

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 420

Commerce Committee Substitute Adopted 4/27/99

House Committee Substitute Favorable 7/7/99

Short Title: Clarify MV Dealers Licensing Law.

(Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301 is amended by adding a new subsection that reads:

"(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the manufacturer through an appeals board or internal grievance procedure of the manufacturer, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the manufacturer, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the manufacturer's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the manufacturer has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute

1 process required or established by the manufacturer before seeking redress from the
2 Commissioner as provided in this Article."

3 Section 2. G.S. 20-305 reads as rewritten:

4 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
5 **cancel franchise; preventing transfer of ownership; granting additional**
6 **franchises; terminating franchises without good cause; preventing family**
7 **succession.**

8 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
9 branch, or any field representative, officer, agent, or any representative whatsoever of any
10 of them:

- 11 (1) To require, coerce, or attempt to coerce any dealer to accept delivery of
12 any motor vehicle or vehicles, parts or accessories therefor, or any other
13 commodities, which shall not have been ordered by ~~such dealer;~~ that
14 dealer, or to accept delivery of any motor vehicle or vehicles which
15 have been equipped in a manner other than as specified by the dealer.
- 16 (2) To require, coerce, or attempt to coerce any dealer to enter into any
17 agreement with such manufacturer, factory branch, distributor, or
18 distributor branch, or representative thereof, or do any other act unfair to
19 such dealer, by threatening to cancel any franchise existing between
20 such manufacturer, factory branch, distributor, distributor branch, or
21 representative thereof, and such dealer;
- 22 (3) Unfairly without due regard to the equities of the dealer, and without
23 just provocation, to cancel the franchise of such dealer;
- 24 (4) Notwithstanding the terms of any franchise agreement, to prevent or
25 refuse to approve the sale or transfer of the ownership of a dealership by
26 the sale of the business, stock transfer, or otherwise, or the transfer, sale
27 or assignment of a dealer franchise, or a change in the executive
28 management or principal operator of the dealership, or relocation of the
29 dealership to another site within the dealership's relevant market area, if
30 the Commissioner has determined, if requested in writing by the dealer
31 within 30 days after receipt of an objection to the proposed transfer,
32 sale, assignment, relocation, or change, and after a hearing on the
33 matter, that the failure to permit or honor the transfer, sale, assignment,
34 relocation, or change is unreasonable under the circumstances. No
35 franchise may be transferred, sold, assigned, relocated, or the executive
36 management or principal operators changed, unless the franchisor has
37 been given at least 30 days' prior written notice as to the identity,
38 financial ability, and qualifications of the proposed transferee, the
39 identity and qualifications of the persons proposed to be involved in
40 executive management or as principal operators, and the location and
41 site plans of any proposed relocation. The franchisor shall send the
42 dealership notice of objection, by registered or certified mail, return
43 receipt requested, to the proposed transfer, sale, assignment, relocation,

1 or change within 30 days after receipt of notice from the dealer, as
2 provided in this section. Failure by the franchisor to send notice of
3 objection within 30 days shall constitute waiver by the franchisor of any
4 right to object to the proposed transfer, sale, assignment, relocation, or
5 change. ~~The manufacturer or distributor has the burden of proving that the~~
6 ~~proposed transfer, sale, assignment, relocation, or change is unreasonable~~
7 ~~under the circumstances.~~ With respect to a proposed transfer of
8 ownership, sale, or assignment, the sole issue for determination by the
9 Commissioner and the sole issue upon which the Commissioner shall
10 hear or consider evidence is whether, by reason of lack of good moral
11 character, lack of general business experience, or lack of financial
12 ability, the proposed transferee is unfit to own the dealership. For
13 purposes of this subdivision, the refusal by the manufacturer to accept a
14 proposed transferee who is of good moral character and who otherwise
15 meets the written, reasonable, and uniformly applied business
16 experience and financial requirements, if any, required by the
17 manufacturer of owners of its franchised automobile dealerships is
18 presumed to demonstrate the manufacturer's failure to prove that the
19 proposed transferee is unfit to own the dealership. With respect to a
20 proposed change in the executive management or principal operator of
21 the dealership, the sole issue for determination by the Commissioner
22 and the sole issue on which the Commissioner shall hear or consider
23 evidence shall be whether, by reason of lack of training, lack of prior
24 experience, poor past performance, or poor character, the proposed
25 candidate for a position within the executive management or as
26 principal operator of the dealership is unfit for the position. For
27 purposes of this subdivision, the refusal by the manufacturer to accept a
28 proposed candidate for executive management or as principal operator
29 who is of good moral character and who otherwise meets the written,
30 reasonable, and uniformly applied standards or qualifications, if any, of
31 the manufacturer relating to the business experience and prior
32 performance of executive management required by the manufacturers of
33 its dealers is presumed to demonstrate the manufacturer's failure to
34 prove the proposed candidate for executive management or as principal
35 operator is unfit to serve the capacity. With respect to a proposed
36 relocation or other proposed change, the issue for determination by the
37 Commissioner is whether the proposed relocation or other change is
38 unreasonable under the circumstances. For purposes of this subdivision,
39 the refusal by the manufacturer to agree to a proposed relocation which
40 meets the written, reasonable, and uniformly applied standards or
41 criteria, if any, of the manufacturer relating to dealer relocations is
42 presumed to demonstrate that the manufacturer's failure to prove the
43 proposed relocation is unreasonable under the circumstances. The

1 manufacturer shall have the burden of proof before the Commissioner
2 under this subdivision. It is unlawful for a manufacturer to, in any way,
3 condition its approval of a proposed transfer, sale, assignment, change
4 in the dealer's executive management or principal operator on the
5 existing or proposed dealer's willingness to construct a new facility,
6 renovate the existing facility, acquire or refrain from acquiring one or
7 more line-makes of vehicles, separate or divest one or more line-makes
8 of vehicle, or establish or maintain exclusive facilities, personnel, or
9 display space. It is unlawful for a manufacturer to, in any way,
10 condition its approval of a proposed relocation on the existing or
11 proposed dealer's willingness to acquire or refrain from acquiring one or
12 more line-makes of vehicles, separate or divest one or more line-makes
13 of vehicle, or establish or maintain exclusive facilities, personnel, or
14 display space.

