

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 420
Commerce Committee Substitute Adopted 4/27/99

Short Title: Clarify MV Dealers Licensing Law.

(Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301 is amended by adding a new subsection that reads:

"(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the manufacturer through an appeals board or internal grievance procedure of the manufacturer, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the manufacturer, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the manufacturer's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the manufacturer has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute

1 process required or established by the manufacturer before seeking redress from the
2 Commissioner as provided in this Article."

3 Section 2. G.S. 20-305 reads as rewritten:

4 **"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to**
5 **cancel franchise; preventing transfer of ownership; granting additional**
6 **franchises; terminating franchises without good cause; preventing family**
7 **succession.**

8 It shall be unlawful for any manufacturer, factory branch, distributor, or distributor
9 branch, or any field representative, officer, agent, or any representative whatsoever of any
10 of them:

- 11 (1) To require, coerce, or attempt to coerce any dealer to accept delivery of
12 any motor vehicle or vehicles, parts or accessories therefor, or any other
13 commodities, which shall not have been ordered by ~~such dealer; that~~
14 dealer, or to accept delivery of any motor vehicle or vehicles which
15 have been equipped in a manner other than as specified by the dealer.
- 16 (2) To require, coerce, or attempt to coerce any dealer to enter into any
17 agreement with such manufacturer, factory branch, distributor, or
18 distributor branch, or representative thereof, or do any other act unfair to
19 such dealer, by threatening to cancel any franchise existing between
20 such manufacturer, factory branch, distributor, distributor branch, or
21 representative thereof, and such dealer;
- 22 (3) Unfairly without due regard to the equities of the dealer, and without
23 just provocation, to cancel the franchise of such dealer;
- 24 (4) Notwithstanding the terms of any franchise agreement, to prevent or
25 refuse to approve the sale or transfer of the ownership of a dealership by
26 the sale of the business, stock transfer, or otherwise, or the transfer, sale
27 or assignment of a dealer franchise, or a change in the executive
28 management or principal operator of the dealership, or relocation of the
29 dealership to another site within the dealership's relevant market area, if
30 the Commissioner has determined, if requested in writing by the dealer
31 within 30 days after receipt of an objection to the proposed transfer,
32 sale, assignment, relocation, or change, and after a hearing on the
33 matter, that the failure to permit or honor the transfer, sale, assignment,
34 relocation, or change is unreasonable under the circumstances. No
35 franchise may be transferred, sold, assigned, relocated, or the executive
36 management or principal operators changed, unless the franchisor has
37 been given at least 30 days' prior written notice as to the identity,
38 financial ability, and qualifications of the proposed transferee, the
39 identity and qualifications of the persons proposed to be involved in
40 executive management or as principal operators, and the location and
41 site plans of any proposed relocation. The franchisor shall send the
42 dealership notice of objection, by registered or certified mail, return
43 receipt requested, to the proposed transfer, sale, assignment, relocation,

1 or change within 30 days after receipt of notice from the dealer, as
2 provided in this section. Failure by the franchisor to send notice of
3 objection within 30 days shall constitute waiver by the franchisor of any
4 right to object to the proposed transfer, sale, assignment, relocation, or
5 change. ~~The manufacturer or distributor has the burden of proving that~~
6 ~~the proposed transfer, sale, assignment, relocation, or change is~~
7 ~~unreasonable under the circumstances.~~ With respect to a proposed
8 transfer of ownership, sale, or assignment, the sole issue for
9 determination by the Commissioner and the sole issue upon which the
10 Commissioner shall hear or consider evidence is whether, by reason of
11 poor character or lack of financial ability, the proposed transferee is
12 unfit to own the dealership. For purposes of this subdivision, the refusal
13 by the manufacturer to accept a proposed transferee who is of good
14 moral character and who otherwise meets the written, reasonable, and
15 uniformly applied financial requirements, if any, required by the
16 manufacturer of owners of its franchised automobile dealerships is
17 presumed to demonstrate the manufacturer's failure to prove that the
18 proposed transferee is unfit to own the dealership. With respect to a
19 proposed change in the executive management or principal operator of
20 the dealership, the sole issue for determination by the Commissioner
21 and the sole issue on which the Commissioner shall hear or consider
22 evidence shall be whether, by reason of lack of training, lack of prior
23 experience, poor past performance, or poor character, the proposed
24 candidate for a position within the executive management or as
25 principal operator of the dealership is unfit for the position. For
26 purposes of this subdivision, the refusal by the manufacturer to accept a
27 proposed candidate for executive management or as principal operator
28 who is of good moral character and who otherwise meets the written,
29 reasonable, and uniformly applied standards or qualifications, if any, of
30 the manufacturer relating to the business experience and prior
31 performance of executive management required by the manufacturers of
32 its dealers is presumed to demonstrate the manufacturer's failure to
33 prove the proposed candidate for executive management or as principal
34 operator is unfit to serve the the capacity. With respect to a proposed
35 relocation or other proposed change, the issue for determination by the
36 Commissioner is whether the proposed relocation or other change is
37 unreasonable under the circumstances. For purposes of this subdivision,
38 the refusal by the manufacturer to agree to a proposed relocation which
39 meets the written, reasonable, and uniformly applied standards or
40 criteria, if any, of the manufacturer relating to dealer relocations is
41 presumed to demonstrate that the manufacturer's failure to prove the
42 proposed relocation is unreasonable under the circumstances. The
43 manufacturer shall have the burden of proof before the Commissioner

1 under this subdivision. It is unlawful for a manufacturer to in any way
2 condition its approval of a proposed transfer, sale, assignment, change
3 in the dealer's executive management or principal operator on the
4 existing or proposed dealer's willingness to construct a new facility,
5 renovate the existing facility, acquire or refrain from acquiring one or
6 more line-makes of vehicles, separate or divest one or more line-makes
7 of vehicle, or establish or maintain exclusive facilities, personnel, or
8 display space. It is unlawful for a manufacturer to, in any way,
9 condition its approval of a proposed relocation on the existing or
10 proposed dealer's willingness to acquire or refrain from acquiring one or
11 more line-makes of vehicles, separate or divest one or more line-makes
12 of vehicle, or establish or maintain exclusive facilities, personnel, or
13 display space.

