

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 919
Second Edition Engrossed 5/9/95

Short Title: Motor Vehicle Dealer Succession.

(Public)

Sponsors: Senators Hobbs, Conder, Jordan, Odom, Plyler, Perdue, Hoyle, Albertson, Gulley, Plexico, and Rand.

Referred to: Transportation

May 1, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PERMIT A MOTOR VEHICLE DEALER TO NAME A SUCCESSOR
3 TO THE FRANCHISE AND TO REQUIRE THAT OBJECTIONS TO THIS
4 APPOINTMENT BE RAISED AT THE TIME THE APPOINTMENT IS MADE.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 20-305(7) reads as rewritten:

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

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

17 b. ~~Unless there exists good cause for refusal to honor succession on~~
18 ~~the part of the manufacturer or distributor, any designated family~~

1 member of a deceased or incapacitated owner of a new motor
2 vehicle dealership may succeed to the ownership of the new
3 motor vehicle dealership under the existing franchise provided
4 that:

5 1. The designated family member gives the manufacturer or
6 distributor written notice of his or her intention to succeed
7 to the ownership of the new motor vehicle dealership
8 within 60 days of the owner's death or incapacity;
9 Provided, however, that the failure of the designated
10 family member to give the manufacturer or distributor
11 written notice as provided above within 60 days of the
12 owner's death or incapacity shall not result in the waiver
13 or termination of the designated family member's right to
14 succeed to the ownership of the new motor vehicle
15 dealership unless the manufacturer or distributor gives
16 written notice of this provision to either the designated
17 family member or the deceased or incapacitated owner's
18 executor, administrator, guardian or other fiduciary by
19 certified or registered mail, return receipt requested, and
20 said written notice grants not less than 30 days time within
21 which the designated family member may give the notice
22 required hereunder, provided the designated family
23 member or the deceased or incapacitated owner's
24 executor, administrator, guardian or other fiduciary has
25 given the manufacturer reasonable notice of death or
26 incapacity; and

27 2. The designated family member agrees to be bound by all
28 terms and conditions of the franchise.

29 e. The manufacturer or distributor may request, and the designated
30 family member shall provide, promptly upon said request,
31 personal and financial data that is reasonably necessary to
32 determine whether the succession should be honored.

33 d. If a manufacturer or distributor believes that good cause exists
34 for refusing to honor the succession to the ownership of a new
35 motor vehicle dealership by a family member of a deceased or
36 incapacitated owner of a new motor vehicle dealership under the
37 existing franchise agreement, the manufacturer or distributor
38 may, not more than 60 days following receipt of:

39 1. Notice of the designated family member's intent to
40 succeed to the ownership of the new motor vehicle dealer;
41 or

42 2. Any personal or financial data which it has requested,
43 serve upon the designated family member and the

- 1 Commissioner notice of its refusal to honor the succession
2 and of its intent to discontinue the existing franchise with
3 the dealer.
- 4 e. ~~The notice must state the specific grounds for the refusal to honor
5 the succession and of its intent to discontinue the existing
6 franchise with the new motor vehicle dealer no sooner than 90
7 days from the date such notice is served.~~
- 8 f. ~~If notice of refusal and discontinuance is not timely served upon
9 the family member, the franchise shall continue in effect subject
10 to termination only as otherwise permitted by this act.~~
- 11 g. ~~Within 30 days of receiving the manufacturer's or distributor's
12 notice of its intent to discontinue the existing franchise as
13 provided in subsection d. above, the designated family member
14 may file a written protest of the manufacturer's or distributor's
15 decision with the Commissioner. When such a protest is filed,
16 the Commissioner shall promptly inform the manufacturer that a
17 timely protest has been filed, and that the franchise shall continue
18 in effect until the Commissioner has held a hearing, and
19 thereafter, unless the Commissioner has determined that there is
20 good cause for the manufacturer's or distributor's refusal to honor
21 the succession. The Commissioner must conduct the hearing and
22 render his final determination as expeditiously as possible, but in
23 any event no later than 180 days after a protest is filed. Any
24 parties to a hearing by the Commissioner concerning whether
25 good cause exists for the refusal to honor the succession shall
26 have a right of review of the decision in a court of competent
27 jurisdiction pursuant to Chapter 150B of the General Statutes.~~
- 28 h. ~~In determining whether good cause for the refusal to honor the
29 succession exists, the manufacturer, distributor, factory branch,
30 or importer has the burden of proving that the successor is a
31 person who is not of good moral character or does not meet the
32 franchisor's existing and reasonable standards and, considering
33 the volume of sales and service of the new motor vehicle dealer,
34 uniformly applied minimum business experience standards in the
35 market area.~~
- 36 b. Any objections by a manufacturer or distributor to an owner's
37 appointment of a designated successor shall be asserted in
38 accordance with the following procedure:
- 39 1. Within 30 days after receiving written notice of the
40 identity of the owner's designated successor and general
41 information as to the financial ability and qualifications of
42 the designated successor, the franchisor shall send the
43 owner and designated successor notice of objection, by

1 registered or certified mail, return receipt requested, to the
2 appointment of the designated successor. The notice of
3 objection shall state in detail all facts which constitute the
4 basis for the contention on the part of the manufacturer or
5 distributor that good cause, as defined in this sub-
6 subdivision below, exists for rejection of the designated
7 family member. Failure by the franchisor to send notice
8 of objection within 30 days and otherwise as provided in
9 this sub-subdivision shall constitute waiver by the
10 franchisor of any right to object to the appointment of the
11 designated successor.

