

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 939  
Transportation Committee Substitute Adopted 5/11/93  
House Committee Substitute Favorable 6/29/93

Short Title: Combined MV Franchises.

(Public)

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Sponsors:

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Referred to:

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April 21, 1993

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY CERTAIN PROVISIONS WITHIN ARTICLE 12 OF  
2 CHAPTER 20 OF THE GENERAL STATUTES OF NORTH CAROLINA  
3 RELATING TO THE RIGHT OF MOTOR VEHICLE DEALERS TO COMBINE  
4 FRANCHISES AT A SINGLE LOCATION AND PERSONS WHO ARRANGE  
5 TRANSACTIONS INVOLVING THE SALE OF NEW MOTOR VEHICLES.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 20-286 reads as rewritten:

9 **"§ 20-286. Definitions.**

10 The following definitions apply in this Article:

11 (1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.

12 (2a) Dealership facilities. – The real estate, buildings, fixtures and  
13 improvements devoted to the conduct of business under a franchise.

14 (2b) Designated family member. – The spouse, child, grandchild, parent,  
15 brother, or sister of a dealer, who, in the case of a deceased dealer, is  
16 entitled to inherit the dealer's ownership interest in the dealership  
17 under the terms of the dealer's will; or who has otherwise been  
18 designated in writing by a deceased dealer to succeed him in the motor  
19 vehicle dealership; or who under the laws of intestate succession of  
20 this State is entitled to inherit the interest; or who, in the case of an  
21 incapacitated dealer, has been appointed by a court as the legal  
22 representative of the dealer's property. The term includes the appointed

- 1 and qualified personal representative and testamentary trustee of a  
2 deceased dealer.
- 3 (3) Distributor. – A person, resident or nonresident of this State, who sells  
4 or distributes new motor vehicles to new motor vehicle dealers in this  
5 State, maintains a distributor representative in this State, controls any  
6 person, resident or nonresident, who in whole or in part offers for sale,  
7 sells or distributes any new motor vehicle to any motor vehicle dealer  
8 in this State.
- 9 (4) Distributor branch. – A branch office maintained by a distributor for  
10 the sale of new motor vehicles to new motor vehicle dealers, or for  
11 directing or supervising the distributor's representatives in this State.
- 12 (5) Distributor representative. – A person employed by a distributor or a  
13 distributor branch for the purpose of selling or promoting the sale of  
14 new motor vehicles or otherwise conducting the business of the  
15 distributor or distributor branch.
- 16 (5a) Established office. – An office that meets the following requirements:  
17 a. Contains at least 96 square feet of floor space in a permanent  
18 enclosed building.  
19 b. Is a place where the books, records, and files required by the  
20 Division under this Article are kept.
- 21 (6) Established salesroom. – A salesroom that meets the following  
22 requirements:  
23 a. Contains at least 96 square feet of floor space in a permanent  
24 enclosed building.  
25 b. Displays, or is located immediately adjacent to, a sign having  
26 block letters not less than three inches in height on contrasting  
27 background, clearly and distinctly designating the trade name of  
28 the business.  
29 c. Is a place at which a permanent business of bartering, trading,  
30 and selling motor vehicles will be carried on in good faith on an  
31 ongoing basis whereby the dealer can be contacted by the  
32 public at reasonable times.  
33 d. Is a place where the books, records, and files required by the  
34 Division under this Article are kept.
- 35 The term includes the area contiguous to or located within 500 feet of the premises on  
36 which the salesroom is located. The term does not include a tent, a temporary stand, or  
37 other temporary quarters. The minimum area requirement does not apply to any place of  
38 business lawfully in existence and duly licensed on or before January 1, 1978.
- 39 (7) Factory branch. – A branch office, maintained for the sale of new  
40 motor vehicles to new motor vehicle dealers, or for directing or  
41 supervising the factory branch's representatives in this State.
- 42 (8) Factory representative. – A person employed by a manufacturer or a  
43 factory branch for the purpose of selling or promoting the sale of the

1 manufacturer's motor vehicles or otherwise conducting the business of  
2 the manufacturer or factory branch.

3 (8a) Franchise. – A written agreement or contract between any new motor  
4 vehicle manufacturer, and any new motor vehicle dealer which  
5 purports to fix the legal rights and liabilities of the parties to such  
6 agreement or contract, and pursuant to which the dealer purchases and  
7 resells the franchised product or leases or rents the dealership  
8 premises.

9 (8b) Franchised motor vehicle dealer. – A dealer who holds a currently  
10 valid franchise as defined in G.S. 20-286(8a) with a manufacturer or  
11 distributor of new motor vehicles, trailers, or semitrailers.

12 ~~(8b)~~(8c) Good faith. – Honest in fact and the observation of reasonable  
13 commercial standards of fair dealing in the trade as defined and  
14 interpreted in G.S. 25-2-103(1)(b).