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

32 a. This section does not apply:

33 1. To the relocation of an existing new motor vehicle dealer
34 within that dealer's relevant market area, provided that the
35 relocation not be at a site within 10 miles of a licensed
36 new motor vehicle dealer for the same line make of motor
37 ~~vehicle;~~ vehicle. If this sub-subdivision is applicable, only
38 dealers trading in the same line-make of vehicle that are
39 located within the 10-mile radius shall be entitled to notice
40 from the manufacturer and have the protest rights afforded
41 under this section; or

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

- 1 which a former licensed new motor vehicle dealer for the
2 same line make of new motor vehicle had ceased
3 operating within the previous two years;
- 4 3. To the relocation of an existing new motor vehicle dealer
5 within two miles of the existing site of the new motor
6 vehicle ~~dealership; dealership~~ if the franchise has been
7 operating on a regular basis from the existing site for a
8 minimum of three years immediately preceding the
9 relocation; or
- 10 4. To the relocation of an existing new motor vehicle dealer
11 if the proposed site of the relocated new motor vehicle
12 dealership is further away from all other new motor
13 vehicle dealers of the same line make in that relevant
14 market area.
- 15 b. In determining whether good cause has been established for not
16 entering into or relocating an additional new motor vehicle dealer
17 for the same line make, the Commissioner shall take into
18 consideration the existing circumstances, including, but not
19 limited to:
- 20 1. The permanency of the investment of both the existing
21 and proposed additional new motor vehicle dealers;
- 22 2. Growth or decline in population, density of population,
23 and new car registrations in the relevant market area;
- 24 3. Effect on the consuming public in the relevant market
25 area;
- 26 4. Whether it is injurious or beneficial to the public welfare
27 for an additional new motor vehicle dealer to be
28 established;
- 29 5. Whether the new motor vehicle dealers of the same line
30 make in that relevant market area are providing adequate
31 competition and convenient customer care for the motor
32 vehicles of the same line make in the market area which
33 shall include the adequacy of motor vehicle sales and
34 service facilities, equipment, supply of motor vehicle
35 parts, and qualified service personnel;
- 36 6. Whether the establishment of an additional new motor
37 vehicle dealer or relocation of an existing new motor
38 vehicle dealer in the relevant market area would increase
39 competition in a manner such as to be in the long-term
40 public interest; and
- 41 7. The effect on the relocating dealer of a denial of its
42 relocation into the relevant market area.

- 1 c. The Commissioner shall try to conduct the hearing and render his
2 final determination if possible, within 180 days after a protest is
3 filed.
- 4 d. Any parties to a hearing by the Commissioner concerning the
5 establishment or relocating of a new motor vehicle dealer 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 e. In a hearing involving a proposed additional dealership, the
9 manufacturer or distributor has the burden of proof under this
10 section. In a proceeding involving the relocation of an existing
11 dealership, the dealer seeking to relocate has the burden of proof
12 under this section.
- 13 f. If the Commissioner determines, following a hearing, that good
14 cause ~~does not exist for refusing to permit~~ exists for permitting the
15 proposed additional or relocated motor vehicle dealership, the
16 dealer seeking the proposed additional or relocated motor vehicle
17 dealership must, within two years, obtain a license from the
18 Commissioner for the sale of vehicles at the relevant site, and
19 actually commence operations at the site selling new motor
20 vehicles of all line makes, as permitted by the Commissioner.
21 Failure to obtain a permit and commence sales within two years
22 shall constitute waiver by the dealer of the dealer's right to the
23 additional or relocated dealership, requiring renotification, a new
24 hearing, and a new determination as provided in this section. If
25 the Commissioner fails to determine that good cause exists for
26 permitting the proposed additional or relocated motor vehicle
27 dealership, the manufacturer seeking the proposed additional
28 dealership or dealer seeking to relocate may not again provide
29 notice of its intention or otherwise attempt to establish an
30 additional dealership or relocate to any location within 10 miles
31 of the site of the original proposed additional dealership or
32 relocation site for a minimum of three years from the date of the
33 Commissioner's determination.
- 34 g. **(See editor's note for applicability)** For purposes of this
35 subdivision, the addition, creation, or operation of a "satellite" or
36 other facility, not physically part of or contiguous to an existing
37 licensed new motor vehicle dealer, whether or not owned or
38 operated by a person or other entity holding a franchise as
39 defined by G.S. 20-286(8a), at which warranty service work
40 authorized or reimbursed by a manufacturer is performed or at
41 which new motor vehicles are offered for sale to the public, shall
42 be considered an additional new motor vehicle dealer requiring a
43 showing of good cause, prior notification to existing new motor

1 vehicle dealers of the same line make of vehicle within the
2 relevant market area by the manufacturer and the opportunity for
3 a hearing before the Commissioner as provided in this
4 subdivision.

- 5 (6) Notwithstanding the terms, provisions or conditions of any franchise or
6 notwithstanding the terms or provisions of any waiver, to terminate,
7 cancel or fail to renew any franchise with a licensed new motor vehicle
8 dealer unless the manufacturer has satisfied the notice requirements of
9 subparagraph c. and the Commissioner has determined, if requested in
10 writing by the dealer within the time period specified in G.S. 20-
11 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
12 that there is good cause for the termination, cancellation, or nonrenewal
13 of the franchise and that the manufacturer has acted in good faith as
14 defined in this act regarding the termination, cancellation or
15 nonrenewal. When such a petition is made to the Commissioner by a
16 dealer for determination as to the existence of good cause and good faith
17 for the termination, cancellation or nonrenewal of a franchise, the
18 Commissioner shall promptly inform the manufacturer that a timely
19 petition has been filed, and the franchise in question shall continue in
20 effect pending the Commissioner's decision. The Commissioner shall
21 try to conduct the hearing and render a final determination within 180
22 days after a petition has been filed. If the termination, cancellation or
23 nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner
24 shall give the proceeding priority consideration and shall try to render
25 his final determination no later than 90 days after the petition has been
26 filed. Any parties to a hearing by the Commissioner under this section
27 shall have a right of review of the decision in a court of competent
28 jurisdiction pursuant to Chapter 150B of the General Statutes. Any
29 determination of the Commissioner under this section finding that good
30 cause exists for the nonrenewal, cancellation, or termination of any
31 franchise shall automatically be stayed during any period that the
32 affected dealer shall have the right to judicial review or appeal of the
33 determination before the superior court or any other appellate court and
34 during the pendency of any appeal; provided, however, that within 30
35 days of entry of the Commissioner's order, the affected dealer provide
36 such security as the reviewing court, in its discretion, may deem
37 appropriate for payment of such costs and damages as may be incurred
38 or sustained by the manufacturer by reason of and during the pendency
39 of the stay. Although the right of the affected dealer to such stay is
40 automatic, the procedure for providing such security and for the award
41 of damages, if any, to the manufacturer upon dissolution of the stay
42 shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such
43 security provided by or on behalf of any affected dealer shall be

