

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 913  
Commerce Committee Substitute Adopted 5/12/09  
House Committee Substitute Favorable 6/25/09  
House Committee Substitute #2 Favorable 7/6/09  
Fifth Edition Engrossed 7/8/09

Short Title: Clarify MV Franchise Laws/Termination Assist.

(Public)

Sponsors:

Referred to:

March 26, 2009

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

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 20-305(28) 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 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to  
13 purchase or order any new motor vehicle as a precondition to purchasing,  
14 ordering, or receiving any other new motor vehicle or vehicles. Nothing  
15 herein shall prevent a manufacturer from requiring that a new motor vehicle  
16 dealer fairly represent and inventory the full line current model year new  
17 motor vehicles which are covered by the franchise ~~agreement-agreement~~,  
18 provided that such inventory representation requirements are not  
19 unreasonable under the circumstances."

20 SECTION 2. G.S. 20-305(30) reads as rewritten:

21 "§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel  
22 franchise; preventing transfer of ownership; granting additional franchises;  
23 terminating franchises without good cause; preventing family succession.

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

26 ...

27 (30) To vary the price charged to any of its franchised new motor vehicle dealers  
28 located in this State for new motor vehicles based on the dealer's purchase of  
29 new facilities, supplies, tools, equipment, or other merchandise from the  
30 manufacturer, the dealer's relocation, remodeling, repair, or renovation of  
31 existing dealerships or construction of a new facility, the dealer's  
32 participation in training programs sponsored, endorsed, or recommended by  
33 the manufacturer, whether or not the dealer is dualled with one or more other



1 line makes of new motor vehicles, or the dealer's sales penetration. Except as  
2 provided in this subdivision, it shall be unlawful for any manufacturer,  
3 factory branch, distributor, or distributor branch, or any field representative,  
4 officer, agent, or any representative whatsoever of any of them to vary the  
5 price charged to any of its franchised new motor vehicle dealers located in  
6 this State for new motor vehicles based on the dealer's sales volume, the  
7 dealer's level of sales or customer service satisfaction, the dealer's purchase  
8 of advertising materials, signage, nondiagnostic computer hardware or  
9 software, communications devices, or furnishings, or the dealer's  
10 participation in used motor vehicle inspection or certification programs  
11 sponsored or endorsed by the manufacturer.

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

16 Notwithstanding the foregoing, nothing in this subdivision shall be  
17 deemed to preclude a manufacturer from establishing sales contests or  
18 promotions that provide or award dealers or consumers rebates or incentives;  
19 provided, however, that the manufacturer complies with all of the following  
20 conditions:

- 21 a. With respect to manufacturer to consumer rebates and incentives, the  
22 manufacturer's criteria for determining eligibility shall:
- 23 1. Permit all of the manufacturer's franchised new motor vehicle  
24 dealers in this State to offer the rebate or incentive; and
  - 25 2. Be uniformly applied and administered to all eligible  
26 consumers.
- 27 b. With respect to manufacturer to dealer rebates and incentives, the  
28 rebate or incentive program shall:
- 29 1. Be based solely on the dealer's actual or reasonably  
30 anticipated sales volume or on a uniform per vehicle sold or  
31 leased basis;
  - 32 2. Be uniformly available, applied, and administered to all of the  
33 manufacturer's franchised new motor vehicle dealers in this  
34 State; and
  - 35 3. Provide that any of the manufacturer's franchised new motor  
36 vehicle dealers in this State may, upon written request, obtain  
37 the method or formula used by the manufacturer in  
38 establishing the sales volumes for receiving the rebates or  
39 incentives and the specific calculations for determining the  
40 required sales volumes of the inquiring dealer and any of the  
41 manufacturer's other franchised new motor vehicle dealers  
42 located within 75 miles of the inquiring dealer.

43 Nothing contained in this subdivision shall prohibit a manufacturer from  
44 providing assistance or encouragement to a franchised dealer to remodel,  
45 renovate, recondition, or relocate the dealer's existing facilities, provided that  
46 this assistance, encouragement, or rewards are not determined on a per  
47 vehicle basis.

48 It is unlawful for any manufacturer to charge or include the cost of any  
49 program or policy prohibited under this subdivision in the price of new  
50 motor vehicles that the manufacturer sells to its franchised dealers or  
51 purchasers located in this State.

