

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 904
Committee Substitute Favorable 5/13/91
Committee Substitute #2 Favorable 6/4/91

Short Title: No Off-Premises Vehicle Sales.

(Public)

Sponsors:

Referred to:

April 18, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE SALE OF MOTOR VEHICLES BY MOTOR
3 VEHICLE DEALERS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 20-286 reads as rewritten:

6 "**§ 20-286. Definitions.**

7 ~~Unless the context otherwise requires, the following words and terms, for the~~
8 ~~purpose of this Article, shall have the following meanings: The following definitions~~
9 ~~apply in this Article:~~

10 (1), (2) Repealed by Session Laws 1973, c. 1330, s. 39.

11 (2a) "~~Dealership facilities~~" ~~means the Dealership facilities.~~ – The real estate,
12 buildings, fixtures and improvements ~~which have been devoted to the~~
13 ~~conduct of business under the franchise by the new motor vehicle dealer.~~ a
14 franchise.

15 (2b) "~~Designated family member~~" ~~means the Designated family member.~~ –
16 The spouse, child, grandchild, parent, brother, or sister of a dealer,
17 who, in the case of a deceased dealer, is entitled to inherit the dealer's
18 ownership interest in the dealership under the terms of the dealer's
19 will; or who has otherwise been designated in writing by a deceased
20 dealer to succeed him in the motor vehicle dealership; or who under
21 the laws of intestate succession of this State is entitled to inherit the
22 interest; or who, in the case of an incapacitated dealer, has been

- 1 appointed by a court as the legal representative of the dealer's property.
2 The term includes the appointed and qualified personal representative
3 and testamentary trustee of a deceased dealer.
- 4 (3) ~~" Distributor" and "wholesaler" mean a~~ Distributor. – A person, resident
5 or nonresident of this State, who sells or distributes new motor
6 vehicles to new motor vehicle dealers in this State, ~~or who maintains a~~
7 distributor representative in this State, ~~or who controls any person, firm,~~
8 ~~association, corporation or trust,~~ resident or nonresident, who in whole or
9 in part offers for sale, sells or distributes any new motor vehicle to any
10 motor vehicle dealer in this State.
- 11 (4) ~~" Distributor branch" means a~~ Distributor branch. – A branch office
12 maintained by a ~~distributor or wholesaler,~~ distributor for the sale of new
13 motor vehicles to new motor vehicle dealers, or for directing or
14 supervising ~~its~~ the distributor's representatives in this State.
- 15 (5) ~~" Distributor representative" means a~~ Distributor representative. – A
16 person employed by a distributor or wholesaler, ~~or by a distributor~~
17 ~~branch,~~ branch for the purpose of ~~making selling~~ or promoting the sale
18 of new motor vehicles dealt in by it, or for supervising or contacting its
19 ~~dealers, prospective dealers, or representatives in this State.~~ vehicles or
20 otherwise conducting the business of the distributor or distributor
21 branch.
- 22 (5a) Established office. – An office that meets the following requirements:
23 a. Contains at least 96 square feet of floor space in a permanent
24 enclosed building.
25 b. Is a place where the books, records, and files required by the
26 Division under this Article are kept.
- 27 (6) ~~'Established place of business' means a~~ Established salesroom. – A
28 salesroom that meets the following requirements:
29 a. ~~containing~~ Contains at least 96 square feet of floor space in a
30 permanent enclosed building; ~~said salesroom shall have displayed~~
31 ~~thereon or~~ building.
32 b. Displays, or is located immediately adjacent thereto ~~a sign, in to,~~
33 a sign having block letters not less than three inches in height
34 on contrasting background, clearly and distinctly designating
35 the trade name of the ~~business~~ business.
36 c. Is a place at which a permanent business of bartering, ~~trading~~
37 trading, and selling motor vehicles will be carried on ~~as such in~~
38 good faith on an ongoing basis whereby the dealer can be
39 contacted by the public at reasonable times.
40 d. ~~and at which place of business shall be kept and maintained~~ Is a
41 place where the books, records ~~records,~~ and files ~~as required by~~
42 the Division ~~may require necessary to conduct the business at~~
43 such place. under this Article are kept.

1 The term includes the area contiguous to or located within 500 feet of
2 the premises on which the salesroom is located. The term does not
3 include a tent, a temporary stand, or other temporary quarters.
4 ~~Provided, however, the~~ The minimum area requirement provided for in
5 ~~this subdivision is not applicable~~ does not apply to any established place
6 of business lawfully in existence and duly licensed on or before
7 January 1, 1978.

