

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 739*

Short Title: MV Dealers/Manufacturers Lic. Law.

(Public)

Sponsors: Representatives Dickson; Alexander, Allred, Arnold, Baddour, Barbee, Beall, Berry, Black, Bowie, Brawley, Brown, Buchanan, Cansler, Capps, Carpenter, Church, Clary, Crawford, Creech, Culp, Culpepper, Daughtry, Davis, Decker, Dedmon, Dockham, Easterling, Eddins, Esposito, Fox, Gardner, Goodwin, Grady, Gray, Gulley, Hall, Hardy, Hensley, Hiatt, Hill, Holmes, Howard, R. Hunter, Hurley, Ives, Jarrell, Justus, Kiser, McComas, McCombs, McCrary, McMahan, Mercer, Miner, Mitchell, Moore, Morris, Mosley, Neely, Nesbitt, Nichols, Nye, Owens, Preston, Ramsey, Redwine, Reynolds, Rogers, Russell, Saunders, Sexton, Sherrill, Smith, Starnes, Tallent, Thompson, Tolson, Warwick, Watson, Weatherly, Wilkins, C. Wilson, G. Wilson, and Yongue.

Referred to: Judiciary I.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN AND CLARIFY THE DEALERS AND
MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-297.1. Certification of compliance of franchise agreements.

Any franchise, as defined in G.S. 20-286(8a), offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. On or before January 1, 1998, every manufacturer, factory branch, distributor, or distributor branch licensed by the

1 Commissioner under this Article which uses an identical or substantially similar form
2 franchise for its dealers or distributors in this State, shall file with the Commissioner a
3 copy of the franchise and all supplements along with a certification in writing that none
4 of the terms and provisions of the franchise or supplements are inconsistent with,
5 prohibited by, or contrary to the provisions of this Article. Any applicant for licensing by
6 the Commissioner as a manufacturer, factory branch, distributor, or distributor branch
7 licensed under this Article, which would use an identical or substantially similar form
8 franchise, as defined in G.S. 20-286(8a), for its dealers or distributors in this State, shall,
9 as a condition for the issuance of a license, file with the Commissioner a copy of the
10 franchise and all supplements along with a certification in writing that none of the terms
11 and provisions of the franchise or supplements are inconsistent with, prohibited by, or
12 contrary to the provisions of this Article. Not later than 60 days prior to the date a
13 revision, modification, or addition to a franchise is offered generally to a licensee's
14 franchisees in this State, the licensee shall notify the Commissioner of the proposed
15 revision, modification, or addition to the franchise on file with the Commissioner and
16 include with the notification:

- 17 (1) A copy of the franchise which incorporates all of the proposed
18 revisions, modifications, and additions;
- 19 (2) A separate statement which identifies and provides a detailed
20 description of all substantive revisions, modifications, and additions
21 proposed and the reasons for the changes; and
- 22 (3) A certification in writing that none of the revisions, modifications, or
23 additions proposed are inconsistent with, prohibited by, or contrary to
24 the provisions of this Article.

25 It shall be unlawful for a franchise or any addendum or supplement thereto to be offered
26 to a motor vehicle dealer in this State after January 1, 1998, until an applicant or licensee
27 has complied with all of the requirements of this section. The Commissioner is to
28 investigate and prevent violations of this section, including inconsistencies of any
29 manufacturer's franchise with the provisions of this Article."

30 Section 2. G.S. 20-301 reads as rewritten:

31 **"§ 20-301. Powers of Commissioner.**

32 (a) The Commissioner shall promote the interests of the retail buyer of motor
33 vehicles.

34 (b) The Commissioner shall ~~have power to~~ investigate any complaint brought by
35 any person alleging a violation of this Article and to prevent unfair methods of
36 competition and unfair or deceptive acts or practices and other violations of this Article.
37 Any franchised new motor vehicle dealer who believes that a manufacturer, factory
38 branch, distributor, or distributor branch with whom the dealer holds a currently valid
39 franchise has violated or is currently violating any provision of this Article may file a
40 petition before the Commissioner setting forth the factual and legal basis for such
41 violations. The Commissioner shall promptly forward a copy of the petition to the named
42 manufacturer, factory branch, distributor, or distributor branch, requesting a reply to the
43 petition within 30 days. Allowing for sufficient time for the parties to conduct discovery,

1 the Commissioner or his designee shall then hold an evidentiary hearing and render
2 findings of fact and conclusions of law based on the evidence presented. At any such
3 evidentiary hearing, the manufacturer, factory branch, distributor, or distributor branch
4 shall have the burden of proving its compliance with the provisions of this Article. Any
5 parties to a hearing by the Commissioner concerning the establishment or relocating of a
6 new motor vehicle dealer shall have a right of review of the decision in a court of
7 competent jurisdiction pursuant to Chapter 150B of the General Statutes.

8 (c) The Commissioner shall have the power in hearings arising under this Article
9 ~~to~~ to:

- 10 (1) Enter scheduling orders and limit the time and scope of discovery;
- 11 (2) To determine the date, time, and place where they shall be hearings are to
12 be held;
- 13 (3) ~~to~~ To subpoena witnesses;
- 14 (4) ~~to~~ To take depositions of witnesses; and
- 15 (5) ~~to~~ To administer oaths.

