

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1351*

Short Title: Clarify Motor Vehicle Franchise Laws. (Public)

Sponsors: Senators Hoyle; Albertson, Apodaca, Berger of Rockingham, Blake, Brock, Dalton, East, Jacumin, Malone, Preston, Rand, Smith, Soles, Stevens, Swindell, and Weinstein.

Referred to: Commerce, Small Business and Entrepreneurship.

March 26, 2007

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY MOTOR VEHICLE FRANCHISE LAWS AS THEY
2 RELATE TO AUTOMOBILE DEALER WARRANTY OBLIGATIONS, CIVIL
3 ACTIONS FOR VIOLATIONS, COERCION, AND INSTALLMENT SALES.
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5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 20-303(a) reads as rewritten:

7 "(a) Every retail installment sale shall be evidenced by ~~an instrument in writing,~~
8 ~~which shall contain all the agreements of the parties and one or more instruments in~~
9 writing which shall be signed by the buyer."

10 **SECTION 2.** G.S. 20-305(4) reads as rewritten:

11 "(4) Notwithstanding the terms of any franchise agreement, to prevent or
12 refuse to approve the sale or transfer of the ownership of a dealership
13 by the sale of the business, stock transfer, or otherwise, or the transfer,
14 sale or assignment of a dealer franchise, or a change in the executive
15 management or principal operator of the dealership, or relocation of
16 the dealership to another site within the dealership's relevant market
17 area, if the Commissioner has determined, if requested in writing by
18 the dealer within 30 days after receipt of an objection to the proposed
19 transfer, sale, assignment, relocation, or change, and after a hearing on
20 the matter, that the failure to permit or honor the transfer, sale,
21 assignment, relocation, or change is unreasonable under the
22 circumstances. No franchise may be transferred, sold, assigned,
23 relocated, or the executive management or principal operators
24 changed, unless the franchisor has been given at least 30 days' prior
25 written notice as to the identity, financial ability, and qualifications of
26 the proposed transferee, the identity and qualifications of the persons
27 proposed to be involved in executive management or as principal

1 operators, and the location and site plans of any proposed relocation.
2 The franchisor shall send the dealership and the proposed transferee
3 notice of objection, by registered or certified mail, return receipt
4 requested, to the proposed transfer, sale, assignment, relocation, or
5 change within 30 days after receipt of notice from the dealer, as
6 provided in this section. The notice of objection shall state in detail all
7 factual and legal bases for the objection on the part of the franchisor to
8 the proposed transfer, sale, assignment, relocation, or change;
9 provided, however, that all such factual and legal bases alleged by the
10 franchisor in the notice of objection shall be issues of material fact
11 upon which a determination may be made by the Commissioner.
12 Failure by the franchisor to send notice of objection within 30 days
13 shall constitute waiver by the franchisor of any right to object to the
14 proposed transfer, sale, assignment, relocation, or change. A notice of
15 objection sent by a franchisor which is in any part based on
16 incomplete, inadequate, or inaccurate information provided to the
17 franchisor by the dealership, or proposed transferee, shall not be
18 effective to preserve the franchisor's right to object to the proposed
19 transfer, sale, assignment, relocation, or change if the dealership, or
20 proposed transferee, has submitted written notice of the identity,
21 financial ability, and qualifications of the proposed transferee, the
22 identity and qualifications of the persons proposed to be involved in
23 executive management or as principal operators, and the location and
24 site plans of any proposed relocation. With respect to a proposed
25 transfer of ownership, sale, or assignment, the sole issue for
26 determination by the Commissioner and the sole issue upon which the
27 Commissioner shall hear or consider evidence is whether, by reason of
28 lack of good moral character, lack of general business experience, or
29 lack of financial ability, the proposed transferee is unfit to own the
30 dealership. For purposes of this subdivision, the refusal by the
31 manufacturer to accept a proposed transferee who is of good moral
32 character and who otherwise meets the written, reasonable, and
33 uniformly applied business experience and financial requirements, if
34 any, required by the manufacturer of owners of its franchised
35 automobile dealerships is presumed to demonstrate the manufacturer's
36 failure to prove that the proposed transferee is unfit to own the
37 dealership. With respect to a proposed change in the executive
38 management or principal operator of the dealership, the sole issue for
39 determination by the Commissioner and the sole issue on which the
40 Commissioner shall hear or consider evidence shall be whether, by
41 reason of lack of training, lack of prior experience, poor past
42 performance, or poor character, the proposed candidate for a position
43 within the executive management or as principal operator of the
44 dealership is unfit for the position. For purposes of this subdivision,