15 (8d) Independent motor vehicle dealer. – A dealer in used motor vehicles.

16 ~~(8e)~~(8e) Manufacturer. – A person, resident or nonresident, who  
17 manufactures or assembles new motor vehicles, or who imports new  
18 motor vehicles for distribution through a distributor, including any  
19 person who acts for and is under the control of the manufacturer or  
20 assembler in connection with the distribution of the motor vehicles.  
21 Additionally, the term 'manufacturer' shall include the terms  
22 'distributor' and 'factory branch.'

23 (9) Repealed by Session Laws 1973, c. 1330, s. 39.

24 (10) Motor vehicle. – Any motor propelled vehicle, trailer or semitrailer,  
25 required to be registered under the laws of this State.

26 a. 'New motor vehicle' means a motor vehicle which has never  
27 been the subject of a sale other than between new motor vehicle  
28 dealers, or between manufacturer and dealer of the same  
29 franchise.

30 b. 'Used motor vehicle' means a motor vehicle other than  
31 described in paragraph (10)a above.

32 (11) Motor vehicle dealer or dealer. – A person who does any of the  
33 following:

34 a. For commission, money, or other thing of value, buys, sells, or  
35 exchanges, whether outright or on conditional sale, bailment  
36 lease, chattel mortgage, or otherwise, five or more motor  
37 vehicles within any 12 consecutive months, regardless of who  
38 owns the motor vehicles.

39 b. On behalf of another and for commission, money, or other thing  
40 of value, arranges, offers, attempts to solicit, or attempts to  
41 negotiate the sale, purchase, or exchange of an interest in five or  
42 more motor vehicles within any 12 consecutive months,  
43 regardless of who owns the motor vehicles.

- 1 c. Engages, wholly or in part, in the business of selling new motor  
2 vehicles or new or used motor vehicles, or used motor vehicles  
3 only, whether or not the motor vehicles are owned by that  
4 person, and sells five or more motor vehicles within any 12  
5 consecutive months.
- 6 d. Offers to sell, displays, or permits the display for sale for any  
7 form of compensation five or more motor vehicles within any  
8 12 consecutive months.
- 9 e. Primarily engages in the leasing or renting of motor vehicles to  
10 others and sells or offers to sell those vehicles at retail.
- 11 The term 'motor vehicle dealer' or 'dealer' does not include any of  
12 the following:
- 13 a. Receivers, trustees, administrators, executors, guardians, or  
14 other persons appointed by or acting under the judgment or  
15 order of any court.
- 16 b. Public officers while performing their official duties.
- 17 c. Persons disposing of motor vehicles acquired for their own use  
18 or the use of a family member, and actually so used, when the  
19 vehicles have been acquired and used in good faith and not for  
20 the purpose of avoiding the provisions of this Article.
- 21 d. Persons who sell motor vehicles as an incident to their principal  
22 business but who are not engaged primarily in the selling of  
23 motor vehicles. This category includes financial institutions  
24 who sell repossessed motor vehicles and insurance companies  
25 who sell motor vehicles to which they have taken title as an  
26 incident of payments made under policies of insurance, and  
27 auctioneers who sell motor vehicles for the owners or the heirs  
28 of the owners of those vehicles as part of an auction of other  
29 personal or real property or for the purpose of settling an estate  
30 or closing a business or who sell motor vehicles on behalf of a  
31 governmental entity, and who do not maintain a used car lot or  
32 building with one or more employed motor vehicle sales  
33 representatives.
- 34 e. Persons manufacturing, distributing or selling trailers and  
35 semitrailers weighing not more than 750 pounds and carrying  
36 not more than a 1,500 pound load.
- 37 f. A licensed real estate broker or salesman who sells a mobile  
38 home for the owner as an incident to the sale of land upon  
39 which the mobile home is located.
- 40 g. An employee of an organization arranging for the purchase or  
41 lease by the organization of vehicles for use in the  
42 organization's business.

