

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 914  
Commerce Committee Substitute Adopted 5/12/09  
House Committee Substitute Favorable 8/5/09  
House Committee Substitute #2 Favorable 8/6/09

Short Title: Clarify MV Dealer Franchise Rights.

(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.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 20-305 is amended by adding a new subdivision to read:

6 "(42) Notwithstanding the terms, provisions, or conditions of any agreement or  
7 waiver, to directly or indirectly condition the awarding of a franchise to a  
8 prospective new motor vehicle dealer, the addition of a line make or  
9 franchise to an existing dealer, the renewal of a franchise of an existing  
10 dealer, the approval of the relocation of an existing dealer's facility, or the  
11 approval of the sale or transfer of the ownership of a franchise on the  
12 willingness of a dealer, proposed new dealer, or owner of an interest in the  
13 dealership facility to enter into a site control agreement or exclusive use  
14 agreement. For purposes of this subdivision, the terms "site control  
15 agreement" and "exclusive use agreement" include any agreement that has  
16 the effect of either: (i) requiring that the dealer establish or maintain  
17 exclusive dealership facilities; or (ii) restricting the ability of the dealer, or  
18 the ability of the dealer's lessor in the event the dealership facility is being  
19 leased, to transfer, sell, lease, or change the use of the dealership premises,  
20 whether by sublease, lease, collateral pledge of lease, right of first refusal to  
21 purchase or lease, option to purchase, option to lease, or other similar  
22 agreement, regardless of the parties to such agreement. Any provision  
23 contained in any agreement that is inconsistent with the provisions of this  
24 subdivision shall be voidable at the election of the affected dealer,  
25 prospective dealer, or owner of an interest in the dealership facility."

26 **SECTION 2.** G.S. 20-305.2 reads as rewritten:

27 **"§ 20-305.2. Unfair methods of competition.**

28 (a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor,  
29 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or  
30 affiliated entity, own any ownership interest in, operate, or control any motor vehicle dealership  
31 in this State, provided that this section shall not be construed to prohibit:

32 (1) The operation by a manufacturer, factory branch, distributor, distributor  
33 branch, or subsidiary thereof, of a dealership for a temporary period (not to  
34 exceed one year) during the transition from one owner or operator to  
35 another; or



- 1           (2)    The ownership or control of a dealership by a manufacturer, factory branch,  
2           distributor, distributor branch, or subsidiary thereof, while in a bona fide  
3           relationship with an economically disadvantaged or other independent  
4           person, other than a manufacturer, factory branch, distributor, distributor  
5           branch, or an agent or affiliate thereof, who has made a bona fide,  
6           unencumbered initial investment of at least six percent (6%) of the total sales  
7           price that is subject to loss in the dealership and who can reasonably expect  
8           to acquire full ownership of the dealership within a reasonable period of  
9           time, not to exceed 12 years, and on reasonable terms and conditions; or
- 10          (3)    The ownership, operation or control of a dealership by a manufacturer,  
11          factory branch, distributor, distributor branch, or subsidiary thereof, if such  
12          manufacturer, factory branch, distributor, distributor branch, or subsidiary  
13          has been engaged in the retail sale of motor vehicles through such dealership  
14          for a continuous period of three years prior to March 16, 1973, and if the  
15          Commissioner determines, after a hearing on the matter at the request of any  
16          party, that there is no independent dealer available in the relevant market  
17          area to own and operate the franchise in a manner consistent with the public  
18          interest; or
- 19          (4)    The ownership, operation, or control of a dealership by a manufacturer,  
20          factory branch, distributor, distributor branch, or subsidiary thereof, if the  
21          Commissioner determines after a hearing on the matter at the request of any  
22          party, that there is no independent dealer available in the relevant market  
23          area to own and operate the franchise in a manner consistent with the public  
24          interest; or
- 25          (5)    The ownership, operation, or control of any facility (location) of a new  
26          motor vehicle dealer in this State at which the dealer sells only new and used  
27          motor vehicles with a gross weight rating of 8,500 pounds or more, provided  
28          that both of the following conditions have been met:
- 29            a.     The facility is located within 35 miles of manufacturing or  
30            assembling facilities existing as of January 1, 1999, and is owned or  
31            operated by the manufacturer, manufacturing branch, distributor,  
32            distributor branch, or any affiliate or subsidiary thereof which  
33            assembles, manufactures, or distributes new motor vehicles with a  
34            gross weight rating of 8,500 pounds or more by such dealer at said  
35            location; and
- 36            b.     The facility is located in the largest Standard Metropolitan Statistical  
37            Area (SMSA) in the State; or
- 38          (6)    As to any line make of motor vehicle for which there is in aggregate no more  
39          than 13 franchised new motor vehicle dealers (locations) licensed and in  
40          operation within the State as of January 1, 1999, the ownership, operation, or  
41          control of one or more new motor vehicle dealership trading solely in such  
42          line make of vehicle by the manufacturer, factory branch, distributor,  
43          distributor branch, or subsidiary or affiliate thereof, provided however, that  
44          all of the following conditions are met:
- 45            a.     The manufacturer, factory branch, distributor, distributor branch, or  
46            subsidiary or affiliate thereof does not own directly or indirectly, in  
47            aggregate, in excess of forty-five percent (45%) interest in the  
48            dealership;
- 49            b.     At the time the manufacturer, factory branch, distributor, distributor  
50            branch, or subsidiary or affiliate thereof first acquires ownership or  
51            assumes operation or control with respect to any such dealership, the

