determining that good cause exists for the termination, cancellation, or  
24 nonrenewal of a dealer's franchise as provided in this paragraph, a dealer  
25 who receives a notice of termination, cancellation, or nonrenewal from a  
26 manufacturer as provided in this subdivision shall continue to have the same  
27 rights to assign, sell, or transfer the franchise to a third party under the  
28 franchise and as permitted under G.S. 20-305(4) as if notice of the  
29 termination had not been given by the manufacturer. Any franchise under  
30 notice or threat of termination, cancellation, or nonrenewal by the  
31 manufacturer which is duly transferred in accordance with G.S. 20-305(4)  
32 shall not be subject to termination by reason of failure of performance or  
33 breaches of the franchise on the part of the transferor.

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

37 1. There is a failure by the new motor vehicle dealer to comply  
38 with a provision of the franchise which provision is both  
39 reasonable and of material significance to the franchise  
40 relationship provided that the dealer has been notified in  
41 writing of the failure within 180 days after the manufacturer  
42 first acquired knowledge of such failure;

43 2. If the failure by the new motor vehicle dealer relates to the  
44 performance of the new motor vehicle dealer in sales or  
45 service, then good cause shall be defined as the failure of the  
46 new motor vehicle dealer to comply with reasonable  
47 performance criteria established by the manufacturer if the  
48 new motor vehicle dealer was apprised by the manufacturer  
49 in writing of the failure; and

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

- 1 II. The new motor vehicle dealer was afforded a  
2 reasonable opportunity, for a period of not less than  
3 180 days, to comply with the criteria; and
- 4 III. The new motor vehicle dealer failed to demonstrate  
5 substantial progress towards compliance with the  
6 manufacturer's performance criteria during such  
7 period and the new motor vehicle dealer's failure was  
8 not primarily due to economic or market factors  
9 within the dealer's relevant market area which were  
10 beyond the dealer's control.
- 11 b. The manufacturer shall have the burden of proof under this section.
- 12 c. Notification of Termination, Cancellation and Nonrenewal. –
- 13 1. Notwithstanding the terms, provisions or conditions of any  
14 franchise prior to the termination, cancellation or nonrenewal  
15 of any franchise, the manufacturer shall furnish notification  
16 of termination, cancellation or nonrenewal to the new motor  
17 vehicle dealer as follows:
- 18 I. In the manner described in G.S. 20-305(6)c2 below;  
19 and
- 20 II. Not less than 90 days prior to the effective date of  
21 such termination, cancellation or nonrenewal; or
- 22 III. Not less than 15 days prior to the effective date of  
23 such termination, cancellation or nonrenewal with  
24 respect to any of the following:
- 25 A. Insolvency of the new motor vehicle dealer, or  
26 filing of any petition by or against the new  
27 motor vehicle dealer under any bankruptcy or  
28 receivership law;
- 29 B. Failure of the new motor vehicle dealer to  
30 conduct its customary sales and service  
31 operations during its customary business hours  
32 for seven consecutive business days, except  
33 for acts of God or circumstances beyond the  
34 direct control of the new motor vehicle dealer;
- 35 C. Revocation of any license which the new  
36 motor vehicle dealer is required to have to  
37 operate a dealership;
- 38 D. Conviction of a felony involving moral  
39 turpitude, under the laws of this State or any  
40 other state, or territory, or the District of  
41 Columbia.
- 42 IV. Not less than 180 days prior to the effective date of  
43 such termination, cancellation, or nonrenewal which  
44 occurs as a result of any change in ownership,  
45 operation, or control of all or any part of the business  
46 of the manufacturer, factory branch, distributor, or  
47 distributor branch whether by sale or transfer of  
48 assets, corporate stock or other equity interest,  
49 assignment, merger, consolidation, combination, joint  
50 venture, redemption, operation of law or otherwise; or  
51 the termination, suspension, or cessation of a part or