1 forfeited or damages awarded against a dealer who obtains a stay under
2 this subdivision in the event the ownership of the affected dealership is
3 subsequently transferred, sold, or assigned to a third party in accordance
4 with this subdivision or subdivision (4) of this section and the closing
5 on such transfer, sale, or assignment occurs no later than 180 days after
6 the date of entry of the Commissioner's order. Furthermore, unless and
7 until the termination, cancellation, or nonrenewal of a dealer's franchise
8 shall finally become effective, in light of any stay or any order of the
9 Commissioner determining that good cause exists for the termination,
10 cancellation, or nonrenewal of a dealer's franchise as provided in this
11 paragraph, a dealer who receives a notice of termination, cancellation,
12 or nonrenewal from a manufacturer as provided in this subdivision shall
13 continue to have the same rights to assign, sell, or transfer the franchise
14 to a third party under the franchise and as permitted under G.S. 20-
15 305(4) as if notice of the termination had not been given by the
16 manufacturer. Any franchise under notice or threat of termination,
17 cancellation, or nonrenewal by the manufacturer which is duly
18 transferred in accordance with G.S. 20-305(4) shall not be subject to
19 termination by reason of failure of performance or breaches of the
20 franchise on the part of the transferor.

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

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

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

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

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

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

- 1 manufacturer or distributor is discontinuing the sale
2 of the product line.
- 3 V. Unless the failure by the new motor vehicle dealer
4 relates to the performance of the new motor vehicle
5 dealer in sales or service, not more than one year
6 after the manufacturer first acquired knowledge of
7 the basic facts comprising the failure.
- 8 2. Notification under this section shall be in writing; shall be
9 by certified mail or personally delivered to the new motor
10 vehicle dealer; and shall contain:
- 11 I. A statement of intention to terminate, cancel or not
12 to renew the franchise;
- 13 II. A detailed statement of all of the material reasons
14 for the termination, cancellation or nonrenewal;
15 and
- 16 III. The date on which the termination, cancellation or
17 nonrenewal takes effect.
- 18 3. Notification provided in G.S. 20-305(6)c1II of 90 days
19 prior to the effective date of such termination, cancellation
20 or renewal may run concurrent with the 180 days
21 designated in G.S. 20-305(6)a2II provided the notification
22 is clearly designated by a separate written document
23 mailed by certified mail or personally delivered to the new
24 motor vehicle dealer.
- 25 d. Payments. –
- 26 1. Upon the termination, nonrenewal or cancellation of any
27 franchise by the manufacturer or distributor, pursuant to
28 this section, the new motor vehicle dealer shall be allowed
29 fair and reasonable compensation by the manufacturer for
30 the:
- 31 I. New motor vehicle inventory that has been
32 acquired from the manufacturer within 18 months,
33 at a price not to exceed the original manufacturer's
34 price to the dealer, and which has not been altered
35 or damaged, and which has not been driven more
36 than 200 miles, and for which no certificate of title
37 has been issued;
- 38 II. Unused, undamaged and unsold supplies and parts
39 purchased from the manufacturer, at a price not to
40 exceed the original manufacturer's price to the
41 dealer, provided such supplies and parts are
42 currently offered for sale by the manufacturer or

- 1 distributor in its current parts catalogs and are in
2 salable condition;
- 3 III. ~~Equipment~~ Equipment, signs, and furnishings that
4 have not been altered or damaged and that have
5 been required by the manufacturer or distributor to
6 be purchased by the new motor vehicle dealer from
7 the manufacturer or distributor, or their approved
8 sources; and
- 9 IV. Special tools that have not been altered or damaged
10 and that have been required by the manufacturer or
11 distributor to be purchased by the new motor
12 vehicle dealer from the manufacturer or distributor,
13 or their approved sources within five years
14 immediately preceding the termination, nonrenewal
15 or cancellation of the franchise.
- 16 2. Fair and reasonable compensation for the above shall be
17 paid by the manufacturer within 90 days of the effective
18 date of termination, cancellation or nonrenewal, provided
19 the new motor vehicle dealer has clear title to the
20 inventory and has conveyed title and possession of the
21 same to the manufacturer. The manufacturer shall be
22 obligated to pay or reimburse the dealer for any
23 transportation charges associated with the manufacturer's
24 repurchase obligations under this sub-subparagraph. The
25 manufacturer may not charge the dealer any handling,
26 restocking, or other similar costs or fees associated with
27 items repurchased by the manufacturer under this sub-
28 subparagraph.
- 29 e. Dealership Facilities Assistance upon Termination, Cancellation
30 or Nonrenewal. –
- 31 In the event of the termination, cancellation or nonrenewal by
32 the manufacturer or distributor under this section, except
33 termination, cancellation or nonrenewal for insolvency, license
34 revocation, conviction of a crime involving moral turpitude, or
35 fraud by a dealer-owner:
- 36 1. Subject to paragraph 3, if the new motor vehicle dealer is
37 leasing the dealership facilities from a lessor other than
38 the manufacturer, the manufacturer shall pay the new
39 motor vehicle dealer a sum equivalent to the rent for the
40 unexpired term of the lease or ~~one~~ three year's rent,
41 whichever is less, or such longer term as is provided in the
42 franchise agreement between the dealer and manufacturer;
43 except that, in the case of motorcycle dealerships, the

1 manufacturer shall pay the new motor vehicle dealer the
2 sum equivalent to the rent for the unexpired term of the
3 lease or one year's rent, whichever is less, or such longer
4 term as provided in the franchise agreement between the
5 dealer and manufacturer; or

6 2. Subject to paragraph 3, if the new motor vehicle dealer
7 owns the dealership facilities, the manufacturer shall pay
8 the new motor vehicle dealer a sum equivalent to the
9 reasonable rental value of the dealership facilities for ~~one~~
10 year, three years, or for one year in the case of motorcycle
11 dealerships.