- 1 distance between the dealership thus owned, operated, or controlled  
2 and the nearest other new motor vehicle dealership trading in the  
3 same line make of vehicle, is no less than 35 miles;
- 4 c. All the manufacturer's franchise agreements confer rights on the  
5 dealer of the line make to develop and operate within a defined  
6 geographic territory or area, as many dealership facilities as the  
7 dealer and manufacturer shall agree are appropriate; and
- 8 d. That as of July 1, 1999, not fewer than half of the dealers of the line  
9 make within the State own and operate two or more dealership  
10 facilities in the geographic territory or area covered by the franchise  
11 agreement with the manufacturer.
- 12 (7) The ownership, operation, or control of a dealership that sells primarily  
13 recreational vehicles as defined in G.S. 20-4.01 by a manufacturer, factory  
14 branch, distributor, or distributor branch, or subsidiary thereof, if the  
15 manufacturer, factory branch, distributor, or distributor branch, or subsidiary  
16 thereof, owned, operated, or controlled the dealership as of October 1, 2001.
- 17 (b) ~~This section~~ Subsection (a) of this section does not apply to manufacturers or  
18 distributors of trailers or semitrailers that are not recreational vehicles as defined in  
19 G.S. 20-4.01.
- 20 (c) For purposes of subsection (d) of this section, the following definitions apply:
- 21 (1) Successor manufacturer. – Any motor vehicle manufacturer, as defined in  
22 G.S. 20-286(8e), that, on or after January 1, 2009, acquires, succeeds to, or  
23 assumes any part of the business of another manufacturer, referred to as the  
24 "predecessor manufacturer," as the result of any of the following:
- 25 a. A change in ownership, operation, or control of the predecessor  
26 manufacturer by sale or transfer of assets, corporate stock or other  
27 equity interest, assignment, merger, consolidation, combination, joint  
28 venture, redemption, court-approved sale, operation of law or  
29 otherwise.
- 30 b. The termination, suspension, or cessation of a part or all of the  
31 business operations of the predecessor manufacturer.
- 32 c. The discontinuance of the sale of the product line.
- 33 d. A change in distribution system by the predecessor manufacturer,  
34 whether through a change in distributor or the predecessor  
35 manufacturer's decision to cease conducting business through a  
36 distributor altogether.
- 37 (2) Relevant market area. – The area within a 10-, 15-, or 20-mile radius around  
38 the site of the previous franchisee's dealership facility, as determined in the  
39 same manner that the relevant market area is determined under  
40 G.S. 20-286(13b) when a manufacturer is seeking to establish an additional  
41 new motor vehicle dealer.
- 42 (3) Former Franchisee. – A new motor vehicle dealer, as defined in  
43 G.S. 20-286(13), that has entered into a franchise, as defined in  
44 G.S. 20-286(8a) with a predecessor manufacturer and that has either:
- 45 a. Entered into a termination agreement or deferred termination  
46 agreement with a predecessor or successor manufacturer related to  
47 such franchise; or
- 48 b. Has had such franchise canceled, terminated, nonrenewed,  
49 noncontinued, rejected, nonassumed, or otherwise ended.
- 50 (d) For a period of five years from the date that a successor manufacturer acquires,  
51 succeeds to, or assumes any part of the business of a predecessor manufacturer, it shall be

1 unlawful for such successor manufacturer to offer a same line make franchise to any person, as  
2 defined in G.S. 20-4.01(28), or to permit the relocation of any existing same line make  
3 franchise, for a line make of the predecessor manufacturer that would be located or relocated  
4 within the relevant market area of a former franchisee who owned or leased a dealership facility  
5 in that relevant market area without first offering the additional or relocated franchise to the  
6 former franchisee, or the designated successor of such former franchisee in the event the former  
7 franchisee is deceased or disabled, at no cost and without any requirements or restrictions other  
8 than those imposed generally on the manufacturer's other franchisees at that time, unless one of  
9 the following applies:

- 10       (1) As a result of the former franchisee's cancellation, termination,  
11 noncontinuance, or nonrenewal of the franchise, the predecessor  
12 manufacturer had consolidated the line make with another of its line makes  
13 for which the predecessor manufacturer had a franchisee with a then-existing  
14 dealership facility located within that relevant market area.
- 15       (2) The successor manufacturer has paid the former franchisee, or the  
16 designated successor of such former franchisee in the event the former  
17 franchisee is deceased or disabled, the fair market value of the former  
18 franchisee's franchise calculated as prescribed in G.S. 20-305(6)d.3.
- 19       (3) The successor manufacturer proves that the former franchisee, or the  
20 designated successor of such former franchisee in the event the former  
21 franchisee is deceased or disabled, by reason of lack of training, lack of prior  
22 experience, poor past performance, lack of financial ability, or poor  
23 character, is unfit to own or manage the dealership. A successor  
24 manufacturer who seeks to assert that a former franchisee is unfit to own or  
25 manage the dealership must file a petition seeking a hearing on this issue  
26 before the Commissioner and shall have the burden of proving lack of fitness  
27 at such hearing. No successor dealer, other than the former franchisee, may  
28 be appointed or franchised by the successor manufacturer within the relevant  
29 market area until the Commissioner has held a hearing and rendered a  
30 determination on the issue of the fitness of the previous franchisee to own or  
31 manage the dealership."

32       **SECTION 3.** The terms and provisions of this act shall be applicable to all  
33 franchises and other agreements in existence between any new motor vehicle dealer located in  
34 this State and a manufacturer or distributor as of the effective date of this act and to all future  
35 franchises and other agreements.

36       **SECTION 4.** If any provision of this act or its application is held invalid, the  
37 invalidity does not affect other provisions or applications of this act that can be given effect  
38 without the invalid provisions or application, and to this end the provisions of this act are  
39 severable.

40       **SECTION 5.** This act is effective when it becomes law.