

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1002
Committee Substitute Favorable 5/1/91

Short Title: MV Dealers Licensing Law.

(Public)

Sponsors:

Referred to:

April 19, 1991

A BILL TO BE ENTITLED
AN ACT TO CLARIFY CERTAIN PROVISIONS CONTAINED IN THE MOTOR
VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301(e) reads as rewritten:

"(e) The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 ~~days~~. days; provided, however, that the Commissioner, in his discretion, may extend the time for discovery beyond the 60-day period either upon the consent of all parties to the proceeding, or upon application of one or more parties and upon a showing of good cause for allowing such extension."

Sec. 2. G.S. 20-305(4) reads as rewritten:

"(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed ~~sale, transfer~~ transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor such ~~sale,~~ transfer, sale, assignment, relocation, or change is unreasonable under

1 the circumstances; provided, however, that no franchise may be sold or
2 assigned or transferred ~~transferred, sold, assigned, relocated, or the~~
3 executive management or principal operators changed, unless (i) the
4 franchisor has been given at least 30 days' prior written notice as to the
5 identity, financial ability and qualifications of the proposed transferee,
6 and (ii) the sale or transfer of the franchise and business will not involve,
7 without the franchisor's consent, a relocation of the the buisness; the
8 identity and qualifications of the persons proposed to be involved in
9 executive management or as principal operators, and the location and
10 site plans of any proposed relocation. The franchisor shall send the
11 dealership notice of objection, by registered or certified mail, return
12 receipt requested, to the proposed transfer, sale, assignment, relocation
13 or change within 30 days after receipt of notice from the dealer, as
14 provided in this section. Failure by the franchisor to send notice of
15 objection within 30 days shall constitute waiver by the franchisor of
16 any right to object to the proposed transfer, sale, assignment,
17 relocation, or change as unreasonable under the circumstances."

18 Sec. 3. G.S. 20-305(5) reads as rewritten:

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

36 a. This section does not apply:

37 1. To the relocation of an existing new motor vehicle dealer
38 within that dealer's relevant market area, provided that
39 the relocation not be at a site within 10 miles of a
40 licensed new motor vehicle dealer for the same line
41 make of motor vehicle; or

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

- 1 dealer for the same line make of new motor vehicle
2 had ceased operating within the previous two years;
- 3 3. To the relocation of an existing new motor
4 vehicle dealer within two miles of the existing site of
5 the new motor vehicle dealership;
- 6 4. To the relocation of an existing new motor
7 vehicle dealer if the proposed site of the relocated new
8 motor vehicle dealership is further away from all other
9 new motor vehicle dealers of the same line make in
10 that relevant market area.
- 11 b. In determining whether good cause has been established for not
12 entering into or relocating an additional new motor vehicle
13 dealer for the same line make, the Commissioner shall take into
14 consideration the existing circumstances, including, but not
15 limited to:
- 16 1. The permanency of the investment of both the existing
17 and proposed additional new motor vehicle dealers;
- 18 2. Growth or decline in population, density of
19 population, and new car registrations in the relevant
20 market area;
- 21 3. Effect on the consuming public in the relevant
22 market area;
- 23 4. Whether it is injurious or beneficial to the
24 public welfare for an additional new motor vehicle
25 dealer to be established;
- 26 5. Whether the new motor vehicle dealers of the
27 same line make in that relevant market area are
28 providing adequate competition and convenient
29 customer care for the motor vehicles of the same line
30 make in the market area which shall include the
31 adequacy of motor vehicle sales and service facilities,
32 equipment, supply of motor vehicle parts, and
33 qualified service personnel;
- 34 6. Whether the establishment of an additional
35 new motor vehicle dealer or relocation of an existing
36 new motor vehicle in the relevant market area would
37 increase competition in a manner such as to be in the
38 long-term public interest; and
- 39 7. The effect on the relocating dealer of a denial
40 of its relocation into the relevant market area.
- 41 c. The Commissioner must conduct the hearing and render his
42 final determination as expeditiously as possible, but in any
43 event no later than 180 days after a protest is filed. Unless
44 waived by the parties, failure to do so shall be deemed the

1 equivalent of a determination that good cause does not exist for
2 refusing to permit the proposed additional or relocated motor
3 vehicle dealer, unless such delay is caused by acts of the
4 manufacturer, or the relocating or additional dealer.

5 d. Any parties to a hearing by the Commissioner concerning the
6 establishment or relocating of a new motor vehicle dealer shall
7 have a right of review of the decision in a court of competent
8 jurisdiction pursuant to Chapter ~~150A~~-150B of the General
9 Statutes.

