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HOUSE BILL 1002
Committee Substitute Favorable 5/1/91
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Short Title: MV Dealers Licensing Law.

(Public)

Sponsors:

Referred to:

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.~~ 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, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor such ~~sale,~~

1 transfer, sale, assignment, relocation, or change is unreasonable under
2 the circumstances; provided, however, that no franchise may be ~~sold or~~
3 ~~assigned or transferred~~ transferred, sold, assigned, relocated, or the
4 executive management or principal operators changed, unless (i) the
5 franchisor has been given at least 30 days' prior written notice as to the
6 identity, financial ability and qualifications of the proposed transferee,
7 and (ii) ~~the sale or transfer of the franchise and business will not involve,~~
8 ~~without the franchisor's consent, a relocation of the the business; the~~
9 identity and qualifications of the persons proposed to be involved in
10 executive management or as principal operators, and the location and
11 site plans of any proposed relocation. The franchisor shall send the
12 dealership notice of objection, by registered or certified mail, return
13 receipt requested, to the proposed transfer, sale, assignment, relocation
14 or change within 30 days after receipt of notice from the dealer, as
15 provided in this section. Failure by the franchisor to send notice of
16 objection within 30 days shall constitute waiver by the franchisor of
17 any right to object to the proposed transfer, sale, assignment,
18 relocation or change. The manufacturer or distributor shall have the
19 burden of proving that the proposed transfer, sale, assignment,
20 relocation, or change is unreasonable under the circumstances."

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

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

39 a. This section does not apply:

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

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2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
 3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
 4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
 2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
 3. Effect on the consuming public in the relevant market area;
 4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
 5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
 6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
 7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

- 1 c. The Commissioner must conduct the hearing and render his
2 final determination as expeditiously as possible, but in any
3 event no later than 180 days after a protest is filed. Unless
4 waived by the parties, failure to do so shall be deemed the
5 equivalent of a determination that good cause does not exist for
6 refusing to permit the proposed additional or relocated motor
7 vehicle dealer, unless such delay is caused by acts of the
8 manufacturer, or the relocating or additional dealer.
- 9 d. Any parties to a hearing by the Commissioner concerning the
10 establishment or relocating of a new motor vehicle dealer shall
11 have a right of review of the decision in a court of competent
12 jurisdiction pursuant to Chapter ~~150A~~ 150B of the General
13 Statutes.
- 14 e. In a hearing involving a proposed additional dealership, the
15 manufacturer or distributor shall have the burden of proof under
16 this section; and in a proceeding involving the relocation of an
17 existing dealership, the dealer seeking to relocate shall have the
18 burden of proof under this section.
- 19 f. If the Commissioner determines, following a hearing, that good
20 cause does not exist for refusing to permit the proposed
21 additional or relocated motor vehicle dealership, the dealer
22 seeking the proposed additional or relocated motor vehicle
23 dealership must, within two years, obtain a license from the
24 Commissioner for the sale of vehicles at the relevant site, and
25 actually commence operations at the site selling new motor
26 vehicles of all line-makes, as permitted by the Commissioner.
27 Failure to obtain a permit and commence sales within two years
28 shall constitute waiver by the dealer of the dealer's right to the
29 additional or relocated dealership, requiring renotification, a
30 new hearing, and a new determination as provided in this
31 section."

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

- 33 "(6) Notwithstanding the terms, provisions or conditions of any franchise
34 or notwithstanding the terms or provisions of any waiver, to terminate,
35 cancel or fail to renew any franchise with a licensed new motor vehicle
36 dealer unless the manufacturer has: satisfied the notice requirements of
37 subparagraph c.; and the Commissioner has determined, if requested in
38 writing by the dealer within the time period specified in G.S. 20-
39 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
40 that there is good cause for the termination, cancellation, or
41 nonrenewal of the franchise and that the manufacturer has acted in
42 good faith as defined in this act regarding the termination, cancellation
43 or nonrenewal. When such a petition is made to the Commissioner by
44 a dealer for determination as to the existence of good cause and good

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

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

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

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

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

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

41 III. The new motor vehicle dealer failed to
42 demonstrate substantial progress towards
43 compliance with the manufacturer's
44 performance criteria during such period and the

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

- 1 manufacturer or distributor is discontinuing the
2 sale of the product line.
- 3 2. Notification under this section shall be in writing; shall
4 be by certified mail or personally delivered to the new
5 motor vehicle dealer; and shall contain:
- 6 I. A statement of intention to terminate,
7 cancel or not to renew the franchise;
- 8 II. A statement of the reasons for the
9 termination, cancellation or nonrenewal; and
- 10 III. The date on which such termination,
11 cancellation or nonrenewal takes effect.
- 12 3. Notification provided in G.S. 20-305(6)c1III of 90 days
13 prior to the effective date of such termination,
14 cancellation or renewal may run concurrent with the 180
15 days designated in G.S. 20-305(6)a2II provided such
16 notification is clearly designated by a separate written
17 document mailed by certified mail or personally
18 delivered to the new motor vehicle dealer.
- 19 d. Payments. –
- 20 1. Upon the termination, nonrenewal or cancellation of any
21 franchise by the manufacturer or distributor, pursuant to
22 this section, the new motor vehicle dealer shall be
23 allowed fair and reasonable compensation by the
24 manufacturer for the:
- 25 I. New motor vehicle inventory which has been
26 acquired from the manufacturer within 18 months,
27 at a price not to exceed the original
28 manufacturer's price to the dealer, and which has
29 not been altered or damaged, and which has not
30 been driven more than 200 miles, and for which
31 no certificate of title has been issued;
- 32 II. Unused, undamaged and unsold supplies and parts
33 purchased from the manufacturer, at a price not to
34 exceed the original manufacturer's price to the
35 dealer, provided such supplies and parts are
36 currently offered for sale by the manufacturer or
37 distributor in its current parts catalogs and are in
38 salable condition;
- 39 III. Equipment and furnishings which have
40 not been altered or damaged and which have
41 been required by the manufacturer or distributor
42 to be purchased by the new motor vehicle dealer
43 from the manufacturer or distributor, or their
44 approved sources; and

1 IV. Special tools which have not been
2 altered or damaged and which have been
3 required by the manufacturer or distributor to be
4 purchased by the new motor vehicle dealer from
5 the manufacturer or distributor, or their
6 approved sources within five years immediately
7 preceding the termination, nonrenewal or
8 cancellation of the franchise.

