

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 913  
Commerce Committee Substitute Adopted 5/12/09  
House Committee Substitute Favorable 6/25/09  
House Committee Substitute #2 Favorable 7/6/09

Short Title: Clarify MV Franchise Laws/Termination Assist.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-305(28) 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:

...

(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, provided that such inventory representation requirements are not unreasonable under the circumstances."

**SECTION 2.** 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,



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1 factory branch, distributor, or distributor branch, or any field representative,  
2 officer, agent, or any representative whatsoever of any of them to vary the  
3 price charged to any of its franchised new motor vehicle dealers located in  
4 this State for new motor vehicles based on the dealer's sales volume, the  
5 dealer's level of sales or customer service satisfaction, the dealer's purchase  
6 of advertising materials, signage, nondiagnostic computer hardware or  
7 software, communications devices, or furnishings, or the dealer's  
8 participation in used motor vehicle inspection or certification programs  
9 sponsored or endorsed by the manufacturer.

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

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

- 19 a. With respect to manufacturer to consumer rebates and incentives, the  
20 manufacturer's criteria for determining eligibility shall:
- 21 1. Permit all of the manufacturer's franchised new motor vehicle  
22 dealers in this State to offer the rebate or incentive; and
  - 23 2. Be uniformly applied and administered to all eligible  
24 consumers.
- 25 b. With respect to manufacturer to dealer rebates and incentives, the  
26 rebate or incentive program shall:
- 27 1. Be based solely on the dealer's actual or reasonably  
28 anticipated sales volume or on a uniform per vehicle sold or  
29 leased basis;
  - 30 2. Be uniformly available, applied, and administered to all of the  
31 manufacturer's franchised new motor vehicle dealers in this  
32 State; and
  - 33 3. Provide that any of the manufacturer's franchised new motor  
34 vehicle dealers in this State may, upon written request, obtain  
35 the method or formula used by the manufacturer in  
36 establishing the sales volumes for receiving the rebates or  
37 incentives and the specific calculations for determining the  
38 required sales volumes of the inquiring dealer and any of the  
39 manufacturer's other franchised new motor vehicle dealers  
40 located within 75 miles of the inquiring dealer.

41 Nothing contained in this subdivision shall prohibit a manufacturer from  
42 providing assistance or encouragement to a franchised dealer to remodel,  
43 renovate, recondition, or relocate the dealer's existing facilities, provided that  
44 this assistance, encouragement, or rewards are not determined on a per  
45 vehicle basis.

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

50 In the event that as of October 1, 1999, a manufacturer was operating a  
51 program that varied the price charged to its franchised dealers in this State in

1 a manner that would violate this subdivision, or had in effect a documented  
2 policy that had been conveyed to its franchised dealers in this State and that  
3 varied the price charged to its franchised dealers in this State in a manner  
4 that would violate this subdivision, it shall be lawful for that program or  
5 policy, including amendments to that program or policy that are consistent  
6 with the purpose and provisions of the existing program or policy, or a  
7 program or policy similar thereto implemented after October 1, 1999, to  
8 continue in effect as to the manufacturer's franchised dealers located in this  
9 State until June 30, ~~2010~~2014.

10 In the event that as of June 30, 2001, a manufacturer was operating a  
11 program that varied the price charged to its franchised dealers in this State in  
12 a manner that would violate this subdivision, or had in effect a documented  
13 policy that had been conveyed to its franchised dealers in this State and that  
14 varied the price charged to its franchised dealers in this State in a manner  
15 that would violate this subdivision, and the program or policy was  
16 implemented in this State subsequent to October 1, 1999, and prior to June  
17 30, 2001, and provided that the program or policy is in compliance with this  
18 subdivision as it existed as of June 30, 2001, it shall be lawful for that  
19 program or policy, including amendments to that program or policy that  
20 comply with this subdivision as it existed as of June 30, 2001, to continue in  
21 effect as to the manufacturer's franchised dealers located in this State until  
22 June 30, ~~2010~~2014.

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

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

31 **SECTION 3.** G.S. 20-305.1 is amended by adding a new subsection to read:

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

1 sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle  
2 would be shipped to a foreign country."

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

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

11 **SECTION 5.** G.S. 20-305(6) reads as rewritten:

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

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

17 ...