10 e. In a hearing involving a proposed additional dealership, the
11 manufacturer or distributor shall have the burden of proof under
12 this section; and in a proceeding involving the relocation of an
13 existing dealership, the dealer seeking to relocate shall have the
14 burden of proof under this section.

15 f. If the Commissioner determines, following a hearing, that good
16 cause does not exist for refusing to permit the proposed
17 additional or relocated motor vehicle dealership, the dealer
18 seeking the proposed additional or relocated motor vehicle
19 dealership must, within two years, obtain a license from the
20 Commissioner for the sale of vehicles at the relevant site, and
21 actually commence operations at the site selling new motor
22 vehicles of all line-makes, as permitted by the Commissioner.
23 Failure to obtain a permit and commence sales within two years
24 shall constitute waiver by the dealer of the dealer's right to the
25 additional or relocated dealership, requiring renotification, a
26 new hearing, and a new determination as provided in this
27 section."

28 Sec. 4. G.S. 20-305(6) reads as rewritten:

29 "(6) Notwithstanding the terms, provisions or conditions of any franchise
30 or notwithstanding the terms or provisions of any waiver, to terminate,
31 cancel or fail to renew any franchise with a licensed new motor vehicle
32 dealer unless the manufacturer has: satisfied the notice requirements of
33 subparagraph c.; and the Commissioner has determined, if requested in
34 writing by the dealer within the time period specified in G.S. 20-
35 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
36 that there is good cause for the termination, cancellation, or
37 nonrenewal of the franchise and that the manufacturer has acted in
38 good faith as defined in this act regarding the termination, cancellation
39 or nonrenewal. When such a petition is made to the Commissioner by
40 a dealer for determination as to the existence of good cause and good
41 faith for the termination, cancellation or nonrenewal of a franchise, the
42 Commissioner shall promptly inform the manufacturer that a timely
43 petition has been filed, and the franchise in question shall continue in
44 effect pending the Commissioner's decision. The Commissioner must

1 conduct the hearing and render his final determination as ~~expeditiously~~
2 ~~as possible, but in any event~~ no later than 180 days after a petition has
3 ~~been filed.~~ filed; provided, however, that the Commissioner may
4 extend such period of time upon application of a party and for good
5 cause shown, or upon the consent of all parties to the proceeding. If
6 the termination, cancellation or nonrenewal is pursuant to G.S. 20-
7 305(6)c1III then the Commissioner shall give the proceeding priority
8 consideration and shall render his final determination no later than 60
9 days after the petition has been filed. Any parties to a hearing by the
10 Commissioner under this section shall have a right of review of the
11 decision in a court of competent jurisdiction pursuant to Chapter 150B
12 of the General Statutes.

13 a. Notwithstanding the terms, provisions or conditions of any
14 franchise or the terms or provisions of any waiver, good cause
15 shall exist for the purposes of a termination, cancellation or
16 nonrenewal when:

17 1. There is a failure by the new motor vehicle dealer to
18 comply with a provision of the franchise which provision
19 is both reasonable and of material significance to the
20 franchise relationship provided that the dealer has been
21 notified in writing of the failure within 180 days after the
22 manufacturer first acquired knowledge of such failure;

23 2. If the failure by the new motor vehicle dealer,
24 defined in 1 above, relates to the performance of the
25 new motor vehicle dealer in sales or service, then good
26 cause shall be defined as the failure of the new motor
27 vehicle dealer to comply with reasonable performance
28 criteria established by the manufacturer if the new
29 motor vehicle dealer was apprised by the manufacturer
30 in writing of such failure; and

31 I. Said notification stated that notice was provided
32 of failure of performance pursuant to this section;

33 II. The new motor vehicle dealer was
34 afforded a reasonable opportunity, for a period
35 of not less than 180 days, to comply with such
36 criteria; and

37 III. The new motor vehicle dealer failed to
38 demonstrate substantial progress towards
39 compliance with the manufacturer's
40 performance criteria during such period and the
41 new motor vehicle dealer's failure was not
42 primarily due to economic or market factors
43 within the dealer's relevant market area which
44 were beyond the dealer's control.