1 the refusal by the manufacturer to accept a proposed candidate for
2 executive management or as principal operator who is of good moral
3 character and who otherwise meets the written, reasonable, and
4 uniformly applied standards or qualifications, if any, of the
5 manufacturer relating to the business experience and prior
6 performance of executive management required by the manufacturers
7 of its dealers is presumed to demonstrate the manufacturer's failure to
8 prove the proposed candidate for executive management or as
9 principal operator is unfit to serve the capacity. With respect to a
10 proposed relocation or other proposed change, the issue for
11 determination by the Commissioner is whether the proposed relocation
12 or other change is unreasonable under the circumstances. For purposes
13 of this subdivision, the refusal by the manufacturer to agree to a
14 proposed relocation which meets the written, reasonable, and
15 uniformly applied standards or criteria, if any, of the manufacturer
16 relating to dealer relocations is presumed to demonstrate that the
17 manufacturer's failure to prove the proposed relocation is unreasonable
18 under the circumstances. The manufacturer shall have the burden of
19 proof before the Commissioner under this subdivision. It is unlawful
20 for a manufacturer to, in any way, condition its approval of a proposed
21 transfer, sale, assignment, change in the dealer's executive
22 ~~management or~~ management, principal operator, or
23 appointment of a designated successor, on the existing or proposed
24 dealer's willingness to construct a new facility, renovate the existing
25 facility, acquire or refrain from acquiring one or more line-makes of
26 vehicles, separate or divest one or more line-makes of vehicle, or
27 establish or maintain exclusive facilities, personnel, or display space. It
28 is unlawful for a manufacturer to, in any way, condition its approval of
29 a proposed relocation on the existing or proposed dealer's willingness
30 to acquire or refrain from acquiring one or more line-makes of
31 vehicles, separate or divest one or more line-makes of vehicle, or
32 establish or maintain exclusive facilities, personnel, or display space."

33 **SECTION 3.** G.S. 20-305(7)c. reads as rewritten:

34 "c. Except as otherwise provided in sub-subdivision d. of this
35 subdivision, any designated successor of a deceased or
36 incapacitated owner or principal operator of a new motor
37 vehicle dealership appointed by such owner in substantial
38 compliance with this section shall, by operation of law, succeed
39 at the time of such death or incapacity to all of the rights and
40 obligations of the owner or principal operator in the new motor
41 vehicle dealership and under either the existing
42 ~~franchise~~ franchise or any other successor, renewal, or
43 replacement franchise."

44 **SECTION 4.** G.S. 20-305(18) reads as rewritten:

1 "(18) To prevent or attempt to prevent a dealer from receiving fair and
2 reasonable compensation for the value of the franchised business
3 transferred in accordance with G.S. 20-305(4) above, or to prevent or
4 attempt to prevent, through the exercise of any contractual right of first
5 refusal or otherwise, a dealer located in this State from transferring the
6 franchised business to such persons or other entities as the dealer shall
7 designate in accordance with G.S. 20-305(4). The opinion or
8 determination of a manufacturer that the existence or location of one of
9 its franchised dealers situated in this State is not viable or is not
10 consistent with the manufacturer's distribution or marketing forecast or
11 plans shall not constitute a lawful basis for the manufacturer to fail or
12 refuse to approve a dealer's proposed transfer of ownership or
13 relocation submitted in accordance with G.S. 20-305(4), or "good
14 cause" for the termination, cancellation, or nonrenewal of the franchise
15 under G.S. 20-305(6) or ~~for the rejection of grounds for the objection~~
16 ~~to an owner's designated successor appointed pursuant to~~
17 ~~G.S. 20-305(7). No manufacturer shall owe any duty to any actual or~~
18 ~~potential purchaser of a motor vehicle franchise located in this State to~~
19 ~~disclose to such actual or potential purchaser its own opinion or~~
20 ~~determination that the franchise being sold or otherwise transferred is~~
21 ~~not viable or is not consistent with the manufacturer's distribution or~~
22 ~~marketing forecast or plans."~~

23 **SECTION 5.** G.S. 20-305.1(b) reads as rewritten:

24 "(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any
25 motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to
26 perform any of its warranty obligations with respect to a motor vehicle, to fail to fully
27 compensate its motor vehicle dealers licensed in this State for warranty parts other than
28 parts used to repair the living facilities of recreational vehicles, at the prevailing retail
29 rate according to the factors in subsection (a) of this section, or, in service in accordance
30 with the schedule of compensation provided the dealer pursuant to subsection (a) above,
31 or to otherwise recover all or any portion of its costs for compensating its motor vehicle
32 dealers licensed in this State for warranty parts and service either by reduction in the
33 amount due to the dealer, or by separate charge, surcharge, or other imposition, and to
34 fail to indemnify and hold harmless its franchised dealers licensed in this State against
35 any judgment for damages or settlements agreed to by the manufacturer, including, but
36 not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer,
37 arising out of complaints, claims or lawsuits including, but not limited to, strict liability,
38 negligence, misrepresentation, express or implied warranty, or rescission or revocation of
39 acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that
40 the judgment or settlement relates to the alleged defective negligent manufacture,
41 assembly or design of new motor vehicles, parts or accessories or other functions by the
42 manufacturer, factory branch, distributor or distributor branch, beyond the control of the
43 dealer. Any audit for warranty parts or service compensation shall only be for the
44 12-month period immediately following the date of the payment of the claim by the