12 3. ~~Provided nothing in this paragraph e. shall relieve a lessee~~
13 ~~or owner, as the case may be, from the obligation to~~
14 ~~mitigate damages under the lease, nor prevent a~~
15 ~~manufacturer from occupying and using the dealership~~
16 ~~facilities while paying rent under subsections 1 and 2, nor~~
17 ~~prevent a manufacturer from obligations by negotiating a~~
18 ~~lease termination, a sublease or a new lease. Any amounts~~
19 ~~recovered by the lessee or owner resulting from mitigation~~
20 ~~of damages shall be deducted from the amount due from~~
21 ~~the manufacturer.~~

22 In order to be entitled to facilities assistance from the
23 manufacturer, as provided in this paragraph e., the dealer,
24 owner, or lessee, as the case may be, shall have the
25 obligation to mitigate damages by listing the demised
26 premises for lease or sublease with a licensed real estate
27 agent within 30 days after the effective date of the
28 termination of the franchise and thereafter by reasonably
29 cooperating with said real estate agent in the performance
30 of the agent's duties and responsibilities. In the event that
31 the dealer, owner, or lessee is able to lease or sublease the
32 demised premises, the dealer shall be obligated to pay the
33 manufacturer the net revenue received from such
34 mitigation up to the total amount of facilities assistance
35 which the dealer has received from the manufacturer
36 pursuant to sub-subdivisions 1. and 2. To the extent and
37 for such uses and purposes as may be consistent with the
38 terms of the lease, a manufacturer who pays facilities
39 assistance to a dealer under this paragraph e. shall be
40 entitled to occupy and use the dealership facilities during
41 the years for which the manufacturer shall have paid rent
42 under sub-subdivisions 1. and 2.

- 1 4. In the event the termination relates to fewer than all of the
2 franchises operated by the dealer at a single location, the
3 amount of facilities assistance which the manufacturer is
4 required to pay the dealer under this sub-subdivision shall
5 be based on the proportion of gross revenue received from
6 the sale and lease of new vehicles by the dealer and from
7 the dealer's parts and service operations during the three
8 years immediately preceding the effective date of the
9 termination (or any shorter period that the dealer may
10 have held these franchises) of the line-makes being
11 terminated, in relation to the gross revenue received from
12 the sale and lease of all line-makes of new vehicles by the
13 dealer and from the total of the dealer's and parts and
14 service operations from this location during the same
15 three-year period.
- 16 5. The compensation required for facilities assistance under
17 this paragraph e. shall be paid by the manufacturer within
18 90 days of the effective date of termination, cancellation,
19 or nonrenewal.
- 20 f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e. above
21 shall not be applicable when the termination, nonrenewal or
22 cancellation of the franchise agreement is the result of the
23 voluntary act of the dealer.
- 24 Notwithstanding the terms of any contract or agreement, any
25 dealer's termination or resignation shall not be deemed to be
26 voluntary if that termination or resignation occurred under the
27 manufacturer's threat of nonrenewal, cancellation, or termination
28 of the franchise.
- 29 (7) Notwithstanding the terms of any contract or agreement, to prevent or
30 refuse to honor the succession to a dealership, including the franchise,
31 by a motor vehicle dealer's designated successor as provided for under
32 this subsection.
- 33 a. Any owner of a new motor vehicle dealership may appoint by
34 will, or any other written instrument, a designated successor to
35 succeed in the respective ownership interest or interest as
36 principal operator of the ~~said~~ owner in the new motor vehicle
37 dealership, including the franchise, upon the death or incapacity
38 of the ~~owner~~ owner or principal operator. In order for succession
39 to the position of principal operator to occur by operation of law
40 in accordance with sub-subdivision c. below, the owner's choice
41 of a successor must be approved by the dealer, in accordance
42 with the dealer's bylaws, if applicable, either prior or subsequent
43 to the death or incapacity of the existing principal operator.

- 1 b. Any objections by a manufacturer or distributor to an owner's
2 appointment of a designated successor shall be asserted in
3 accordance with the following procedure:
- 4 1. Within 30 days after receiving written notice of the
5 identity of the owner's designated successor and general
6 information as to the financial ability and qualifications of
7 the designated successor, the franchisor shall send the
8 owner and designated successor notice of objection, by
9 registered or certified mail, return receipt requested, to the
10 appointment of the designated successor. The notice of
11 objection shall state in detail all facts which constitute the
12 basis for the contention on the part of the manufacturer or
13 distributor that good cause, as defined in this sub-
14 subdivision below, exists for rejection of the designated
15 successor. Failure by the franchisor to send notice of
16 objection within 30 days and otherwise as provided in this
17 sub-subdivision shall constitute waiver by the franchisor
18 of any right to object to the appointment of the designated
19 successor.
 - 20 2. Any time within 30 days of receipt of the manufacturer's
21 notice of objection the owner or the designated successor
22 may file a request in writing with the Commissioner that
23 the Commissioner hold an evidentiary hearing and
24 determine whether good cause exists for rejection of the
25 designated successor. When such a request is filed, the
26 Commissioner shall promptly inform the affected
27 manufacturer or distributor that a timely request has been
28 filed.
 - 29 3. The Commissioner shall endeavor to hold the evidentiary
30 hearing required under this sub-subdivision and render a
31 determination within 180 days after receipt of the written
32 request from the owner or designated successor. In
33 determining whether good cause exists for rejection of the
34 owner's appointed designated successor, the manufacturer
35 or distributor has the burden of proving that the designated
36 successor is a person who is not of good moral character
37 or does not meet the franchisor's existing written and
38 reasonable standards and, considering the volume of sales
39 and service of the new motor vehicle dealer, uniformly
40 applied minimum business experience standards in the
41 market area.
 - 42 4. Any parties to a hearing by the Commissioner concerning
43 whether good cause exists for the rejection of the dealer's

1 designated successor shall have a right of review of the
2 decision in a court of competent jurisdiction pursuant to
3 Chapter 150B of the General Statutes.