16 (d) The Commissioner may, whenever he shall believe from evidence submitted to
17 him that any person has been or is violating any provision of this Article, in addition to
18 any other ~~remedy~~ remedy, bring an action in the name of the State against ~~such~~ that person
19 and any other persons concerned or in any way participating in, or about to participate in
20 practices or acts so in violation, to enjoin ~~such~~ any persons and ~~such other persons~~ from
21 continuing the ~~same~~ violations.

22 (e) ~~The Commissioner shall limit the time for discovery in any contested~~
23 ~~administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days.~~
24 ~~The Commissioner may extend the time for discovery beyond 60 days either upon the~~
25 ~~consent of all parties to the proceeding or upon application of one or more parties to the~~
26 ~~proceeding for good cause shown. The Commissioner may issue rules and regulations to~~
27 ~~implement the provisions of this section and to establish procedures related to~~
28 ~~administrative proceedings commenced under this section."~~

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

30 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
31 **cancel franchise; preventing transfer of ownership; granting additional**
32 **franchises; terminating franchises without good cause; preventing family**
33 **succession.**

34 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
35 branch, or any field representative, officer, agent, or any representative whatsoever of any
36 of them:

- 37 (1) To require, coerce, or attempt to coerce any dealer to accept delivery of
38 any motor vehicle or vehicles, parts or accessories therefor, or any other
39 commodities, which shall not have been ordered by such dealer;
- 40 (2) To require, coerce, or attempt to coerce any dealer to enter into any
41 agreement with such manufacturer, factory branch, distributor, or
42 distributor branch, or representative thereof, or do any other act unfair to
43 such dealer, by threatening to cancel any franchise existing between

- 1 such manufacturer, factory branch, distributor, distributor branch, or
2 representative thereof, and such dealer;
- 3 (3) Unfairly without due regard to the equities of the dealer, and without
4 just provocation, to cancel the franchise of such dealer;
- 5 (4) Notwithstanding the terms of any franchise agreement, to prevent or
6 refuse to approve the sale or transfer of the ownership of a dealership by
7 the sale of the business, stock transfer, or otherwise, or the transfer, sale
8 or assignment of a dealer franchise, or a change in the executive
9 management or principal operator of the dealership, or relocation of the
10 dealership to another site within the dealership's relevant market area, if
11 the Commissioner has determined, if requested in writing by the dealer
12 within 30 days after receipt of an objection to the proposed transfer,
13 sale, assignment, relocation, or change, and after a hearing on the
14 matter, that the failure to permit or honor the transfer, sale, assignment,
15 relocation, or change is unreasonable under the circumstances. No
16 franchise may be transferred, sold, assigned, relocated, or the executive
17 management or principal operators changed, unless the franchisor has
18 been given at least 30 days' prior written notice as to the identity,
19 financial ability, and qualifications of the proposed transferee, the
20 identity and qualifications of the persons proposed to be involved in
21 executive management or as principal operators, and the location and
22 site plans of any proposed relocation. The franchisor shall send the
23 dealership notice of objection, by registered or certified mail, return
24 receipt requested, to the proposed transfer, sale, assignment, relocation,
25 or change within 30 days after receipt of notice from the dealer, as
26 provided in this section. Failure by the franchisor to send notice of
27 objection within 30 days shall constitute waiver by the franchisor of any
28 right to object to the proposed transfer, sale, assignment, relocation, or
29 change. The manufacturer or distributor has the burden of proving that
30 the proposed transfer, sale, assignment, relocation, or change is
31 unreasonable under the circumstances.
- 32 (5) To enter into a franchise establishing an additional new motor vehicle
33 dealer or relocating an existing new motor vehicle dealer into a relevant
34 market area where the same line make is then represented without first
35 notifying in writing the Commissioner and each new motor vehicle
36 dealer in that line make in the relevant market area of the intention to
37 establish an additional dealer or to relocate an existing dealer within or
38 into that market area. Within 30 days of receiving such notice or within
39 30 days after the end of any appeal procedure provided by the
40 manufacturer, any new motor vehicle dealer may file with the
41 Commissioner a protest to the establishing or relocating of the new
42 motor vehicle dealer. When a protest is filed, the Commissioner shall
43 promptly inform the manufacturer that a timely protest has been filed,

1 and that the manufacturer shall not establish or relocate the proposed
2 new motor vehicle dealer until the Commissioner has held a hearing,
3 nor thereafter, if the Commissioner has determined that there is good
4 cause for not permitting the addition or relocation of such new motor
5 vehicle dealer.

6 a. This section does not apply:

- 7 1. To the relocation of an existing new motor vehicle dealer
8 within that dealer's relevant market area, provided that the
9 relocation not be at a site within 10 miles of a licensed
10 new motor vehicle dealer for the same line make of motor
11 vehicle; or
- 12 2. If the proposed additional new motor vehicle dealer is to
13 be established at or within two miles of a location at
14 which a former licensed new motor vehicle dealer for the
15 same line make of new motor vehicle had ceased
16 operating within the previous two years;
- 17 3. To the relocation of an existing new motor vehicle dealer
18 within two miles of the existing site of the new motor
19 vehicle dealership;
- 20 4. To the relocation of an existing new motor vehicle dealer
21 if the proposed site of the relocated new motor vehicle
22 dealership is further away from all other new motor
23 vehicle dealers of the same line make in that relevant
24 market area.

