

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1002

Short Title: MV Dealers Licensing Law.

(Public)

Sponsors: Representative Brawley.

Referred to: Judiciary II.

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY CERTAIN PROVISIONS CONTAINED IN THE MOTOR
VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301(e) reads as rewritten:

"(e) The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed ~~60 days.~~ 60 days; provided, however, that the Commissioner, in his discretion, may extend the time for discovery beyond the 60-day period either upon the consent of all parties to the proceeding, or upon application of one or more parties and upon a showing of good cause for allowing such extension."

Sec. 2. G.S. 20-305(4) reads as rewritten:

"(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, or 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 sale, ~~transfer~~ transfer, relocation, or change, and after a hearing on the matter, that the failure to permit or honor such sale, transfer, relocation, assignment, or change is unreasonable under the circumstances; provided, however, that no franchise may be sold or

1 assigned or ~~transferred~~ transferred, or the dealership relocated, unless
2 ~~(i)~~ the franchisor has been given at least 30 days' prior written notice as
3 to the identity, financial ability and qualifications of the proposed
4 transferee, and ~~(ii) the sale or transfer of the franchise and business will not~~
5 ~~involve, without the franchisor's consent, a relocation of the business;~~ the
6 identity and qualifications of persons proposed to be involved in
7 executive management or as principal operators or the proposed
8 location and site plans of the site at which the relocation is proposed.
9 The franchisor's failure to send the dealership notice of the franchisor's
10 objection to the proposed sale, transfer, relocation or change by
11 registered or certified mail, return receipt requested which specifies in
12 detail all grounds upon which said objection is based within 30 days
13 after the franchisor has received written notice from the dealership as
14 provided herein, shall constitute a waiver by the franchisor of any right
15 said franchisor may otherwise have had to object to the proposed sale,
16 transfer, relocation, assignment or change is unreasonable under the
17 circumstances of this section."

18 Sec. 3. G.S. 20-305(5) reads as rewritten:

19 "(5) To enter into a franchise establishing an additional new motor vehicle
20 dealer or relocating an existing new motor vehicle dealer into a
21 relevant market area where the same line make is then represented
22 without first notifying in writing the Commissioner and each new
23 motor vehicle dealer in such line make in the relevant market area of
24 the intention to establish an additional dealer or to relocate an existing
25 dealer within or into that market area. Within 30 days of receiving
26 such notice or within 30 days after the end of any appeal procedure
27 provided by the manufacturer, any such new motor vehicle dealer may
28 file with the Commissioner a protest to the establishing or relocating of
29 the new motor vehicle dealer. When such a protest is filed, the
30 Commissioner shall promptly inform the manufacturer that a timely
31 protest has been filed, and that the manufacturer shall not establish or
32 relocate the proposed new motor vehicle dealer until the
33 Commissioner has held a hearing, nor thereafter, if the Commissioner
34 has determined that there is good cause for not permitting the addition
35 or relocation of such new motor vehicle dealer.

36 a. This section does not apply:

37 1. To the relocation of an existing new motor vehicle dealer
38 within that dealer's relevant market area, provided that
39 the relocation not be at a site within 10 miles of a
40 licensed new motor vehicle dealer for the same line
41 make of motor vehicle; or

42 2. If the proposed additional new motor vehicle
43 dealer is to be established at or within two miles of a
44 location at which a former licensed new motor vehicle

1 dealer for the same line make of new motor vehicle
2 had ceased operating within the previous two years;

3 3. To the relocation of an existing new motor
4 vehicle dealer within two miles of the existing site of
5 the new motor vehicle dealership;

6 4. To the relocation of an existing new motor
7 vehicle dealer if the proposed site of the relocated new
8 motor vehicle dealership is further away from all other
9 new motor vehicle dealers of the same line make in
10 that relevant market area.

11 b. In determining whether good cause has been established for not
12 entering into or relocating an additional new motor vehicle
13 dealer for the same line make, the Commissioner shall take into
14 consideration the existing circumstances, including, but not
15 limited to:

16 1. The permanency of the investment of both the existing
17 and proposed additional new motor vehicle dealers;

18 2. Growth or decline in population, density of
19 population, and new car registrations in the relevant
20 market area;

21 3. Effect on the consuming public in the relevant
22 market area;

23 4. Whether it is injurious or beneficial to the
24 public welfare for an additional new motor vehicle
25 dealer to be established;

26 5. Whether the new motor vehicle dealers of the
27 same line make in that relevant market area are
28 providing adequate competition and convenient
29 customer care for the motor vehicles of the same line
30 make in the market area which shall include the
31 adequacy of motor vehicle sales and service facilities,
32 equipment, supply of motor vehicle parts, and
33 qualified service personnel;

34 6. Whether the establishment of an additional
35 new motor vehicle dealer or relocation of an existing
36 new motor vehicle in the relevant market area would
37 increase competition in a manner such as to be in the
38 long-term public interest; and

39 7. The effect on the relocating dealer of a denial
40 of its relocation into the relevant market area.