- 1 all of the business operations of the manufacturers,  
2 factory branch, distributor, or distributor branch; or  
3 discontinuance of the sale of the product line or a  
4 change in distribution system by the manufacturer  
5 whether through a change in distributors or the  
6 manufacturer's decision to cease conducting business  
7 through a distributor altogether.
- 8 V. Unless the failure by the new motor vehicle dealer  
9 relates to the performance of the new motor vehicle  
10 dealer in sales or service, not more than one year after  
11 the manufacturer first acquired knowledge of the basic  
12 facts comprising the failure.
- 13 2. Notification under this section shall be in writing; shall be by  
14 certified mail or personally delivered to the new motor  
15 vehicle dealer; and shall contain:
- 16 I. A statement of intention to terminate, cancel or not to  
17 renew the franchise;
- 18 II. A detailed statement of all of the material reasons for  
19 the termination, cancellation or nonrenewal; and
- 20 III. The date on which the termination, cancellation or  
21 nonrenewal takes effect.
- 22 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior  
23 to the effective date of such termination, cancellation or  
24 renewal may run concurrent with the 180 days designated in  
25 G.S. 20-305(6)a2II provided the notification is clearly  
26 designated by a separate written document mailed by certified  
27 mail or personally delivered to the new motor vehicle dealer.
- 28 d. Payments.
- 29 1. Notwithstanding the terms of any franchise, agreement, or  
30 waiver, upon ~~Upon~~ the termination, nonrenewal or  
31 cancellation of any franchise by the manufacturer or  
32 distributor, ~~pursuant to this section, the cessation of business~~  
33 or the termination, nonrenewal, or cancellation of any  
34 franchise by any new motor vehicle dealer located in this  
35 State, or upon any of the occurrences set forth in  
36 G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall  
37 purchase from and compensate the new motor vehicle dealer  
38 be allowed fair and reasonable compensation by the  
39 manufacturer for the all of the following:
- 40 I. New ~~Each new~~ motor vehicle within the new motor  
41 vehicle dealer's inventory that is of a line-make  
42 manufactured or distributed by the manufacturer or  
43 distributor, has been acquired from the manufacturer  
44 within 18 months, at a price not to exceed the original  
45 manufacturer's price to the dealer, and which has not  
46 been substantially altered or damaged to the prejudice  
47 of the manufacturer or distributor while in the new  
48 motor vehicle dealer's possession, ~~and which has not~~  
49 been driven more than 200 miles, and for which no  
50 certificate of title has been ~~issued~~; issued. New motor  
51 vehicles shall be purchased by the manufacturer or

- 1 distributor from the new motor vehicle dealer at the  
2 dealer's net cost. For purposes of this sub-subdivision,  
3 "net cost" is defined as the dealer's cost plus any  
4 charges by the manufacturer or distributor for  
5 distribution, delivery, advertising, and taxes less all  
6 allowances paid to the dealer by the manufacturer or  
7 distributor. In addition, the manufacturer or distributor  
8 shall be entitled to discount the net cost paid by the  
9 new motor vehicle dealer based on the odometer  
10 mileage of each new motor vehicle at the time of its  
11 purchase from the dealer by the manufacturer or  
12 distributor, to be determined as follows:
- 13 (i) Vehicles with 0-1,000 miles shall be compensated at  
14 the new motor vehicle dealer's net cost without any  
15 discount on the basis of odometer mileage.
- 16 (ii) Vehicles with 1,001-6,000 miles shall be compensated  
17 at the new motor vehicle dealer's net cost, reduced by  
18 the net discount value of each mile in excess of 1,000  
19 miles, where "net discount value" is determined  
20 according to the following formula: net cost to the  
21 dealer multiplied by total mileage in excess of 1,000  
22 miles divided by 100,000.
- 23 (iii) Vehicles with more than 6,000 miles – no obligation  
24 on the part of the manufacturer or distributor to  
25 purchase.
- 26 (iv) Any mileage on a motor vehicle recorded by a  
27 manufacturer or distributor or agent of a manufacturer  
28 or distributor prior to its physical delivery to a motor  
29 vehicle dealer shall not be included in the discount  
30 calculation.
- 31 II. Unused, undamaged and unsold supplies and parts  
32 purchased from the manufacturer or distributor or  
33 sources approved by the manufacturer or distributor,  
34 at a price not to exceed the original manufacturer's  
35 price to the dealer the current catalogue price, less any  
36 applicable discounts, provided such supplies and parts  
37 are currently offered for sale by the manufacturer or  
38 distributor in its current parts catalogs and are in  
39 salable condition;
- 40 III. Equipment, signs, and furnishings that have not been  
41 substantially altered or damaged and that have been  
42 required by the manufacturer or distributor to be  
43 purchased by the new motor vehicle dealer from the  
44 manufacturer or distributor, or their approved sources.
- 45 IV. Special tools that have not been substantially altered  
46 or damaged and that have been required by the  
47 manufacturer or distributor to be purchased by the  
48 new motor vehicle dealer from the manufacturer or  
49 distributor, or their approved sources within five years  
50 immediately preceding the termination, nonrenewal or  
51 cancellation of the franchise. The amount of