- 9 2. Such fair and reasonable compensation for the above
10 shall be paid by the manufacturer within 90 days of the
11 effective date of termination, cancellation or nonrenewal,
12 provided the new motor vehicle dealer has clear title to
13 the inventory and has conveyed title and possession to
14 the manufacturer.

15 e. Dealership Facilities Assistance upon Termination,
16 Cancellation or Nonrenewal. –

17 In the event of the termination, cancellation or nonrenewal by the
18 manufacturer or distributor under this section, except termination,
19 cancellation or nonrenewal for insolvency, license revocation,
20 conviction of a crime involving moral turpitude, or fraud by a dealer-
21 owner:

- 22 1. Subject to paragraph 3, if the new motor vehicle dealer is
23 leasing the dealership facilities from a lessor other than
24 the manufacturer, the manufacturer shall pay the new
25 motor vehicle dealer a sum equivalent to the rent for the
26 unexpired term of the lease or one year's rent, whichever
27 is less, or such longer term as is provided in the
28 franchise agreement between the dealer and
29 manufacturer; or

30 2. Subject to paragraph 3, if the new motor
31 vehicle dealer owns the dealership facilities, the
32 manufacturer shall pay the new motor vehicle dealer a
33 sum equivalent to the reasonable rental value of the
34 dealership facilities for one year.

- 35 3. Provided nothing in this ~~section e~~ paragraph e. shall
36 relieve a lessee or owner, as the case may be, from the
37 obligation to mitigate damages under the lease, nor
38 prevent a manufacturer from occupying and using the
39 dealership facilities while paying rent under subsections
40 1 and 2, nor prevent a manufacturer from obligations by
41 negotiating a lease termination, a sublease or a new
42 lease. Any amounts recovered by the lessee or owner
43 resulting from mitigation of damages shall be deducted
44 from the amount due from the manufacturer.

- 1 f. The provisions of paragraphs d. and e. above shall not be
2 applicable when the termination, nonrenewal or cancellation of
3 the franchise agreement is the result of the voluntary act of the
4 dealer."

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

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

18 Sec. 6. G.S. 286(10) is rewritten to read:

19 "(10) 'Motor vehicle' means any motor propelled vehicle, trailer or
20 semitrailer, required to be registered under the laws of this State.
21 The term 'motor vehicle,' as used in this Article, does not include
22 mobile or manufactured type housing or recreational trailers.

- 23 a. 'New motor vehicle' means a motor vehicle which has never
24 been the subject of a sale other than between new motor vehicle
25 dealers, or between manufacturer and dealer of the same
26 franchise.
27 b. 'Used motor vehicle' means a motor vehicle other than
28 described in paragraph (10)a above."

29 Sec. 7. G.S. 20-288(e) is rewritten to read:

30 "(e) Each applicant approved by the Division for license as a motor vehicle dealer,
31 manufacturer, distributor branch, or factory branch shall furnish a corporate surety bond
32 or cash bond or fixed value equivalent thereof in the principal sum of fifteen thousand
33 dollars (\$15,000) and an additional principal sum of five thousand dollars (\$5,000) for
34 each additional place of business within this State at which motor vehicles are sold.
35 Each application for a license or a renewal of a license shall be accompanied by a list of
36 locations at which the applicant engages in the business of selling motor vehicles in this
37 State. A corporate surety bond shall be approved by the Commissioner as to form and
38 shall be conditioned that the obligor will faithfully conform to and abide by the
39 provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof
40 shall be approved by the Commissioner as to form and terms of deposits as will secure
41 the ultimate beneficiaries of the bond; and such bond shall not be available for delivery
42 to any person contrary to the rules of the Commissioner. Any purchaser of a motor
43 vehicle who shall have suffered any loss or damage by any act of a motor vehicle dealer
44 that constitutes a violation of this Article or Article 15 shall have the right to institute an

1 action to recover against such motor vehicle dealer and the surety. Every licensee
2 against whom such action is instituted shall notify the Commissioner of the action
3 within 10 days after process is served on the licensee. A corporate surety bond shall
4 remain in force and effect and may not be canceled by the surety unless the motor
5 vehicle dealer, manufacturer, distributor branch, or factory branch has terminated the
6 operations of its business nor unless its license has been denied, suspended, or revoked
7 under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to
8 the Commissioner and shall not affect any liability incurred or accrued prior to the
9 termination of such 30-day period. Provided nothing herein shall apply to a motor
10 vehicle dealer, manufacturer, distributor branch or factory branch which deals only in
11 trailers having an empty weight of 4,000 pounds or less. ~~This subsection shall not apply to~~
12 ~~manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety~~
13 ~~bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."~~

14 Sec. 8. G.S. 20-305(3) is repealed.

15 Sec. 9. G.S. 20-305.5 is repealed.

16 Sec. 10. This act becomes effective October 1, 1991.