12 2. Any time within 30 days of receipt of the manufacturer's
13 notice of objection the owner or the designated successor
14 may file a request in writing with the Commissioner that
15 the Commissioner hold an evidentiary hearing and
16 determine whether good cause exists for rejection of the
17 designated successor. When such a request is filed, the
18 Commissioner shall promptly inform the affected
19 manufacturer or distributor that a timely request has been
20 filed.

21 3. The Commissioner shall endeavor to hold the evidentiary
22 hearing required under this sub-subdivision and render a
23 determination within 180 days after receipt of the written
24 request from the owner or designated successor. In
25 determining whether good cause exists for rejection of the
26 owner's appointed designated successor, the manufacturer
27 or distributor has the burden of proving that the designated
28 successor is a person who is not of good moral character
29 or does not meet the franchisor's existing and reasonable
30 standards and, considering the volume of sales and service
31 of the new motor vehicle dealer, uniformly applied
32 minimum business experience standards in the market
33 area.

34 4. Any parties to a hearing by the Commissioner concerning
35 whether good cause exists for the rejection of the dealer's
36 designated successor shall have a right of review of the
37 decision in a court of competent jurisdiction pursuant to
38 Chapter 150B of the General Statutes.

39 5. Nothing in this sub-subdivision shall preclude a
40 manufacturer or distributor from, upon its receipt of
41 written notice from a dealer of identity of the dealer's
42 designated successor, requiring that the designated
43 successor promptly provide personal and financial data

1 that is reasonably necessary to determine the financial
2 ability and qualifications of the designated successor;
3 provided, however, that such a request for additional
4 information shall not delay any of the time periods or
5 constraints contained herein.

6 6. In the event death or incapacity of the owner occurs prior
7 to the time a manufacturer or distributor receives notice of
8 the owner's appointment of a designated successor or
9 before the Commissioner has rendered a determination as
10 provided above, the existing franchise shall remain in
11 effect and the designated successor shall be deemed to
12 have succeeded to all of the owner's rights and obligations
13 in the dealership and under the franchise until a
14 determination is made by the Commissioner or the rights
15 of the parties have otherwise become fixed in accordance
16 with this sub-subdivision.

17 c. Except as otherwise provided in sub-subdivision d. of this
18 subdivision, any designated successor of a deceased or
19 incapacitated owner of a new motor vehicle dealership appointed
20 by such owner in substantial compliance with this section shall,
21 by operation of law, succeed at the time of such death or
22 incapacity to all of the ownership rights and obligations of the
23 owner in the new motor vehicle dealership and under the existing
24 franchise.

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

1 or incapacity. Within 30 days of receipt of the notice by the
2 manufacturer or distributor from the designated successor
3 provided in this paragraph, the manufacturer or distributor may
4 request that the designated successor complete the application
5 forms generally utilized by the manufacturer or distributor to
6 review the designated successor's qualifications to establish a
7 successor dealership. Within 30 days of receipt of the completed
8 forms, the manufacturer or distributor shall send a letter by
9 certified or registered mail, return receipt requested, advising the
10 designated successor of facts and circumstances which have
11 changed since the manufacturer's or distributor's original
12 approval of the designated successor, and which have caused the
13 manufacturer or distributor to object to the designated successor.
14 Upon receipt of such notice, the designated successor may either
15 designate an alternative successor or may file a request for
16 evidentiary hearing in accordance with the procedures provided
17 in sub-subdivisions b. 2.-5. of this subdivision. In any such
18 hearing, the manufacturer or distributor shall be limited to facts
19 and circumstances which did not exist at the time the designated
20 successor was originally approved or evidence which was
21 originally requested to be produced by the designated successor
22 at the time of the original request and was either not produced or
23 the material which was produced was incorrect.

24 e. The designated successor shall agree to be bound by all terms
25 and conditions of the franchise in effect between the
26 manufacturer or distributor and the owner at the time of the
27 owner's death or incapacity, if so requested in writing by the
28 manufacturer or distributor subsequent to the owner's death or
29 incapacity.

30 f. This section does not preclude ~~the~~ an owner of a new motor vehicle
31 dealership from designating any person as his successor by written
32 instrument filed with the manufacturer or distributor, and, in the event
33 there is ~~a~~ an inconsistency ~~conflict~~ between the successor named in such
34 written instrument and the designated successor otherwise appointed by
35 the owner consistent with the provisions of this section, and that written
36 instrument has not been revoked by the owner of the new motor vehicle
37 dealership in writing to the manufacturer or distributor, then the written
38 instrument filed with the manufacturer or distributor shall govern as to
39 the appointment of the successor."

40 Sec. 2. Any owner of a new motor vehicle dealership who, prior to the
41 effective date of this act, previously named or appointed a successor to succeed in the
42 ownership interest of the said owner in such dealership, may obtain the benefits of this
43 act by, at any time subsequent to the effective date of this act, providing or reproviding

1 notice of such appointment or reappointment to the affected manufacturer or distributor
2 and otherwise complying with the provisions of G.S. 20-305(7) a. through f. above.

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

7 Sec. 4. This act becomes effective October 1, 1995, and shall be applicable on
8 and after said date to the appointment by any owner of a new motor vehicle dealership of
9 any successor to succeed in the ownership interest of the said owner in such dealership.