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

- 1 I. A statement of intention to terminate,
2 cancel or not to renew the franchise;
- 3 II. A statement of the reasons for the
4 termination, cancellation or nonrenewal; and
5 III. The date on which such termination,
6 cancellation or nonrenewal takes effect.
- 7 3. Notification provided in G.S. 20-305(6)c1III of 90 days
8 prior to the effective date of such termination,
9 cancellation or renewal may run concurrent with the 180
10 days designated in G.S. 20-305(6)a2II provided such
11 notification is clearly designated by a separate written
12 document mailed by certified mail or personally
13 delivered to the new motor vehicle dealer.
- 14 d. Payments. –
- 15 1. Upon the termination, nonrenewal or cancellation of any
16 franchise by the manufacturer or distributor, pursuant to
17 this section, the new motor vehicle dealer shall be
18 allowed fair and reasonable compensation by the
19 manufacturer for the:
- 20 I. New motor vehicle inventory which has been
21 acquired from the manufacturer within 18 months,
22 at a price not to exceed the original
23 manufacturer's price to the dealer, and which has
24 not been altered or damaged, and which has not
25 been driven more than 200 miles, and for which
26 no certificate of title has been issued;
- 27 II. Unused, undamaged and unsold supplies and parts
28 purchased from the manufacturer, at a price not to
29 exceed the original manufacturer's price to the
30 dealer, provided such supplies and parts are
31 currently offered for sale by the manufacturer or
32 distributor in its current parts catalogs and are in
33 salable condition;
- 34 III. Equipment and furnishings which have
35 not been altered or damaged and which have
36 been required by the manufacturer or distributor
37 to be purchased by the new motor vehicle dealer
38 from the manufacturer or distributor, or their
39 approved sources; and
- 40 IV. Special tools which have not been
41 altered or damaged and which have been
42 required by the manufacturer or distributor to be
43 purchased by the new motor vehicle dealer from
44 the manufacturer or distributor, or their

1 approved sources within five years immediately
2 preceding the termination, nonrenewal or
3 cancellation of the franchise.

- 4 2. Such fair and reasonable compensation for the above
5 shall be paid by the manufacturer within 90 days of the
6 effective date of termination, cancellation or nonrenewal,
7 provided the new motor vehicle dealer has clear title to
8 the inventory and has conveyed title and possession to
9 the manufacturer.

10 e. Dealership Facilities Assistance upon Termination,
11 Cancellation or Nonrenewal. –

12 In the event of the termination, cancellation or nonrenewal by the
13 manufacturer or distributor under this section, except termination,
14 cancellation or nonrenewal for insolvency, license revocation,
15 conviction of a crime involving moral turpitude, or fraud by a dealer-
16 owner:

- 17 1. Subject to paragraph 3, if the new motor vehicle dealer is
18 leasing the dealership facilities from a lessor other than
19 the manufacturer, the manufacturer shall pay the new
20 motor vehicle dealer a sum equivalent to the rent for the
21 unexpired term of the lease or one year's rent, whichever
22 is less, or such longer term as is provided in the
23 franchise agreement between the dealer and
24 manufacturer; or

- 25 2. Subject to paragraph 3, if the new motor
26 vehicle dealer owns the dealership facilities, the
27 manufacturer shall pay the new motor vehicle dealer a
28 sum equivalent to the reasonable rental value of the
29 dealership facilities for one year.

- 30 3. Provided nothing in this ~~section~~ paragraph e. shall
31 relieve a lessee or owner, as the case may be, from the
32 obligation to mitigate damages under the lease, nor
33 prevent a manufacturer from occupying and using the
34 dealership facilities while paying rent under subsections
35 1 and 2, nor prevent a manufacturer from obligations by
36 negotiating a lease termination, a sublease or a new
37 lease. Any amounts recovered by the lessee or owner
38 resulting from mitigation of damages shall be deducted
39 from the amount due from the manufacturer.

- 40 f. The provisions of paragraphs d. and e. above shall not be
41 applicable when the termination, nonrenewal or cancellation of
42 the franchise agreement is the result of the voluntary act of the
43 dealer."

44 Sec. 5. G.S. 20-308.1(a) reads as rewritten:

1 "(a) Notwithstanding the terms, provisions or conditions of any agreement or
2 franchise or other terms or provisions of any novation, waiver or other written
3 instrument, any person who is or may be injured by a violation of a provision of this
4 Article, or any party to a franchise who is so injured in his business or property by a
5 violation of a provision of this Article relating to that franchise, ~~or any person so injured~~
6 ~~because he refuses to accede to a proposal for or~~ an arrangement which, if consummated,
7 would be in violation of this Article may, notwithstanding the initiation or pendency of
8 an administrative proceeding before the Commissioner concerning the same parties or
9 subject matter, bring an action for damages and equitable relief, including injunctive
10 relief, in any court of competent jurisdiction with regard to any matter not within the
11 jurisdiction of the ~~Commissioner.~~ Commissioner or which seeks relief wholly outside the
12 authority or jurisdiction of the Commissioner to award."

13 Sec. 6. This act becomes effective October 1, 1991.