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

31 a. This section does not apply:

32 1. To the relocation of an existing new motor vehicle dealer
33 within that dealer's relevant market area, provided that the
34 relocation not be at a site within 10 miles of a licensed
35 new motor vehicle dealer for the same line make of motor
36 ~~vehicle;~~ vehicle. If this sub-subdivision is applicable,
37 only dealers trading in the same line-make of vehicle that
38 are located within the 10-mile radius shall be entitled to
39 notice from the manufacturer and have the protest rights
40 afforded under this section; or

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

- 1 same line make of new motor vehicle had ceased
2 operating within the previous two years;
- 3 3. To the relocation of an existing new motor vehicle dealer
4 within two miles of the existing site of the new motor
5 vehicle ~~dealership~~; dealership if the franchise has been
6 operating on a regular basis from the existing site for a
7 minimum of three years immediately preceding the
8 relocation; or
- 9 4. To the relocation of an existing new motor vehicle dealer
10 if the proposed site of the relocated new motor vehicle
11 dealership is further away from all other new motor
12 vehicle dealers of the same line make in that relevant
13 market area.
- 14 b. In determining whether good cause has been established for not
15 entering into or relocating an additional new motor vehicle dealer
16 for the same line make, the Commissioner shall take into
17 consideration the existing circumstances, including, but not
18 limited to:
- 19 1. The permanency of the investment of both the existing
20 and proposed additional new motor vehicle dealers;
- 21 2. Growth or decline in population, density of population,
22 and new car registrations in the relevant market area;
- 23 3. Effect on the consuming public in the relevant market
24 area;
- 25 4. Whether it is injurious or beneficial to the public welfare
26 for an additional new motor vehicle dealer to be
27 established;
- 28 5. Whether the new motor vehicle dealers of the same line
29 make in that relevant market area are providing adequate
30 competition and convenient customer care for the motor
31 vehicles of the same line make in the market area which
32 shall include the adequacy of motor vehicle sales and
33 service facilities, equipment, supply of motor vehicle
34 parts, and qualified service personnel;
- 35 6. Whether the establishment of an additional new motor
36 vehicle dealer or relocation of an existing new motor
37 vehicle dealer in the relevant market area would increase
38 competition in a manner such as to be in the long-term
39 public interest; and
- 40 7. The effect on the relocating dealer of a denial of its
41 relocation into the relevant market area.

- 1 c. The Commissioner shall try to conduct the hearing and render his
2 final determination if possible, within 180 days after a protest is
3 filed.
- 4 d. Any parties to a hearing by the Commissioner concerning the
5 establishment or relocating of a new motor vehicle dealer shall
6 have a right of review of the decision in a court of competent
7 jurisdiction pursuant to Chapter 150B of the General Statutes.
- 8 e. In a hearing involving a proposed additional dealership, the
9 manufacturer or distributor has the burden of proof under this
10 section. In a proceeding involving the relocation of an existing
11 dealership, the dealer seeking to relocate has the burden of proof
12 under this section.
- 13 f. If the Commissioner determines, following a hearing, that good
14 cause ~~does not exist for refusing to permit~~ exists for permitting
15 the proposed additional or relocated motor vehicle dealership, the
16 dealer seeking the proposed additional or relocated motor vehicle
17 dealership must, within two years, obtain a license from the
18 Commissioner for the sale of vehicles at the relevant site, and
19 actually commence operations at the site selling new motor
20 vehicles of all line makes, as permitted by the Commissioner.
21 Failure to obtain a permit and commence sales within two years
22 shall constitute waiver by the dealer of the dealer's right to the
23 additional or relocated dealership, requiring renotification, a new
24 hearing, and a new determination as provided in this section. If
25 the Commissioner fails to determine that good cause exists for
26 permitting the proposed additional or relocated motor vehicle
27 dealership, the manufacturer seeking the proposed additional
28 dealership or dealer seeking to relocate may not again provide
29 notice of its intention or otherwise attempt to establish an
30 additional dealership or relocate to any location within 10 miles
31 of the site of the original proposed additional dealership or
32 relocation site for a minimum of three years from the date of the
33 Commissioner's determination.
- 34 g. **(See editor's note for applicability)** For purposes of this
35 subdivision, the addition, creation, or operation of a "satellite" or
36 other facility, not physically part of or contiguous to an existing
37 licensed new motor vehicle dealer, whether or not owned or
38 operated by a person or other entity holding a franchise as
39 defined by G.S. 20-286(8a), at which warranty service work
40 authorized or reimbursed by a manufacturer is performed or at
41 which new motor vehicles are offered for sale to the public, shall
42 be considered an additional new motor vehicle dealer requiring a
43 showing of good cause, prior notification to existing new motor

1 vehicle dealers of the same line make of vehicle within the
2 relevant market area by the manufacturer and the opportunity for
3 a hearing before the Commissioner as provided in this
4 subdivision.