41 c. The Commissioner must conduct the hearing and render his
42 final determination as expeditiously as possible, but in any
43 event no later than 180 days after a protest is filed. Unless
44 waived by the parties, failure to do so shall be deemed the

1 equivalent of a determination that good cause does not exist for
2 refusing to permit the proposed additional or relocated motor
3 vehicle dealer, unless such delay is caused by acts of the
4 manufacturer, or the relocating or additional dealer.

5 d. Any parties to a hearing by the Commissioner concerning the
6 establishment or relocating of a new motor vehicle dealer shall
7 have a right of review of the decision in a court of competent
8 jurisdiction pursuant to Chapter ~~150A~~-150B of the General
9 Statutes.

10 e. In a proceeding involving a proposed additional dealership, the
11 manufacturer or distributor shall have the burden of proof under
12 this section; and in a proceeding involving the relocation of an
13 existing dealership, the dealer seeking to relocate shall have the
14 burden of proof under this section.

15 f. If, pursuant to the foregoing procedure, it shall be determined,
16 following a hearing or otherwise, that good does not exist for
17 refusing to permit the proposed additional or relocated motor
18 vehicle dealer, the proposed additional or relocated motor
19 vehicle dealer has not, within two years from the date such
20 determination became final, both (i) obtained a license from the
21 Commissioner for the sale of vehicles at the site at which
22 permission for the additional new motor vehicle dealer or
23 relocated dealer was granted by the Commissioner, and (ii)
24 actually commenced operations at such site selling new motor
25 vehicles of all line-makes for which permission to operate at the
26 additional or relocated site was allowed by the Commissioner,
27 such failure shall constitute a waiver by the proposed additional
28 or relocated motor vehicle dealer to exercise such dealer's rights
29 under this section, requiring renotification, a new hearing, and a
30 new determination pursuant to this section."

31 Sec. 4. G.S. 20-305(6) reads as rewritten:

32 "(6) Notwithstanding the terms, provisions or conditions of any franchise
33 or notwithstanding the terms or provisions of any waiver, to terminate,
34 cancel or fail to renew any franchise with a licensed new motor vehicle
35 dealer unless the manufacturer has: satisfied the notice requirements of
36 subparagraph c.; and the Commissioner has determined, if requested in
37 writing by the dealer within the time period specified in G.S. 20-
38 305(6)cIII, III or IV, as applicable, and after a hearing on the matter,
39 that there is good cause for the termination, cancellation, or
40 nonrenewal of the franchise and that the manufacturer has acted in
41 good faith as defined in this act regarding the termination, cancellation
42 or nonrenewal. When such a petition is made to the Commissioner by
43 a dealer for determination as to the existence of good cause and good
44 faith for the termination, cancellation or nonrenewal of a franchise, the

1 Commissioner shall promptly inform the manufacturer that a timely
2 petition has been filed, and the franchise in question shall continue in
3 effect pending the Commissioner's decision. The Commissioner must
4 conduct the hearing and render his final determination as ~~expeditiously~~
5 ~~as possible, but in any event~~ no later than 180 days after a petition has
6 been ~~filed~~ filed; provided, however, that the Commissioner may
7 extend such period of time upon application of a party and for good
8 cause shown, or upon the consent of all parties to the proceeding. If
9 the termination, cancellation or nonrenewal is pursuant to G.S. 20-
10 305(6)c1III then the Commissioner shall give the proceeding priority
11 consideration and shall render his final determination no later than 60
12 days after the petition has been filed. Any parties to a hearing by the
13 Commissioner under this section shall have a right of review of the
14 decision in a court of competent jurisdiction pursuant to Chapter 150A
15 of the General Statutes.

16 a. Notwithstanding the terms, provisions or conditions of any
17 franchise or the terms or provisions of any waiver, good cause
18 shall exist for the purposes of a termination, cancellation or
19 nonrenewal when:

20 1. There is a failure by the new motor vehicle dealer to
21 comply with a provision of the franchise which provision
22 is both reasonable and of material significance to the
23 franchise relationship provided that the dealer has been
24 notified in writing of the failure within 180 days after the
25 manufacturer first acquired knowledge of such failure;

26 2. If the failure by the new motor vehicle dealer,
27 defined in 1 above, relates to the performance of the
28 new motor vehicle dealer in sales or service, then good
29 cause shall be defined as the failure of the new motor
30 vehicle dealer to comply with reasonable performance
31 criteria established by the manufacturer if the new
32 motor vehicle dealer was apprised by the manufacturer
33 in writing of such failure; and

34 I. Said notification stated that notice was provided
35 of failure of performance pursuant to this section;

36 II. The new motor vehicle dealer was
37 afforded a reasonable opportunity, for a period
38 of not less than 180 days, to comply with such
39 criteria; and

40 III. The new motor vehicle dealer failed to
41 demonstrate substantial progress towards
42 compliance with the manufacturer's
43 performance criteria during such period and the
44 new motor vehicle dealer's failure was not

