

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 754
House Committee Substitute Favorable 6/14/95

Short Title: Motor Vehicle Liens/Dealers.

(Public)

Sponsors:

Referred to:

April 18, 1995

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW MOTOR VEHICLE DEALERS TO INCLUDE IN THEIR
2 POSSESSORY LIENS AMOUNTS FOR RENTAL OF SUBSTITUTE VEHICLES,
3 TO ALLOW LIENORS WHO PURCHASE FOR VALUE AT A SALE TO
4 ACQUIRE CLEAR TITLE TO THE SAME EXTENT AS OTHER PURCHASERS,
5 TO PERMIT A MOTOR VEHICLE DEALER TO NAME A SUCCESSOR TO THE
6 FRANCHISE AND TO REQUIRE THAT OBJECTIONS TO THIS
7 APPOINTMENT BE RAISED AT THE TIME THE APPOINTMENT IS MADE.

8 The General Assembly of North Carolina enacts:

9 Section 1. G.S. 44A-2(d) reads as rewritten:

10 "(d) Any person who repairs, services, tows, or stores motor vehicles in the
11 ordinary course of his business pursuant to an express or implied contract with an owner
12 or legal possessor of the motor vehicle has a lien upon the motor vehicle for reasonable
13 charges for such repairs, servicing, towing, ~~or storing~~ storing, or for the rental of one or
14 more substitute vehicles provided during the repair, servicing, or storage. This lien shall
15 have priority over perfected and unperfected security interests."
16

17 Sec. 2. G.S. 44A-6 reads as rewritten:

18 "§ 44A-6. Title of purchaser.

1 A purchaser for value at a properly conducted sale, and a purchaser for value without
2 constructive notice of a defect in the ~~sale who is sale~~, whether or not the purchaser is the
3 lienor or an agent of the lienor, acquires title to the property free of any interests over
4 which the lienor was entitled to priority."

5 Sec. 3. G.S. 20-305(7) reads as rewritten:

6 "(7) Notwithstanding the terms of any ~~franchise contract or agreement~~, to
7 prevent or refuse to honor the succession to a ~~dealership~~ dealership,
8 including the franchise, by ~~the a motor vehicle dealer's~~ designated family
9 member successor as provided for under this subsection.

10 a. Any owner of a new motor vehicle dealership may appoint by
11 will, or any other written instrument, a designated family
12 member successor to succeed in the ownership interest of the
13 said owner in the new motor vehicle ~~dealership~~ dealership,
14 including the franchise, upon the death or incapacity of the
15 owner.

16 b. ~~Unless there exists good cause for refusal to honor succession on~~
17 ~~the part of the manufacturer or distributor, any designated family~~
18 ~~member of a deceased or incapacitated owner of a new motor~~
19 ~~vehicle dealership may succeed to the ownership of the new~~
20 ~~motor vehicle dealership under the existing franchise provided~~
21 ~~that:~~

22 1. ~~The designated family member gives the manufacturer or~~
23 ~~distributor written notice of his or her intention to succeed~~
24 ~~to the ownership of the new motor vehicle dealership~~
25 ~~within 60 days of the owner's death or incapacity;~~
26 ~~Provided, however, that the failure of the designated~~
27 ~~family member to give the manufacturer or distributor~~
28 ~~written notice as provided above within 60 days of the~~
29 ~~owner's death or incapacity shall not result in the waiver~~
30 ~~or termination of the designated family member's right to~~
31 ~~succeed to the ownership of the new motor vehicle~~
32 ~~dealership unless the manufacturer or distributor gives~~
33 ~~written notice of this provision to either the designated~~
34 ~~family member or the deceased or incapacitated owner's~~
35 ~~executor, administrator, guardian or other fiduciary by~~
36 ~~certified or registered mail, return receipt requested, and~~
37 ~~said written notice grants not less than 30 days time within~~
38 ~~which the designated family member may give the notice~~
39 ~~required hereunder, provided the designated family~~
40 ~~member or the deceased or incapacitated owner's~~
41 ~~executor, administrator, guardian or other fiduciary has~~
42 ~~given the manufacturer reasonable notice of death or~~
43 ~~incapacity; and~~