- 5 (6) Notwithstanding the terms, provisions or conditions of any franchise or
6 notwithstanding the terms or provisions of any waiver, to terminate,
7 cancel or fail to renew any franchise with a licensed new motor vehicle
8 dealer unless the manufacturer has satisfied the notice requirements of
9 subparagraph c. and the Commissioner has determined, if requested in
10 writing by the dealer within the time period specified in G.S. 20-
11 305(6)c1II, III or IV, as applicable, and after a hearing on the matter,
12 that there is good cause for the termination, cancellation, or nonrenewal
13 of the franchise and that the manufacturer has acted in good faith as
14 defined in this act regarding the termination, cancellation or
15 nonrenewal. When such a petition is made to the Commissioner by a
16 dealer for determination as to the existence of good cause and good faith
17 for the termination, cancellation or nonrenewal of a franchise, the
18 Commissioner shall promptly inform the manufacturer that a timely
19 petition has been filed, and the franchise in question shall continue in
20 effect pending the Commissioner's decision. The Commissioner shall
21 try to conduct the hearing and render a final determination within 180
22 days after a petition has been filed. If the termination, cancellation or
23 nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner
24 shall give the proceeding priority consideration and shall try to render
25 his final determination no later than 90 days after the petition has been
26 filed. Any parties to a hearing by the Commissioner under this section
27 shall have a right of review of the decision in a court of competent
28 jurisdiction pursuant to Chapter 150B of the General Statutes. Any
29 determination of the Commissioner under this section finding that good
30 cause exists for the nonrenewal, cancellation, or termination of any
31 franchise shall automatically be stayed during any period that the
32 affected dealer shall have the right to judicial review or appeal of the
33 determination before the superior court or any other appellate court and
34 during the pendency of any appeal. Furthermore, unless and until the
35 termination, cancellation, or nonrenewal of a dealer's franchise shall
36 finally become effective, in light of any stay or any order of the
37 commissioner determining that good cause exists for the termination,
38 cancellation, or nonrenewal of a dealer's franchise as provided in this
39 paragraph, a dealer who receives a notice of termination, cancellation,
40 or nonrenewal from a manufacturer as provided in this subdivision shall
41 continue to have the same rights to assign, sell, or transfer the franchise
42 to a third party under the franchise and as permitted under G.S. 20-
43 305(4) as if notice of the termination had not been given by the

1 manufacturer. Any franchise under notice or threat of termination,
2 cancellation, or nonrenewal by the manufacturer which is duly
3 transferred in accordance with G.S. 20-305(4) shall not be subject to
4 termination by reason of failure of performance or breaches of the
5 franchise on the part of the transferor.

6 a. Notwithstanding the terms, provisions or conditions of any
7 franchise or the terms or provisions of any waiver, good cause
8 shall exist for the purposes of a termination, cancellation or
9 nonrenewal when:

10 1. There is a failure by the new motor vehicle dealer to
11 comply with a provision of the franchise which provision
12 is both reasonable and of material significance to the
13 franchise relationship provided that the dealer has been
14 notified in writing of the failure within ~~180~~ 90 days after
15 the manufacturer first acquired knowledge of such failure;

16 2. If the failure by the new motor vehicle dealer relates to the
17 performance of the new motor vehicle dealer in sales or
18 service, then good cause shall be defined as the failure of
19 the new motor vehicle dealer to comply with reasonable
20 performance criteria established by the manufacturer if the
21 new motor vehicle dealer was apprised by the
22 manufacturer in writing of the failure; and

23 I. The notification stated that notice was provided of
24 failure of performance pursuant to this section;

25 II. The new motor vehicle dealer was afforded a
26 reasonable opportunity, for a period of not less than
27 180 days, to comply with the criteria; and

28 III. The new motor vehicle dealer failed to demonstrate
29 substantial progress towards compliance with the
30 manufacturer's performance criteria during such
31 period and the new motor vehicle dealer's failure
32 was not primarily due to economic or market
33 factors within the dealer's relevant market area
34 which were beyond the dealer's control.

35 b. The manufacturer shall have the burden of proof under this
36 section.

37 c. Notification of Termination, Cancellation and Nonrenewal. –

38 1. Notwithstanding the terms, provisions or conditions of
39 any franchise prior to the termination, cancellation or
40 nonrenewal of any franchise, the manufacturer shall
41 furnish notification of termination, cancellation or
42 nonrenewal to the new motor vehicle dealer as follows:

- 1 I. In the manner described in G.S. 20-305(6)c2
2 below; and
- 3 II. Not less than 90 days prior to the effective date of
4 such termination, cancellation or nonrenewal; or
- 5 III. Not less than 15 days prior to the effective date of
6 such termination, cancellation or nonrenewal with
7 respect to any of the following:
- 8 A. Insolvency of the new motor vehicle
9 dealer, or filing of any petition by or
10 against the new motor vehicle dealer
11 under any bankruptcy or receivership law;
- 12 B. Failure of the new motor vehicle dealer to
13 conduct its customary sales and service
14 operations during its customary business
15 hours for seven consecutive business days,
16 except for acts of God or circumstances
17 beyond the direct control of the new motor
18 vehicle dealer;
- 19 C. Revocation of any license which the new
20 motor vehicle dealer is required to have to
21 operate a dealership;
- 22 D. Conviction of a felony involving moral
23 turpitude, under the laws of this State or
24 any other state, or territory, or the District
25 of Columbia.
- 26 IV. Not less than 180 days prior to the effective date of
27 such termination or cancellation where the
28 manufacturer or distributor is discontinuing the sale
29 of the product line.
- 30 V. Unless the failure by the new motor vehicle dealer
31 relates to the performance of the new motor vehicle
32 dealer in sales or service, not more than 1 year after
33 the manufacturer first acquired knowledge of the
34 basic facts comprising the failure.
- 35 2. Notification under this section shall be in writing; shall be
36 by certified mail or personally delivered to the new motor
37 vehicle dealer; and shall contain:
- 38 I. A statement of intention to terminate, cancel or not
39 to renew the franchise;
- 40 II. A detailed statement of all of the material reasons
41 for the termination, cancellation or nonrenewal;
42 and