1 manufacturer, factory branch, distributor, or distributor branch. Any audit for sales
2 incentives, service incentives, rebates, or other forms of incentive compensation shall
3 only be for the 12-month period immediately following the date of the ~~termination of~~
4 ~~the payment of the claim by the manufacturer, factory branch, distributor, or distributor~~
5 ~~branch pursuant to a sales incentives program, service incentives program, rebate~~
6 ~~program, or other form of incentive compensation program. Provided, however, these~~
7 ~~limitations shall not be effective in the case of fraudulent claims."~~

8 **SECTION 6.** G.S. 20-305.1(b1) reads as rewritten:

9 "(b1) All claims made by motor vehicle dealers pursuant to this section for
10 compensation for delivery, preparation, warranty and recall work including labor, parts,
11 and other expenses, shall be paid by the manufacturer within 30 days after receipt of
12 claim from the dealer. When any claim is disapproved, the dealer shall be notified in
13 writing of the grounds for disapproval. Any claim not specifically disapproved in
14 writing within 30 days after receipt shall be considered approved and payment is due
15 immediately. No claim which has been approved and paid may be charged back to the
16 dealer unless it can be shown that the claim was false or fraudulent, that the repairs were
17 not properly made or were unnecessary to correct the defective condition, or the dealer
18 failed to reasonably substantiate the ~~claim-claim~~ either in accordance with the
19 manufacturer's reasonable written procedures or by any other reasonable means.~~A~~
20 ~~manufacturer or distributor shall not deny a claim or reduce the amount to be~~
21 ~~reimbursed to the dealer as long as the dealer has provided reasonably sufficient~~
22 ~~documentation that the dealer:~~

- 23 (1) ~~Made a good faith attempt to perform the work in compliance with the~~
24 ~~written policies and procedures of the manufacturer; and~~
25 (2) ~~Actually performed the work.~~

26 A manufacturer may further not charge a dealer back subsequent to the payment of the
27 claim unless a representative of the manufacturer has met in person at the dealership, or
28 by telephone, with an officer or employee of the dealer designated by the dealer and
29 explained in detail the basis for each of the proposed charge-backs and thereafter given
30 the dealer's representative a reasonable opportunity at the meeting, or during the
31 telephone call, to explain the dealer's position relating to each of the proposed
32 charge-backs. In the event the dealer was selected for audit or review on the basis that
33 some or all of the dealer's claims were viewed as excessive in comparison to average,
34 mean, or aggregate data accumulated by the manufacturer, or in relation to claims
35 submitted by a group of other franchisees of the manufacturer, the manufacturer shall, at
36 or prior to the meeting or telephone call with the dealer's representative, provide the
37 dealer with a written statement containing the basis or methodology upon which the
38 dealer was selected for audit or review."

39 **SECTION 7.** G.S. 20-305.1(b2) reads as rewritten:

40 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales
41 incentives, service incentives, rebates, or other forms of incentive compensation, reduce
42 the amount to be paid to the dealer, or charge a dealer back subsequent to the payment
43 of the claim unless it can be shown that the claim was false or fraudulent or that the

1 dealer failed to reasonably substantiate the claim either in accordance with the
2 manufacturer's reasonable written procedures or by any other reasonable means."

3 **SECTION 8.** G.S. 20-305.1 is amended by adding a new subsection to read:

4 "(g) Heavy-Duty Truck Dealer Cost Reimbursement. – Every manufacturer,
5 manufacturer branch, distributor, or distributor branch of new motor vehicles, or any
6 affiliate or subsidiary thereof, which manufactures or distributes new motor vehicles
7 with a gross vehicle weight rating of 10,000 pounds or more shall compensate its new
8 motor vehicle dealers located in this State for the cost of special tools, equipment, and
9 training for which its dealers are liable when the applicable manufacturer, manufacturer
10 branch, distributor, or distributor branch sells a portion of its vehicle inventory to
11 converters and other non-dealer retailers. The compensation which shall be paid
12 pursuant to this subsection shall be applicable only with respect to new motor vehicles
13 with a gross vehicle weight rating of 10,000 pounds or more which are registered to end
14 users within this State and that are sold by a manufacturer, manufacturer branch,
15 distributor, or distributor branch to either:

- 16 (1) Persons or entities other than new motor vehicle dealers with whom
17 the manufacturer, manufacturer branch, distributor, or distributor
18 branch has entered into franchises; or
19 (2) Persons or entities that install custom bodies on heavy-duty truck
20 chassis, including but not limited to, mounted equipment or specialized
21 bodies for concrete distribution, firefighting equipment, waste
22 disposal, recycling, garbage disposal, buses, utility service, street
23 sweepers, wreckers, and rollback bodies for vehicle recovery.

