

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH50301-MA-314A\* (3/12)

Short Title: Clarify Motor Vehicle Franchise Laws.

(Public)

Sponsors: Representative Cole.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY MOTOR VEHICLE DEALERS AND MANUFACTURERS  
3 LICENSING LAWS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 20-305(4) reads as rewritten:

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

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

11 ...

12 (4) Notwithstanding the terms of any franchise agreement, to prevent or refuse  
13 to approve the sale or transfer of the ownership of a dealership by the sale of  
14 the business, stock transfer, or otherwise, or the transfer, sale or assignment  
15 of a dealer franchise, or a change in the executive management or principal  
16 operator of the dealership, the relocation or addition of another franchise to  
17 the dealership facility, or the relocation of the dealership to another site  
18 within the dealership's relevant market area, if the Commissioner has  
19 determined, if requested in writing by the dealer within 30 days after receipt  
20 of an objection to the proposed transfer, sale, assignment, relocation, or  
21 change, and after a hearing on the matter, that the failure to permit or honor  
22 the transfer, sale, assignment, relocation, or change is unreasonable under  
23 the circumstances. No franchise may be transferred, sold, assigned,  
24 relocated, or the executive management or principal operators changed,  
25 unless the franchisor has been given at least 30 days' prior written notice as  
26 to the proposed transferee's name and address, financial ability, and  
27 qualifications of the proposed transferee, a copy of the purchase agreement  
28 between the dealership and the proposed transferee, the identity and  
29 qualifications of the persons proposed to be involved in executive  
30 management or as principal operators, and the location and site plans of any  
31 proposed relocation. The franchisor shall send the dealership and the  
32 proposed transferee notice of objection, by registered or certified mail, return  
33 receipt requested, to the proposed transfer, sale, assignment, relocation, or  
34 change within 30 days after receipt of notice from the dealer, as provided in  
35 this section. The notice of objection shall state in detail all factual and legal



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1 bases for the objection on the part of the franchisor to the proposed transfer,  
2 sale, assignment, relocation, or change that is specifically referenced in this  
3 subdivision. An objection to a proposed transfer, sale, assignment,  
4 relocation, or change in the executive management or principal operator of  
5 the dealership may only be premised upon the factual and legal bases  
6 specifically referenced in this subdivision. A manufacturer's notice of  
7 objection which is based upon factual or legal issues that are not specifically  
8 referenced in this subdivision as being issues upon which the Commissioner  
9 shall base his determination shall not be effective to preserve the franchisor's  
10 right to object to the proposed transfer sale, assignment, relocation, or  
11 change, provided the dealership or proposed transferee has submitted written  
12 notice, as required above, as to the proposed transferee's name and address,  
13 financial ability, and qualifications of the proposed transferee, a copy of the  
14 purchase agreement between the dealership and the proposed transferee, the  
15 identity and qualifications of the persons proposed to be involved in the  
16 executive management or as principal operators, and the location and site  
17 plans of any proposed relocation. Failure by the franchisor to send notice of  
18 objection within 30 days shall constitute waiver by the franchisor of any  
19 right to object to the proposed transfer, sale, assignment, relocation, or  
20 change. If the franchisor requires additional information to complete its  
21 review, the franchisor shall notify the dealership within 15 days after receipt  
22 of the proposed transferee's name and address, financial ability, and  
23 qualifications, a copy of the purchase agreement between the dealership and  
24 the proposed transferee, the identity and qualifications of the persons  
25 proposed to be involved in executive management or as principal operators,  
26 and the location and site plans of any proposed relocation. If the franchisor  
27 fails to request additional information from the dealer or proposed transferee  
28 within 15 days of receipt of this initial information, the 30-day time period  
29 within which the franchisor may provide notice of objection shall be deemed  
30 to run from the initial receipt date. Otherwise, the 30-day time period within  
31 which the franchisor may provide notice of objection shall run from the date  
32 the franchisor has received the supplemental information requested from the  
33 dealer or proposed transferee; provided, however, that failure by the  
34 franchisor to send notice of objection within 60 days of the franchisor's  
35 receipt of the initial information from the dealer shall constitute waiver by  
36 the franchisor of any right to object to the proposed transfer, sale,  
37 assignment, relocation, or change. With respect to a proposed transfer of  
38 ownership, sale, or assignment, the sole issue for determination by the  
39 Commissioner and the sole issue upon which the Commissioner shall hear or  
40 consider evidence is whether, by reason of lack of good moral character,  
41 lack of general business experience, or lack of financial ability, the proposed  
42 transferee is unfit to own the dealership. For purposes of this subdivision, the  
43 refusal by the manufacturer to accept a proposed transferee who is of good  
44 moral character and who otherwise meets the written, reasonable, and  
45 uniformly applied business experience and financial requirements, if any,  
46 required by the manufacturer of owners of its franchised automobile  
47 dealerships is presumed to demonstrate the manufacturer's failure to prove  
48 that the proposed transferee is unfit to own the dealership. With respect to a  
49 proposed change in the executive management or principal operator of the  
50 dealership, the sole issue for determination by the Commissioner and the  
51 sole issue on which the Commissioner shall hear or consider evidence shall