- 1 primarily due to economic or market factors
2 within the dealer's relevant market area which
3 were beyond the dealer's control.
- 4 b. The manufacturer shall have the burden of proof under this
5 section.
- 6 c. Notification of Termination, Cancellation and
7 Nonrenewal.
- 8 1. Notwithstanding the terms, provisions or conditions of
9 any franchise prior to the termination, cancellation or
10 nonrenewal of any franchise, the manufacturer shall
11 furnish notification of such termination, cancellation or
12 nonrenewal to the new motor vehicle dealer as follows:
- 13 I. In the manner described in G.S. 20-305(6)c2
14 below; and
- 15 II. Not less than 90 days prior to the
16 effective date of such termination, cancellation
17 or nonrenewal; or
- 18 III. Not less than 15 days prior to the
19 effective date of such termination, cancellation
20 or nonrenewal with respect to any of the
21 following:
- 22 A. Insolvency of the new motor vehicle
23 dealer, or filing of any petition by or
24 against the new motor vehicle dealer
25 under any bankruptcy or receivership
26 law;
- 27 B. Failure of the new motor vehicle
28 dealer to conduct its customary sales and
29 service operations during its customary
30 business hours for seven consecutive
31 business days, except for acts of God or
32 circumstances beyond the direct control
33 of the new motor vehicle dealer;
- 34 C. Revocation of any license which
35 the new motor vehicle dealer is required
36 to have to operate a dealership;
- 37 D. Conviction of a felony involving
38 moral turpitude, under the laws of this
39 State or any other state, or territory, or
40 the District of Columbia.
- 41 IV. Not less than 180 days prior to the effective date
42 of such termination or cancellation where the
43 manufacturer or distributor is discontinuing the
44 sale of the product line.

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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 statement of the reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which such termination, cancellation or nonrenewal takes effect.
 3. Notification provided in G.S. 20-305(6)c1III 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 such 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. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:
 - I. New motor vehicle inventory which has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;
 - II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, 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 and furnishings which have not been altered or damaged and which 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; and
 - IV. Special tools which have not been altered or damaged and which have been

- 1 required by the manufacturer or distributor to be
2 purchased by the new motor vehicle dealer from
3 the manufacturer or distributor, or their
4 approved sources within five years immediately
5 preceding the termination, nonrenewal or
6 cancellation of the franchise.
- 7 2. Such fair and reasonable compensation for the above
8 shall be paid by the manufacturer within 90 days of the
9 effective date of termination, cancellation or nonrenewal,
10 provided the new motor vehicle dealer has clear title to
11 the inventory and has conveyed title and possession to
12 the manufacturer.
- 13 e. Dealership Facilities Assistance upon Termination,
14 Cancellation or Nonrenewal. –
15 In the event of the termination, cancellation or nonrenewal
16 by the manufacturer or distributor under this section, except
17 termination, cancellation or nonrenewal for insolvency, license
18 revocation, conviction of a crime involving moral turpitude, or
19 fraud by a dealer-owner:
- 20 1. Subject to paragraph 3, if the new motor vehicle dealer is
21 leasing the dealership facilities from a lessor other than
22 the manufacturer, the manufacturer shall pay the new
23 motor vehicle dealer a sum equivalent to the rent for the
24 unexpired term of the lease or one year's rent, whichever
25 is less, or such longer term as is provided in the
26 franchise agreement between the dealer and
27 manufacturer; or
- 28 2. Subject to paragraph 3, if the new motor
29 vehicle dealer owns the dealership facilities, the
30 manufacturer shall pay the new motor vehicle dealer a
31 sum equivalent to the reasonable rental value of the
32 dealership facilities for one year.
- 33 3. Provided nothing in this section e shall relieve a lessee or
34 owner, as the case may be, from the obligation to
35 mitigate damages under the lease, nor prevent a
36 manufacturer from occupying and using the dealership
37 facilities while paying rent under subsections 1 and 2,
38 nor prevent a manufacturer from obligations by
39 negotiating a lease termination, a sublease or a new
40 lease. Any amounts recovered by the lessee or owner
41 resulting from mitigation of damages shall be deducted
42 from the amount due from the manufacturer.
- 43 f. The provisions of paragraphs d. and e. above shall not be
44 applicable when the termination, nonrenewal or cancellation of

1 the franchise agreement is the result of the voluntary act of the
2 dealer."

3 Sec. 5. G.S. 20-308.1(a) reads as rewritten:

4 "(a) Notwithstanding the terms, provisions or conditions of any agreement or
5 franchise or other terms or provisions of any novation, waiver or other written
6 instrument, any person who is or may be injured by a violation of a provision of this
7 Article, or any party to a franchise who is so injured in his business or property by a
8 violation of a provision of this Article relating to that franchise, ~~or any person so injured~~
9 ~~because he refuses to accede to a proposal for~~ or an arrangement which, if consummated,
10 would be in violation of this Article may, notwithstanding the initiation or pendency of
11 an administrative proceeding before the Commissioner concerning the same parties or
12 subject matter, bring an action for damages and equitable relief, including injunctive
13 relief, in any court of competent jurisdiction with regard to any matter not within the
14 jurisdiction of the ~~Commissioner.~~ Commissioner or which seeks relief wholly outside the
15 authority or jurisdiction of the Commissioner to award."

16 Sec. 6. This act is effective upon ratification and affects any pending
17 administrative proceeding or litigation.