24 The amount of compensation which shall be payable by the applicable manufacturer,
25 manufacturer branch, distributor, or distributor branch shall be three hundred dollars
26 (\$300.00) for each such new motor vehicle registered in this State whose chassis has a
27 gross vehicle weight rating of 16,000 pounds or less, and six hundred dollars (\$600.00)
28 per new motor vehicle registered in this State whose chassis has a gross vehicle weight
29 rating of more than 16,000 pounds. The compensation required pursuant to this
30 subsection shall be paid by the applicable manufacturer, manufacturer branch,
31 distributor, or distributor branch to its franchised new motor vehicle dealer in closest
32 proximity to the registered address of the end user to whom the motor vehicle has been
33 registered within 30 days after such registration. Upon receiving a request in writing
34 from one of its franchised dealers located in this State, a manufacturer, manufacturer
35 branch, distributor, or distributor branch shall promptly make available to such dealer its
36 records relating to the registered addresses of its new motor vehicles registered in this
37 State for the previous 12 months and its payment of compensation to dealers as
38 provided in this subsection."

39 **SECTION 9.** G.S. 20-308.1 reads as rewritten:

40 "**§ 20-308.1. Civil actions for violations.**

41 (a) Notwithstanding the terms, provisions or conditions of any agreement or
42 franchise or other terms or provisions of any novation, waiver or other written
43 instrument, any ~~person~~ motor vehicle dealer who is or may be injured by a violation of a
44 provision of this Article, or any party to a franchise who is so injured in his business or

1 property by a violation of a provision of this Article relating to that franchise, or an
2 arrangement which, if consummated, would be in violation of this Article may,
3 notwithstanding the initiation or pendency of, or failure to initiate an administrative
4 proceeding before the Commissioner concerning the same parties or subject matter,
5 bring an action for damages and equitable relief, including injunctive relief, in any court
6 of competent jurisdiction with regard to any matter not within the jurisdiction of the
7 Commissioner or that seeks relief wholly outside the authority or jurisdiction of the
8 Commissioner to award.

9 (b) Where the violation of a provision of this Article can be shown to be willful,
10 malicious, or wanton, or if continued multiple violations of a provision or provisions of
11 this Article occur, the court may award punitive damages, attorneys' fees and costs in
12 addition to any other damages under this Article. Where the violation of a provision of
13 this Article can be shown, in an administrative proceeding before the Commissioner, to
14 be willful, malicious, or wanton, or if continued multiple violations of a provision or
15 provisions of this Article occur, the Commissioner may award punitive damages,
16 attorneys' fees, and costs in addition to any other relief available under this Article.

17 (c) A new motor vehicle dealer, if he has not suffered any loss of money or
18 property, may obtain final equitable relief if it can be shown that the violation of a
19 provision of this Article by a manufacturer or distributor may have the effect of causing
20 a loss of money or property.

21 (d) Any association that is comprised of a minimum of 400 new motor vehicle
22 dealers, or a minimum of 10 motorcycle dealers, substantially all of whom are new
23 motor vehicle dealers located within North Carolina, and which represents the collective
24 interests of its members, shall have standing to file a petition before the Commissioner
25 or a cause of action in any court of competent jurisdiction for itself, or on behalf of any
26 or all of its members, seeking declaratory and injunctive relief. Prior to bringing an
27 action, the association and manufacturer, factory branch, distributor, or distributor
28 branch shall initiate mediation as set forth in G.S. 20-301.1(b). An action brought
29 pursuant to this subsection may seek a determination whether one or more
30 manufacturers, factory branches, distributors, or distributor branches doing business in
31 this State have violated any of the provisions of this Article, or for the determination of
32 any rights created or defined by this Article, so long as the association alleges an injury
33 to the collective interest of its members cognizable under this section. A cognizable
34 injury to the collective interest of the members of the association shall be deemed to
35 occur if a manufacturer, factory branch, distributor, or distributor branch doing business
36 in this State has engaged in any conduct or taken any action which actually harms or
37 affects all of the franchised new motor vehicle dealers holding franchises with that
38 manufacturer, factory branch, distributor, or distributor branch in this State. With
39 respect to any administrative or civil action filed by an association pursuant to this
40 subsection, the relief granted shall be limited to declaratory and injunctive relief and in
41 no event shall the Commissioner or court enter an award of monetary damages."

42 **SECTION 10.** This act becomes effective July 1, 2007.