1                                    compensation which shall be paid to the new motor  
2                                    vehicle dealer by the manufacturer or distributor shall  
3                                    be the net acquisition price if the item was acquired in  
4                                    the 12 months preceding the date of receipt of the  
5                                    dealer's request for compensation; seventy-five  
6                                    percent (75%) of the net acquisition price if the item  
7                                    was acquired between 13 and 24 months preceding the  
8                                    dealer's request for compensation; fifty percent (50%)  
9                                    of the net acquisition price if the item was acquired  
10                                   between 25 and 36 months preceding the dealer's  
11                                   request for compensation; twenty-five percent (25%)  
12                                   of the net acquisition price if the item was acquired  
13                                   between 37 and 60 months preceding the dealer's  
14                                   request for compensation.

15                                   2. ~~Fair and reasonable compensation for the~~ The compensation  
16                                   provided above shall be paid by the manufacturer or  
17                                   distributor ~~within not later than 90 days of the effective date~~  
18                                   ~~of termination, cancellation or nonrenewal,~~ after the  
19                                   manufacturer or distributor has received notice in writing  
20                                   from or on behalf of the new motor vehicle dealer specifying  
21                                   the elements of compensation requested by the dealer;  
22                                   provided the new motor vehicle dealer ~~has~~ has, or can obtain,  
23                                   clear title to the inventory and has ~~conveyed~~ conveyed, or can  
24                                   convey, title and possession of the same to the manufacturer  
25                                   or distributor. Within 10 days after receipt of the dealer's  
26                                   written request for compensation, the manufacturer or  
27                                   distributor shall send the dealer detailed written instructions  
28                                   and forms required by the manufacturer or distributor to  
29                                   effectuate the receipt of the compensation requested by the  
30                                   dealer. The manufacturer or distributor shall be obligated to  
31                                   pay or reimburse the dealer for any transportation charges  
32                                   associated with the ~~manufacturer's~~ repurchase obligations of  
33                                   the manufacturer or distributor under this sub-subparagraph.  
34                                   The manufacturer or distributor may not charge the dealer  
35                                   any handling, restocking, or other similar costs or fees  
36                                   associated with items repurchased by the manufacturer under  
37                                   this sub-subparagraph.

