

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
Fourth Edition Engrossed 7/7/93

Short Title: Combined MV Franchises.

(Public)

Sponsors:

Referred to:

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11 (1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.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

- 1 representative of the dealer's property. The term includes the
2 appointed and qualified personal representative and testamentary
3 trustee of a deceased dealer.
- 4 (3) Distributor. – A person, resident or nonresident of this State, who sells
5 or distributes new motor vehicles to new motor vehicle dealers in this
6 State, maintains a distributor representative in this State, controls any
7 person, resident or nonresident, who in whole or in part offers for sale,
8 sells or distributes any new motor vehicle to any motor vehicle dealer
9 in this State.
- 10 (4) Distributor branch. – A branch office maintained by a distributor for
11 the sale of new motor vehicles to new motor vehicle dealers, or for
12 directing or supervising the distributor's representatives in this State.
- 13 (5) Distributor representative. – A person employed by a distributor or a
14 distributor branch for the purpose of selling or promoting the sale of
15 new motor vehicles or otherwise conducting the business of the
16 distributor or distributor branch.
- 17 (5a) Established office. – An office that meets the following requirements:
18 a. Contains at least 96 square feet of floor space in a permanent
19 enclosed building.
20 b. Is a place where the books, records, and files required by the
21 Division under this Article are kept.
- 22 (6) Established salesroom. – A salesroom that meets the following
23 requirements:
24 a. Contains at least 96 square feet of floor space in a permanent
25 enclosed building.
26 b. Displays, or is located immediately adjacent to, a sign having
27 block letters not less than three inches in height on contrasting
28 background, clearly and distinctly designating the trade name of
29 the business.
30 c. Is a place at which a permanent business of bartering, trading,
31 and selling motor vehicles will be carried on in good faith on an
32 ongoing basis whereby the dealer can be contacted by the
33 public at reasonable times.
34 d. Is a place where the books, records, and files required by the
35 Division under this Article are kept.
- 36 The term includes the area contiguous to or located within 500 feet of the premises on
37 which the salesroom is located. The term does not include a tent, a temporary stand, or
38 other temporary quarters. The minimum area requirement does not apply to any place
39 of business lawfully in existence and duly licensed on or before January 1, 1978.
- 40 (7) Factory branch. – A branch office, maintained for the sale of new
41 motor vehicles to new motor vehicle dealers, or for directing or
42 supervising the factory branch's representatives in this State.
- 43 (8) Factory representative. – A person employed by a manufacturer or a
44 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 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 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 October 1, 1993.