

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**SENATE BILL 913**

Short Title: Clarify Motor Vehicle Franchise Laws. (Public)

Sponsors: Senators Hoyle; Apodaca, Forrester, Jacumin, Jenkins, Tillman, and Vaughan.

Referred to: Commerce.

March 26, 2009

A BILL TO BE ENTITLED  
AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS  
LICENSING LAWS.

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 another 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, relocation, or change is unreasonable under the circumstances. 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 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, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. The notice of objection shall state in detail all factual and legal bases for the objection on the part of the franchisor to the proposed transfer, sale, assignment, relocation, or change that is specifically referenced in this



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

1 the executive management or as principal operator of the dealership is unfit  
2 for the position. For purposes of this subdivision, the refusal by the  
3 manufacturer to accept a proposed candidate for executive management or as  
4 principal operator who is of good moral character and who otherwise meets  
5 the written, reasonable, and uniformly applied standards or qualifications, if  
6 any, of the manufacturer relating to the business experience and prior  
7 performance of executive management required by the manufacturers of its  
8 dealers is presumed to demonstrate the manufacturer's failure to prove the  
9 proposed candidate for executive management or as principal operator is  
10 unfit to serve the capacity. With respect to a proposed relocation or other  
11 proposed change, the issue for determination by the Commissioner is  
12 whether the proposed relocation or other change is unreasonable under the  
13 circumstances. For purposes of this subdivision, the refusal by the  
14 manufacturer to agree to a proposed relocation which meets the written,  
15 reasonable, and uniformly applied standards or criteria, if any, of the  
16 manufacturer relating to dealer relocations is presumed to demonstrate that  
17 the manufacturer's failure to prove the proposed relocation is unreasonable  
18 under the circumstances. The manufacturer shall have the burden of proof  
19 before the Commissioner under this subdivision. It is unlawful for a  
20 manufacturer to, in any way, condition its approval of a proposed transfer,  
21 sale, assignment, change in the dealer's executive management, principal  
22 operator, or appointment of a designated successor, on the existing or  
23 proposed dealer's willingness to construct a new facility, renovate the  
24 existing facility, acquire or refrain from acquiring one or more line-makes of  
25 vehicles, separate or divest one or more line-makes of vehicle, or establish or  
26 maintain exclusive facilities, personnel, or display space. It is unlawful for a  
27 manufacturer to, in any way, condition its approval of a proposed relocation  
28 on the existing or proposed dealer's willingness to acquire or refrain from  
29 acquiring one or more line-makes of vehicles, separate or divest one or more  
30 line-makes of vehicle, or establish or maintain exclusive facilities, personnel,  
31 or display space. The opinion or determination of a franchisor that the  
32 continued existence of one of its franchised dealers situated in this State is  
33 not viable, or that the dealer holds or fails to hold licensing rights for the sale  
34 of other line-makes of vehicles in a manner consistent with the franchisor's  
35 existing or future distribution or marketing plans, shall not constitute a  
36 lawful basis for the franchisor to fail or refuse to approve a dealer's proposed  
37 relocation: provided, however, that nothing contained in this subdivision  
38 shall be deemed to prevent or prohibit a franchisor from failing to approve a  
39 dealer's proposed relocation on grounds that the specific site or facility  
40 proposed by the dealer is otherwise unreasonable under the circumstances.  
41 Approval of a relocation pursuant to this subdivision shall not in itself  
42 constitute the franchisor's representation or assurance of the dealer's viability  
43 at that location.

44 ...."

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

46 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
47 **franchise; preventing transfer of ownership; granting additional franchises;**  
48 **terminating franchises without good cause; preventing family succession.**

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

51 ...

(28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line current model year new motor vehicles which are covered by the franchise ~~agreement~~-agreement, and which the dealer could reasonably be expected to sell in the dealer's market, provided that such inventory representation requirements are not unreasonable under the circumstances.

...."

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

...

(30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility, the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer, whether or not the dealer is dualed with one or more other line makes of new motor vehicles, or the dealer's sales penetration. Except as provided in this subdivision, 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 to vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's sales volume, the dealer's level of sales or customer service satisfaction, the dealer's purchase of advertising materials, signage, nondiagnostic computer hardware or software, communications devices, or furnishings, or the dealer's participation in used motor vehicle inspection or certification programs sponsored or endorsed by the manufacturer.