38                                   3. In addition to the other payments set forth in this section, if a  
39                                   termination, cancellation, or nonrenewal is premised upon  
40                                   any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then  
41                                   the manufacturer or distributor shall be liable to the dealer for  
42                                   an amount at least equivalent to the fair market value of the  
43                                   franchise on (i) the date the franchisor announces the action  
44                                   which results in termination, cancellation, or nonrenewal; or  
45                                   (ii) the date the action which results in termination,  
46                                   cancellation, or nonrenewal first became general knowledge;  
47                                   or (iii) the day 12 months prior to the date on which the  
48                                   notice of termination, cancellation, or nonrenewal is issued,  
49                                   whichever amount is higher. Payment is due ~~within not later~~  
50                                   than 90 days of the effective date of the termination,  
51                                   cancellation, or nonrenewal after the manufacturer or

1 distributor has received notice in writing from, or on behalf  
2 of, the new motor vehicle dealer specifying the elements of  
3 compensation requested by the dealer. If the termination,  
4 cancellation, or nonrenewal is due to a manufacturer's change  
5 in distributors, the manufacturer may avoid paying fair  
6 market value to the dealer if the new distributor or the  
7 manufacturer offers the dealer a franchise agreement with  
8 terms acceptable to the dealer.

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

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

- 17 1. Subject to paragraph 3, if the new motor vehicle dealer is  
18 leasing the dealership facilities from a lessor other than the  
19 manufacturer or distributor, the manufacturer or distributor  
20 shall pay the new motor vehicle dealer a sum equivalent to  
21 the rent for the unexpired term of the lease or three year's  
22 rent, whichever is less, or such longer term as is provided in  
23 the franchise agreement between the dealer and manufacturer;  
24 except that, in the case of motorcycle dealerships, the  
25 manufacturer shall pay the new motor vehicle dealer the sum  
26 equivalent to the rent for the unexpired term of the lease or  
27 one year's rent, whichever is less, or such longer term as  
28 provided in the franchise agreement between the dealer and  
29 manufacturer; or
- 30 2. Subject to paragraph 3, if the new motor vehicle dealer owns  
31 the dealership facilities, the manufacturer or distributor shall  
32 pay the new motor vehicle dealer a sum equivalent to the  
33 reasonable rental value of the dealership facilities for three  
34 years, or for one year in the case of motorcycle dealerships.
- 35 3. In order to be entitled to facilities assistance from the  
36 manufacturer or distributor, as provided in this paragraph e.,  
37 the dealer, owner, or lessee, as the case may be, shall have the  
38 obligation to mitigate damages by listing the demised  
39 premises for lease or sublease with a licensed real estate agent  
40 within 30 days after the effective date of the termination of  
41 the franchise and thereafter by reasonably cooperating with  
42 said real estate agent in the performance of the agent's duties  
43 and responsibilities. In the event that the dealer, owner, or  
44 lessee is able to lease or sublease the demised premises, the  
45 dealer shall be obligated to pay the manufacturer the net  
46 revenue received from such mitigation up to the total amount  
47 of facilities assistance which the dealer has received from the  
48 manufacturer pursuant to sub-subdivisions 1. and 2. To the  
49 extent and for such uses and purposes as may be consistent  
50 with the terms of the lease, a manufacturer who pays facilities  
51 assistance to a dealer under this paragraph e. shall be entitled