- 1 h. Any publication, broadcast, or other communications media  
2 when engaged in the business of advertising, but not otherwise  
3 arranging for the sale of motor vehicles owned by others.
- 4 i. Any person dealing solely in the sale or lease of vehicles  
5 designed exclusively for off-road use.
- 6 j. Any real property owner who leases any interest in property for  
7 use by a dealer.
- 8 k. Any person acquiring any interest in a motor vehicle for a  
9 family member.
- 10 (12) Motor vehicle sales representative or salesman. – A person who is  
11 employed as a sales representative by, or has an agreement with, a  
12 motor vehicle dealer or a wholesaler to sell or exchange motor  
13 vehicles.
- 14 (13) New motor vehicle dealer. – A motor vehicle dealer who buys, sells or  
15 exchanges, or offers or attempts to negotiate a sale or exchange of an  
16 interest in, or who is engaged, wholly or in part, in the business of  
17 selling, new or new and used motor vehicles.
- 18 (13a) Person. – Defined in G.S. 20-4.01.
- 19 (13b) Relevant market area or trade area. – The area within a radius of 20  
20 miles around an existing dealer or the area of responsibility defined in  
21 the franchise, whichever is greater; except that, where a manufacturer  
22 is seeking to establish an additional new motor vehicle dealer the  
23 relevant market area shall be as follows:
- 24 a. If the population in an area within a radius of 10 miles around  
25 the proposed site is 250,000 or more, the relevant market area  
26 shall be that area within the 10 mile radius; or
- 27 b. If the population in an area within a radius of 10 miles around  
28 the proposed site is less than 250,000, but the population in an  
29 area within a radius of 15 miles around the proposed site is  
30 150,000 or more, the relevant market area shall be that area  
31 within the 15 mile radius; or
- 32 c. Except as defined in subparts a. and b., the relevant market area  
33 shall be the area within a radius of 20 miles around an existing  
34 dealer.
- 35 In determining population for this definition the most recent census by  
36 the U.S. Bureau of the Census or the most recent population update  
37 either from the National Planning Data Corporation or other similar  
38 recognized source shall be accumulated for all census tracts either  
39 wholly or partially within the relevant market area.
- 40 (14) Repealed by Session Laws 1973, c. 1330, s. 39.
- 41 (15) Retail installment sale. – A sale of one or more motor vehicles to a  
42 buyer for the buyer's use and not for resale, in which the price thereof  
43 is payable in one or more installments over a period of time and in  
44 which the seller has either retained title to the goods or has taken or

1 retained a security interest in the goods under a form of contract  
2 designated as a conditional sale, bailment lease, chattel mortgage or  
3 otherwise.

4 (16) Used motor vehicle dealer. – A motor vehicle dealer who buys, sells or  
5 exchanges, or offers or attempts to negotiate a sale or exchange of an  
6 interest in, or who is engaged, wholly or in part, in the business of  
7 selling, used motor vehicles only.

8 (17) Wholesaler. – A person who sells or distributes used motor vehicles to  
9 motor vehicle dealers in this State, has a sales representative in this  
10 State, or controls any person who in whole or in part offers for sale,  
11 sells, or distributes any used motor vehicle to a motor vehicle dealer in  
12 this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that  
13 apply to distributors also apply to wholesalers."

14 Sec. 2. G.S. 20-305 reads as rewritten:

15 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**  
16 **cancel franchise; preventing transfer of ownership; granting additional**  
17 **franchises; terminating franchises without good cause; preventing family**  
18 **succession.**

19 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor  
20 branch, or any field representative, officer, agent, or any representative whatsoever of  
21 any of them:

- 22 (1) To require, coerce, or attempt to coerce any dealer to accept delivery  
23 of any motor vehicle or vehicles, parts or accessories therefor, or any  
24 other commodities, which shall not have been ordered by such dealer;
- 25 (2) To require, coerce, or attempt to coerce any dealer to enter into any  
26 agreement with such manufacturer, factory branch, distributor, or  
27 distributor branch, or representative thereof, or do any other act unfair  
28 to such dealer, by threatening to cancel any franchise existing between  
29 such manufacturer, factory branch, distributor, distributor branch, or  
30 representative thereof, and such dealer;
- 31 (3) (**See note**) Unfairly without due regard to the equities of the dealer,  
32 and without just provocation, to cancel the franchise of such dealer;
- 33 (4) Notwithstanding the terms of any franchise agreement, to prevent or  
34 refuse to approve the sale or transfer of the ownership of a dealership  
35 by the sale of the business, stock transfer, or otherwise, or the transfer,  
36 sale or assignment of a dealer franchise, or a change in the executive  
37 management or principal operator of the dealership, or relocation of  
38 the dealership to another site within the dealership's relevant market  
39 area, if the Commissioner has determined, if requested in writing by  
40 the dealer within 30 days after receipt of an objection to the proposed  
41 transfer, sale, assignment, relocation, or change, and after a hearing on  
42 the matter, that the failure to permit or honor the transfer, sale,  
43 assignment, relocation, or change is unreasonable under the  
44 circumstances. No franchise may be transferred, sold, assigned,

1 relocated, or the executive management or principal operators  
2 changed, unless the franchisor has been given at least 30 days' prior  
3 written notice as to the identity, financial ability, and qualifications of  
4 the proposed transferee, the identity and qualifications of the persons  
5 proposed to be involved in executive management or as principal  
6 operators, and the location and site plans of any proposed relocation.  
7 The franchisor shall send the dealership notice of objection, by  
8 registered or certified mail, return receipt requested, to the proposed  
9 transfer, sale, assignment, relocation, or change within 30 days after  
10 receipt of notice from the dealer, as provided in this section. Failure  
11 by the franchisor to send notice of objection within 30 days shall  
12 constitute waiver by the franchisor of any right to object to the  
13 proposed transfer, sale, assignment, relocation, or change. The  
14 manufacturer or distributor has the burden of proving that the proposed  
15 transfer, sale, assignment, relocation, or change is unreasonable under  
16 the circumstances.