18 (6) Notwithstanding the terms, provisions or conditions of any franchise or  
19 notwithstanding the terms or provisions of any waiver, to terminate, cancel  
20 or fail to renew any franchise with a licensed new motor vehicle dealer  
21 unless the manufacturer has satisfied the notice requirements of  
22 subparagraph c. and the Commissioner has determined, if requested in  
23 writing by the dealer within (i) the time period specified in  
24 G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of  
25 the franchise termination specified or proposed by the manufacturer in the  
26 notice of termination, whichever period of time is longer, and after a hearing  
27 on the matter, that there is good cause for the termination, cancellation, or  
28 nonrenewal of the franchise and that the manufacturer has acted in good  
29 faith as defined in this act regarding the termination, cancellation or  
30 nonrenewal. When such a petition is made to the Commissioner by a dealer  
31 for determination as to the existence of good cause and good faith for the  
32 termination, cancellation or nonrenewal of a franchise, the Commissioner  
33 shall promptly inform the manufacturer that a timely petition has been filed,  
34 and the franchise in question shall continue in effect pending the  
35 Commissioner's decision. The Commissioner shall try to conduct the hearing  
36 and render a final determination within 180 days after a petition has been  
37 filed. If the termination, cancellation or nonrenewal is pursuant to  
38 G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding  
39 priority consideration and shall try to render his final determination no later  
40 than 90 days after the petition has been filed. Any parties to a hearing by the  
41 Commissioner under this section shall have a right of review of the decision  
42 in a court of competent jurisdiction pursuant to Chapter 150B of the General  
43 Statutes. Any determination of the Commissioner under this section finding  
44 that good cause exists for the nonrenewal, cancellation, or termination of any  
45 franchise shall automatically be stayed during any period that the affected  
46 dealer shall have the right to judicial review or appeal of the determination  
47 before the superior court or any other appellate court and during the  
48 pendency of any appeal; provided, however, that within 30 days of entry of  
49 the Commissioner's order, the affected dealer provide such security as the  
50 reviewing court, in its discretion, may deem appropriate for payment of such  
51 costs and damages as may be incurred or sustained by the manufacturer by

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

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

- 28 1. There is a failure by the new motor vehicle dealer to comply  
29 with a provision of the franchise which provision is both  
30 reasonable and of material significance to the franchise  
31 relationship provided that the dealer has been notified in  
32 writing of the failure within 180 days after the manufacturer  
33 first acquired knowledge of such failure;
- 34 2. If the failure by the new motor vehicle dealer relates to the  
35 performance of the new motor vehicle dealer in sales or  
36 service, then good cause shall be defined as the failure of the  
37 new motor vehicle dealer to comply with reasonable  
38 performance criteria established by the manufacturer if the  
39 new motor vehicle dealer was apprised by the manufacturer  
40 in writing of the failure; and
  - 41 I. The notification stated that notice was provided of  
42 failure of performance pursuant to this section;
  - 43 II. The new motor vehicle dealer was afforded a  
44 reasonable opportunity, for a period of not less than  
45 180 days, to comply with the criteria; and
  - 46 III. The new motor vehicle dealer failed to demonstrate  
47 substantial progress towards compliance with the  
48 manufacturer's performance criteria during such  
49 period and the new motor vehicle dealer's failure was  
50 not primarily due to economic or market factors

- 1 within the dealer's relevant market area which were  
2 beyond the dealer's control.
- 3 b. The manufacturer shall have the burden of proof under this section.
- 4 c. Notification of Termination, Cancellation and Nonrenewal. –
- 5 1. Notwithstanding the terms, provisions or conditions of any  
6 franchise prior to the termination, cancellation or nonrenewal  
7 of any franchise, the manufacturer shall furnish notification  
8 of termination, cancellation or nonrenewal to the new motor  
9 vehicle dealer as follows:
- 10 I. In the manner described in G.S. 20-305(6)c2 below;  
11 and
- 12 II. Not less than 90 days prior to the effective date of  
13 such termination, cancellation or nonrenewal; or
- 14 III. Not less than 15 days prior to the effective date of  
15 such termination, cancellation or nonrenewal with  
16 respect to any of the following:
- 17 A. Insolvency of the new motor vehicle dealer, or  
18 filing of any petition by or against the new  
19 motor vehicle dealer under any bankruptcy or  
20 receivership law;
- 21 B. Failure of the new motor vehicle dealer to  
22 conduct its customary sales and service  
23 operations during its customary business hours  
24 for seven consecutive business days, except  
25 for acts of God or circumstances beyond the  
26 direct control of the new motor 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 any  
32 other state, or territory, or the District of  
33 Columbia.
- 34 IV. Not less than 180 days prior to the effective date of  
35 such termination, cancellation, or nonrenewal which  
36 occurs as a result of any change in ownership,  
37 operation, or control of all or any part of the business  
38 of the manufacturer, factory branch, distributor, or  
39 distributor branch whether by sale or transfer of  
40 assets, corporate stock or other equity interest,  
41 assignment, merger, consolidation, combination, joint  
42 venture, redemption, operation of law or otherwise; or  
43 the termination, suspension, or cessation of a part or  
44 all of the business operations of the manufacturers,  
45 factory branch, distributor, or distributor branch; or  
46 discontinuance of the sale of the product line or a  
47 change in distribution system by the manufacturer  
48 whether through a change in distributors or the  
49 manufacturer's decision to cease conducting business  
50 through a distributor altogether.