- 1 III. The date on which the termination, cancellation or
2 nonrenewal takes effect.
- 3 3. Notification provided in G.S. 20-305(6)c1II of 90 days
4 prior to the effective date of such termination, cancellation
5 or renewal may run concurrent with the 180 days
6 designated in G.S. 20-305(6)a2II provided the notification
7 is clearly designated by a separate written document
8 mailed by certified mail or personally delivered to the new
9 motor vehicle dealer.
- 10 d. Payments. –
- 11 1. Upon the termination, nonrenewal or cancellation of any
12 franchise by the manufacturer or distributor, pursuant to
13 this section, the new motor vehicle dealer shall be allowed
14 fair and reasonable compensation by the manufacturer for
15 the:
- 16 I. New motor vehicle inventory that has been
17 acquired from the manufacturer within 18 months,
18 at a price not to exceed the original manufacturer's
19 price to the dealer, and which has not been altered
20 or damaged, and which has not been driven more
21 than 200 miles, and for which no certificate of title
22 has been issued;
- 23 II. Unused, undamaged and unsold supplies and parts
24 purchased from the manufacturer, at a price not to
25 exceed the original manufacturer's price to the
26 dealer, provided such supplies and parts are
27 currently offered for sale by the manufacturer or
28 distributor in its current parts catalogs and are in
29 salable condition;
- 30 III. ~~Equipment~~ Equipment, signs, and furnishings that
31 have not been altered or damaged and that have
32 been required by the manufacturer or distributor to
33 be purchased by the new motor vehicle dealer from
34 the manufacturer or distributor, or their approved
35 sources; and
- 36 IV. Special tools that have not been altered or damaged
37 and that have been required by the manufacturer or
38 distributor to be purchased by the new motor
39 vehicle dealer from the manufacturer or distributor,
40 or their approved sources within five years
41 immediately preceding the termination, nonrenewal
42 or cancellation of the franchise.

1 2. Fair and reasonable compensation for the above shall be
2 paid by the manufacturer within 90 days of the effective
3 date of termination, cancellation or nonrenewal, provided
4 the new motor vehicle dealer has offered to convey clear
5 title to the inventory and has conveyed title and possession
6 of the same to the manufacturer. The manufacturer shall
7 be obligated to pay or reimburse the dealer for any
8 transportation charges associated with the manufacturer's
9 repurchase obligations under this sub-subparagraph. The
10 manufacturer may not charge the dealer any handling,
11 restocking, or other similar costs or fees associated with
12 items repurchased by the manufacturer under this sub-
13 subparagraph.

14 e. Dealership Facilities Assistance upon Termination, Cancellation
15 or Nonrenewal. –

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

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

29 2. Subject to paragraph 3, if the new motor vehicle dealer
30 owns the dealership facilities, the manufacturer shall pay
31 the new motor vehicle dealer a sum equivalent to the
32 reasonable rental value of the dealership facilities for ~~one~~
33 year-three years.

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

1 In order to be entitled to facilities assistance from the
2 manufacturer, as provided in this paragraph e., no dealer,
3 owner, or lessee, as the case may be, shall have an
4 obligation to mitigate damages under the lease; provided,
5 however, that to the extent that a dealer, owner, or lessee
6 does elect to voluntarily mitigate damages, the dealer shall
7 be obligated to pay the manufacturer the net revenue
8 received from such mitigation up to the total amount of
9 facilities assistance which the dealer has received from the
10 manufacturer pursuant to sub-subdivisions 1. and 2. To
11 the extent and for such uses and purposes as may be
12 consistent with the terms of the lease, a manufacturer who
13 pays facilities assistance to a dealer under this paragraph
14 e. shall be entitled to occupy and use the dealership
15 facilities during the years for which the manufacturer shall
16 have paid rent under sub-subdivisions 1. and 2.

17 4. In the event the termination relates to fewer than all of the
18 franchises operated by the dealer at a single location, the
19 amount of facilities assistance which the manufacturer is
20 required to pay the dealer under this sub-subdivision shall
21 be based on the proportion of gross revenue received from
22 the sale and lease of new vehicles by the dealer and from
23 the dealer's parts and service operations during the three
24 years immediately preceding the effective date of the
25 termination (or any shorter period that the dealer may
26 have held these franchises) of the line-makes being
27 terminated, in relation to the gross revenue received from
28 the sale and lease of all line-makes of new vehicles by the
29 dealer and from the total of the dealer's and parts and
30 service operations from this location during the same
31 three-year period.

32 5. The compensation required for facilities assistance under
33 this paragraph e. shall be paid by the manufacturer within
34 90 days of the effective date of termination, cancellation,
35 or nonrenewal.

36 f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e. above
37 shall not be applicable when the termination, nonrenewal or
38 cancellation of the franchise agreement is the result of the
39 voluntary act of the dealer.

40 Notwithstanding the terms of any contract or agreement, any
41 dealer's termination or resignation shall not be deemed to be
42 voluntary if that termination or resignation occurred under the

1 manufacturer's threat of nonrenewal, cancellation, or termination
2 of the franchise.