1 be whether, by reason of lack of training, lack of prior experience, poor past  
2 performance, or poor character, the proposed candidate for a position within  
3 the executive management or as principal operator of the dealership is unfit  
4 for the position. For purposes of this subdivision, the refusal by the  
5 manufacturer to accept a proposed candidate for executive management or as  
6 principal operator who is of good moral character and who otherwise meets  
7 the written, reasonable, and uniformly applied standards or qualifications, if  
8 any, of the manufacturer relating to the business experience and prior  
9 performance of executive management required by the manufacturers of its  
10 dealers is presumed to demonstrate the manufacturer's failure to prove the  
11 proposed candidate for executive management or as principal operator is  
12 unfit to serve the capacity. With respect to a proposed relocation or other  
13 proposed change, the issue for determination by the Commissioner is  
14 whether the proposed relocation or other change is unreasonable under the  
15 circumstances. For purposes of this subdivision, the refusal by the  
16 manufacturer to agree to a proposed relocation which meets the written,  
17 reasonable, and uniformly applied standards or criteria, if any, of the  
18 manufacturer relating to dealer relocations is presumed to demonstrate that  
19 the manufacturer's failure to prove the proposed relocation is unreasonable  
20 under the circumstances. The manufacturer shall have the burden of proof  
21 before the Commissioner under this subdivision. It is unlawful for a  
22 manufacturer to, in any way, condition its approval of a proposed transfer,  
23 sale, assignment, change in the dealer's executive management, principal  
24 operator, or appointment of a designated successor, on the existing or  
25 proposed dealer's willingness to construct a new facility, renovate the  
26 existing facility, acquire or refrain from acquiring one or more line-makes of  
27 vehicles, separate or divest one or more line-makes of vehicle, or establish or  
28 maintain exclusive facilities, personnel, or display space. It is unlawful for a  
29 manufacturer to, in any way, condition its approval of a proposed relocation  
30 on the existing or proposed dealer's willingness to acquire or refrain from  
31 acquiring one or more line-makes of vehicles, separate or divest one or more  
32 line-makes of vehicle, or establish or maintain exclusive facilities, personnel,  
33 or display space. The opinion or determination of a franchisor that the  
34 continued existence of one of its franchised dealers situated in this State is  
35 not viable, or that the dealer holds or fails to hold licensing rights for the sale  
36 of other line-makes of vehicles in a manner consistent with the franchisor's  
37 existing or future distribution or marketing plans, shall not constitute a  
38 lawful basis for the franchisor to fail or refuse to approve a dealer's proposed  
39 relocation: provided, however, that nothing contained in this subdivision  
40 shall be deemed to prevent or prohibit a franchisor from failing to approve a  
41 dealer's proposed relocation on grounds that the specific site or facility  
42 proposed by the dealer is otherwise unreasonable under the circumstances.  
43 Approval of a relocation pursuant to this subdivision shall not in itself  
44 constitute the franchisor's representation or assurance of the dealer's viability  
45 at that location.

46 ...."

47 **SECTION 2.** G.S. 20-305(28) reads as rewritten:

48 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
49 **franchise; preventing transfer of ownership; granting additional franchises;**  
50 **terminating franchises without good cause; preventing family succession.**

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

3 ...  
4 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to  
5 purchase or order any new motor vehicle as a precondition to purchasing,  
6 ordering, or receiving any other new motor vehicle or vehicles. Nothing  
7 herein shall prevent a manufacturer from requiring that a new motor vehicle  
8 dealer fairly represent and inventory the full line current model year new  
9 motor vehicles which are covered by the franchise ~~agreement~~agreement,  
10 and which the dealer could reasonably be expected to sell in the dealer's  
11 market, provided that such inventory representation requirements are not  
12 unreasonable under the circumstances.

13 ...."