- 1 to occupy and use the dealership facilities during the years for  
2 which the manufacturer shall have paid rent under  
3 sub-subdivisions 1. and 2.
- 4 4. In the event the termination relates to fewer than all of the  
5 franchises operated by the dealer at a single location, the  
6 amount of facilities assistance which the manufacturer or  
7 distributor is required to pay the dealer under this  
8 sub-subdivision shall be based on the proportion of gross  
9 revenue received from the sale and lease of new vehicles by  
10 the dealer and from the dealer's parts and service operations  
11 during the three years immediately preceding the effective  
12 date of the termination (or any shorter period that the dealer  
13 may have held these franchises) of the line-makes being  
14 terminated, in relation to the gross revenue received from the  
15 sale and lease of all line-makes of new vehicles by the dealer  
16 and from the total of the dealer's and parts and service  
17 operations from this location during the same three-year  
18 period.
- 19 5. The compensation required for facilities assistance under this  
20 paragraph e. shall be paid by the manufacturer or distributor  
21 within 90 days of the effective date of termination,  
22 cancellation, or nonrenewal. after the manufacturer or  
23 distributor has received notice in writing from, or on behalf  
24 of, a new motor vehicle dealer specifying the elements of  
25 compensation requested by the dealer.
- 26 f. ~~The provisions of sub-subdivisions d. and e. above shall not be~~  
27 ~~applicable when the termination, nonrenewal or cancellation of the~~  
28 ~~franchise agreement is the result of the voluntary act of the dealer.~~  
29 ~~Notwithstanding the terms of any contract or agreement, any dealer's~~  
30 ~~termination or resignation shall not be deemed to be voluntary if that~~  
31 ~~termination or resignation occurred under the manufacturer's threat of~~  
32 ~~nonrenewal, cancellation, or termination of the franchise.~~  
33 The provisions of sub-subdivisions d. and e. of this subdivision shall  
34 also apply when a manufacturer or distributor provides public notice  
35 or notifies one of its franchised dealers located in this State that it  
36 intends to either phase out the dealer's franchise or terminate the  
37 dealer's franchise at a later date, or when a manufacturer or  
38 distributor provides public notice or notice to any of its franchised or  
39 licensed dealers located in this State that any of the occurrences set  
40 forth in G.S. 20-305(6)c.1.IV. has occurred or may reasonably be  
41 expected to occur in the future, so as to either render a dealer's  
42 franchised business substantially unmarketable, or saleable only at  
43 prices significantly below its fair market value prior to the date any  
44 of the occurrences set forth in G.S. 20-305(6)c.1.IV., either having  
45 occurred in the past or to occur in the future, became public  
46 knowledge.
- 47 g. A franchise shall continue in full force and operation notwithstanding  
48 a change, in whole or in part, of an established plan or system of  
49 distribution of the motor vehicles offered for sale under the franchise.  
50 The appointment of a new manufacturer, factory branch, distributor,  
51 or distributor branch for motor vehicles offered for sale under the



1 franchise agreement shall be deemed to be a change of an established  
2 plan or system of distribution.  
3 Upon the occurrence of the change, the Division shall deny an  
4 application of a manufacturer, factory branch, distributor, or  
5 distributor branch for a license or license renewal unless the  
6 applicant for a license as a manufacturer, factory branch, distributor,  
7 or distributor branch offers to each motor vehicle dealer who is a  
8 party to a franchise for that line-make a new franchise agreement  
9 containing substantially the same provisions which were contained in  
10 the previous franchise agreement or files an affidavit with the  
11 Division acknowledging its undertaking to assume and fulfill the  
12 rights, duties, and obligations of its predecessor under the previous  
13 franchise agreement.

14 h. The rights provided to new motor vehicle dealers in sub-subdivisions  
15 d. and e. of this subdivision shall be in addition to any other rights  
16 afforded dealers under any franchise or agreement. It shall be  
17 unlawful for a manufacturer or distributor to condition making any of  
18 the payments required in sub-subdivisions d. and e. of this  
19 subdivision on the willingness of a new motor vehicle dealer to  
20 waive any of the dealer's rights provided by this or any other law. It  
21 shall be unlawful for a manufacturer or distributor to offer any  
22 renewal or subsequent franchise or other agreement relating to the  
23 sale of motor vehicles or motor vehicle parts or accessories, or  
24 relating to the service of motor vehicles, which is conditioned on the  
25 willingness of a new motor vehicle dealer to waive any of the dealer's  
26 rights provided by this or any other law. Any waiver of rights  
27 executed by any new motor vehicle dealer in favor of a manufacturer  
28 or distributor which violates or is inconsistent with any of the terms  
29 or provisions of this Chapter shall be void.

30 ...."

31 **SECTION 2.** This act is effective when it becomes law.

32 **SECTION 3.** If any provision of this act or its application is held invalid, the  
33 invalidity does not affect other provisions or applications of this act that can be given effect  
34 without the invalid provisions or application, and to this end the provisions of this act are  
35 severable.