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

7 a. Any owner of a new motor vehicle dealership may appoint by
8 will, or any other written instrument, a designated successor to
9 succeed in the respective ownership interest or interest as
10 principal operator of the ~~said~~—owner in the new motor vehicle
11 dealership, including the franchise, upon the death or incapacity
12 of the ~~owner.~~ owner or principal operator. In order for
13 succession to the position of principal operator to occur by
14 operation of law in accordance with sub-subdivision c. below, the
15 owner's choice of a successor must be approved by the dealer, in
16 accordance with the dealer's bylaws, if applicable, either prior or
17 subsequent to the death or incapacity of the existing principal
18 operator.

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

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

38 2. Any time within 30 days of receipt of the manufacturer's
39 notice of objection the owner or the designated successor
40 may file a request in writing with the Commissioner that
41 the Commissioner hold an evidentiary hearing and
42 determine whether good cause exists for rejection of the
43 designated successor. When such a request is filed, the

- 1 Commissioner shall promptly inform the affected
2 manufacturer or distributor that a timely request has been
3 filed.
- 4 3. The Commissioner shall endeavor to hold the evidentiary
5 hearing required under this sub-subdivision and render a
6 determination within 180 days after receipt of the written
7 request from the owner or designated successor. In
8 determining whether good cause exists for rejection of the
9 owner's appointed designated successor, the manufacturer
10 or distributor has the burden of proving that the designated
11 successor is a person who is not of good moral character
12 or does not meet the franchisor's existing written and
13 reasonable standards and, considering the volume of sales
14 and service of the new motor vehicle dealer, uniformly
15 applied minimum business experience standards in the
16 market area.
- 17 4. Any parties to a hearing by the Commissioner concerning
18 whether good cause exists for the rejection of the dealer's
19 designated successor shall have a right of review of the
20 decision in a court of competent jurisdiction pursuant to
21 Chapter 150B of the General Statutes.
- 22 5. Nothing in this sub-subdivision shall preclude a
23 manufacturer or distributor from, upon its receipt of
24 written notice from ~~a dealer~~ an owner of the identity of the
25 ~~dealer's~~ owner's designated successor, requiring that the
26 designated successor promptly provide personal and
27 financial data that is reasonably necessary to determine
28 the financial ability and qualifications of the designated
29 successor; provided, however, that such a request for
30 additional information shall not delay any of the time
31 periods or constraints contained herein.
- 32 6. In the event death or incapacity of the owner or principal
33 operator occurs prior to the time a manufacturer or
34 distributor receives notice of the owner's appointment of a
35 designated successor or before the Commissioner has
36 rendered a determination as provided above, the existing
37 franchise shall remain in effect and the designated
38 successor shall be deemed to have succeeded to all of the
39 owner's or principal operator's rights and obligations in the
40 dealership and under the franchise until a determination is
41 made by the Commissioner or the rights of the parties
42 have otherwise become fixed in accordance with this sub-
43 subdivision.

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

1 alternative successor or may file a request for evidentiary hearing
2 in accordance with the procedures provided in sub-subdivisions
3 b. 2.-5. of this subdivision. In any such hearing, the manufacturer
4 or distributor shall be limited to facts and circumstances which
5 did not exist at the time the designated successor was originally
6 approved or evidence which was originally requested to be
7 produced by the designated successor at the time of the original
8 request and was ~~either not produced or the material which was~~
9 ~~produced was incorrect, fraudulent.~~

- 10 e. The designated successor shall agree to be bound by all terms
11 and conditions of the franchise in effect between the
12 manufacturer or distributor and the owner at the time of the
13 owner's or principal operator's death or incapacity, if so requested
14 in writing by the manufacturer or distributor subsequent to the
15 owner's or principal operator's death or incapacity.
- 16 f. This section does not preclude an owner of a new motor vehicle
17 dealership from designating any person as his or her successor by
18 written instrument filed with the manufacturer or distributor, and,
19 in the event there is an inconsistency between the successor
20 named in such written instrument and the designated successor
21 otherwise appointed by the owner consistent with the provisions
22 of this section, and that written instrument has not been revoked
23 by the owner of the new motor vehicle dealership in writing to
24 the manufacturer or distributor, then the written instrument filed
25 with the manufacturer or distributor shall govern as to the
26 appointment of the successor.
- 27 (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in
28 this State to order or accept delivery of any new motor vehicle with
29 special features, options, accessories or equipment which are either:
30 a. ~~not~~ Not included in the list price of ~~such those~~ motor vehicles as
31 publicly advertised by the manufacturer or ~~distributor~~
32 distributor; or
33 b. Added by the manufacturer or distributor at port or at any other
34 time subsequent to the time assembly of the vehicle has been
35 completed at the manufacturer's factory.
- 36 (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in
37 this State to participate monetarily in an advertising campaign or
38 contest, or to purchase unnecessary or unreasonable quantities of any
39 promotional materials, training materials, ~~training programs~~, showroom
40 or other display ~~decorations or materials~~ decorations, materials,
41 computer equipment or programs, or special tools at the expense of the
42 new motor vehicle dealer, provided that nothing in this subsection shall
43 preclude a manufacturer or distributor from including an unitemized

1 uniform charge in the base price of the new motor vehicle charged to the
2 dealer where such charge is attributable to advertising costs incurred or
3 to be incurred by the manufacturer or distributor in the ordinary courses
4 of its business.

