

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 1353\***

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

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Sponsors: Representatives Cole, Sutton (Primary Sponsors); Allen, Allred, Boylan, Brown, Carney, Church, Coates, Cotham, Current, Daughtry, Dickson, Faison, Gillespie, Goforth, Holliman, Howard, Hurley, Jeffus, Johnson, Lucas, Owens, Pate, Setzer, Spear, Tarleton, Wainwright, Walend, and Wray.

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Referred to: Judiciary III.

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April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY MOTOR VEHICLE FRANCHISE LAWS AS THEY RELATE TO AUTOMOBILE DEALER WARRANTY OBLIGATIONS, CIVIL ACTIONS FOR VIOLATIONS, COERCION, AND INSTALLMENT SALES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

1 ~~franchise-franchise~~ or any other successor, renewal, or  
2 ~~replacement franchise."~~

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

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

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

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

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

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

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

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

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

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

43 "(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales  
44 incentives, service incentives, rebates, or other forms of incentive compensation, reduce

1 the amount to be paid to the dealer, or charge a dealer back subsequent to the payment  
2 of the claim unless it can be shown that the claim was false or fraudulent or that the  
3 dealer failed to reasonably substantiate the claim either in accordance with the  
4 manufacturer's reasonable written procedures or by any other reasonable means."

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

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

18 (1) Persons or entities other than new motor vehicle dealers with whom  
19 the manufacturer, manufacturer branch, distributor, or distributor  
20 branch has entered into franchises; or

21 (2) Persons or entities that install custom bodies on heavy-duty truck  
22 chassis, including but not limited to, mounted equipment or specialized  
23 bodies for concrete distribution, firefighting equipment, waste  
24 disposal, recycling, garbage disposal, buses, utility service, street  
25 sweepers, wreckers, and rollback bodies for vehicle recovery.

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

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

42 "**§ 20-308.1. Civil actions for violations.**

43 (a) Notwithstanding the terms, provisions or conditions of any agreement or  
44 franchise or other terms or provisions of any novation, waiver or other written

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

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

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

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

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