

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 913
RATIFIED BILL

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

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

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

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

In the event that as of June 30, 2001, a manufacturer was operating a program that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, or had in effect a documented policy that had been conveyed to its franchised dealers in this State and that varied the price charged to its franchised dealers in this State in a manner that would violate this subdivision, and the program or policy was implemented in this State subsequent to October 1, 1999, and prior to June 30, 2001, and provided that the program or policy is in compliance with this subdivision as it existed as of June 30, 2001, it shall be lawful for that program or policy, including amendments to that program or policy that comply with this subdivision as it existed as of June 30, 2001, to continue in

effect as to the manufacturer's franchised dealers located in this State until June 30, ~~2010~~2014.

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

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

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

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

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

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

SECTION 5. G.S. 20-305(6) 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:

...
(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within (i) the time period specified in G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, whichever period of time is longer, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good

faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this paragraph, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

- a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:
 1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
 2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the

new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

- I. The notification stated that notice was provided of failure of performance pursuant to this section;
- II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and
- III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

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

c. Notification of Termination, Cancellation and Nonrenewal. –

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

- I. In the manner described in G.S. 20-305(6)c2 below; and
- II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
- III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
 - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or

discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.

- V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
 - I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.
- d. Payments.
1. Notwithstanding the terms of any franchise, agreement, or waiver, upon ~~Upon~~ the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the cessation of business or the termination, nonrenewal, or cancellation of any franchise by any new motor vehicle dealer located in this State, or upon any of the occurrences set forth in G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall purchase from and compensate the new motor vehicle dealer ~~shall be allowed fair and reasonable compensation by the manufacturer for the~~ all of the following:
 - I. New ~~Each~~ new and unsold motor vehicle within the new motor vehicle dealer's inventory that has been acquired from the manufacturer within 24 months of the effective date of the termination ~~18 months, at a price not to exceed the original manufacturer's price to the dealer, and from the manufacturer or distributor or another same line-make dealer in the ordinary course of business, and which has not been substantially altered or damaged, damaged to the prejudice of the manufacturer or distributor while in the new motor vehicle dealer's possession, and which has not been driven more less than 200 miles, 1,000 miles or, for purposes of a recreational vehicle motor home as defined in G.S. 20-4.01(32a)a., less than 1,500 miles following the original date of delivery to the dealer, and for which no certificate of title has been issued; issued. For purposes of this sub-subdivision, the term "ordinary course of business" shall include inventory transfers of all new, same line-make vehicles between affiliated dealerships, or otherwise between dealerships having common or interrelated ownership, provided that the transfer is not intended~~

solely for the purpose of benefiting from the termination assistance described in this sub-subdivision.

- II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer or distributor or sources approved by the manufacturer or distributor, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;
 - III. Equipment, signs, and furnishings that have not been substantially altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources;
 - IV. Special tools that have not been altered or damaged, normal wear and tear excepted, and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise. The amount of compensation which shall be paid to the new motor vehicle dealer by the manufacturer or distributor shall be the net acquisition price if the item was acquired in the 12 months preceding the date of receipt of the dealer's request for compensation; seventy-five percent (75%) of the net acquisition price if the item was acquired between 13 and 24 months preceding the dealer's request for compensation; fifty percent (50%) of the net acquisition price if the item was acquired between 25 and 36 months preceding the dealer's request for compensation; twenty-five percent (25%) of the net acquisition price if the item was acquired between 37 and 60 months preceding the dealer's request for compensation.
2. Fair and reasonable compensation for the ~~The compensation provided above shall be paid by the manufacturer or distributor within not later than 90 days of the effective date of termination, cancellation or nonrenewal, after the manufacturer or distributor has received notice in writing from or on behalf of the new motor vehicle dealer specifying the elements of compensation requested by the dealer; provided the new motor vehicle dealer has, or can obtain, clear title to the inventory and has conveyed, or can convey, title and possession of the same to the manufacturer or distributor. Within 15 days after receipt of the dealer's written request for compensation, the manufacturer or distributor shall send the dealer detailed written instructions and forms required by the manufacturer or distributor to effectuate the receipt of the compensation requested by the dealer. The manufacturer or distributor shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase obligations of the manufacturer or distributor under this sub-subparagraph. The manufacturer or distributor shall also compensate the~~

dealer for any handling, packing, or similar payments contemplated in the franchise. In no event may the manufacturer or distributor not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.

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

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

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

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer or distributor, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer or distributor shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years, or for one year in the case of motorcycle dealerships.
3. In order to be entitled to facilities assistance from the manufacturer or distributor, as provided in this paragraph e., the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by listing the demised premises for lease or sublease with a licensed real estate agent

within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this paragraph e. shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.

4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer or distributor is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service operations from this location during the same three-year period.

5. The compensation required for facilities assistance under this paragraph e. shall be paid by the manufacturer or distributor within 90 days of the effective date of termination, ~~cancellation, or nonrenewal.~~ after the manufacturer or distributor has received notice in writing from, or on behalf of, a new motor vehicle dealer specifying the elements of compensation requested by the dealer.

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 15th day of July, 2009.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2009