25 b. In determining whether good cause has been established for not
26 entering into or relocating an additional new motor vehicle dealer
27 for the same line make, the Commissioner shall take into
28 consideration the existing circumstances, including, but not
29 limited to:

- 30 1. The permanency of the investment of both the existing
31 and proposed additional new motor vehicle dealers;
- 32 2. Growth or decline in population, density of population,
33 and new car registrations in the relevant market area;
- 34 3. Effect on the consuming public in the relevant market
35 area;
- 36 4. Whether it is injurious or beneficial to the public welfare
37 for an additional new motor vehicle dealer to be
38 established;
- 39 5. Whether the new motor vehicle dealers of the same line
40 make in that relevant market area are providing adequate
41 competition and convenient customer care for the motor
42 vehicles of the same line make in the market area which
43 shall include the adequacy of motor vehicle sales and

- 1 service facilities, equipment, supply of motor vehicle
2 parts, and qualified service personnel;
- 3 6. Whether the establishment of an additional new motor
4 vehicle dealer or relocation of an existing new motor
5 vehicle dealer in the relevant market area would increase
6 competition in a manner such as to be in the long-term
7 public interest; and
- 8 7. The effect on the relocating dealer of a denial of its
9 relocation into the relevant market area.
- 10 c. The Commissioner ~~must~~ shall try to conduct the hearing and
11 render his final determination as ~~expeditiously as possible, but in~~
12 ~~any event no later than if possible, within~~ 180 days after a protest
13 is filed. ~~Unless waived by the parties, failure to do so shall be deemed~~
14 ~~the equivalent of a determination that good cause does not exist for~~
15 ~~refusing to permit the proposed additional or relocated motor vehicle~~
16 ~~dealer, unless such delay is caused by acts of the manufacturer, or the~~
17 ~~relocating or additional dealer.~~
- 18 d. Any parties to a hearing by the Commissioner concerning the
19 establishment or relocating of a new motor vehicle dealer shall
20 have a right of review of the decision in a court of competent
21 jurisdiction pursuant to Chapter 150B of the General Statutes.
- 22 e. In a hearing involving a proposed additional dealership, the
23 manufacturer or distributor has the burden of proof under this
24 section. In a proceeding involving the relocation of an existing
25 dealership, the dealer seeking to relocate has the burden of proof
26 under this section.
- 27 f. If the Commissioner determines, following a hearing, that good
28 cause does not exist for refusing to permit the proposed
29 additional or relocated motor vehicle dealership, the dealer
30 seeking the proposed additional or relocated motor vehicle
31 dealership must, within two years, obtain a license from the
32 Commissioner for the sale of vehicles at the relevant site, and
33 actually commence operations at the site selling new motor
34 vehicles of all line makes, as permitted by the Commissioner.
35 Failure to obtain a permit and commence sales within two years
36 shall constitute waiver by the dealer of the dealer's right to the
37 additional or relocated dealership, requiring renotification, a new
38 hearing, and a new determination as provided in this section.
- 39 g. For purposes of this subdivision, the addition, creation, or
40 operation of a 'satellite' or other facility, not physically part of or
41 contiguous to an existing licensed new motor vehicle dealer,
42 whether or not owned or operated by a person or other entity
43 holding a franchise as defined by G.S. 20-286(8a), at which

1 warranty service work authorized or reimbursed by a
2 manufacturer is performed or at which new motor vehicles are
3 offered for sale to the public, shall be considered an additional
4 new motor vehicle dealer requiring a showing of good cause,
5 prior notification to existing new motor vehicle dealers of the
6 same line-make of vehicle within the relevant market area by the
7 manufacturer and the opportunity for a hearing before the
8 Commissioner as provided in this subdivision.

- 9 (6) Notwithstanding the terms, provisions or conditions of any franchise or
10 notwithstanding the terms or provisions of any waiver, to terminate,
11 cancel or fail to renew any franchise with a licensed new motor vehicle
12 dealer unless the manufacturer has satisfied the notice requirements of
13 subparagraph c. and the Commissioner has determined, if requested in
14 writing by the dealer within the time period specified in G.S. 20-
15 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
16 that there is good cause for the termination, cancellation, or nonrenewal
17 of the franchise and that the manufacturer has acted in good faith as
18 defined in this act regarding the termination, cancellation or
19 nonrenewal. When such a petition is made to the Commissioner by a
20 dealer for determination as to the existence of good cause and good faith
21 for the termination, cancellation or nonrenewal of a franchise, the
22 Commissioner shall promptly inform the manufacturer that a timely
23 petition has been filed, and the franchise in question shall continue in
24 effect pending the Commissioner's decision. The Commissioner ~~must~~
25 shall try to conduct the hearing and render a final determination ~~no later~~
26 ~~than within~~ 180 days after a petition has been filed; ~~provided, however,~~
27 ~~that the Commissioner may extend such period of time upon application of a~~
28 ~~party and for good cause shown, or upon the consent of all parties to the~~
29 ~~proceeding.~~ filed. If the termination, cancellation or nonrenewal is
30 pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the
31 proceeding priority consideration and shall try to render his final
32 determination no later than 90 days after the petition has been filed. Any
33 parties to a hearing by the Commissioner under this section shall have a
34 right of review of the decision in a court of competent jurisdiction
35 pursuant to Chapter 150B of the General Statutes.