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

34 a. This section does not apply:

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

40 2. If the proposed additional new motor vehicle  
41 dealer is to be established at or within two miles of a  
42 location at which a former licensed new motor vehicle  
43 dealer for the same line make of new motor vehicle  
44 had ceased operating within the previous two years;

- 1 3. To the relocation of an existing new motor  
2 vehicle dealer within two miles of the existing site of  
3 the new motor vehicle dealership;
- 4 4. To the relocation of an existing new motor  
5 vehicle dealer if the proposed site of the relocated new  
6 motor vehicle dealership is further away from all other  
7 new motor vehicle dealers of the same line make in  
8 that relevant market area.
- 9 b. In determining whether good cause has been established for not  
10 entering into or relocating an additional new motor vehicle  
11 dealer for the same line make, the Commissioner shall take into  
12 consideration the existing circumstances, including, but not  
13 limited to:
  - 14 1. The permanency of the investment of both the existing  
15 and proposed additional new motor vehicle dealers;
  - 16 2. Growth or decline in population, density of  
17 population, and new car registrations in the relevant  
18 market area;
  - 19 3. Effect on the consuming public in the relevant  
20 market area;
  - 21 4. Whether it is injurious or beneficial to the  
22 public welfare for an additional new motor vehicle  
23 dealer to be established;
  - 24 5. Whether the new motor vehicle dealers of the  
25 same line make in that relevant market area are  
26 providing adequate competition and convenient  
27 customer care for the motor vehicles of the same line  
28 make in the market area which shall include the  
29 adequacy of motor vehicle sales and service facilities,  
30 equipment, supply of motor vehicle parts, and  
31 qualified service personnel;
  - 32 6. Whether the establishment of an additional  
33 new motor vehicle dealer or relocation of an existing  
34 new motor vehicle in the relevant market area would  
35 increase competition in a manner such as to be in the  
36 long-term public interest; and
  - 37 7. The effect on the relocating dealer of a denial  
38 of its relocation into the relevant market area.
- 39 c. The Commissioner must conduct the hearing and render his  
40 final determination as expeditiously as possible, but in any  
41 event no later than 180 days after a protest is filed. Unless  
42 waived by the parties, failure to do so shall be deemed the  
43 equivalent of a determination that good cause does not exist for  
44 refusing to permit the proposed additional or relocated motor



- 1 vehicle dealer, unless such delay is caused by acts of the  
2 manufacturer, or the relocating or additional dealer.
- 3 d. Any parties to a hearing by the Commissioner concerning the  
4 establishment or relocating of a new motor vehicle dealer shall  
5 have a right of review of the decision in a court of competent  
6 jurisdiction pursuant to Chapter 150B of the General Statutes.
- 7 e. In a hearing involving a proposed additional dealership, the  
8 manufacturer or distributor has the burden of proof under this  
9 section. In a proceeding involving the relocation of an existing  
10 dealership, the dealer seeking to relocate has the burden of  
11 proof under this section.
- 12 f. If the Commissioner determines, following a hearing, that good  
13 cause does not exist for refusing to permit the proposed  
14 additional or relocated motor vehicle dealership, the dealer  
15 seeking the proposed additional or relocated motor vehicle  
16 dealership must, within two years, obtain a license from the  
17 Commissioner for the sale of vehicles at the relevant site, and  
18 actually commence operations at the site selling new motor  
19 vehicles of all line makes, as permitted by the Commissioner.  
20 Failure to obtain a permit and commence sales within two years  
21 shall constitute waiver by the dealer of the dealer's right to the  
22 additional or relocated dealership, requiring renotification, a  
23 new hearing, and a new determination as provided in this  
24 section.
- 25 (6) Notwithstanding the terms, provisions or conditions of any franchise  
26 or notwithstanding the terms or provisions of any waiver, to terminate,  
27 cancel or fail to renew any franchise with a licensed new motor vehicle  
28 dealer unless the manufacturer has satisfied the notice requirements of  
29 subparagraph c. and the Commissioner has determined, if requested in  
30 writing by the dealer within the time period specified in G.S. 20-  
31 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,  
32 that there is good cause for the termination, cancellation, or  
33 nonrenewal of the franchise and that the manufacturer has acted in  
34 good faith as defined in this act regarding the termination, cancellation  
35 or nonrenewal. When such a petition is made to the Commissioner by  
36 a dealer for determination as to the existence of good cause and good  
37 faith for the termination, cancellation or nonrenewal of a franchise, the  
38 Commissioner shall promptly inform the manufacturer that a timely  
39 petition has been filed, and the franchise in question shall continue in  
40 effect pending the Commissioner's decision. The Commissioner must  
41 conduct the hearing and render a final determination no later than 180  
42 days after a petition has been filed; provided, however, that the  
43 Commissioner may extend such period of time upon application of a  
44 party and for good cause shown, or upon the consent of all parties to