1 In the event that as of October 1, 1999, a manufacturer was operating a  
2 program that varied the price charged to its franchised dealers in this State in  
3 a manner that would violate this subdivision, or had in effect a documented  
4 policy that had been conveyed to its franchised dealers in this State and that  
5 varied the price charged to its franchised dealers in this State in a manner  
6 that would violate this subdivision, it shall be lawful for that program or  
7 policy, including amendments to that program or policy that are consistent  
8 with the purpose and provisions of the existing program or policy, or a  
9 program or policy similar thereto implemented after October 1, 1999, to  
10 continue in effect as to the manufacturer's franchised dealers located in this  
11 State until June 30, ~~2010~~2014.

12 In the event that as of June 30, 2001, a manufacturer was operating a  
13 program that varied the price charged to its franchised dealers in this State in  
14 a manner that would violate this subdivision, or had in effect a documented  
15 policy that had been conveyed to its franchised dealers in this State and that  
16 varied the price charged to its franchised dealers in this State in a manner  
17 that would violate this subdivision, and the program or policy was  
18 implemented in this State subsequent to October 1, 1999, and prior to June  
19 30, 2001, and provided that the program or policy is in compliance with this  
20 subdivision as it existed as of June 30, 2001, it shall be lawful for that  
21 program or policy, including amendments to that program or policy that  
22 comply with this subdivision as it existed as of June 30, 2001, to continue in  
23 effect as to the manufacturer's franchised dealers located in this State until  
24 June 30, ~~2010~~2014.

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

29 The provisions of this subdivision shall not be applicable to multiple or  
30 repeated sales of new motor vehicles made by a new motor vehicle dealer to  
31 a single purchaser under a bona fide fleet sales policy of a manufacturer,  
32 factory branch, distributor, or distributor branch."

33 **SECTION 3.** G.S. 20-305.1 is amended by adding a new subsection to read:

34 "(b3) Notwithstanding the terms of any franchise or other agreement, or the terms of any  
35 program, policy, or procedure of any manufacturer, it shall be unlawful for a manufacturer to  
36 take or threaten to take any adverse action against a dealer located in this State, or to otherwise  
37 discriminate against any dealer located in this State, on the basis that the dealer sold or leased a  
38 motor vehicle to a customer who either exported the vehicle to a foreign country or who resold  
39 the vehicle to a third party, unless the dealer knew or reasonably should have known that the  
40 customer intended to export or resell the motor vehicle prior to the customer's purchase of the  
41 vehicle from the dealer. The conduct prohibited under this subsection includes, but is not  
42 limited to, a manufacturer's actual or threatened: (i) failure or refusal to allocate, sell, or deliver  
43 motor vehicles to the dealer; or (ii) discrimination against any dealer in the allocation of  
44 vehicles; or (iii) charging back or withholding payments or other compensation or  
45 consideration for which a dealer is otherwise eligible for warranty reimbursement or under a  
46 sales promotion, incentive program, or contest; or (iv) disqualification of a dealer from  
47 participating in or discrimination against any dealer relating to any sales promotion, incentive  
48 program, or contest; or (v) termination of a franchise. In any proceeding brought pursuant to  
49 this subsection, there shall be a rebuttable presumption that the dealer, prior to the customer's  
50 purchase of the vehicle, did not know nor should have reasonably known that the customer  
51 intended to export or resell the motor vehicle, if (i) following the sale, the vehicle is titled,

1 registered, and, where applicable, taxes paid in any state or territory within the United States in  
2 the name of a customer who was physically present at the dealership at or prior to the time of  
3 sale, and (ii) the dealer did not know, prior to the consummation of the sale, that the vehicle  
4 would be shipped to a foreign country."

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

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

13 **SECTION 5.** G.S. 20-305(6) reads as rewritten:

14 "**§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel**  
15 **franchise; preventing transfer of ownership; granting additional franchises;**  
16 **terminating franchises without good cause; preventing family succession.**

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

19 ...