- 36 a. Notwithstanding the terms, provisions or conditions of any
37 franchise or the terms or provisions of any waiver, good cause
38 shall exist for the purposes of a termination, cancellation or
39 nonrenewal when:
- 40 1. There is a failure by the new motor vehicle dealer to
41 comply with a provision of the franchise which provision
42 is both reasonable and of material significance to the
43 franchise relationship provided that the dealer has been

- 1 notified in writing of the failure within 180 days after the
2 manufacturer first acquired knowledge of such failure;
- 3 2. If the failure by the new motor vehicle dealer relates to the
4 performance of the new motor vehicle dealer in sales or
5 service, then good cause shall be defined as the failure of
6 the new motor vehicle dealer to comply with reasonable
7 performance criteria established by the manufacturer if the
8 new motor vehicle dealer was apprised by the
9 manufacturer in writing of the failure; and
- 10 I. The notification stated that notice was provided of
11 failure of performance pursuant to this section;
- 12 II. The new motor vehicle dealer was afforded a
13 reasonable opportunity, for a period of not less than
14 180 days, to comply with the criteria; and
- 15 III. The new motor vehicle dealer failed to demonstrate
16 substantial progress towards compliance with the
17 manufacturer's performance criteria during such
18 period and the new motor vehicle dealer's failure
19 was not primarily due to economic or market
20 factors within the dealer's relevant market area
21 which were beyond the dealer's control.
- 22 b. The manufacturer shall have the burden of proof under this
23 section.
- 24 c. Notification of Termination, Cancellation and Nonrenewal. –
- 25 1. Notwithstanding the terms, provisions or conditions of
26 any franchise prior to the termination, cancellation or
27 nonrenewal of any franchise, the manufacturer shall
28 furnish notification of termination, cancellation or
29 nonrenewal to the new motor vehicle dealer as follows:
- 30 I. In the manner described in G.S. 20-305(6)c2
31 below; and
- 32 II. Not less than 90 days prior to the effective date of
33 such termination, cancellation or nonrenewal; or
- 34 III. Not less than 15 days prior to the effective date of
35 such termination, cancellation or nonrenewal with
36 respect to any of the following:
- 37 A. Insolvency of the new motor vehicle
38 dealer, or filing of any petition by or
39 against the new motor vehicle dealer
40 under any bankruptcy or receivership law;
- 41 B. Failure of the new motor vehicle dealer to
42 conduct its customary sales and service
43 operations during its customary business

- 1 hours for seven consecutive business days,
2 except for acts of God or circumstances
3 beyond the direct control of the new motor
4 vehicle dealer;
- 5 C. Revocation of any license which the new
6 motor vehicle dealer is required to have to
7 operate a dealership;
- 8 D. Conviction of a felony involving moral
9 turpitude, under the laws of this State or
10 any other state, or territory, or the District
11 of Columbia.
- 12 IV. Not less than 180 days prior to the effective date of
13 such termination or cancellation where the
14 manufacturer or distributor is discontinuing the sale
15 of the product line.
- 16 2. Notification under this section shall be in writing; shall be
17 by certified mail or personally delivered to the new motor
18 vehicle dealer; and shall contain:
- 19 I. A statement of intention to terminate, cancel or not
20 to renew the franchise;
- 21 II. A statement of the reasons for the termination,
22 cancellation or nonrenewal; and
- 23 III. The date on which the termination, cancellation or
24 nonrenewal takes effect.
- 25 3. Notification provided in G.S. 20-305(6)c1II of 90 days
26 prior to the effective date of such termination, cancellation
27 or renewal may run concurrent with the 180 days
28 designated in G.S. 20-305(6)a2II provided the notification
29 is clearly designated by a separate written document
30 mailed by certified mail or personally delivered to the new
31 motor vehicle dealer.
- 32 d. Payments. –
- 33 1. Upon the termination, nonrenewal or cancellation of any
34 franchise by the manufacturer or distributor, pursuant to
35 this section, the new motor vehicle dealer shall be allowed
36 fair and reasonable compensation by the manufacturer for
37 the:
- 38 I. New motor vehicle inventory that has been
39 acquired from the manufacturer within 18 months,
40 at a price not to exceed the original manufacturer's
41 price to the dealer, and which has not been altered
42 or damaged, and which has not been driven more