- 1 V. Unless the failure by the new motor vehicle dealer  
2 relates to the performance of the new motor vehicle  
3 dealer in sales or service, not more than one year after  
4 the manufacturer first acquired knowledge of the basic  
5 facts comprising the failure.
- 6 2. Notification under this section shall be in writing; shall be by  
7 certified mail or personally delivered to the new motor  
8 vehicle dealer; and shall contain:
- 9 I. A statement of intention to terminate, cancel or not to  
10 renew the franchise;
- 11 II. A detailed statement of all of the material reasons for  
12 the termination, cancellation or nonrenewal; and
- 13 III. The date on which the termination, cancellation or  
14 nonrenewal takes effect.
- 15 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior  
16 to the effective date of such termination, cancellation or  
17 renewal may run concurrent with the 180 days designated in  
18 G.S. 20-305(6)a2II provided the notification is clearly  
19 designated by a separate written document mailed by certified  
20 mail or personally delivered to the new motor vehicle dealer.
- 21 d. Payments.
- 22 1. Notwithstanding the terms of any franchise, agreement, or  
23 waiver, upon ~~Upon~~ the termination, nonrenewal or  
24 cancellation of any franchise by the manufacturer or  
25 distributor, ~~pursuant to this section, the cessation of business~~  
26 or the termination, nonrenewal, or cancellation of any  
27 franchise by any new motor vehicle dealer located in this  
28 State, or upon any of the occurrences set forth in  
29 G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall  
30 purchase from and compensate the new motor vehicle dealer  
31 shall be allowed fair and reasonable compensation by the  
32 manufacturer for the all of the following:
- 33 I. New-Each new and unsold motor vehicle within the  
34 new motor vehicle dealer's inventory that has been  
35 acquired from the manufacturer within 24 months of  
36 the effective date of the termination 18 months, at a  
37 price not to exceed the original manufacturer's price to  
38 the dealer, and from the manufacturer or distributor or  
39 another same line-make dealer in the ordinary course  
40 of business, and which has not been substantially  
41 altered or ~~damaged~~,damaged to the prejudice of the  
42 manufacturer or distributor while in the new motor  
43 vehicle dealer's possession, and which has ~~not~~ been  
44 driven ~~more~~ less than 200 miles,1,000 miles or, for  
45 purposes of a recreational vehicle motor home as  
46 defined in G.S. 20-4.01(32a)a., less than 1,500 miles  
47 following the original date of delivery to the dealer,  
48 and for which no certificate of title has been  
49 issued;issued. For purposes of this sub-subdivision,  
50 the term "ordinary course of business" shall include  
51 inventory transfers of all new, same line-make

- 1 vehicles between affiliated dealerships, or otherwise  
2 between dealerships having common or interrelated  
3 ownership.
- 4 II. Unused, undamaged and unsold supplies and parts  
5 purchased from the manufacturer or distributor or  
6 sources approved by the manufacturer or distributor,  
7 at a price not to exceed the original manufacturer's  
8 price to the dealer, provided such supplies and parts  
9 are currently offered for sale by the manufacturer or  
10 distributor in its current parts catalogs and are in  
11 salable ~~condition;~~condition.
- 12 III. Equipment, signs, and furnishings that have not been  
13 substantially altered or damaged and that have been  
14 required by the manufacturer or distributor to be  
15 purchased by the new motor vehicle dealer from the  
16 manufacturer or distributor, or their approved ~~sources;~~  
17 and sources.
- 18 IV. Special tools that have not been altered or ~~damaged~~  
19 damaged, normal wear and tear excepted, and that  
20 have been required by the manufacturer or distributor  
21 to be purchased by the new motor vehicle dealer from  
22 the manufacturer or distributor, or their approved  
23 sources within five years immediately preceding the  
24 termination, nonrenewal or cancellation of the  
25 franchise. The amount of compensation which shall be  
26 paid to the new motor vehicle dealer by the  
27 manufacturer or distributor shall be the net acquisition  
28 price if the item was acquired in the 12 months  
29 preceding the date of receipt of the dealer's request for  
30 compensation; seventy-five percent (75%) of the net  
31 acquisition price if the item was acquired between 13  
32 and 24 months preceding the dealer's request for  
33 compensation; fifty percent (50%) of the net  
34 acquisition price if the item was acquired between 25  
35 and 36 months preceding the dealer's request for  
36 compensation; twenty-five percent (25%) of the net  
37 acquisition price if the item was acquired between 37  
38 and 60 months preceding the dealer's request for  
39 compensation.
- 40 2. Fair and reasonable compensation for the ~~The compensation~~  
41 provided above shall be paid by the manufacturer or  
42 distributor ~~within not later than~~ 90 days ~~of the effective date~~  
43 of termination, cancellation or nonrenewal, ~~after the~~  
44 manufacturer or distributor has received notice in writing  
45 from or on behalf of the new motor vehicle dealer specifying  
46 the elements of compensation requested by the dealer;  
47 provided the new motor vehicle dealer ~~has~~has, or can obtain,  
48 clear title to the inventory and has ~~conveyed~~conveyed, or can  
49 convey, title and possession of the same to the manufacturer  
50 or distributor. Within 15 days after receipt of the dealer's  
51 written request for compensation, the manufacturer or