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

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions that provide or award dealers or consumers rebates or incentives; provided, however, that the manufacturer complies with all of the following conditions:

- a. With respect to manufacturer to consumer rebates and incentives, the manufacturer's criteria for determining eligibility shall:
  1. Permit all of the manufacturer's franchised new motor vehicle dealers in this State to offer the rebate or incentive; and
  2. Be uniformly applied and administered to all eligible consumers.

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

17                 Nothing contained in this subdivision shall prohibit a manufacturer from  
18                 providing assistance or encouragement to a franchised dealer to remodel,  
19                 renovate, recondition, or relocate the dealer's existing facilities, provided that  
20                 this assistance, encouragement, or rewards are not determined on a per  
21                 vehicle basis.

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

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

37                 In the event that as of June 30, 2001, a manufacturer was operating a  
38                 program that varied the price charged to its franchised dealers in this State in  
39                 a manner that would violate this subdivision, or had in effect a documented  
40                 policy that had been conveyed to its franchised dealers in this State and that  
41                 varied the price charged to its franchised dealers in this State in a manner  
42                 that would violate this subdivision, and the program or policy was  
43                 implemented in this State subsequent to October 1, 1999, and prior to June  
44                 30, 2001, and provided that the program or policy is in compliance with this  
45                 subdivision as it existed as of June 30, 2001, it shall be lawful for that  
46                 program or policy, including amendments to that program or policy that  
47                 comply with this subdivision as it existed as of June 30, 2001, to continue in  
48                 effect as to the manufacturer's franchised dealers located in this State until  
49                 June 30, ~~2010~~2014.

50                 Any manufacturer shall be required to pay or otherwise compensate any  
51                 franchise dealer who has earned the right to receive payment or other

1 compensation under a program in accordance with the manufacturer's  
2 program or policy.

3 The provisions of this subdivision shall not be applicable to multiple or  
4 repeated sales of new motor vehicles made by a new motor vehicle dealer to  
5 a single purchaser under a bona fide fleet sales policy of a manufacturer,  
6 factory branch, distributor, or distributor branch.

7 ...."

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

9 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any  
10 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to  
11 take or threaten to take any adverse action against a dealer located in this State, or to otherwise  
12 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a  
13 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold  
14 the vehicle to a third party, unless the dealer possessed actual knowledge that the customer  
15 intended to export or resell the motor vehicle prior to the customer's purchase of the vehicle  
16 from the dealer. The conduct prohibited under this subsection includes, but is not limited to, a  
17 manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver motor  
18 vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of vehicles; or  
19 (iii) charging back or withholding payments or other compensation or consideration for which a  
20 dealer is otherwise eligible for warranty reimbursement or under a sales promotion, incentive  
21 program, or contest; or (iv) disqualification of a dealer from participating in or discrimination  
22 against any dealer relating to any sales promotion, incentive program, or contest; or termination  
23 of a franchise. In any proceeding brought pursuant to this subsection, there shall be a  
24 conclusive presumption that the dealer, prior to the customer's purchase of the vehicle, had no  
25 actual knowledge the customer intended to export or resell the motor vehicle, if (i) following  
26 the sale, the vehicle is titled or registered in any state or territory within the United States in the  
27 name of a customer who was physically present at the dealership at or prior to the time of sale  
28 and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle would  
29 be shipped to a foreign country. In any proceeding brought pursuant to this subsection, there  
30 shall be a rebuttable presumption that the dealer, prior to the customer's purchase of the vehicle,  
31 had no actual knowledge the customer intended to ship the vehicle to a foreign country, if the  
32 vehicle is titled in any state or territory within the United States."

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

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

41 **SECTION 6.** This act is effective when it becomes law.

42 **SECTION 7.** If any provision of this act or its application is held invalid, the  
43 invalidity does not affect other provisions or applications of this act that can be given effect  
44 without the invalid provisions or application, and to this end the provisions of this act are  
45 severable.