5 (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in
6 this State to change the capital structure of the new motor vehicle dealer
7 or the means by or through which the new motor vehicle dealer finances
8 the operation of the dealership provided that the new motor vehicle
9 dealer at all times meets any reasonable capital standards determined by
10 the manufacturer in accordance with uniformly applied criteria; and also
11 provided that no change in the capital structure shall cause a change in
12 the principal management or have the effect of a sale of the franchise
13 without the consent of the manufacturer or distributor, provided that
14 said consent shall not be unreasonably withheld.

15 (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in
16 this State to refrain from participation in the management of, investment
17 in, or the acquisition of any other line of new motor vehicle or related
18 products; Provided, however, that this subsection does not apply unless
19 the new motor vehicle dealer maintains a reasonable line of credit for
20 each make or line of new motor vehicle, and the new motor vehicle
21 dealer remains in compliance with any reasonable capital standards and
22 facilities requirements of the manufacturer. The reasonable facilities
23 requirements shall not include any requirement that a new motor vehicle
24 dealer establish or maintain exclusive facilities, personnel, or display
25 ~~space, when such requirements, or any of them, would be unreasonable~~
26 ~~in light of current economic conditions and would not otherwise be~~
27 ~~justified by reasonable business considerations.~~ space.

28 (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in
29 this State to change location of the dealership, or to make any
30 substantial alterations to the dealership premises or facilities, when to do
31 so would be unreasonable, or without written assurance of a sufficient
32 supply of new motor vehicles so as to justify such an expansion, in light
33 of the current market and economic conditions.

34 (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in
35 this State to prospectively assent to a release, assignment, novation,
36 waiver or estoppel which would relieve any person from liability to be
37 imposed by this law or to require any controversy between a new motor
38 vehicle dealer and a manufacturer, distributor, or representative, to be
39 referred to any person other than the duly constituted courts of the State
40 or the United States of America, or to the Commissioner, if such referral
41 would be binding upon the new motor vehicle dealer.

42 (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts
43 or accessories in reasonable quantities relative to the new motor vehicle

1 dealer's facilities and sales potential in the new motor vehicle dealer's
2 ~~relevant market area, and area as determined in accordance with~~
3 reasonably applied economic principles, or within a reasonable time,
4 after receipt of an order from a dealer having a franchise for the retail
5 sale of any new motor vehicle sold or distributed by the manufacturer or
6 distributor, any new vehicle, parts or accessories to new vehicles as are
7 covered by such franchise, and such vehicles, parts or accessories as are
8 publicly advertised as being available or actually being delivered. The
9 delivery to another dealer of a motor vehicle of the same model and
10 similarly equipped as the vehicle ordered by a motor vehicle dealer who
11 has not received delivery thereof, but who has placed his written order
12 for the vehicle prior to the order of the dealer receiving the vehicle, shall
13 be evidence of a delayed delivery of, or refusal to deliver, a new motor
14 vehicle to a motor vehicle dealer within a reasonable time, without
15 cause. Each manufacturer shall allocate its products in a manner that
16 provides each of its franchised dealers in this State an adequate supply
17 of vehicles by series, product line, and model to achieve the
18 manufacturer's minimum sales requirements, planning volume, or sales
19 objectives and that is fair and equitable to all of its franchised dealers in
20 this State. Additionally, each manufacturer shall make available to each
21 of its franchised dealers in this State a minimum of one of each vehicle
22 series, model, or product line that the manufacturer advertises nationally
23 as being available for purchase. In allocating its vehicles to its
24 franchised dealers in this State, each manufacturer shall give equal
25 weight to: (i) each dealer's past sales by series, model, or product line
26 and (ii) the vehicle registrations by series, model, and product line
27 within the dealer's assigned primary market area. A manufacturer shall
28 not unfairly discriminate among its franchised dealers in this allocation
29 process. This subsection is not violated, however, if such failure is
30 caused by acts or causes beyond the control of the manufacturer,
31 distributor, factory branch, or factory representative.

32 (15) To refuse to disclose to any new motor vehicle dealer, handling the
33 same line make, the manner and mode of distribution of that line make
34 within the State.

35 (16) To award money, goods, services, or any other benefit to any new motor
36 vehicle dealership employee, either directly or indirectly, unless such
37 benefit is promptly accounted for, and transmitted to, or approved by,
38 the new motor vehicle dealer.

39 (17) To increase prices of new motor vehicles which the new motor vehicle
40 dealer had ordered and which the manufacturer or distributor has
41 accepted for immediate delivery for private retail consumers prior to the
42 new motor vehicle dealer's receipt of the written official price increase
43 notification. A sales contract signed by a private retail consumer shall

1 constitute evidence of each such order provided that the vehicle is in
2 fact delivered to that customer. Price differences applicable to new
3 model or series shall not be considered a price increase or price
4 decrease. Price changes caused by either: (i) the addition to a new motor
5 vehicle of required or optional equipment; or (ii) revaluation of the
6 United States dollar, in the case of foreign-make vehicles or
7 components; or (iii) an increase in transportation charges due to
8 increased rates imposed by carriers; or (iv) new tariffs or duties imposed
9 by the United States of America or any other governmental authority,
10 shall not be subject to the provisions of this subsection.

11 (18) To prevent or attempt to prevent a dealer from receiving fair and
12 reasonable compensation for the value of the franchised business
13 transferred in accordance with G.S. 20-305(4) above.

14 (19) To offer any refunds or other types of inducements to any person for the
15 purchase of new motor vehicles of a certain line make to be sold to the
16 State or any political subdivision thereof without making the same offer
17 available upon request to all other new motor vehicle dealers in the
18 same line make within the State.

