

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

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

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

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

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

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

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

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

1 clear title to the inventory and has ~~conveyed~~ conveyed, or can
2 convey, title and possession of the same to the manufacturer
3 or distributor. Within 15 days after receipt of the dealer's
4 written request for compensation, the manufacturer or
5 distributor shall send the dealer detailed written instructions
6 and forms required by the manufacturer or distributor to
7 effectuate the receipt of the compensation requested by the
8 dealer. The manufacturer or distributor shall be obligated to
9 pay or reimburse the dealer for any transportation charges
10 associated with the ~~manufacturer's~~ repurchase obligations of
11 the manufacturer or distributor under this sub-subparagraph.
12 The manufacturer or distributor shall also compensate the
13 dealer for any handling, packing, or similar payments
14 contemplated in the franchise. In no event may the
15 manufacturer or distributor ~~not~~ charge the dealer any
16 handling, restocking, or other similar costs or fees associated
17 with items repurchased by the manufacturer under this
18 sub-subparagraph.

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

- 42 e. Dealership Facilities Assistance upon Termination, Cancellation or
43 Nonrenewal.

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

- 50 1. Subject to paragraph 3, if the new motor vehicle dealer is
51 leasing the dealership facilities from a lessor other than the

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

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

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

11 The provisions of sub-subdivision e. above shall not be applicable
12 when the termination, nonrenewal, or cancellation of the franchise
13 agreement by a new motor vehicle dealer is the result of the sale of
14 assets or stock of the motor vehicle dealership.

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

19 The provisions of sub-subdivisions d. and e. of this subdivision shall
20 also apply, upon request of the dealer pursuant to G.S. 20-305(6)d.2.,
21 when a manufacturer or distributor provides public notice or notifies
22 one of its franchised dealers located in this State that it intends to
23 either phase out the dealer's franchise or terminate the dealer's
24 franchise at a later date, or when a manufacturer or distributor
25 provides public notice or notice to any of its franchised or licensed
26 dealers located in this State that any of the occurrences set forth in
27 G.S. 20-305(6)c.1.IV. has occurred or will occur in the future, so as
28 to either render a dealer's franchised business substantially
29 unmarketable, or saleable only at prices significantly below its fair
30 market value prior to the date of the occurrences set forth in
31 G.S. 20-305(6)c.1.IV.

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

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

50 **SECTION 2.** If any provision of this act or its application is held invalid, the
51 invalidity does not affect other provisions or applications of this act that can be given effect

1 without the invalid provisions or application, and to this end the provisions of this act are
2 severable.

3 **SECTION 3.** This act is effective when it becomes law.