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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. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown."

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, the~~

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

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

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

40 a. This section does not apply:

- 41 1. To the relocation of an existing new motor vehicle dealer
42 within that dealer's relevant market area, provided that
43 the relocation not be at a site within 10 miles of a

1 licensed new motor vehicle dealer for the same line
2 make of motor vehicle; or

3 2. If the proposed additional new motor vehicle
4 dealer is to be established at or within two miles of a
5 location at which a former licensed new motor vehicle
6 dealer for the same line make of new motor vehicle
7 had ceased operating within the previous two years;

8 3. To the relocation of an existing new motor
9 vehicle dealer within two miles of the existing site of
10 the new motor vehicle dealership;

11 4. To the relocation of an existing new motor
12 vehicle dealer if the proposed site of the relocated new
13 motor vehicle dealership is further away from all other
14 new motor vehicle dealers of the same line make in
15 that relevant market area.

16 b. In determining whether good cause has been established for not
17 entering into or relocating an additional new motor vehicle
18 dealer for the same line make, the Commissioner shall take into
19 consideration the existing circumstances, including, but not
20 limited to:

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

23 2. Growth or decline in population, density of
24 population, and new car registrations in the relevant
25 market area;

26 3. Effect on the consuming public in the relevant
27 market area;

28 4. Whether it is injurious or beneficial to the
29 public welfare for an additional new motor vehicle
30 dealer to be established;

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

39 6. Whether the establishment of an additional
40 new motor vehicle dealer or relocation of an existing
41 new motor vehicle in the relevant market area would
42 increase competition in a manner such as to be in the
43 long-term public interest; and

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

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

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

- "(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~~ has satisfied the notice requirements of ~~subparagraph e.~~ subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, 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

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

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

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

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

38 I. ~~Said~~ The notification stated that notice was
39 provided of failure of performance pursuant to
40 this section;

41 II. The new motor vehicle dealer was
42 afforded a reasonable opportunity, for a period
43 of not less than 180 days, to comply with ~~such~~
44 the criteria; and

1 III. The new motor vehicle dealer failed to
2 demonstrate substantial progress towards
3 compliance with the manufacturer's
4 performance criteria during such period and the
5 new motor vehicle dealer's failure was not
6 primarily due to economic or market factors
7 within the dealer's relevant market area which
8 were beyond the dealer's control.

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

11 c. Notification of Termination, Cancellation and
12 Nonrenewal.

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

18 I. In the manner described in G.S. 20-305(6)c2
19 below; and

20 II. Not less than 90 days prior to the
21 effective date of such termination, cancellation
22 or nonrenewal; or

23 III. Not less than 15 days prior to the
24 effective date of such termination, cancellation
25 or nonrenewal with respect to any of the
26 following:

27 A. Insolvency of the new motor vehicle
28 dealer, or filing of any petition by or
29 against the new motor vehicle dealer
30 under any bankruptcy or receivership
31 law;

32 B. Failure of the new motor vehicle
33 dealer to conduct its customary sales and
34 service operations during its customary
35 business hours for seven consecutive
36 business days, except for acts of God or
37 circumstances beyond the direct control
38 of the new motor vehicle dealer;

39 C. Revocation of any license which
40 the new motor vehicle dealer is required
41 to have to operate a dealership;

42 D. Conviction of a felony involving
43 moral turpitude, under the laws of this

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

1 that have been required by the manufacturer or
 2 distributor to be purchased by the new motor
 3 vehicle dealer from the manufacturer or
 4 distributor, or their approved sources; and

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

13 2. ~~Such fair~~ Fair and reasonable compensation for the above
 14 shall be paid by the manufacturer within 90 days of the
 15 effective date of termination, cancellation or nonrenewal,
 16 provided the new motor vehicle dealer has clear title to
 17 the inventory and has conveyed title and possession to
 18 the manufacturer.

19 e. Dealership Facilities Assistance upon Termination,
 20 Cancellation or Nonrenewal. –

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

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

34 2. Subject to paragraph 3, if the new motor
 35 vehicle dealer owns the dealership facilities, the
 36 manufacturer shall pay the new motor vehicle dealer a
 37 sum equivalent to the reasonable rental value of the
 38 dealership facilities for one year.

39 3. Provided nothing in this ~~section~~ paragraph e. shall
 40 relieve a lessee or owner, as the case may be, from the
 41 obligation to mitigate damages under the lease, nor
 42 prevent a manufacturer from occupying and using the
 43 dealership facilities while paying rent under subsections
 44 1 and 2, nor prevent a manufacturer from obligations by

1 negotiating a lease termination, a sublease or a new
2 lease. Any amounts recovered by the lessee or owner
3 resulting from mitigation of damages shall be deducted
4 from the amount due from the manufacturer.

5 f. The provisions of paragraphs d. and e. above shall not be
6 applicable when the termination, nonrenewal or cancellation of
7 the franchise agreement is the result of the voluntary act of the
8 dealer."

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

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

22 Sec. 6. This act becomes effective October 1, 1991.