- 1 2. ~~The designated family member agrees to be bound by all~~
2 ~~terms and conditions of the franchise.~~
- 3 e. ~~The manufacturer or distributor may request, and the designated~~
4 ~~family member shall provide, promptly upon said request,~~
5 ~~personal and financial data that is reasonably necessary to~~
6 ~~determine whether the succession should be honored.~~
- 7 d. ~~If a manufacturer or distributor believes that good cause exists~~
8 ~~for refusing to honor the succession to the ownership of a new~~
9 ~~motor vehicle dealership by a family member of a deceased or~~
10 ~~incapacitated owner of a new motor vehicle dealership under the~~
11 ~~existing franchise agreement, the manufacturer or distributor~~
12 ~~may, not more than 60 days following receipt of:~~
- 13 1. ~~Notice of the designated family member's intent to~~
14 ~~succeed to the ownership of the new motor vehicle dealer;~~
15 ~~or~~
- 16 2. ~~Any personal or financial data which it has requested,~~
17 ~~serve upon the designated family member and the~~
18 ~~Commissioner notice of its refusal to honor the succession~~
19 ~~and of its intent to discontinue the existing franchise with~~
20 ~~the dealer.~~
- 21 e. ~~The notice must state the specific grounds for the refusal to honor~~
22 ~~the succession and of its intent to discontinue the existing~~
23 ~~franchise with the new motor vehicle dealer no sooner than 90~~
24 ~~days from the date such notice is served.~~
- 25 f. ~~If notice of refusal and discontinuance is not timely served upon~~
26 ~~the family member, the franchise shall continue in effect subject~~
27 ~~to termination only as otherwise permitted by this act.~~
- 28 g. ~~Within 30 days of receiving the manufacturer's or distributor's~~
29 ~~notice of its intent to discontinue the existing franchise as~~
30 ~~provided in subsection d. above, the designated family member~~
31 ~~may file a written protest of the manufacturer's or distributor's~~
32 ~~decision with the Commissioner. When such a protest is filed,~~
33 ~~the Commissioner shall promptly inform the manufacturer that a~~
34 ~~timely protest has been filed, and that the franchise shall continue~~
35 ~~in effect until the Commissioner has held a hearing, and~~
36 ~~thereafter, unless the Commissioner has determined that there is~~
37 ~~good cause for the manufacturer's or distributor's refusal to honor~~
38 ~~the succession. The Commissioner must conduct the hearing and~~
39 ~~render his final determination as expeditiously as possible, but in~~
40 ~~any event no later than 180 days after a protest is filed. Any~~
41 ~~parties to a hearing by the Commissioner concerning whether~~
42 ~~good cause exists for the refusal to honor the succession shall~~

1 have a right of review of the decision in a court of competent
2 jurisdiction pursuant to Chapter 150B of the General Statutes.

3 h. ~~In determining whether good cause for the refusal to honor the
4 succession exists, the manufacturer, distributor, factory branch,
5 or importer has the burden of proving that the successor is a
6 person who is not of good moral character or does not meet the
7 franchisor's existing and reasonable standards and, considering
8 the volume of sales and service of the new motor vehicle dealer,
9 uniformly applied minimum business experience standards in the
10 market area.~~

11 b. Any objections by a manufacturer or distributor to an owner's
12 appointment of a designated successor shall be asserted in
13 accordance with the following procedure:

14 1. Within 30 days after receiving written notice of the
15 identity of the owner's designated successor and general
16 information as to the financial ability and qualifications of
17 the designated successor, the franchisor shall send the
18 owner and designated successor notice of objection, by
19 registered or certified mail, return receipt requested, to the
20 appointment of the designated successor. The notice of
21 objection shall state in detail all facts which constitute the
22 basis for the contention on the part of the manufacturer or
23 distributor that good cause, as defined in this sub-
24 subdivision below, exists for rejection of the designated
25 family member. Failure by the franchisor to send notice
26 of objection within 30 days and otherwise as provided in
27 this sub-subdivision shall constitute waiver by the
28 franchisor of any right to object to the appointment of the
29 designated successor.

30 2. Any time within 30 days of receipt of the manufacturer's
31 notice of objection the owner or the designated successor
32 may file a request in writing with the Commissioner that
33 the Commissioner hold an evidentiary hearing and
34 determine whether good cause exists for rejection of the
35 designated successor. When such a request is filed, the
36 Commissioner shall promptly inform the affected
37 manufacturer or distributor that a timely request has been
38 filed.

39 3. The Commissioner shall endeavor to hold the evidentiary
40 hearing required under this sub-subdivision and render a
41 determination within 180 days after receipt of the written
42 request from the owner or designated successor. In
43 determining whether good cause exists for rejection of the

1 owner's appointed designated successor, the manufacturer
2 or distributor has the burden of proving that the designated
3 successor is a person who is not of good moral character
4 or does not meet the franchisor's existing and reasonable
5 standards and, considering the volume of sales and service
6 of the new motor vehicle dealer, uniformly applied
7 minimum business experience standards in the market
8 area.

9 4. Any parties to a hearing by the Commissioner concerning
10 whether good cause exists for the rejection of the dealer's
11 designated successor shall have a right of review of the
12 decision in a court of competent jurisdiction pursuant to
13 Chapter 150B of the General Statutes.