4 5. Nothing in this sub-subdivision shall preclude a
5 manufacturer or distributor from, upon its receipt of
6 written notice from ~~a dealer~~ an owner of the identity of the
7 ~~dealer's~~ owner's designated successor, requiring that the
8 designated successor promptly provide personal and
9 financial data that is reasonably necessary to determine
10 the financial ability and qualifications of the designated
11 successor; provided, however, that such a request for
12 additional information shall not delay any of the time
13 periods or constraints contained herein.

14 6. In the event death or incapacity of the owner or principal
15 operator occurs prior to the time a manufacturer or
16 distributor receives notice of the owner's appointment of a
17 designated successor or before the Commissioner has
18 rendered a determination as provided above, the existing
19 franchise shall remain in effect and the designated
20 successor shall be deemed to have succeeded to all of the
21 owner's or principal operator's rights and obligations in the
22 dealership and under the franchise until a determination is
23 made by the Commissioner or the rights of the parties
24 have otherwise become fixed in accordance with this sub-
25 subdivision.

26 c. Except as otherwise provided in sub-subdivision d. of this
27 subdivision, any designated successor of a deceased or
28 incapacitated owner or principal operator of a new motor vehicle
29 dealership appointed by such owner in substantial compliance
30 with this section shall, by operation of law, succeed at the time of
31 such death or incapacity to all of the ~~ownership~~ rights and
32 obligations of the owner or principal operator in the new motor
33 vehicle dealership and under the existing franchise.

34 d. Within 60 days after the death or incapacity of the ~~owner,~~ owner
35 or principal operator, a designated successor appointed in
36 substantial compliance with this section shall give the affected
37 manufacturer or distributor written notice of his or her succession
38 to the ~~ownership~~ position of owner or principal operator of the
39 new motor vehicle dealership; provided, however, that the failure
40 of the designated successor to give the manufacturer or
41 distributor written notice as provided above within 60 days of the
42 ~~owner's~~ death or incapacity of the owner or principal operator
43 shall not result in the waiver or termination of the designated

1 successor's right to succeed to the ownership of the new motor
2 vehicle dealership unless the manufacturer or distributor gives
3 written notice of this provision to either the designated successor
4 or the deceased or incapacitated owner's executor, administrator,
5 guardian or other fiduciary by certified or registered mail, return
6 receipt requested, and said written notice grants not less than 30
7 days time within which the designated successor may give the
8 notice required hereunder, provided the designated successor or
9 the deceased or incapacitated owner's executor, administrator,
10 guardian or other fiduciary has given the manufacturer
11 reasonable notice of death or incapacity. Within 30 days of
12 receipt of the notice by the manufacturer or distributor from the
13 designated successor provided in this paragraph, the
14 manufacturer or distributor may request that the designated
15 successor complete the application forms generally utilized by
16 the manufacturer or distributor to review the designated
17 successor's qualifications to establish a successor dealership.
18 Within 30 days of receipt of the completed forms, the
19 manufacturer or distributor shall send a letter by certified or
20 registered mail, return receipt requested, advising the designated
21 successor of facts and circumstances which have changed since
22 the manufacturer's or distributor's original approval of the
23 designated successor, and which have caused the manufacturer or
24 distributor to object to the designated successor. Upon receipt of
25 such notice, the designated successor may either designate an
26 alternative successor or may file a request for evidentiary hearing
27 in accordance with the procedures provided in sub-subdivisions
28 b. 2.-5. of this subdivision. In any such hearing, the manufacturer
29 or distributor shall be limited to facts and circumstances which
30 did not exist at the time the designated successor was originally
31 approved or evidence which was originally requested to be
32 produced by the designated successor at the time of the original
33 request and was ~~either not produced or the material which was~~
34 ~~produced was incorrect- fraudulent.~~

35 e. The designated successor shall agree to be bound by all terms
36 and conditions of the franchise in effect between the
37 manufacturer or distributor and the owner at the time of the
38 owner's or principal operator's death or incapacity, if so requested
39 in writing by the manufacturer or distributor subsequent to the
40 owner's or principal operator's death or incapacity.

41 f. This section does not preclude an owner of a new motor vehicle
42 dealership from designating any person as his or her successor by
43 written instrument filed with the manufacturer or distributor, and,

1 in the event there is an inconsistency between the successor
2 named in such written instrument and the designated successor
3 otherwise appointed by the owner consistent with the provisions
4 of this section, and that written instrument has not been revoked
5 by the owner of the new motor vehicle dealership in writing to
6 the manufacturer or distributor, then the written instrument filed
7 with the manufacturer or distributor shall govern as to the
8 appointment of the successor.

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

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

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

37 (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in
38 this State to refrain from participation in the management of, investment
39 in, or the acquisition of any other line of new motor vehicle or related
40 products; Provided, however, that this subsection does not apply unless
41 the new motor vehicle dealer maintains a reasonable line of credit for
42 each make or line of new motor vehicle, and the new motor vehicle
43 dealer remains in compliance with any reasonable capital standards and

1 facilities requirements of the manufacturer. The reasonable facilities
2 requirements shall not include any requirement that a new motor vehicle
3 dealer establish or maintain exclusive facilities, personnel, or display
4 ~~space, when such requirements, or any of them, would be unreasonable in~~
5 ~~light of current economic conditions and would not otherwise be justified by~~
6 ~~reasonable business considerations.~~ space.

7 (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in
8 this State to change location of the dealership, or to make any
9 substantial alterations to the dealership premises or facilities, when to do
10 so would be unreasonable, or without written assurance of a sufficient
11 supply of new motor vehicles so as to justify such an expansion, in light
12 of the current market and economic conditions.

13 (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in
14 this State to prospectively assent to a release, assignment, novation,
15 waiver or estoppel which would relieve any person from liability to be
16 imposed by this law or to require any controversy between a new motor
17 vehicle dealer and a manufacturer, distributor, or representative, to be
18 referred to any person other than the duly constituted courts of the State
19 or the United States of America, or to the Commissioner, if such referral
20 would be binding upon the new motor vehicle dealer.