8 (7) ~~" Factory branch" means a~~ Factory branch. – A branch office, maintained
9 for the sale of new motor vehicles to new motor vehicle dealers, or for
10 directing or supervising ~~its~~ the factory branch's representatives in this
11 State.

12 (8) ~~" Factory representative" means a~~ Factory representative. – A person
13 employed by a ~~person who manufactures or assembles motor vehicles, or~~
14 ~~by a factory branch,~~ manufacturer or a factory branch for the purpose of
15 ~~making~~ selling or promoting the sale of ~~its~~ the manufacturer's motor
16 ~~vehicles, or for supervising or contacting its dealers, prospective dealers or~~
17 ~~representatives in this State.~~ vehicles or otherwise conducting the
18 business of the manufacturer or factory branch.

19 (8a) ~~" Franchise" means the~~ Franchise. – A written agreement or contract
20 between any new motor vehicle manufacturer, and any new motor
21 vehicle dealer which purports to fix the legal rights and liabilities of
22 the parties to such agreement or contract, and pursuant to which the
23 dealer purchases and resells the franchised product or leases or rents
24 the dealership premises.

25 (8b) ~~" Good faith" seems honest~~ Good faith. – Honest in fact and the
26 observation of reasonable commercial standards of fair dealing in the
27 trade as defined and interpreted in G.S. 25-2-103(1)(b).

28 (8c) ~~" Manufacturer" means any~~ Manufacturer. – A person, resident or
29 nonresident, who manufactures or assembles motor vehicles, or who
30 imports new motor vehicles for distribution through ~~distributors of~~
31 ~~motor vehicles, a distributor,~~ including any ~~person, partnership, or~~
32 ~~corporation which~~ person who acts for and is under the control of ~~such~~
33 the manufacturer or assembler in connection with the distribution of
34 ~~said~~ the motor vehicles. Additionally, the term 'manufacturer' shall
35 include the terms 'distributor' and 'factory branch' ~~which have been~~
36 ~~defined above.~~ branch.'

37 (9) Repealed by Session Laws 1973, c. 1330, s. 39.

38 (10) ~~" Motor vehicle" means any~~ Motor vehicle. – Any motor propelled
39 vehicle, trailer or semitrailer, required to be registered under the laws
40 of this State.

41 a. 'New motor vehicle' means a motor vehicle which has never
42 been the subject of a sale other than between new motor vehicle
43 dealers, or between manufacturer and dealer of the same
44 franchise.

1 b. 'Used motor vehicle' means a motor vehicle other than
2 described in paragraph (10)a above.

3 (11) "~~Motor vehicle dealer~~" and "~~dealer~~" mean ~~any person, firm, association, or~~
4 ~~corporation~~ Motor vehicle dealer or dealer. – A person who is engaged
5 in the business of selling motor vehicles, ~~vehicles at retail~~ or who holds
6 or held at the time a cause of action under this Article accrued, a valid
7 sales and service agreement, franchise or contract, granted by the
8 manufacturer or distributor for the retail sale of said manufacturer's or
9 distributor's new motor vehicles.

10 The term 'motor vehicle dealer' or 'dealer' does not include:

11 a. Receivers, trustees, administrators, executors, guardians, or
12 other persons appointed by or acting under the judgment or
13 order of any court; or

14 b. Public officers while performing their official duties; or

15 c. Persons disposing of motor vehicles acquired for their own use
16 and actually so used, when the same shall have been so
17 acquired and used in good faith and not for the purpose of
18 avoiding the provisions of this Article; or

19 d. ~~Persons, firms or corporations who shall~~ Persons who sell motor
20 vehicles as an incident to their principal business but who are
21 not engaged primarily in the selling of motor vehicles. This
22 category includes finance companies who shall sell repossessed
23 motor vehicles and insurance companies who sell motor
24 vehicles to which they have taken title as an incident of
25 payments made under policies of insurance and who do not
26 maintain a used car lot or building with one or more employed
27 motor vehicle salesmen.

28 e. ~~Persons, firms or corporations~~ Persons manufacturing, distributing
29 or selling trailers and semitrailers weighing not more than 750
30 pounds and carrying not more than a 1,500 pound load.

31 f. A licensed real estate broker or salesman who sells a mobile
32 home for the owner as an incident to the sale of land upon
33 which the mobile home is located.

34 (12) "~~Motor vehicle salesman~~" or "~~salesman~~" means ~~any~~ Motor vehicle sales
35 representative or salesman. – A person who is employed as a ~~salesman~~
36 sales representative by, or has an agreement with, a motor vehicle
37 ~~dealer, dealer or a wholesaler~~ to sell or exchange motor vehicles.