14 5. Nothing in this sub-subdivision shall preclude a
15 manufacturer or distributor from, upon its receipt of
16 written notice from a dealer of identity of the dealer's
17 designated successor, requiring that the designated
18 successor promptly provide personal and financial data
19 that is reasonably necessary to determine the financial
20 ability and qualifications of the designated successor;
21 provided, however, that such a request for additional
22 information shall not delay any of the time periods or
23 constraints contained herein.

24 6. In the event death or incapacity of the owner occurs prior
25 to the time a manufacturer or distributor receives notice of
26 the owner's appointment of a designated successor or
27 before the Commissioner has rendered a determination as
28 provided above, the existing franchise shall remain in
29 effect and the designated successor shall be deemed to
30 have succeeded to all of the owner's rights and obligations
31 in the dealership and under the franchise until a
32 determination is made by the Commissioner or the rights
33 of the parties have otherwise become fixed in accordance
34 with this sub-subdivision.

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

1 d. Within 60 days after the death or incapacity of the owner, a
2 designated successor appointed in substantial compliance with
3 this section shall give the affected manufacturer or distributor
4 written notice of his or her succession to the ownership of the
5 new motor vehicle dealership; provided, however, that the failure
6 of the designated successor to give the manufacturer or
7 distributor written notice as provided above within 60 days of the
8 owner's death or incapacity shall not result in the waiver or
9 termination of the designated successor's right to succeed to the
10 ownership of the new motor vehicle dealership unless the
11 manufacturer or distributor gives written notice of this provision
12 to either the designated successor or the deceased or
13 incapacitated owner's executor, administrator, guardian or other
14 fiduciary by certified or registered mail, return receipt requested,
15 and said written notice grants not less than 30 days time within
16 which the designated successor may give the notice required
17 hereunder, provided the designated successor or the deceased or
18 incapacitated owner's executor, administrator, guardian or other
19 fiduciary has given the manufacturer reasonable notice of death
20 or incapacity. Within 30 days of receipt of the notice by the
21 manufacturer or distributor from the designated successor
22 provided in this paragraph, the manufacturer or distributor may
23 request that the designated successor complete the application
24 forms generally utilized by the manufacturer or distributor to
25 review the designated successor's qualifications to establish a
26 successor dealership. Within 30 days of receipt of the completed
27 forms, the manufacturer or distributor shall send a letter by
28 certified or registered mail, return receipt requested, advising the
29 designated successor of facts and circumstances which have
30 changed since the manufacturer's or distributor's original
31 approval of the designated successor, and which have caused the
32 manufacturer or distributor to object to the designated successor.
33 Upon receipt of such notice, the designated successor may either
34 designate an alternative successor or may file a request for
35 evidentiary hearing in accordance with the procedures provided
36 in sub-subdivisions b. 2.-5. of this subdivision. In any such
37 hearing, the manufacturer or distributor shall be limited to facts
38 and circumstances which did not exist at the time the designated
39 successor was originally approved or evidence which was
40 originally requested to be produced by the designated successor
41 at the time of the original request and was either not produced or
42 the material which was produced was incorrect.

1 e. The designated successor shall agree to be bound by all terms
2 and conditions of the franchise in effect between the
3 manufacturer or distributor and the owner at the time of the
4 owner's death or incapacity, if so requested in writing by the
5 manufacturer or distributor subsequent to the owner's death or
6 incapacity.

7 f. This section does not preclude ~~the~~ an owner of a new motor vehicle
8 dealership from designating any person as his successor by written
9 instrument filed with the manufacturer or distributor, and, in the event
10 there is ~~a~~ an inconsistency ~~conflict~~ between the successor named in such
11 written instrument and the designated successor otherwise appointed by
12 the owner consistent with the provisions of this section, and that written
13 instrument has not been revoked by the owner of the new motor vehicle
14 dealership in writing to the manufacturer or distributor, then the written
15 instrument filed with the manufacturer or distributor shall govern as to
16 the appointment of the successor."

17 Sec. 4. Any owner of a new motor vehicle dealership who, prior to the
18 effective date of this act, previously named or appointed a successor to succeed in the
19 ownership interest of the said owner in such dealership, may obtain the benefits of this
20 act by, at any time subsequent to the effective date of this act, providing or reproviding
21 notice of such appointment or reappointment to the affected manufacturer or distributor
22 and otherwise complying with the provisions of G.S. 20-305(7) a. through f. above.

23 Sec. 5. Nothing contained in Sections 3 or 4 of this act shall be deemed to
24 revoke or otherwise invalidate or render unenforceable the appointment, prior to the
25 effective date of this act, by any owner of a new motor vehicle dealership of any
26 successor to succeed in the ownership interest of the said owner in such dealership.

27 Sec. 6. Sections 3 through 5 of this act become effective October 1, 1995, and
28 shall be applicable on and after said date to the appointment by any owner of a new
29 motor vehicle dealership of any successor to succeed in the ownership interest of the said
30 owner in such dealership. Sections 1 and 2 of this act are effective upon ratification.