20 (6) Notwithstanding the terms, provisions or conditions of any franchise or  
21 notwithstanding the terms or provisions of any waiver, to terminate, cancel  
22 or fail to renew any franchise with a licensed new motor vehicle dealer  
23 unless the manufacturer has satisfied the notice requirements of  
24 subparagraph c. and the Commissioner has determined, if requested in  
25 writing by the dealer within (i) the time period specified in  
26 G.S. 20-305(6)c.1.II., III., or IV., as applicable, or (ii) the effective date of  
27 the franchise termination specified or proposed by the manufacturer in the  
28 notice of termination, whichever period of time is longer, and after a hearing  
29 on the matter, that there is good cause for the termination, cancellation, or  
30 nonrenewal of the franchise and that the manufacturer has acted in good  
31 faith as defined in this act regarding the termination, cancellation or  
32 nonrenewal. When such a petition is made to the Commissioner by a dealer  
33 for determination as to the existence of good cause and good faith for the  
34 termination, cancellation or nonrenewal of a franchise, the Commissioner  
35 shall promptly inform the manufacturer that a timely petition has been filed,  
36 and the franchise in question shall continue in effect pending the  
37 Commissioner's decision. The Commissioner shall try to conduct the hearing  
38 and render a final determination within 180 days after a petition has been  
39 filed. If the termination, cancellation or nonrenewal is pursuant to  
40 G.S. 20-305(6)c.1.III. then the Commissioner shall give the proceeding  
41 priority consideration and shall try to render his final determination no later  
42 than 90 days after the petition has been filed. Any parties to a hearing by the  
43 Commissioner under this section shall have a right of review of the decision  
44 in a court of competent jurisdiction pursuant to Chapter 150B of the General  
45 Statutes. Any determination of the Commissioner under this section finding  
46 that good cause exists for the nonrenewal, cancellation, or termination of any  
47 franchise shall automatically be stayed during any period that the affected  
48 dealer shall have the right to judicial review or appeal of the determination  
49 before the superior court or any other appellate court and during the  
50 pendency of any appeal; provided, however, that within 30 days of entry of  
51 the Commissioner's order, the affected dealer provide such security as the

1 reviewing court, in its discretion, may deem appropriate for payment of such  
2 costs and damages as may be incurred or sustained by the manufacturer by  
3 reason of and during the pendency of the stay. Although the right of the  
4 affected dealer to such stay is automatic, the procedure for providing such  
5 security and for the award of damages, if any, to the manufacturer upon  
6 dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and  
7 (e). No such security provided by or on behalf of any affected dealer shall be  
8 forfeited or damages awarded against a dealer who obtains a stay under this  
9 subdivision in the event the ownership of the affected dealership is  
10 subsequently transferred, sold, or assigned to a third party in accordance  
11 with this subdivision or subdivision (4) of this section and the closing on  
12 such transfer, sale, or assignment occurs no later than 180 days after the date  
13 of entry of the Commissioner's order. Furthermore, unless and until the  
14 termination, cancellation, or nonrenewal of a dealer's franchise shall finally  
15 become effective, in light of any stay or any order of the Commissioner  
16 determining that good cause exists for the termination, cancellation, or  
17 nonrenewal of a dealer's franchise as provided in this paragraph, a dealer  
18 who receives a notice of termination, cancellation, or nonrenewal from a  
19 manufacturer as provided in this subdivision shall continue to have the same  
20 rights to assign, sell, or transfer the franchise to a third party under the  
21 franchise and as permitted under G.S. 20-305(4) as if notice of the  
22 termination had not been given by the manufacturer. Any franchise under  
23 notice or threat of termination, cancellation, or nonrenewal by the  
24 manufacturer which is duly transferred in accordance with G.S. 20-305(4)  
25 shall not be subject to termination by reason of failure of performance or  
26 breaches of the franchise on the part of the transferor.

27 a. Notwithstanding the terms, provisions or conditions of any franchise  
28 or the terms or provisions of any waiver, good cause shall exist for  
29 the purposes of a termination, cancellation or nonrenewal when:

- 30 1. There is a failure by the new motor vehicle dealer to comply  
31 with a provision of the franchise which provision is both  
32 reasonable and of material significance to the franchise  
33 relationship provided that the dealer has been notified in  
34 writing of the failure within 180 days after the manufacturer  
35 first acquired knowledge of such failure;
- 36 2. If the failure by the new motor vehicle dealer relates to the  
37 performance of the new motor vehicle dealer in sales or  
38 service, then good cause shall be defined as the failure of the  
39 new motor vehicle dealer to comply with reasonable  
40 performance criteria established by the manufacturer if the  
41 new motor vehicle dealer was apprised by the manufacturer  
42 in writing of the failure; and
  - 43 I. The notification stated that notice was provided of  
44 failure of performance pursuant to this section;
  - 45 II. The new motor vehicle dealer was afforded a  
46 reasonable opportunity, for a period of not less than  
47 180 days, to comply with the criteria; and
  - 48 III. The new motor vehicle dealer failed to demonstrate  
49 substantial progress towards compliance with the  
50 manufacturer's performance criteria during such  
51 period and the new motor vehicle dealer's failure was

- 1 not primarily due to economic or market factors  
2 within the dealer's relevant market area which were  
3 beyond the dealer's control.
- 4 b. The manufacturer shall have the burden of proof under this section.
- 5 c. Notification of Termination, Cancellation and Nonrenewal. –
- 6 1. Notwithstanding the terms, provisions or conditions of any  
7 franchise prior to the termination, cancellation or nonrenewal  
8 of any franchise, the manufacturer shall furnish notification  
9 of termination, cancellation or nonrenewal to the new motor  
10 vehicle dealer as follows:
- 11 I. In the manner described in G.S. 20-305(6)c2 below;  
12 and
- 13 II. Not less than 90 days prior to the effective date of  
14 such termination, cancellation or nonrenewal; or
- 15 III. Not less than 15 days prior to the effective date of  
16 such termination, cancellation or nonrenewal with  
17 respect to any of the following:
- 18 A. Insolvency of the new motor vehicle dealer, or  
19 filing of any petition by or against the new  
20 motor vehicle dealer under any bankruptcy or  
21 receivership law;
- 22 B. Failure of the new motor vehicle dealer to  
23 conduct its customary sales and service  
24 operations during its customary business hours  
25 for seven consecutive business days, except  
26 for acts of God or circumstances beyond the  
27 direct control of the new motor vehicle dealer;
- 28 C. Revocation of any license which the new  
29 motor vehicle dealer is required to have to  
30 operate a dealership;
- 31 D. Conviction of a felony involving moral  
32 turpitude, under the laws of this State or any  
33 other state, or territory, or the District of  
34 Columbia.
- 35 IV. Not less than 180 days prior to the effective date of  
36 such termination, cancellation, or nonrenewal which  
37 occurs as a result of any change in ownership,  
38 operation, or control of all or any part of the business  
39 of the manufacturer, factory branch, distributor, or  
40 distributor branch whether by sale or transfer of  
41 assets, corporate stock or other equity interest,  
42 assignment, merger, consolidation, combination, joint  
43 venture, redemption, operation of law or otherwise; or  
44 the termination, suspension, or cessation of a part or  
45 all of the business operations of the manufacturers,  
46 factory branch, distributor, or distributor branch; or  
47 discontinuance of the sale of the product line or a  
48 change in distribution system by the manufacturer  
49 whether through a change in distributors or the  
50 manufacturer's decision to cease conducting business  
51 through a distributor altogether.