- 1 than 200 miles, and for which no certificate of title
2 has been issued;
- 3 II. Unused, undamaged and unsold supplies and parts
4 purchased from the manufacturer, at a price not to
5 exceed the original manufacturer's price to the
6 dealer, provided such supplies and parts are
7 currently offered for sale by the manufacturer or
8 distributor in its current parts catalogs and are in
9 salable condition;
- 10 III. Equipment and furnishings that have not been
11 altered or damaged and that have been required by
12 the manufacturer or distributor to be purchased by
13 the new motor vehicle dealer from the
14 manufacturer or distributor, or their approved
15 sources; and
- 16 IV. Special tools that have not been altered or damaged
17 and that have been required by the manufacturer or
18 distributor to be purchased by the new motor
19 vehicle dealer from the manufacturer or distributor,
20 or their approved sources within five years
21 immediately preceding the termination, nonrenewal
22 or cancellation of the franchise.
- 23 2. Fair and reasonable compensation for the above shall be
24 paid by the manufacturer within 90 days of the effective
25 date of termination, cancellation or nonrenewal, provided
26 the new motor vehicle dealer has clear title to the
27 inventory and has conveyed title and possession to the
28 manufacturer.
- 29 e. Dealership Facilities Assistance upon Termination, Cancellation
30 or Nonrenewal. –
- 31 In the event of the termination, cancellation or nonrenewal by the
32 manufacturer or distributor under this section, except termination,
33 cancellation or nonrenewal for insolvency, license revocation,
34 conviction of a crime involving moral turpitude, or fraud by a dealer-
35 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 year's rent, whichever
41 is less, or such longer term as is provided in the franchise
42 agreement between the dealer and manufacturer; or

- 1 2. Subject to paragraph 3, if the new motor vehicle dealer
2 owns the dealership facilities, the manufacturer shall pay
3 the new motor vehicle dealer a sum equivalent to the
4 reasonable rental value of the dealership facilities for one
5 year.
- 6 3. Provided nothing in this paragraph e. shall relieve a lessee
7 or owner, as the case may be, from the obligation to
8 mitigate damages under the lease, nor prevent a
9 manufacturer from occupying and using the dealership
10 facilities while paying rent under subsections 1 and 2, nor
11 prevent a manufacturer from obligations by negotiating a
12 lease termination, a sublease or a new lease. Any amounts
13 recovered by the lessee or owner resulting from mitigation
14 of damages shall be deducted from the amount due from
15 the manufacturer.
- 16 f. The provisions of paragraphs d. and e. above shall not be
17 applicable when the termination, nonrenewal or cancellation of
18 the franchise agreement is the result of the voluntary act of the
19 dealer.
- 20 (7) Notwithstanding the terms of any contract or agreement, to prevent or
21 refuse to honor the succession to a dealership, including the franchise,
22 by a motor vehicle dealer's designated successor as provided for under
23 this subsection.
- 24 a. Any owner of a new motor vehicle dealership may appoint by
25 will, or any other written instrument, a designated family
26 member successor to succeed in the ownership interest of the
27 said owner in the new motor vehicle dealership, including the
28 franchise, upon the death or incapacity of the owner.
- 29 b. Any objections by a manufacturer or distributor to an owner's
30 appointment of a designated successor shall be asserted in
31 accordance with the following procedure:
- 32 1. Within 30 days after receiving written notice of the
33 identity of the owner's designated successor and general
34 information as to the financial ability and qualifications of
35 the designated successor, the franchisor shall send the
36 owner and designated successor notice of objection, by
37 registered or certified mail, return receipt requested, to the
38 appointment of the designated successor. The notice of
39 objection shall state in detail all facts which constitute the
40 basis for the contention on the part of the manufacturer or
41 distributor that good cause, as defined in this sub-
42 subdivision below, exists for rejection of the designated
43 ~~family member~~ successor. Failure by the franchisor to send

- 1 notice of objection within 30 days and otherwise as
2 provided in this sub-subdivision shall constitute waiver by
3 the franchisor of any right to object to the appointment of
4 the designated successor.
- 5 2. Any time within 30 days of receipt of the manufacturer's
6 notice of objection the owner or the designated successor
7 may file a request in writing with the Commissioner that
8 the Commissioner hold an evidentiary hearing and
9 determine whether good cause exists for rejection of the
10 designated successor. When such a request is filed, the
11 Commissioner shall promptly inform the affected
12 manufacturer or distributor that a timely request has been
13 filed.
- 14 3. The Commissioner shall endeavor to hold the evidentiary
15 hearing required under this sub-subdivision and render a
16 determination within 180 days after receipt of the written
17 request from the owner or designated successor. In
18 determining whether good cause exists for rejection of the
19 owner's appointed designated successor, the manufacturer
20 or distributor has the burden of proving that the designated
21 successor is a person who is not of good moral character
22 or does not meet the franchisor's existing and reasonable
23 standards and, considering the volume of sales and service
24 of the new motor vehicle dealer, uniformly applied
25 minimum business experience standards in the market
26 area.
- 27 4. Any parties to a hearing by the Commissioner concerning
28 whether good cause exists for the rejection of the dealer's
29 designated successor shall have a right of review of the
30 decision in a court of competent jurisdiction pursuant to
31 Chapter 150B of the General Statutes.
- 32 5. Nothing in this sub-subdivision shall preclude a
33 manufacturer or distributor from, upon its receipt of
34 written notice from a dealer of identity of the dealer's
35 designated successor, requiring that the designated
36 successor promptly provide personal and financial data
37 that is reasonably necessary to determine the financial
38 ability and qualifications of the designated successor;
39 provided, however, that such a request for additional
40 information shall not delay any of the time periods or
41 constraints contained herein.
- 42 6. In the event death or incapacity of the owner occurs prior
43 to the time a manufacturer or distributor receives notice of