14 **SECTION 3.** G.S. 20-305(30) reads as rewritten:

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

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

20 ...  
21 (30) To vary the price charged to any of its franchised new motor vehicle dealers  
22 located in this State for new motor vehicles based on the dealer's purchase of  
23 new facilities, supplies, tools, equipment, or other merchandise from the  
24 manufacturer, the dealer's relocation, remodeling, repair, or renovation of  
25 existing dealerships or construction of a new facility, the dealer's  
26 participation in training programs sponsored, endorsed, or recommended by  
27 the manufacturer, whether or not the dealer is dualed with one or more other  
28 line makes of new motor vehicles, or the dealer's sales penetration. Except as  
29 provided in this subdivision, it shall be unlawful for any manufacturer,  
30 factory branch, distributor, or distributor branch, or any field representative,  
31 officer, agent, or any representative whatsoever of any of them to vary the  
32 price charged to any of its franchised new motor vehicle dealers located in  
33 this State for new motor vehicles based on the dealer's sales volume, the  
34 dealer's level of sales or customer service satisfaction, the dealer's purchase  
35 of advertising materials, signage, nondiagnostic computer hardware or  
36 software, communications devices, or furnishings, or the dealer's  
37 participation in used motor vehicle inspection or certification programs  
38 sponsored or endorsed by the manufacturer.

39 The price of the vehicle, for purposes of this subdivision shall include  
40 the manufacturer's use of rebates, credits, or other consideration that has the  
41 effect of causing a variance in the price of new motor vehicles offered to its  
42 franchised dealers located in the State.

43 Notwithstanding the foregoing, nothing in this subdivision shall be  
44 deemed to preclude a manufacturer from establishing sales contests or  
45 promotions that provide or award dealers or consumers rebates or incentives;  
46 provided, however, that the manufacturer complies with all of the following  
47 conditions:

- 48 a. With respect to manufacturer to consumer rebates and incentives, the  
49 manufacturer's criteria for determining eligibility shall:  
50 1. Permit all of the manufacturer's franchised new motor vehicle  
51 dealers in this State to offer the rebate or incentive; and



1 Any manufacturer shall be required to pay or otherwise compensate any  
2 franchise dealer who has earned the right to receive payment or other  
3 compensation under a program in accordance with the manufacturer's  
4 program or policy.

5 The provisions of this subdivision shall not be applicable to multiple or  
6 repeated sales of new motor vehicles made by a new motor vehicle dealer to  
7 a single purchaser under a bona fide fleet sales policy of a manufacturer,  
8 factory branch, distributor, or distributor branch.

9 ...."

10 **SECTION 4.** G.S. 20-305.1 is amended by adding a new subsection to read:

11 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any  
12 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to  
13 take or threaten to take any adverse action against a dealer located in this State, or to otherwise  
14 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a  
15 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold  
16 the vehicle to a third party, unless the dealer possessed actual knowledge that the customer  
17 intended to export or resell the motor vehicle prior to the customer's purchase of the vehicle  
18 from the dealer. The conduct prohibited under this subsection includes, but is not limited to, a  
19 manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver motor  
20 vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of vehicles; or  
21 (iii) charging back or withholding payments or other compensation or consideration for which a  
22 dealer is otherwise eligible for warranty reimbursement or under a sales promotion, incentive  
23 program, or contest; or (iv) disqualification of a dealer from participating in or discrimination  
24 against any dealer relating to any sales promotion, incentive program, or contest; or termination  
25 of a franchise. In any proceeding brought pursuant to this subsection, there shall be a  
26 conclusive presumption that the dealer, prior to the customer's purchase of the vehicle, had no  
27 actual knowledge the customer intended to export or resell the motor vehicle, if (i) following  
28 the sale, the vehicle is titled or registered in any state or territory within the United States in the  
29 name of a customer who was physically present at the dealership at or prior to the time of sale  
30 and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle would  
31 be shipped to a foreign country. In any proceeding brought pursuant to this subsection, there  
32 shall be a rebuttable presumption that the dealer, prior to the customer's purchase of the vehicle,  
33 had no actual knowledge the customer intended to ship the vehicle to a foreign country, if the  
34 vehicle is titled in any state or territory within the United States."

35 **SECTION 5.** G.S. 20-305.1 is amended by adding a new subsection to read:

36 "(f1) The provisions of subsections (a), (b), (b1), (b2), and (c) of this section applicable to  
37 a motor vehicle manufacturer shall also apply to a component parts manufacturer. For  
38 purposes of this section, a component parts manufacturer means a person, resident, or  
39 nonresident of this State, who manufactures or assembles new motor vehicle "component parts"  
40 and directly warrants the component parts to the consumer. For purposes of this section,  
41 component parts means an engine, power train, rear axle, or other part of a motor vehicle that is  
42 not warranted by the final manufacturer of the motor vehicle."

43 **SECTION 6.** This act is effective when it becomes law.

44 **SECTION 7.** If any provision of this act or its application is held invalid, the  
45 invalidity does not affect other provisions or applications of this act that can be given effect  
46 without the invalid provisions or application, and to this end the provisions of this act are  
47 severable.