1 the proceeding. If the termination, cancellation or nonrenewal is  
2 pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the  
3 proceeding priority consideration and shall render his final  
4 determination no later than 60 days after the petition has been filed.  
5 Any parties to a hearing by the Commissioner under this section shall  
6 have a right of review of the decision in a court of competent  
7 jurisdiction pursuant to Chapter 150B of the General Statutes.

8 a. Notwithstanding the terms, provisions or conditions of any  
9 franchise or the terms or provisions of any waiver, good cause  
10 shall exist for the purposes of a termination, cancellation or  
11 nonrenewal when:

12 1. There is a failure by the new motor vehicle dealer to  
13 comply with a provision of the franchise which provision  
14 is both reasonable and of material significance to the  
15 franchise relationship provided that the dealer has been  
16 notified in writing of the failure within 180 days after the  
17 manufacturer first acquired knowledge of such failure;

18 2. If the failure by the new motor vehicle dealer  
19 relates to the performance of the new motor vehicle  
20 dealer in sales or service, then good cause shall be  
21 defined as the failure of the new motor vehicle dealer  
22 to comply with reasonable performance criteria  
23 established by the manufacturer if the new motor  
24 vehicle dealer was apprised by the manufacturer in  
25 writing of the failure; and

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

28 II. The new motor vehicle dealer was  
29 afforded a reasonable opportunity, for a period  
30 of not less than 180 days, to comply with the  
31 criteria; and

32 III. The new motor vehicle dealer failed to  
33 demonstrate substantial progress towards  
34 compliance with the manufacturer's  
35 performance criteria during such period and the  
36 new motor vehicle dealer's failure was not  
37 primarily due to economic or market factors  
38 within the dealer's relevant market area which  
39 were beyond the dealer's control.

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

42 c. Notification of Termination, Cancellation and  
43 Nonrenewal. –

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

1 III. The date on which the termination,  
2 cancellation or nonrenewal takes effect.

- 3 3. Notification provided in G.S. 20-305(6)c1III of 90 days  
4 prior to the effective date of such termination,  
5 cancellation or renewal may run concurrent with the 180  
6 days designated in G.S. 20-305(6)a2II provided the  
7 notification is clearly designated by a separate written  
8 document mailed by certified mail or personally  
9 delivered to the new motor vehicle dealer.

10 d. Payments. –

- 11 1. Upon the termination, nonrenewal or cancellation of any  
12 franchise by the manufacturer or distributor, pursuant to  
13 this section, the new motor vehicle dealer shall be  
14 allowed fair and reasonable compensation by the  
15 manufacturer for the:

16 I. New motor vehicle inventory that has been  
17 acquired from the manufacturer within 18 months,  
18 at a price not to exceed the original  
19 manufacturer's price to the dealer, and which has  
20 not been altered or damaged, and which has not  
21 been driven more than 200 miles, and for which  
22 no certificate of title has been issued;

23 II. Unused, undamaged and unsold supplies and parts  
24 purchased from the manufacturer, at a price not to  
25 exceed the original manufacturer's price to the  
26 dealer, provided such supplies and parts are  
27 currently offered for sale by the manufacturer or  
28 distributor in its current parts catalogs and are in  
29 salable condition;

30 III. Equipment and furnishings that have  
31 not been altered or damaged and that have been  
32 required by the manufacturer or distributor to be  
33 purchased by the new motor vehicle dealer from  
34 the manufacturer or distributor, or their  
35 approved sources; and

36 IV. Special tools that have not been altered  
37 or damaged and that have been required by the  
38 manufacturer or distributor to be purchased by  
39 the new motor vehicle dealer from the  
40 manufacturer or distributor, or their approved  
41 sources within five years immediately  
42 preceding the termination, nonrenewal or  
43 cancellation of the franchise.