1 the owner's appointment of a designated successor or
2 before the Commissioner has rendered a determination as
3 provided above, the existing franchise shall remain in
4 effect and the designated successor shall be deemed to
5 have succeeded to all of the owner's rights and obligations
6 in the dealership and under the franchise until a
7 determination is made by the Commissioner or the rights
8 of the parties have otherwise become fixed in accordance
9 with this sub-subdivision.

10 c. Except as otherwise provided in sub-subdivision d. of this
11 subdivision, any designated successor of a deceased or
12 incapacitated owner of a new motor vehicle dealership appointed
13 by such owner in substantial compliance with this section shall,
14 by operation of law, succeed at the time of such death or
15 incapacity to all of the ownership rights and obligations of the
16 owner in the new motor vehicle dealership and under the existing
17 franchise.

18 d. Within 60 days after the death or incapacity of the owner, a
19 designated successor appointed in substantial compliance with
20 this section shall give the affected manufacturer or distributor
21 written notice of his or her succession to the ownership of the
22 new motor vehicle dealership; provided, however, that the failure
23 of the designated successor to give the manufacturer or
24 distributor written notice as provided above within 60 days of the
25 owner's death or incapacity shall not result in the waiver or
26 termination of the designated successor's right to succeed to the
27 ownership of the new motor vehicle dealership unless the
28 manufacturer or distributor gives written notice of this provision
29 to either the designated successor or the deceased or
30 incapacitated owner's executor, administrator, guardian or other
31 fiduciary by certified or registered mail, return receipt requested,
32 and said written notice grants not less than 30 days time within
33 which the designated successor may give the notice required
34 hereunder, provided the designated successor or the deceased or
35 incapacitated owner's executor, administrator, guardian or other
36 fiduciary has given the manufacturer reasonable notice of death
37 or incapacity. Within 30 days of receipt of the notice by the
38 manufacturer or distributor from the designated successor
39 provided in this paragraph, the manufacturer or distributor may
40 request that the designated successor complete the application
41 forms generally utilized by the manufacturer or distributor to
42 review the designated successor's qualifications to establish a
43 successor dealership. Within 30 days of receipt of the completed

1 forms, the manufacturer or distributor shall send a letter by
2 certified or registered mail, return receipt requested, advising the
3 designated successor of facts and circumstances which have
4 changed since the manufacturer's or distributor's original
5 approval of the designated successor, and which have caused the
6 manufacturer or distributor to object to the designated successor.
7 Upon receipt of such notice, the designated successor may either
8 designate an alternative successor or may file a request for
9 evidentiary hearing in accordance with the procedures provided
10 in sub-subdivisions b. 2.-5. of this subdivision. In any such
11 hearing, the manufacturer or distributor shall be limited to facts
12 and circumstances which did not exist at the time the designated
13 successor was originally approved or evidence which was
14 originally requested to be produced by the designated successor
15 at the time of the original request and was either not produced or
16 the material which was produced was incorrect.

17 e. The designated successor shall agree to be bound by all terms
18 and conditions of the franchise in effect between the
19 manufacturer or distributor and the owner at the time of the
20 owner's death or incapacity, if so requested in writing by the
21 manufacturer or distributor subsequent to the owner's death or
22 incapacity.

23 f. This section does not preclude an owner of a new motor vehicle
24 dealership from designating any person as his successor by
25 written instrument filed with the manufacturer or distributor, and,
26 in the event there is an inconsistency between the successor
27 named in such written instrument and the designated successor
28 otherwise appointed by the owner consistent with the provisions
29 of this section, and that written instrument has not been revoked
30 by the owner of the new motor vehicle dealership in writing to
31 the manufacturer or distributor, then the written instrument filed
32 with the manufacturer or distributor shall govern as to the
33 appointment of the successor.

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

39 (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in
40 this State to participate monetarily in an advertising campaign or
41 contest, or to purchase unnecessary or unreasonable quantities of any
42 promotional materials, training materials, training programs, showroom
43 or other display decorations or materials at the expense of the new

1 motor vehicle dealer, provided that nothing in this subsection shall
2 preclude a manufacturer or distributor from including an unitemized
3 uniform charge in the base price of the new motor vehicle charged to the
4 dealer where such charge is attributable to advertising costs incurred or
5 to be incurred by the manufacturer or distributor in the ordinary courses
6 of its business.

7 (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in
8 this State to change the capital structure of the new motor vehicle dealer
9 or the means by or through which the new motor vehicle dealer finances
10 the operation of the dealership provided that the new motor vehicle
11 dealer at all times meets any reasonable capital standards determined by
12 the manufacturer in accordance with uniformly applied criteria; and also
13 provided that no change in the capital structure shall cause a change in
14 the principal management or have the effect of a sale of the franchise
15 without the consent of the manufacturer or distributor, provided that
16 said consent shall not be unreasonably withheld.