21 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts
22 or accessories in reasonable quantities relative to the new motor vehicle
23 dealer's facilities and sales potential in the new motor vehicle dealer's
24 ~~relevant market area, and area as determined in accordance with~~
25 reasonably applied economic principles, or within a reasonable time,
26 after receipt of an order from a dealer having a franchise for the retail
27 sale of any new motor vehicle sold or distributed by the manufacturer or
28 distributor, any new vehicle, parts or accessories to new vehicles as are
29 covered by such franchise, and such vehicles, parts or accessories as are
30 publicly advertised as being available or actually being delivered. The
31 delivery to another dealer of a motor vehicle of the same model and
32 similarly equipped as the vehicle ordered by a motor vehicle dealer who
33 has not received delivery thereof, but who has placed his written order
34 for the vehicle prior to the order of the dealer receiving the vehicle, shall
35 be evidence of a delayed delivery of, or refusal to deliver, a new motor
36 vehicle to a motor vehicle dealer within a reasonable time, without
37 cause. Except as may be required by any consent decree of the
38 Commissioner or other order of the Commissioner or court of
39 competent jurisdiction, each manufacturer shall allocate its products in a
40 manner that provides each of its franchised dealers in this State an
41 adequate supply of vehicles by series, product line, and model to
42 achieve the manufacturer's minimum sales requirements, planning
43 volume, or sales objectives and that is fair and equitable to all of its

1 franchised dealers in this State. Additionally, each manufacturer shall
2 make available to each of its franchised dealers in this State a minimum
3 of one of each vehicle series, model, or product line that the
4 manufacturer advertises nationally as being available for purchase. A
5 manufacturer shall not unfairly discriminate among its franchised
6 dealers in this allocation process. This subsection is not violated,
7 however, if such failure is caused by acts or causes beyond the control
8 of the manufacturer, distributor, factory branch, or factory
9 representative.

10 (15) To refuse to disclose to any new motor vehicle dealer, handling the
11 same line make, the manner and mode of distribution of that line make
12 within the State.

13 (16) To award money, goods, services, or any other benefit to any new motor
14 vehicle dealership employee, either directly or indirectly, unless such
15 benefit is promptly accounted for, and transmitted to, or approved by,
16 the new motor vehicle dealer.

17 (17) To increase prices of new motor vehicles which the new motor vehicle
18 dealer had ordered and which the manufacturer or distributor has
19 accepted for immediate delivery for private retail consumers prior to the
20 new motor vehicle dealer's receipt of the written official price increase
21 notification. A sales contract signed by a private retail consumer shall
22 constitute evidence of each such order provided that the vehicle is in
23 fact delivered to that customer. Price differences applicable to new
24 model or series shall not be considered a price increase or price
25 decrease. Price changes caused by either: (i) the addition to a new motor
26 vehicle of required or optional equipment; or (ii) revaluation of the
27 United States dollar, in the case of foreign-make vehicles or
28 components; or (iii) an increase in transportation charges due to
29 increased rates imposed by carriers; or (iv) new tariffs or duties imposed
30 by the United States of America or any other governmental authority,
31 shall not be subject to the provisions of this subsection.

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

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

40 (20) To release to any outside party, except under subpoena or as otherwise
41 required by law or in an administrative, judicial or arbitration
42 proceeding involving the manufacturer or new motor vehicle dealer, any
43 confidential business, financial, or personal information which may be

- 1 from time to time provided by the new motor vehicle dealer to the
2 manufacturer, without the express written consent of the new motor
3 vehicle dealer.
- 4 (21) To deny any new motor vehicle dealer the right of free association with
5 any other new motor vehicle dealer for any lawful purpose.
- 6 (22) To unfairly discriminate among its new motor vehicle dealers with
7 respect to warranty reimbursements or authority granted its new motor
8 vehicle dealers to make warranty adjustments with retail customers.
- 9 (23) To engage in any predatory practice against or unfairly compete with a
10 new motor vehicle dealer located in this State.
- 11 (24) To terminate any franchise solely because of the death or incapacity of
12 an owner who is not listed in the franchise as one on whose expertise
13 and abilities the manufacturer relied in the granting of the franchise.
- 14 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in
15 this State to either establish or maintain exclusive facilities, personnel,
16 or display space, ~~when such requirements, or any of them, would be~~
17 ~~unreasonable in light of current economic conditions and would not otherwise~~
18 ~~be justified by reasonable business considerations.~~ space.
- 19 (26) To resort to or to use any false or misleading advertisement in the
20 conducting of its business as a manufacturer or distributor in this State.
- 21 (27) To knowingly make, either directly or through any agent or employee,
22 any material statement which is false or misleading ~~and or conceal any~~
23 material facts which ~~induces~~ induce any new motor vehicle dealer to
24 enter into any agreement or franchise or to take any action which is
25 materially prejudicial to that new motor vehicle dealer or his business.
- 26 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
27 purchase or order any new motor vehicle as a precondition to
28 purchasing, ordering, or receiving any other new motor vehicle or
29 vehicles. Nothing herein shall prevent a manufacturer from requiring
30 that a new motor vehicle dealer fairly represent and inventory the full
31 line of new motor vehicles which are covered by the franchise
32 agreement.
- 33 (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to
34 sell, transfer, or otherwise issue stock or other ownership interest in the
35 dealership corporation to a general manager or any other person
36 involved in the management of the dealership other than the dealer
37 principal or dealer operator named in the franchise, unless the dealer
38 principal or dealer operator is an absentee owner who is not involved in
39 the operation of the dealership on a regular basis.
- 40 (30) To vary the price charged to any of its franchised new motor vehicle
41 dealers located in this State for new motor vehicles based on the dealer's
42 purchase of new facilities, supplies, tools, equipment, or other
43 merchandise from the manufacturer, the dealer's relocation, remodeling,

1 repair, or renovation of existing dealerships or construction of a new
2 facility or upon the dealer's participation in training programs
3 sponsored, endorsed, or recommended by the manufacturer.

4 The price of the vehicle, for purposes of this subdivision shall include
5 the manufacturer's use of rebates, credits, or other consideration which
6 has the effect of causing a variance in the price of new motor vehicles
7 offered to its franchised dealers located in the State.

8 Notwithstanding the foregoing, nothing in this subdivision shall be
9 deemed to preclude a manufacturer from establishing sales contests or
10 promotions which provide or award dealers or consumers rebates or
11 incentives.

12 Nothing contained in this subdivision shall prohibit a manufacturer
13 from providing assistance or encouragement to a franchised dealer to
14 remodel, renovate, recondition, or relocate the dealer's existing
15 facilities, provided that this assistance, encouragement, or rewards are
16 not determined on a per vehicle basis.