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

- 1 member to succeed in the ownership interest of the said owner  
2 in the new motor vehicle dealership.
- 3 b. Unless there exists good cause for refusal to honor succession  
4 on the part of the manufacturer or distributor, any designated  
5 family member of a deceased or incapacitated owner of a new  
6 motor vehicle dealership may succeed to the ownership of the  
7 new motor vehicle dealership under the existing franchise  
8 provided that:
- 9 1. The designated family member gives the manufacturer or  
10 distributor written notice of his or her intention to  
11 succeed to the ownership of the new motor vehicle  
12 dealership within 60 days of the owner's death or  
13 incapacity; Provided, however, that the failure of the  
14 designated family member to give the manufacturer or  
15 distributor written notice as provided above within 60  
16 days of the owner's death or incapacity shall not result in  
17 the waiver or termination of the designated family  
18 member's right to succeed to the ownership of the new  
19 motor vehicle dealership unless the manufacturer or  
20 distributor gives written notice of this provision to either  
21 the designated family member or the deceased or  
22 incapacitated owner's executor, administrator, guardian  
23 or other fiduciary by certified or registered mail, return  
24 receipt requested, and said written notice grants not less  
25 than 30 days time within which the designated family  
26 member may give the notice required hereunder,  
27 provided the designated family member or the deceased  
28 or incapacitated owner's executor, administrator,  
29 guardian or other fiduciary has given the manufacturer  
30 reasonable notice of death or incapacity; and
- 31 2. The designated family member agrees to be bound by all  
32 terms and conditions of the franchise.
- 33 c. The manufacturer or distributor may request, and the designated  
34 family member shall provide, promptly upon said request,  
35 personal and financial data that is reasonably necessary to  
36 determine whether the succession should be honored.
- 37 d. If a manufacturer or distributor believes that good cause exists  
38 for refusing to honor the succession to the ownership of a new  
39 motor vehicle dealership by a family member of a deceased or  
40 incapacitated owner of a new motor vehicle dealership under  
41 the existing franchise agreement, the manufacturer or  
42 distributor may, not more than 60 days following receipt of:

- 1 1. Notice of the designated family member's intent to  
2 succeed to the ownership of the new motor vehicle  
3 dealer; or
- 4 2. Any personal or financial data which it has requested,  
5 serve upon the designated family member and the  
6 Commissioner notice of its refusal to honor the  
7 succession and of its intent to discontinue the existing  
8 franchise with the dealer.
- 9 e. The notice must state the specific grounds for the refusal to  
10 honor the succession and of its intent to discontinue the existing  
11 franchise with the new motor vehicle dealer no sooner than 90  
12 days from the date such notice is served.
- 13 f. If notice of refusal and discontinuance is not timely served upon  
14 the family member, the franchise shall continue in effect subject  
15 to termination only as otherwise permitted by this act.
- 16 g. Within 30 days of receiving the manufacturer's or distributor's  
17 notice of its intent to discontinue the existing franchise as  
18 provided in subsection d. above, the designated family member  
19 may file a written protest of the manufacturer's or distributor's  
20 decision with the Commissioner. When such a protest is filed,  
21 the Commissioner shall promptly inform the manufacturer that  
22 a timely protest has been filed, and that the franchise shall  
23 continue in effect until the Commissioner has held a hearing,  
24 and thereafter, unless the Commissioner has determined that  
25 there is good cause for the manufacturer's or distributor's refusal  
26 to honor the succession. The Commissioner must conduct the  
27 hearing and render his final determination as expeditiously as  
28 possible, but in any event no later than 180 days after a protest  
29 is filed. Any parties to a hearing by the Commissioner  
30 concerning whether good cause exists for the refusal to honor  
31 the succession shall have a right of review of the decision in a  
32 court of competent jurisdiction pursuant to Chapter 150A of the  
33 General Statutes.
- 34 h. In determining whether good cause for the refusal to honor the  
35 succession exists, the manufacturer, distributor, factory branch,  
36 or importer has the burden of proving that the successor is a  
37 person who is not of good moral character or does not meet the  
38 franchisor's existing and reasonable standards and, considering  
39 the volume of sales and service of the new motor vehicle dealer,  
40 uniformly applied minimum business experience standards in  
41 the market area.
- 42 i. This section does not preclude the owner of a new motor  
43 vehicle dealership from designating any person as his successor  
44 by written instrument filed with the manufacturer or distributor,

1 and, in the event there is a conflict between such written  
2 instrument and the provisions of this section, and that written  
3 instrument has not been revoked by the owner of the new motor  
4 vehicle dealership in writing to the manufacturer or distributor,  
5 then the written instrument shall govern.

6 (8) To require, coerce, or attempt to coerce any new motor vehicle dealer  
7 in this State to order or accept delivery of any new motor vehicle with  
8 special features, accessories or equipment not included in the list price  
9 of such motor vehicles as publicly advertised by the manufacturer or  
10 distributor.

11 (9) To require, coerce, or attempt to coerce any new motor vehicle dealer  
12 in this State to participate monetarily in an advertising campaign or  
13 contest, or to purchase unnecessary or unreasonable quantities of any  
14 promotional materials, training materials, training programs,  
15 showroom or other display decorations or materials at the expense of  
16 the new motor vehicle dealer, provided that nothing in this subsection  
17 shall preclude a manufacturer or distributor from including an  
18 unitemized uniform charge in the base price of the new motor vehicle  
19 charged to the dealer where such charge is attributable to advertising  
20 costs incurred or to be incurred by the manufacturer or distributor in  
21 the ordinary courses of its business.