17 (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in
18 this State to refrain from participation in the management of, investment
19 in, or the acquisition of any other line of new motor vehicle or related
20 products; Provided, however, that this subsection does not apply unless
21 the new motor vehicle dealer maintains a reasonable line of credit for
22 each make or line of new motor vehicle, and the new motor vehicle
23 dealer remains in compliance with any reasonable capital standards and
24 facilities requirements of the manufacturer. The reasonable facilities
25 requirements shall not include any requirement that a new motor vehicle
26 dealer establish or maintain exclusive facilities, personnel, or display
27 space, when such requirements, or any of them, would be unreasonable
28 in light of current economic conditions and would not otherwise be
29 justified by reasonable business considerations.

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

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

- 1 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts
2 or accessories in reasonable quantities relative to the new motor vehicle
3 dealer's facilities and sales potential in the new motor vehicle dealer's
4 relevant market area, and within a reasonable time, after receipt of an
5 order from a dealer having a franchise for the retail sale of any new
6 motor vehicle sold or distributed by the manufacturer or distributor, any
7 new vehicle, parts or accessories to new vehicles as are covered by such
8 franchise, and such vehicles, parts or accessories as are publicly
9 advertised as being available or actually being delivered. The delivery to
10 another dealer of a motor vehicle of the same model and similarly
11 equipped as the vehicle ordered by a motor vehicle dealer who has not
12 received delivery thereof, but who has placed his written order for the
13 vehicle prior to the order of the dealer receiving the vehicle, shall be
14 evidence of a delayed delivery of, or refusal to deliver, a new motor
15 vehicle to a motor vehicle dealer within a reasonable time, without
16 cause. This subsection is not violated, however, if such failure is caused
17 by acts or causes beyond the control of the manufacturer, distributor,
18 factory branch, or factory representative.
- 19 (15) To refuse to disclose to any new motor vehicle dealer, handling the
20 same line make, the manner and mode of distribution of that line make
21 within the State.
- 22 (16) To award money, goods, services, or any other benefit to any new motor
23 vehicle dealership employee, either directly or indirectly, unless such
24 benefit is promptly accounted for, and transmitted to, or approved by,
25 the new motor vehicle dealer.
- 26 (17) To increase prices of new motor vehicles which the new motor vehicle
27 dealer had ordered and which the manufacturer or distributor has
28 accepted for immediate delivery for private retail consumers prior to the
29 new motor vehicle dealer's receipt of the written official price increase
30 notification. A sales contract signed by a private retail consumer shall
31 constitute evidence of each such order provided that the vehicle is in
32 fact delivered to that customer. Price differences applicable to new
33 model or series shall not be considered a price increase or price
34 decrease. Price changes caused by either: (i) the addition to a new motor
35 vehicle of required or optional equipment; or (ii) revaluation of the
36 United States dollar, in the case of foreign-make vehicles or
37 components; or (iii) an increase in transportation charges due to
38 increased rates imposed by carriers; or (iv) new tariffs or duties imposed
39 by the United States of America or any other governmental authority,
40 shall not be subject to the provisions of this subsection.
- 41 (18) To prevent or attempt to prevent a dealer from receiving fair and
42 reasonable compensation for the value of the franchised business
43 transferred in accordance with G.S. 20-305(4) ~~above~~above, or to

1 prevent, through right of first refusal or otherwise, a dealer from
2 transferring the franchised business to the persons or other entities that
3 the dealer shall designate in accordance with G.S. 20-305(4).

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

9 (20) To release to any outside party, except under subpoena or as otherwise
10 required by law or in an administrative, judicial or arbitration
11 proceeding involving the manufacturer or new motor vehicle dealer, any
12 confidential business, financial, or personal information which may be
13 from time to time provided by the new motor vehicle dealer to the
14 manufacturer, without the express written consent of the new motor
15 vehicle dealer.

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

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

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

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

26 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in
27 this State to either establish or maintain exclusive facilities, personnel,
28 or display space, when such requirements, or any of them, would be
29 unreasonable in light of current economic conditions and would not
30 otherwise be justified by reasonable business considerations.

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

33 (27) To knowingly make, either directly or through any agent or employee,
34 any material statement which is false or misleading and which induces
35 any new motor vehicle dealer to enter into any agreement or franchise
36 or to take any action which is materially prejudicial to that new motor
37 vehicle dealer or his business.

38 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
39 purchase or order any new motor vehicle as a precondition to
40 purchasing, ordering, or receiving any other new motor vehicle or
41 vehicles. Nothing herein shall prevent a manufacturer from requiring
42 that a new motor vehicle dealer fairly represent and inventory the full

1 line of new motor vehicles which are covered by the franchise
2 agreement.

3 (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to
4 sell, transfer, or otherwise issue stock or other ownership interest in the
5 dealership corporation to a general manager or any other person
6 involved in the management of the dealership other than the dealer
7 principal or dealer operator named in the franchise.