1 distributor shall send the dealer detailed written instructions  
2 and forms required by the manufacturer or distributor to  
3 effectuate the receipt of the compensation requested by the  
4 dealer. The manufacturer or distributor shall be obligated to  
5 pay or reimburse the dealer for any transportation charges  
6 associated with the ~~manufacturer's~~ repurchase obligations of  
7 the manufacturer or distributor under this sub-subparagraph.  
8 The manufacturer or distributor shall also compensate the  
9 dealer for any handling, packing, or similar payments  
10 contemplated in the franchise. In no event may the  
11 manufacturer or distributor ~~not~~ charge the dealer any  
12 handling, restocking, or other similar costs or fees associated  
13 with items repurchased by the manufacturer under this  
14 sub-subparagraph.

15 3. In addition to the other payments set forth in this section, if a  
16 termination, cancellation, or nonrenewal is premised upon  
17 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then  
18 the manufacturer or distributor shall be liable to the dealer for  
19 an amount at least equivalent to the fair market value of the  
20 franchise on (i) the date the franchisor announces the action  
21 which results in termination, cancellation, or nonrenewal; or  
22 (ii) the date the action which results in termination,  
23 cancellation, or nonrenewal first became general knowledge;  
24 or (iii) the day 12 months prior to the date on which the  
25 notice of termination, cancellation, or nonrenewal is issued,  
26 whichever amount is higher. Payment is due ~~within~~ not later  
27 than 90 days of the effective date of the termination,  
28 cancellation, or nonrenewal after the manufacturer or  
29 distributor has received notice in writing from, or on behalf  
30 of, the new motor vehicle dealer specifying the elements of  
31 compensation requested by the dealer. If the termination,  
32 cancellation, or nonrenewal is due to a manufacturer's change  
33 in distributors, the manufacturer may avoid paying fair  
34 market value to the dealer if the new distributor or the  
35 manufacturer offers the dealer a franchise agreement with  
36 terms acceptable to the dealer.

37 e. Dealership Facilities Assistance upon Termination, Cancellation or  
38 Nonrenewal.

39 In the event of the occurrence of any of the events specified in  
40 G.S. 20-305(6)d.1. above, termination, cancellation or nonrenewal by  
41 the manufacturer or distributor under this section, except termination,  
42 cancellation or nonrenewal for insolvency, license revocation,  
43 conviction of a crime involving moral turpitude, or fraud by a  
44 dealer-owner:

45 1. Subject to paragraph 3, if the new motor vehicle dealer is  
46 leasing the dealership facilities from a lessor other than the  
47 manufacturer or distributor, the manufacturer or distributor  
48 shall pay the new motor vehicle dealer a sum equivalent to  
49 the rent for the unexpired term of the lease or three year's  
50 rent, whichever is less, or such longer term as is provided in  
51 the franchise agreement between the dealer and manufacturer;