- 1 V. Unless the failure by the new motor vehicle dealer  
2 relates to the performance of the new motor vehicle  
3 dealer in sales or service, not more than one year after  
4 the manufacturer first acquired knowledge of the basic  
5 facts comprising the failure.
- 6 2. Notification under this section shall be in writing; shall be by  
7 certified mail or personally delivered to the new motor  
8 vehicle dealer; and shall contain:
- 9 I. A statement of intention to terminate, cancel or not to  
10 renew the franchise;
- 11 II. A detailed statement of all of the material reasons for  
12 the termination, cancellation or nonrenewal; and
- 13 III. The date on which the termination, cancellation or  
14 nonrenewal takes effect.
- 15 3. Notification provided in G.S. 20-305(6)c1II of 90 days prior  
16 to the effective date of such termination, cancellation or  
17 renewal may run concurrent with the 180 days designated in  
18 G.S. 20-305(6)a2II provided the notification is clearly  
19 designated by a separate written document mailed by certified  
20 mail or personally delivered to the new motor vehicle dealer.
- 21 d. Payments.
- 22 1. Notwithstanding the terms of any franchise, agreement, or  
23 waiver, upon ~~Upon~~ the termination, nonrenewal or  
24 cancellation of any franchise by the manufacturer or  
25 distributor, ~~pursuant to this section, the cessation of business~~  
26 or the termination, nonrenewal, or cancellation of any  
27 franchise by any new motor vehicle dealer located in this  
28 State, or upon any of the occurrences set forth in  
29 G.S. 20-305(6)c.1.IV., the manufacturer or distributor shall  
30 purchase from and compensate the new motor vehicle dealer  
31 shall be allowed fair and reasonable compensation by the  
32 manufacturer for the all of the following:
- 33 I. New ~~Each new and unsold motor vehicle within the~~  
34 new motor vehicle dealer's inventory that has been  
35 acquired from the manufacturer within 24 months of  
36 the effective date of the termination ~~18 months, at a~~  
37 price not to exceed the original manufacturer's price to  
38 the dealer, and from the manufacturer or distributor or  
39 another same line-make dealer in the ordinary course  
40 of business, and which has not been substantially  
41 altered or ~~damaged, damaged to the prejudice of the~~  
42 manufacturer or distributor while in the new motor  
43 vehicle dealer's possession, and which has ~~not been~~  
44 driven ~~more less than 200 miles, 1,000 miles or, for~~  
45 purposes of a recreational vehicle motor home as  
46 defined in G.S. 20-4.01(32a)a., less than 1,500 miles  
47 following the original date of delivery to the dealer,  
48 and for which no certificate of title has been  
49 issued; issued. For purposes of this sub-subdivision,  
50 the term "ordinary course of business" shall include  
51 inventory transfers of all new, same line-make

- 1 vehicles between affiliated dealerships, or otherwise  
2 between dealerships having common or interrelated  
3 ownership, provided that the transfer is not intended  
4 solely for the purpose of benefiting from the  
5 termination assistance described in this sub-  
6 subdivision.
- 7 II. Unused, undamaged and unsold supplies and parts  
8 purchased from the manufacturer or distributor or  
9 sources approved by the manufacturer or distributor,  
10 at a price not to exceed the original manufacturer's  
11 price to the dealer, provided such supplies and parts  
12 are currently offered for sale by the manufacturer or  
13 distributor in its current parts catalogs and are in  
14 salable condition; condition.
- 15 III. Equipment, signs, and furnishings that have not been  
16 substantially altered or damaged and that have been  
17 required by the manufacturer or distributor to be  
18 purchased by the new motor vehicle dealer from the  
19 manufacturer or distributor, or their approved sources;  
20 and sources.
- 21 IV. Special tools that have not been altered or damaged  
22 damaged, normal wear and tear excepted, and that  
23 have been required by the manufacturer or distributor  
24 to be purchased by the new motor vehicle dealer from  
25 the manufacturer or distributor, or their approved  
26 sources within five years immediately preceding the  
27 termination, nonrenewal or cancellation of the  
28 franchise. The amount of compensation which shall be  
29 paid to the new motor vehicle dealer by the  
30 manufacturer or distributor shall be the net acquisition  
31 price if the item was acquired in the 12 months  
32 preceding the date of receipt of the dealer's request for  
33 compensation; seventy-five percent (75%) of the net  
34 acquisition price if the item was acquired between 13  
35 and 24 months preceding the dealer's request for  
36 compensation; fifty percent (50%) of the net  
37 acquisition price if the item was acquired between 25  
38 and 36 months preceding the dealer's request for  
39 compensation; twenty-five percent (25%) of the net  
40 acquisition price if the item was acquired between 37  
41 and 60 months preceding the dealer's request for  
42 compensation.
- 43 2. Fair and reasonable compensation for the ~~The compensation~~  
44 provided above shall be paid by the manufacturer or  
45 distributor within not later than 90 days of the effective date  
46 of termination, cancellation or nonrenewal, after the  
47 manufacturer or distributor has received notice in writing  
48 from or on behalf of the new motor vehicle dealer specifying  
49 the elements of compensation requested by the dealer;  
50 provided the new motor vehicle dealer has has, or can obtain,  
51 clear title to the inventory and has conveyed conveyed, or can