19 (20) To release to any outside party, except under subpoena or as otherwise
20 required by law or in an administrative, judicial or arbitration
21 proceeding involving the manufacturer or new motor vehicle dealer, any
22 confidential business, financial, or personal information which may be
23 from time to time provided by the new motor vehicle dealer to the
24 manufacturer, without the express written consent of the new motor
25 vehicle dealer.

26 (21) To deny any new motor vehicle dealer the right of free association with
27 any other new motor vehicle dealer for any lawful purpose.

28 (22) To unfairly discriminate among its new motor vehicle dealers with
29 respect to warranty reimbursements or authority granted its new motor
30 vehicle dealers to make warranty adjustments with retail customers.

31 (23) To engage in any predatory practice against or unfairly compete with a
32 new motor vehicle dealer located in this State.

33 (24) To terminate any franchise solely because of the death or incapacity of
34 an owner who is not listed in the franchise as one on whose expertise
35 and abilities the manufacturer relied in the granting of the franchise.

36 (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in
37 this State to either establish or maintain exclusive facilities, personnel,
38 or display space, when such requirements, or any of them, would be
39 unreasonable in light of current economic conditions and would not
40 otherwise be justified by reasonable business considerations. space.

41 (26) To resort to or to use any false or misleading advertisement in the
42 conducting of its business as a manufacturer or distributor in this State.

- 1 (27) To knowingly make, either directly or through any agent or employee,
2 any material statement which is false or misleading ~~and or conceal~~ any
3 material facts which ~~induces~~ induce any new motor vehicle dealer to
4 enter into any agreement or franchise or to take any action which is
5 materially prejudicial to that new motor vehicle dealer or his business.
- 6 (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to
7 purchase or order any new motor vehicle as a precondition to
8 purchasing, ordering, or receiving any other new motor vehicle or
9 vehicles. Nothing herein shall prevent a manufacturer from requiring
10 that a new motor vehicle dealer fairly represent and inventory the full
11 line of new motor vehicles which are covered by the franchise
12 agreement.
- 13 (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to
14 sell, transfer, or otherwise issue stock or other ownership interest in the
15 dealership corporation to a general manager or any other person
16 involved in the management of the dealership other than the dealer
17 principal or dealer operator named in the franchise, unless the dealer
18 principal or dealer operator is an absentee owner who is not involved in
19 the operation of the dealership on a regular basis.
- 20 (30) To vary the price charged to any of its franchised new motor vehicle
21 dealers located in this State for new motor vehicles based on the dealer's
22 purchase of new facilities, supplies, computers, tools, equipment, or
23 other merchandise from the manufacturer or any other person or entity
24 designated, endorsed, or approved by the manufacturer, the dealer's
25 relocation, remodeling, repair, or renovation of existing dealerships or
26 construction of a new ~~facility~~ facility; the dealer's willingness or
27 commitment to either establish or maintain exclusive facilities,
28 personnel, or display space; the dealer's willingness to provide loaner
29 vehicles in whole or in part at the dealer's expense to customers who are
30 having a vehicle serviced at the dealership; or upon the dealer's
31 participation in training programs or employment or association of one
32 or more consultants which are sponsored, endorsed, or recommended by
33 the ~~manufacturer~~ manufacturer, the payment for which is in any part the
34 responsibility of the dealer.

35 The price of the vehicle, for purposes of this subdivision shall include
36 the manufacturer's use of rebates, credits, bonuses, or other
37 consideration which has the effect of causing a variance in the price of
38 new motor vehicles offered to its franchised dealers located in the State.

39 Notwithstanding the foregoing, nothing in this subdivision shall be
40 deemed to preclude a manufacturer from establishing sales contests or
41 promotions which provide or award dealers or consumers rebates or
42 incentives.

1 Nothing contained in this subdivision shall prohibit a manufacturer
2 from providing assistance or encouragement to a franchised dealer to
3 remodel, renovate, recondition, or relocate the dealer's existing
4 facilities, provided that this assistance, encouragement, or rewards are
5 not determined on a per vehicle basis.

6 In the event that at the time of the ratification of this act a
7 manufacturer is currently operating a program or has in effect a policy
8 which would violate this subdivision after the effective date of this act,
9 it shall be lawful for that program or policy to continue in effect as to
10 the manufacturer's franchised dealers located in this State until
11 December 31, 1999. ~~Any~~ Whether or not a program operated by a
12 manufacturer complies with this paragraph, a manufacturer shall be
13 required to pay or otherwise compensate any franchise dealer who has
14 earned the right to receive payment or other compensation under a
15 program as of ~~December 31, 1999, March 31, 2000,~~ in accordance with
16 the manufacturer's program or policy.

17 (31) Notwithstanding the terms of any contract, franchise, agreement,
18 release, or waiver, to require that in any civil or administrative
19 proceeding in which a new motor vehicle dealer asserts any claims,
20 rights, or defenses arising under this Article or under the franchise, that
21 the dealer or any nonprevailing party compensate the manufacturer or
22 prevailing party for any court costs, attorneys' fees, or other expenses
23 incurred in the litigation.

24 (32) To require that any of its franchised new motor vehicle dealers located
25 in this State pay any extra fee, purchase unreasonable or unnecessary
26 quantities of advertising displays or other materials, or remodel,
27 renovate, or recondition the dealers' existing facilities in order to receive
28 any particular model or series of vehicles manufactured or distributed
29 by the manufacturer for which the dealers have a valid franchise.
30 Notwithstanding the foregoing, nothing contained in this subdivision
31 shall be deemed to prohibit or prevent a manufacturer from requiring
32 that its franchised dealers located in this State purchase special tools or
33 equipment, stock reasonable quantities of certain parts, or participate in
34 training programs which are reasonably necessary for those dealers to
35 sell or service any model or series of vehicles.