- 1 except that, in the case of motorcycle dealerships, the  
2 manufacturer shall pay the new motor vehicle dealer the sum  
3 equivalent to the rent for the unexpired term of the lease or  
4 one year's rent, whichever is less, or such longer term as  
5 provided in the franchise agreement between the dealer and  
6 manufacturer; or
- 7 2. Subject to paragraph 3, if the new motor vehicle dealer owns  
8 the dealership facilities, the manufacturer or distributor shall  
9 pay the new motor vehicle dealer a sum equivalent to the  
10 reasonable rental value of the dealership facilities for three  
11 years, or for one year in the case of motorcycle dealerships.
- 12 3. In order to be entitled to facilities assistance from the  
13 manufacturer or distributor, as provided in this paragraph e.,  
14 the dealer, owner, or lessee, as the case may be, shall have the  
15 obligation to mitigate damages by listing the demised  
16 premises for lease or sublease with a licensed real estate agent  
17 within 30 days after the effective date of the termination of  
18 the franchise and thereafter by reasonably cooperating with  
19 said real estate agent in the performance of the agent's duties  
20 and responsibilities. In the event that the dealer, owner, or  
21 lessee is able to lease or sublease the demised premises, the  
22 dealer shall be obligated to pay the manufacturer the net  
23 revenue received from such mitigation up to the total amount  
24 of facilities assistance which the dealer has received from the  
25 manufacturer pursuant to sub-subdivisions 1. and 2. To the  
26 extent and for such uses and purposes as may be consistent  
27 with the terms of the lease, a manufacturer who pays facilities  
28 assistance to a dealer under this paragraph e. shall be entitled  
29 to occupy and use the dealership facilities during the years for  
30 which the manufacturer shall have paid rent under  
31 sub-subdivisions 1. and 2.
- 32 4. In the event the termination relates to fewer than all of the  
33 franchises operated by the dealer at a single location, the  
34 amount of facilities assistance which the manufacturer or  
35 distributor is required to pay the dealer under this  
36 sub-subdivision shall be based on the proportion of gross  
37 revenue received from the sale and lease of new vehicles by  
38 the dealer and from the dealer's parts and service operations  
39 during the three years immediately preceding the effective  
40 date of the termination (or any shorter period that the dealer  
41 may have held these franchises) of the line-makes being  
42 terminated, in relation to the gross revenue received from the  
43 sale and lease of all line-makes of new vehicles by the dealer  
44 and from the total of the dealer's and parts and service  
45 operations from this location during the same three-year  
46 period.
- 47 5. The compensation required for facilities assistance under this  
48 paragraph e. shall be paid by the manufacturer or distributor  
49 within 90 days of the effective date of termination,  
50 cancellation, or nonrenewal. after the manufacturer or  
51 distributor has received notice in writing from, or on behalf

1 of, a new motor vehicle dealer specifying the elements of  
2 compensation requested by the dealer.

3 f. ~~The provisions of sub-subdivisions d. and e. above shall not be~~  
4 ~~applicable when the termination, nonrenewal or cancellation of the~~  
5 ~~franchise agreement is the result of the voluntary act of the dealer.~~

6 The provisions of sub-subdivision e. above shall not be applicable  
7 when the termination, nonrenewal, or cancellation of the franchise  
8 agreement by a new motor vehicle dealer is the result of the sale of  
9 assets or stock of the motor vehicle dealership. The provisions of  
10 sub-subdivisions d. and e. above shall not be applicable when the  
11 termination, nonrenewal, or cancellation of the franchise agreement  
12 is at the initiation of a new motor vehicle dealer of recreational  
13 vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided  
14 that at the time of the termination, nonrenewal, or cancellation, the  
15 recreational vehicle manufacturer or distributor has paid to the dealer  
16 all claims for warranty or recall work, including payments for labor,  
17 parts, and other expenses, which were submitted by the dealer 30  
18 days or more prior to the date of termination, nonrenewal, or  
19 cancellation.

20 ~~Notwithstanding the terms of any contract or agreement, any dealer's~~  
21 ~~termination or resignation shall not be deemed to be voluntary if that~~  
22 ~~termination or resignation occurred under the manufacturer's threat of~~  
23 ~~nonrenewal, cancellation, or termination of the franchise.~~

24 g. A franchise shall continue in full force and operation notwithstanding  
25 a change, in whole or in part, of an established plan or system of  
26 distribution of the motor vehicles offered for sale under the franchise.  
27 The appointment of a new manufacturer, factory branch, distributor,  
28 or distributor branch for motor vehicles offered for sale under the  
29 franchise agreement shall be deemed to be a change of an established  
30 plan or system of distribution.

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

39 **SECTION 6.** The terms and provisions of this act shall be applicable to all  
40 franchises and other agreements in existence between any new motor vehicle dealer located in  
41 this State and a manufacturer or distributor as of the effective date of this act, and to all future  
42 franchises and other agreements.

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

47 **SECTION 8.** This act is effective when it becomes law.