1 convey, title and possession of the same to the manufacturer  
2 or distributor. Within 15 days after receipt of the dealer's  
3 written request for compensation, the manufacturer or  
4 distributor shall send the dealer detailed written instructions  
5 and forms required by the manufacturer or distributor to  
6 effectuate the receipt of the compensation requested by the  
7 dealer. The manufacturer or distributor shall be obligated to  
8 pay or reimburse the dealer for any transportation charges  
9 associated with the manufacturer's repurchase obligations of  
10 the manufacturer or distributor under this sub-subparagraph.  
11 The manufacturer or distributor shall also compensate the  
12 dealer for any handling, packing, or similar payments  
13 contemplated in the franchise. In no event may the  
14 manufacturer or distributor not charge the dealer any  
15 handling, restocking, or other similar costs or fees associated  
16 with items repurchased by the manufacturer under this  
17 sub-subparagraph.

18 3. In addition to the other payments set forth in this section, if a  
19 termination, cancellation, or nonrenewal is premised upon  
20 any of the occurrences set forth in G.S. 20-305(6)c.1.IV., then  
21 the manufacturer or distributor shall be liable to the dealer for  
22 an amount at least equivalent to the fair market value of the  
23 franchise on (i) the date the franchisor announces the action  
24 which results in termination, cancellation, or nonrenewal; or  
25 (ii) the date the action which results in termination,  
26 cancellation, or nonrenewal first became general knowledge;  
27 or (iii) the day 12 months prior to the date on which the  
28 notice of termination, cancellation, or nonrenewal is issued,  
29 whichever amount is higher. Payment is due ~~within not later~~  
30 than 90 days of the effective date of the termination,  
31 cancellation, or nonrenewal after the manufacturer or  
32 distributor has received notice in writing from, or on behalf  
33 of, the new motor vehicle dealer specifying the elements of  
34 compensation requested by the dealer. If the termination,  
35 cancellation, or nonrenewal is due to a manufacturer's change  
36 in distributors, the manufacturer may avoid paying fair  
37 market value to the dealer if the new distributor or the  
38 manufacturer offers the dealer a franchise agreement with  
39 terms acceptable to the dealer.

40 e. Dealership Facilities Assistance upon Termination, Cancellation or  
41 Nonrenewal.

42 In the event of the occurrence of any of the events specified in  
43 G.S. 20-305(6)d.1. above, termination, cancellation or nonrenewal by  
44 the manufacturer or distributor under this section, except termination,  
45 cancellation or nonrenewal for insolvency, license revocation,  
46 conviction of a crime involving moral turpitude, or fraud by a  
47 dealer-owner:

48 1. Subject to paragraph 3, if the new motor vehicle dealer is  
49 leasing the dealership facilities from a lessor other than the  
50 manufacturer or distributor, the manufacturer or distributor  
51 shall pay the new motor vehicle dealer a sum equivalent to

- 1 the rent for the unexpired term of the lease or three year's  
2 rent, whichever is less, or such longer term as is provided in  
3 the franchise agreement between the dealer and manufacturer;  
4 except that, in the case of motorcycle dealerships, the  
5 manufacturer shall pay the new motor vehicle dealer the sum  
6 equivalent to the rent for the unexpired term of the lease or  
7 one year's rent, whichever is less, or such longer term as  
8 provided in the franchise agreement between the dealer and  
9 manufacturer; or
- 10 2. Subject to paragraph 3, if the new motor vehicle dealer owns  
11 the dealership facilities, the manufacturer or distributor shall  
12 pay the new motor vehicle dealer a sum equivalent to the  
13 reasonable rental value of the dealership facilities for three  
14 years, or for one year in the case of motorcycle dealerships.
- 15 3. In order to be entitled to facilities assistance from the  
16 manufacturer or distributor, as provided in this paragraph e.,  
17 the dealer, owner, or lessee, as the case may be, shall have the  
18 obligation to mitigate damages by listing the demised  
19 premises for lease or sublease with a licensed real estate agent  
20 within 30 days after the effective date of the termination of  
21 the franchise and thereafter by reasonably cooperating with  
22 said real estate agent in the performance of the agent's duties  
23 and responsibilities. In the event that the dealer, owner, or  
24 lessee is able to lease or sublease the demised premises, the  
25 dealer shall be obligated to pay the manufacturer the net  
26 revenue received from such mitigation up to the total amount  
27 of facilities assistance which the dealer has received from the  
28 manufacturer pursuant to sub-subdivisions 1. and 2. To the  
29 extent and for such uses and purposes as may be consistent  
30 with the terms of the lease, a manufacturer who pays facilities  
31 assistance to a dealer under this paragraph e. shall be entitled  
32 to occupy and use the dealership facilities during the years for  
33 which the manufacturer shall have paid rent under  
34 sub-subdivisions 1. and 2.
- 35 4. In the event the termination relates to fewer than all of the  
36 franchises operated by the dealer at a single location, the  
37 amount of facilities assistance which the manufacturer or  
38 distributor is required to pay the dealer under this  
39 sub-subdivision shall be based on the proportion of gross  
40 revenue received from the sale and lease of new vehicles by  
41 the dealer and from the dealer's parts and service operations  
42 during the three years immediately preceding the effective  
43 date of the termination (or any shorter period that the dealer  
44 may have held these franchises) of the line-makes being  
45 terminated, in relation to the gross revenue received from the  
46 sale and lease of all line-makes of new vehicles by the dealer  
47 and from the total of the dealer's and parts and service  
48 operations from this location during the same three-year  
49 period.
- 50 5. The compensation required for facilities assistance under this  
51 paragraph e. shall be paid by the manufacturer or distributor