17 In the event that at the time of the ratification of this act a
18 manufacturer is currently operating a program or has in effect a policy
19 which would violate this subdivision after the effective date of this act,
20 it shall be lawful for that program or ~~policy~~ policy, or a program or
21 policy similar thereto implemented after the effective date of this act, to
22 continue in effect as to the manufacturer's franchised dealers located in
23 this State until ~~December 31, 1999.~~ December 31, 2002. Any
24 manufacturer shall be required to pay or otherwise compensate any
25 franchise dealer who has earned the right to receive payment or other
26 compensation under a program ~~as of December 31, 1999~~, in accordance
27 with the manufacturer's program or policy.

28 (31) Notwithstanding the terms of any contract, franchise, agreement,
29 release, or waiver, to require that in any civil or administrative
30 proceeding in which a new motor vehicle dealer asserts any claims,
31 rights, or defenses arising under this Article or under the franchise, that
32 the dealer or any nonprevailing party compensate the manufacturer or
33 prevailing party for any court costs, attorneys' fees, or other expenses
34 incurred in the litigation.

35 (32) To require that any of its franchised new motor vehicle dealers located
36 in this State pay any extra fee, purchase unreasonable or unnecessary
37 quantities of advertising displays or other materials, or remodel,
38 renovate, or recondition the dealers' existing facilities in order to receive
39 any particular model or series of vehicles manufactured or distributed
40 by the manufacturer for which the dealers have a valid franchise.
41 Notwithstanding the foregoing, nothing contained in this subdivision
42 shall be deemed to prohibit or prevent a manufacturer from requiring
43 that its franchised dealers located in this State purchase special tools or

1 equipment, stock reasonable quantities of certain parts, or participate in
2 training programs which are reasonably necessary for those dealers to
3 sell or service any model or series of vehicles.

4 (33) To fail to reimburse a dealer located in this State in full for the actual
5 cost of providing a loaner vehicle to any customer who is having a
6 vehicle serviced at the dealership if the provision of such a loaner
7 vehicle is required by the manufacturer.

8 (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in
9 this State to participate monetarily in any training program whose
10 subject matter is not expressly limited to specific information necessary
11 to sell or service the models of vehicles the dealer is authorized to sell
12 or service under the dealer's franchise with that manufacturer.
13 Examples of training programs with respect to which a manufacturer is
14 prohibited from requiring the dealer's monetary participation include,
15 but are not limited to, those which purport to teach morale-boosting
16 employee motivation, teamwork, or general principles of customer
17 relations. A manufacturer is further prohibited from requiring the
18 personal attendance of an owner or dealer principal of any dealership
19 located in this State at any meeting or training program at which it is
20 reasonably possible for another member of the dealer's management to
21 attend and later relate the subject matter of the meeting or training
22 program to the dealership's owners or principal operator.

23 (35) Notwithstanding the terms of any franchise, agreement, waiver or
24 novation, to limit the number of franchises of the same line make of
25 vehicle that any franchised motor vehicle dealer, including its parent(s),
26 subsidiaries, and affiliates, if any, may own or operate or attach any
27 restrictions or conditions on the ownership or operation of multiple
28 franchises of the same line make of motor vehicle without making the
29 same limitations, conditions, and restrictions applicable to all of its
30 other franchisees.

31 (36) With regard to any manufacturer, factory branch, distributor, distributor
32 branch, or subsidiary thereof that owns and operates a new motor
33 vehicle dealership, directly or indirectly through any subsidiary or
34 affiliated entity as provided in G.S. 20-305.2, to unreasonably
35 discriminate against any other new motor vehicle dealer in the same line
36 make in any matter governed by the motor vehicle franchise, including
37 the sale or allocation of vehicles or other manufacturer or distributor
38 products, or the execution of dealer programs for benefits.

39 (37) Subdivisions (11) and (25) of this section shall not apply to any
40 manufacturer, manufacturer branch, distributor, distributor branch, or
41 any affiliate or subsidiary thereof of new motor vehicles which
42 manufactures or distributes exclusively new motor vehicles with a gross
43 weight rating of 8,500 pounds or more, provided that the following

1 conditions are met: (i) the manufacturer has, as of November 1, 1996, an
2 agreement in effect with at least three of its franchised dealers within
3 the State, and which agreement was, in fact, being enforced by the
4 manufacturer, requiring the dealers to maintain separate and exclusive
5 facilities for the vehicles it manufactures or distributes; and (ii) there
6 existed at least seven dealerships (locations) of that manufacturer within
7 the State as of January 1, 1999."

8 Section 3. G.S. 20-305.1(b) reads as rewritten:

9 "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any
10 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to
11 perform any of its warranty obligations with respect to a motor vehicle, to fail to
12 compensate its motor vehicle dealers licensed in this State for warranty parts other than
13 parts used to repair the living facilities of recreational vehicles, at the prevailing retail
14 rate according to the factors in subsection (a) of this section, or, in service in accordance
15 with the schedule of compensation provided the dealer pursuant to subsection (a) above,
16 and to fail to indemnify and hold harmless its franchised dealers licensed in this State
17 against any judgment for damages or settlements agreed to by the manufacturer,
18 including, but not limited to, court costs and reasonable attorneys' fees of the motor
19 vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to,
20 strict liability, negligence, misrepresentation, express or implied warranty, or rescision or
21 revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the
22 extent that the judgment or settlement relates to the alleged defective negligent
23 manufacture, assembly or design of new motor vehicles, parts or accessories or other
24 functions by the manufacturer, factory branch, distributor or distributor branch, beyond
25 the control of the dealer. Any audit for warranty parts or service compensation shall only
26 be for the 12-month period immediately following the date of the payment of the claim
27 by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales
28 incentives, service incentives, rebates, or other forms of incentive compensation shall
29 only be for the ~~24-month~~ 12-month period immediately following the date of the ~~payment~~
30 of the claim by the manufacturer, factory branch, distributor, or distributor branch. termination
31 of the sales incentives program, service incentives program, rebate program, or other
32 form of incentive compensation program. Provided, however, these limitations shall not
33 be effective in the case of fraudulent claims."