22 (10) To require, coerce, or attempt to coerce any new motor vehicle dealer  
23 in this State to change the capital structure of the new motor vehicle  
24 dealer or the means by or through which the new motor vehicle dealer  
25 finances the operation of the dealership provided that the new motor  
26 vehicle dealer at all times meets any reasonable capital standards  
27 determined by the manufacturer in accordance with uniformly applied  
28 criteria; and also provided that no change in the capital structure shall  
29 cause a change in the principal management or have the effect of a sale  
30 of the franchise without the consent of the manufacturer or distributor,  
31 provided that said consent shall not be unreasonably withheld.

32 (11) To require, coerce, or attempt to coerce any new motor vehicle dealer  
33 in this State to refrain from participation in the management of,  
34 investment in, or the acquisition of any other line of new motor vehicle  
35 or related products; Provided, however, that this subsection does not  
36 apply unless the new motor vehicle dealer maintains a reasonable line  
37 of credit for each make or line of new motor vehicle, and the new  
38 motor vehicle dealer remains in compliance with any reasonable  
39 capital standards and facilities requirements of the manufacturer. The  
40 reasonable facilities requirements shall not include any requirement  
41 that a new motor vehicle dealer establish or maintain exclusive  
42 facilities, personnel, or display space, when such requirements, or any  
43 of them, would be unreasonable in light of current economic



- 1                    conditions and would not otherwise be justified by reasonable business  
2                    considerations.
- 3                    (12) To require, coerce, or attempt to coerce any new motor vehicle dealer  
4                    in this State to change location of the dealership, or to make any  
5                    substantial alterations to the dealership premises or facilities, when to  
6                    do so would be unreasonable, or without written assurance of a  
7                    sufficient supply of new motor vehicles so as to justify such an  
8                    expansion, in light of the current market and economic conditions.
- 9                    (13) To require, coerce, or attempt to coerce any new motor vehicle dealer  
10                    in this State to prospectively assent to a release, assignment, novation,  
11                    waiver or estoppel which would relieve any person from liability to be  
12                    imposed by this law or to require any controversy between a new  
13                    motor vehicle dealer and a manufacturer, distributor, or representative,  
14                    to be referred to any person other than the duly constituted courts of  
15                    the State or the United States of America, or to the Commissioner, if  
16                    such referral would be binding upon the new motor vehicle dealer.
- 17                    (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle  
18                    parts or accessories in reasonable quantities relative to the new motor  
19                    vehicle dealer's facilities and sales potential in the new motor vehicle  
20                    dealer's relevant market area, and within a reasonable time, after  
21                    receipt of an order from a dealer having a franchise for the retail sale  
22                    of any new motor vehicle sold or distributed by the manufacturer or  
23                    distributor, any new vehicle, parts or accessories to new vehicles as are  
24                    covered by such franchise, and such vehicles, parts or accessories as  
25                    are publicly advertised as being available or actually being delivered.  
26                    The delivery to another dealer of a motor vehicle of the same model  
27                    and similarly equipped as the vehicle ordered by a motor vehicle  
28                    dealer who has not received delivery thereof, but who has placed his  
29                    written order for the vehicle prior to the order of the dealer receiving  
30                    the vehicle, shall be evidence of a delayed delivery of, or refusal to  
31                    deliver, a new motor vehicle to a motor vehicle dealer within a  
32                    reasonable time, without cause. This subsection is not violated,  
33                    however, if such failure is caused by acts or causes beyond the control  
34                    of the manufacturer, distributor, factory branch, or factory  
35                    representative.
- 36                    (15) To refuse to disclose to any new motor vehicle dealer, handling the  
37                    same line make, the manner and mode of distribution of that line make  
38                    within the State.
- 39                    (16) To award money, goods, services, or any other benefit to any new  
40                    motor vehicle dealership employee, either directly or indirectly, unless  
41                    such benefit is promptly accounted for, and transmitted to, or approved  
42                    by, the new motor vehicle dealer.
- 43                    (17) To increase prices of new motor vehicles which the new motor vehicle  
44                    dealer had ordered and which the manufacturer or distributor has

1 accepted for immediate delivery for private retail consumers prior to  
2 the new motor vehicle dealer's receipt of the written official price  
3 increase notification. A sales contract signed by a private retail  
4 consumer shall constitute evidence of each such order provided that  
5 the vehicle is in fact delivered to that customer. Price differences  
6 applicable to new model or series shall not be considered a price  
7 increase or price decrease. Price changes caused by either: (i) the  
8 addition to a new motor vehicle of required or optional equipment; or  
9 (ii) revaluation of the United States dollar, in the case of foreign-make  
10 vehicles or components; or (iii) an increase in transportation charges  
11 due to increased rates imposed by carriers; or (iv) new tariffs or duties  
12 imposed by the United States of America or any other governmental  
13 authority, shall not be subject to the provisions of this subsection.