1 within 90 days of the effective date of termination,  
2 cancellation, or nonrenewal, after the manufacturer or  
3 distributor has received notice in writing from, or on behalf  
4 of, a new motor vehicle dealer specifying the elements of  
5 compensation requested by the dealer.

6 f. ~~The provisions of sub-subdivisions d. and e. above shall not be~~  
7 ~~applicable when the termination, nonrenewal or cancellation of the~~  
8 ~~franchise agreement is the result of the voluntary act of the dealer.~~

9 The provisions of sub-subdivision e. above shall not be applicable  
10 when the termination, nonrenewal, or cancellation of the franchise  
11 agreement by a new motor vehicle dealer is the result of the sale of  
12 assets or stock of the motor vehicle dealership. The provisions of  
13 sub-subdivisions d. and e. above shall not be applicable when the  
14 termination, nonrenewal, or cancellation of the franchise agreement  
15 is at the initiation of a new motor vehicle dealer of recreational  
16 vehicle motor homes, as defined in G.S. 20-4.01(32a)a., provided  
17 that at the time of the termination, nonrenewal, or cancellation, the  
18 recreational vehicle manufacturer or distributor has paid to the dealer  
19 all claims for warranty or recall work, including payments for labor,  
20 parts, and other expenses, which were submitted by the dealer 30  
21 days or more prior to the date of termination, nonrenewal, or  
22 cancellation.

23 ~~Notwithstanding the terms of any contract or agreement, any dealer's~~  
24 ~~termination or resignation shall not be deemed to be voluntary if that~~  
25 ~~termination or resignation occurred under the manufacturer's threat of~~  
26 ~~nonrenewal, cancellation, or termination of the franchise.~~

27 g. A franchise shall continue in full force and operation notwithstanding  
28 a change, in whole or in part, of an established plan or system of  
29 distribution of the motor vehicles offered for sale under the franchise.  
30 The appointment of a new manufacturer, factory branch, distributor,  
31 or distributor branch for motor vehicles offered for sale under the  
32 franchise agreement shall be deemed to be a change of an established  
33 plan or system of distribution.

34 Upon the occurrence of the change, the Division shall deny an application of a  
35 manufacturer, factory branch, distributor, or distributor branch for a license or license renewal  
36 unless the applicant for a license as a manufacturer, factory branch, distributor, or distributor  
37 branch offers to each motor vehicle dealer who is a party to a franchise for that line-make a  
38 new franchise agreement containing substantially the same provisions which were contained in  
39 the previous franchise agreement or files an affidavit with the Division acknowledging its  
40 undertaking to assume and fulfill the rights, duties, and obligations of its predecessor under the  
41 previous franchise agreement."

42 **SECTION 6.** The terms and provisions of this act shall be applicable to all  
43 franchises and other agreements in existence between any new motor vehicle dealer located in  
44 this State and a manufacturer or distributor as of the effective date of this act, and to all future  
45 franchises and other agreements.

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

50 **SECTION 8.** This act is effective when it becomes law.