34 Section 3.1. G.S. 20-305.1 is amended by adding a new subsection to read:

35 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales
36 incentives, service incentives, rebates, or other forms of incentive compensation, reduce
37 the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of
38 the claim unless it can be shown that the claim was false or fraudulent or that the dealer
39 failed to reasonably substantiate the claim either in accordance with the manufacturer's
40 written procedures or by other reasonable means."

41 Section 4. G.S. 20-305.1(c) reads as rewritten:

42 "(c) In the event there is a dispute between the manufacturer, factory branch,
43 distributor, or distributor branch, and the dealer with respect to any matter referred to in

1 ~~subsections~~ subsection (a), (b), (b1), (b2), or (d) of this section, either party may petition
2 the Commissioner in writing, within 30 days after either party has given written notice of
3 the dispute to the other, for a hearing on the subject and the decision of the Commissioner
4 shall be binding on the parties, subject to rights of judicial review and appeal as provided
5 in Chapter 150B of the General Statutes; provided, however, that nothing contained
6 herein shall give the Commissioner any authority as to the content of any manufacturer's
7 or distributor's warranty. Upon the filing of a petition before the Commissioner under this
8 subsection, any chargeback to or any payment required of a dealer by a manufacturer
9 relating to warranty parts or service compensation, or to sales incentives, service
10 incentives, rebates, or other forms of incentive compensation, shall be stayed during the
11 pendency of the determination by the Commissioner."

12 Section 5. G.S. 20-305.2 reads as rewritten:

13 "**§ 20-305.2. Unfair methods of competition.**

14 (a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor,
15 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary
16 or affiliated entity, own, own any ownership interest in, operate, or control any motor
17 vehicle dealership in a relevant market area of this State already served by a motor vehicle
18 dealer under a franchise for the same line make from such manufacturer, factory branch,
19 distributor, or distributor branch, or subsidiary, in this State, provided that this section shall
20 not be construed to ~~prohibit~~ prohibit: (i)

21 (1) the operation by a manufacturer, factory branch,
22 distributor, distributor branch, or subsidiary thereof, of a dealership for
23 a temporary period (not to exceed one year) during the transition from
24 one owner or operator to ~~another, another;~~ or (ii)

25 (2) the ownership or control of a dealership by a manufacturer, factory
26 branch, distributor, distributor branch, or subsidiary thereof, ~~during a~~
27 ~~period while such dealership is being sold under a bona fide contract or~~
28 ~~purchase option to the operator of the dealership, while in a bona fide~~
29 relationship with an economically disadvantaged or other independent
30 person, other than a manufacturer, factory branch, distributor,
31 distributor branch, or an agent or affiliate thereof, who has made a bona
32 fide, unencumbered initial investment of at least six percent (6%) of the
33 total sales price that is subject to loss in the dealership and who can
34 reasonably expect to acquire full ownership of the dealership within a
35 reasonable period of time, not to exceed 12 years, and on reasonable
36 terms and conditions; or (iii)

37 (3) the ownership, operation or control of a dealership by a manufacturer,
38 factory branch, distributor, distributor branch, or subsidiary thereof, if
39 such manufacturer, factory branch, distributor, distributor branch, or
40 subsidiary has been engaged in the retail sale of motor vehicles through
41 such dealership for a continuous period of three years prior to March 16,
42 1973, and if the Commissioner determines, after a hearing on the matter
43 at the request of any party, that there is no independent dealer available

1 in the relevant market area to own and operate the franchise in a manner
2 consistent with the public ~~interest,~~ interest; or ~~(iv)~~

3 (4) the ownership, operation, or control of a dealership by a manufacturer,
4 factory branch, distributor, distributor branch, or subsidiary thereof, if
5 the Commissioner determines after a hearing on the matter at the request
6 of any party, that there is no independent dealer available in the relevant
7 market area to own and operate the franchise in a manner consistent
8 with the public ~~interest,~~ interest; or

9 (5) the ownership, operation, or control of any facility (location) of a new
10 motor vehicle dealer in this State at which the dealer sells only new and
11 used motor vehicles with a gross weight rating of 8,500 pounds or more,
12 provided that both of the following conditions have been met:

13 a. the facility is located within 35 miles of manufacturing or
14 assembling facilities existing as of January 1, 1999, and is owned
15 or operated by the manufacturer, manufacturing branch,
16 distributor, distributor branch, or any affiliate or subsidiary
17 thereof which assembles, manufactures, or distributes new motor
18 vehicles with a gross weight rating of 8,500 pounds or more by
19 such dealer at said location; and

20 b. the facility is located in the largest Standard Metropolitan
21 Statistical Area (SMSA) in the State; or

22 (6) as to any line make of motor vehicle for which there is in aggregate no
23 more than 13 franchised new motor vehicle dealers (locations) licensed
24 and in operation within the State as of January 1, 1999, the ownership,
25 operation, or control of one or more new motor vehicle dealership
26 trading solely in such line make of vehicle by the manufacturer, factory
27 branch, distributor, distributor branch, or subsidiary or affiliate thereof,
28 provided however, that all of the following conditions are met:

29 a. the manufacturer, factory branch, distributor, distributor branch,
30 or subsidiary or affiliate thereof does not own directly or
31 indirectly, in aggregate, in excess of forty-five percent (45%)
32 interest in the dealership;

33 b. at the time the manufacturer, factory branch, distributor,
34 distributor branch, or subsidiary or affiliate thereof first acquires
35 ownership or assumes operation or control with respect to any
36 such dealership, the distance between the dealership thus owned,
37 operated, or controlled and the nearest other new motor vehicle
38 dealership trading in the same line make of vehicle, is no less
39 than 35 miles;

40 c. all the manufacturer's franchise agreements confer rights on the
41 dealer of the line make to develop and operate within a defined
42 geographic territory or area, as many dealership facilities as the
43 dealer and manufacturer shall agree are appropriate; and

1 d. that as of July 1, 1999, not fewer than half of the dealers of the
2 line make within the State own and operate two or more
3 dealership facilities in the geographic territory or area covered by
4 the franchise agreement with the manufacturer.

5 (b) ~~Provided, this~~ This section shall not apply to manufacturers or distributors of ~~trailers~~
6 trailers, motor homes, or semitrailers."

7 Section 6. This act becomes effective October 1, 1999.