14 (18) To prevent or attempt to prevent a dealer from receiving fair and  
15 reasonable compensation for the value of the franchised business  
16 transferred in accordance with G.S. 20-305(4) above.

17 (19) To offer any refunds or other types of inducements to any person for  
18 the purchase of new motor vehicles of a certain line make to be sold to  
19 the State or any political subdivision thereof without making the same  
20 offer available upon request to all other new motor vehicle dealers in  
21 the same line make within the State.

22 (20) To release to any outside party, except under subpoena or as otherwise  
23 required by law or in an administrative, judicial or arbitration  
24 proceeding involving the manufacturer or new motor vehicle dealer,  
25 any confidential business, financial, or personal information which  
26 may be from time to time provided by the new motor vehicle dealer to  
27 the manufacturer, without the express written consent of the new  
28 motor vehicle dealer.

29 (21) To deny any new motor vehicle dealer the right of free association  
30 with any other new motor vehicle dealer for any lawful purpose.

31 (22) To unfairly discriminate among its new motor vehicle dealers with  
32 respect to warranty reimbursements or authority granted its new motor  
33 vehicle dealers to make warranty adjustments with retail customers.

34 (23) To engage in any predatory practice against or unfairly compete with a  
35 new motor vehicle dealer located in this State.

36 (24) To terminate any franchise solely because of the death or incapacity of  
37 an owner who is not listed in the franchise as one on whose expertise  
38 and abilities the manufacturer relied in the granting of the franchise.

39 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in  
40 this State to either establish or maintain exclusive facilities, personnel,  
41 or display ~~space when such requirements would not be justified by~~  
42 ~~reasonable business considerations.~~ space, when such requirements, or  
43 any of them, would be unreasonable in light of current economic

1                    conditions and would not otherwise be justified by reasonable business  
 2                    considerations.

3            (26) To resort to or to use any false or misleading advertisement in the  
 4            conducting of its business as a manufacturer or distributor in this State.

5            (27) To knowingly make, either directly or through any agent or employee,  
 6            any material statement which is false or misleading and which induces  
 7            any new motor vehicle dealer to enter into any agreement or franchise  
 8            or to take any action which is materially prejudicial to that new motor  
 9            vehicle dealer or his business.

10          (28) To require, coerce, or attempt to coerce any new motor vehicle dealer  
 11          to purchase or order any new motor vehicle as a precondition to  
 12          purchasing, ordering, or receiving any other new motor vehicle or  
 13          vehicles. Nothing herein shall prevent a manufacturer from requiring  
 14          that a new motor vehicle dealer fairly represent and inventory the full  
 15          line of new motor vehicles which are covered by the franchise  
 16          agreement."

17          Sec. 3. G.S. 20-306 reads as rewritten:

18    **"§ 20-306. Unlawful for salesman to sell except for his employer; multiple**  
 19                    **employment. ~~employment~~; persons who arrange transactions involving**  
 20                    **the sale of new motor vehicles.**

21          It shall be unlawful for any motor vehicle salesman licensed under this Article to sell  
 22          or exchange or offer or attempt to sell or exchange any motor vehicle other than his own  
 23          except for the licensed motor vehicle dealer or dealers by whom he is employed, or to  
 24          offer, transfer or assign, any sale or exchange, that he may have negotiated, to any other  
 25          dealer or salesman. ~~Salesmen~~ A salesman may be employed by more than one dealer  
 26          provided such multiple employment is clearly indicated on his license. It shall be  
 27          unlawful for any person to, for a fee, commission, or other valuable consideration,  
 28          arrange or offer to arrange a transaction involving the sale of a new motor vehicle;  
 29          provided, however, this prohibition shall not be applicable to:

30            (1) A franchised motor vehicle dealer as defined in G.S. 20-286(8b) who  
 31            is licensed under this Article or a sales representative who is licensed  
 32            under this Article when acting on behalf of the dealer;

33            (2) A manufacturer who is licensed under this Article or bona fide  
 34            employee of such manufacturer when acting on behalf of the  
 35            manufacturer;

36            (3) A distributor who is licensed under this Article or a bona fide  
 37            employee of such distributor when acting on behalf of the distributor;  
 38            or

39            (4) At any point in the transaction the bona fide owner of the vehicle  
 40            involved in the transaction."

41          Sec. 4. Sections 2 and 3 of this act shall not apply to manufacturers of or  
 42          dealers in mobile or manufactured type housing or recreational trailers.

43          Sec. 5. This act becomes effective July 1, 1993.