8 (30) To vary the price charged to any of its franchised new motor vehicle
9 dealers located in this State for new motor vehicles on any basis which
10 includes consideration of any or all of the following factors:

11 a. The dealer's purchase of new facilities, supplies, tools,
12 equipment, or other merchandise;

13 b. The dealer's relocation, remodeling, repair, or renovation of
14 existing dealership facilities;

15 c. The dealer's participation in training programs sponsored,
16 endorsed, or recommended by the manufacturer; or

17 d. Achievement by the new motor vehicle dealer of one or more
18 levels of customer satisfaction in sales or service specified by the
19 manufacturer.

20 Such unlawful price variation shall include not only
21 differentiation by a manufacturer in the base price of new motor
22 vehicles, but a manufacturer's use of rebates, credits, or other
23 consideration which has the effect of causing variance in the
24 price of new motor vehicles offered its franchised dealers located
25 in this State.

26 It shall further be unlawful for a manufacturer to fail to offer
27 its entire line of new motor vehicles to all of its franchised
28 dealers in this State at the lowest prices that vehicles similarly
29 equipped are offered to its franchised dealers in other states, after
30 application of any rebates, credits, or other consideration which
31 may be awardable to dealers in other states on the bases
32 prohibited in this subdivision.

33 Notwithstanding the foregoing, nothing in this subdivision
34 shall be deemed to preclude a manufacturer from establishing
35 sales contests or promotions which provide or award dealers or
36 consumers rebates or incentives; provided, however, that the
37 awarding or amount of any rebates or incentives shall not be
38 based on any unlawful bases.

39 (31) Notwithstanding the terms of any contract, franchise, agreement,
40 release, or waiver, to require that in any civil or administrative
41 proceeding in which a new motor vehicle dealer asserts any claims,
42 rights, or defenses arising under this Article or under the franchise, that
43 the dealer or any nonprevailing party compensate the manufacturer or

1 prevailing party for any court costs, attorneys' fees, or other expenses
2 incurred in the litigation.

3 (32) To require that any of its franchised new motor vehicle dealers located
4 in this State pay any extra fee, purchase advertising displays or other
5 materials, or remodel, renovate, or recondition the dealers' existing
6 facilities in order to receive any model or series of vehicles
7 manufactured or distributed by the manufacturer for which the dealers
8 have a valid franchise. It shall further be unlawful for any manufacturer
9 to fail to offer any model or series of new motor vehicles to its
10 franchised dealers located in this State which are offered to its
11 franchised dealers in other states which do not prohibit the practices
12 made unlawful by this subdivision. Notwithstanding the foregoing,
13 nothing contained in this subdivision shall be deemed to prohibit or
14 prevent, a manufacturer from requiring, that its franchised dealers
15 located in this State purchase special tools or equipment, stock
16 reasonable quantities of certain parts, or participate in training programs
17 which are reasonably necessary for those dealers to sell or service any
18 model or series of vehicles."

19 Section 4. G.S. 20-305.1(b) reads as rewritten:

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

1 Section 5. G.S. 20-305.1(b1) reads as rewritten:

2 "(b1) All claims made by motor vehicle dealers pursuant to this section for
3 compensation for delivery, preparation, warranty and recall work including labor, parts,
4 and other expenses, shall be paid by the manufacturer within 30 days after receipt of
5 claim from the dealer. When any claim is disapproved, the dealer shall be notified in
6 writing of the grounds for disapproval. Any claim not specifically disapproved in writing
7 within 30 days after receipt shall be considered approved and payment is due
8 immediately. No claim which has been approved and paid may be charged back to the
9 dealer unless it can be shown that the claim was false or fraudulent, that the repairs were
10 not properly made or were unnecessary to correct the defective condition, or the dealer
11 failed to reasonably substantiate the claim ~~in accordance with the written requirements of the~~
12 ~~manufacturer or distributor in effect at the time the claim arose.~~ A dealer's failure to comply
13 with the specific requirements of the manufacturer or distributor for documentation or
14 processing of the claim shall not constitute grounds for the denial of the claim or
15 reduction of the amount to be reimbursed to the dealer as long as reasonably sufficient
16 documentation or other evidence has been presented to substantiate the claim."

17 Section 6. G.S. 20-305.1(c) reads as rewritten:

18 "(c) In the event there is a dispute between the manufacturer, factory branch,
19 distributor, or distributor branch, and the dealer with respect to any matter referred to in
20 subsections ~~(a) and (b) above and subsection (d) below,~~ (a), (b), or (d) of this section either
21 party may petition the Commissioner in writing, within 30 days after either party has
22 given written notice of the dispute to the other, for a hearing on the subject and the
23 decision of the Commissioner shall be binding on the parties, subject to rights of judicial
24 review and appeal as provided in Chapter 150B of the General Statutes; provided,
25 however, that nothing contained herein shall give the Commissioner any authority as to
26 the content of any manufacturer's or distributor's warranty. Upon the filing of a petition
27 before the Commissioner under this subsection, any chargeback to or any payment
28 required of a dealer by a manufacturer relating to warranty parts or service compensation,
29 or to sales incentives, service incentives, rebates, or other forms of incentive
30 compensation, shall be stayed during the pendency of the determination by the
31 Commissioner."

32 Section 7. This act becomes effective October 1, 1997.