36 (33) To fail to reimburse a dealer located in this State in full for the actual
37 cost of providing a loaner vehicle to any customer who is having a
38 vehicle serviced at the dealership if the provision of such a loaner
39 vehicle is required by the manufacturer.

40 (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in
41 this State to participate monetarily in any training program whose
42 subject matter is not expressly limited to specific information necessary
43 to sell or service the models of vehicles the dealer is authorized to sell

1 or service under the dealer's franchise with that manufacturer.
2 Examples of training programs with respect to which a manufacturer is
3 prohibited from requiring the dealer's monetary participation include,
4 but are not limited to, those which purport to teach morale-boosting
5 employee motivation, teamwork, or general principles of customer
6 relations. A manufacturer is further prohibited from requiring the
7 personal attendance of an owner or dealer principal of any dealership
8 located in this State at any meeting or training program at which it is
9 reasonably possible for another member of the dealer's management to
10 attend and later relate the subject matter of the meeting or training
11 program to the dealership's owners or principal operator.

12 (35) Notwithstanding the terms of any franchise, agreement, waiver, or
13 novation, to limit the number of franchises of the same line make of
14 vehicle that any motor vehicle dealer may own or operate within this
15 State or attach any such restrictions or conditions on such ownership or
16 operation without making the same limitations, conditions, and
17 restrictions applicable to all of its other franchisees."

18 Section 3. G.S. 20-305.1(b) reads as rewritten:

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

43 Section 3.1. G.S. 20-305.1 is amended by adding a new subsection to read:

1 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales
2 incentives, service incentives, rebates, or other forms of incentive compensation, reduce
3 the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of
4 the claim unless it can be shown that the claim was false or fraudulent or that the dealer
5 failed to reasonably substantiate the claim either in accordance with the manufacturer's
6 written procedures or by other reasonable means."

7 Section 4. G.S. 20-305.1(c) reads as rewritten:

8 "(c) In the event there is a dispute between the manufacturer, factory branch,
9 distributor, or distributor branch, and the dealer with respect to any matter referred to in
10 ~~subsections~~ subsection (a), (b), (b1), (b2), or (d) of this section, either party may petition
11 the Commissioner in writing, within 30 days after either party has given written notice of
12 the dispute to the other, for a hearing on the subject and the decision of the Commissioner
13 shall be binding on the parties, subject to rights of judicial review and appeal as provided
14 in Chapter 150B of the General Statutes; provided, however, that nothing contained
15 herein shall give the Commissioner any authority as to the content of any manufacturer's
16 or distributor's warranty. Upon the filing of a petition before the Commissioner under this
17 subsection, any chargeback to or any payment required of a dealer by a manufacturer
18 relating to warranty parts or service compensation, or to sales incentives, service
19 incentives, rebates, or other forms of incentive compensation, shall be stayed during the
20 pendency of the determination by the Commissioner."

21 Section 5. G.S. 20-305.2 reads as rewritten:

22 **"§ 20-305.2. Unfair methods of competition.**

23 It is unlawful for any motor vehicle manufacturer, factory branch, distributor,
24 distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary
25 or affiliated entity, own, own any ownership interest in, operate, or control any motor
26 vehicle dealership in a relevant market area of this State already served by a motor
27 vehicle dealer under a franchise for the same line make from such manufacturer, factory
28 branch, distributor, or distributor branch, or subsidiary, in this State, provided that this
29 section shall not be construed to prohibit (i) the operation by a manufacturer, factory
30 branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a
31 temporary period (not to exceed one year) during the transition from one owner or
32 operator to another, or (ii) the ownership or control of a dealership by a manufacturer,
33 factory branch, distributor, distributor branch, or subsidiary thereof, ~~during a period while~~
34 such dealership is being sold under a bona fide contract or purchase option to the operator
35 of the dealership, while in a bona fide relationship with any independent person, other
36 than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate
37 thereof, who has made a significant investment that is subject to loss in the dealership and
38 who can reasonably expect to acquire full ownership of the dealership within a
39 reasonable period of time (not to exceed nine years) and on reasonable terms and
40 conditions, or (iii) the ownership, operation or control of a dealership by a manufacturer,
41 factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer,
42 factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail
43 sale of motor vehicles through such dealership for a continuous period of three years

1 prior to March 16, 1973, and if the Commissioner determines, after a hearing on the
2 matter at the request of any party, that there is no independent dealer available in the
3 relevant market area to own and operate the franchise in a manner consistent with the
4 public interest, or (iv) the ownership, operation, or control of a dealership by a
5 manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the
6 Commissioner determines after a hearing on the matter at the request of any party, that
7 there is no independent dealer available in the relevant market area to own and operate
8 the franchise in a manner consistent with the public ~~interest.~~interest, or (v) the
9 ownership, operation, control of a new motor vehicle dealership by a manufacturer,
10 factory branch or distributor, distributor branch or subsidiary thereof (herein
11 'manufacturer') which directly or indirectly owns, in aggregate, directly or indirectly, no
12 more than a thirty-four percent (34%) interest in the dealership and which is not located
13 within 65 miles of any other new motor vehicle dealership trading in the same line make
14 of vehicle, with the exception of other same line make new motor vehicle dealerships that
15 are owned and operated by the same or affiliated corporations or other business entities,
16 and there are no other dealerships of the same line make owned by other parties within
17 said 65 miles.

18 Provided, this section shall not apply to manufacturers or distributors of trailers or
19 semitrailers."

20 Section 6. This act becomes effective October 1, 1999.