

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

3

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

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

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

32 **"§ 20-305.2. Unfair methods of competition.**

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



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

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

1 relevant market area in which the predecessor manufacturer previously cancelled, terminated,
2 noncontinued, failed to renew, or otherwise ended a franchise with a new motor vehicle dealer,
3 as defined in G.S. 20-286(13), who owned or leased a dealership facility in that relevant market
4 area without first offering the additional or relocated franchise to the former franchisee, or the
5 designated successor of such former franchisee in the event the former franchisee is deceased
6 or disabled, at no cost and without any requirements or restrictions other than those imposed
7 generally on the manufacturer's other franchisees at that time, unless one of the following
8 applies:

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

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

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

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