38 (13) "~~New motor vehicle dealer~~" means ~~a~~ New motor vehicle dealer. – A
39 motor vehicle dealer who buys, sells or exchanges, or offers or
40 attempts to negotiate a sale or exchange of an interest in, or who is
41 engaged, wholly or in part, in the business of selling, new or new and
42 used motor vehicles.

1 (13a) ~~" Person" means every natural person, partnership, corporation,~~
 2 ~~association, trust or estate or other legal entity. Person. – Defined~~
 3 ~~in G.S. 20-4.01.~~

4 (13b) ~~" Relevant market area" or "trade area" means the Relevant market area~~
 5 ~~or trade area. – The area within a radius of 20 miles around an~~
 6 ~~existing dealer or the area of responsibility defined in the franchise,~~
 7 ~~whichever is greater; except that, where a manufacturer is seeking~~
 8 ~~to establish an additional new motor vehicle dealer the relevant~~
 9 ~~market area shall be as follows:~~

- 10 a. If the population in an area within a radius of 10 miles around
 11 the proposed site is 250,000 or more, the relevant market area
 12 shall be that area within the 10 mile radius; or
 13 b. If the population in an area within a radius of 10 miles around
 14 the proposed site is less than 250,000, but the population in an
 15 area within a radius of 15 miles around the proposed site is
 16 150,000 or more, the relevant market area shall be that area
 17 within the 15 mile radius; or
 18 c. Except as defined in ~~subsections (a) and (b) above, subparts a. and~~
 19 ~~b.,~~ the relevant market area shall be the area within a radius of
 20 20 miles around an existing dealer.

21 In determining population for this definition the most recent
 22 census by the U.S. Bureau of the Census or the most recent
 23 population update either from the National Planning Data
 24 Corporation or other similar recognized source shall be
 25 accumulated for all census tracts either wholly or partially
 26 within the relevant market area.

27 (14) Repealed by Session Laws 1973, c. 1330, s. 39.

28 (15) ~~" Retail installment sale" means and includes every Retail installment sale.~~
 29 ~~– A sale of one or more motor vehicles to a buyer for ~~his~~ the buyer's~~
 30 ~~use and not for resale, in which the price thereof is payable in one or~~
 31 ~~more installments over a period of time and in which the seller has~~
 32 ~~either retained title to the goods or has taken or retained a security~~
 33 ~~interest in the goods under a form of contract designated either as a~~
 34 ~~conditional sale, bailment lease, chattel mortgage or otherwise.~~

35 (16) ~~" Used motor vehicle dealer" means a Used motor vehicle dealer. – A~~
 36 ~~motor vehicle dealer who buys, sells or exchanges, or offers or~~
 37 ~~attempts to negotiate a sale or exchange of an interest in, or who is~~
 38 ~~engaged, wholly or in part, in the business of selling, used motor~~
 39 ~~vehicles only.~~

40 (17) Wholesaler. – A person who sells or distributes used motor vehicles to
 41 motor vehicle dealers in this State, has a sales representative in this
 42 State, or controls any person who in whole or in part offers for sale,
 43 sells, or distributes any used motor vehicle to a motor vehicle dealer in

1 this State. The provisions of G.S. 20-302, 20-305.1, and 20-305.2 that
2 apply to distributors also apply to wholesalers."

3 Sec. 2. G.S. 20-287 reads as rewritten:

4 **"§ 20-287. Licenses required.**

5 It shall be unlawful for any new motor vehicle dealer, used motor vehicle dealer,
6 motor vehicle ~~salesman, sales representative,~~ manufacturer, factory branch, factory
7 representative, distributor, distributor branch, factory or distributor representative, or
8 wholesaler to engage in business ~~as such~~ in this State without first obtaining a license as
9 provided in this Article. If any motor vehicle dealer acts as a motor vehicle ~~salesman, he~~
10 sales representative, the dealer shall obtain a motor vehicle ~~salesman's sales~~
11 representative's license in addition to a motor vehicle dealer's license. A ~~salesman sales~~
12 representative may have only one ~~license, and such license.~~ The license shall show the
13 name of ~~the dealer or dealers~~ each dealer or wholesaler employing him. ~~A manufacturer or~~
14 ~~a factory branch or distributor or distributor branch, licensed as such, may also operate as a~~
15 ~~motor vehicle dealer without additional license.~~ the sales representative. The following
16 license holders may operate as a motor vehicle dealer without obtaining a motor vehicle
17 dealer's license or paying an additional fee: a manufacturer, a factory branch, a
18 distributor, and a distributor branch. Any of these license holders who operates as a
19 motor vehicle dealer may sell motor vehicles at retail only at an established salesroom."

20 Sec. 3. G.S. 20-288 reads as rewritten:

21 **"§ 20-288. Application for license; ~~information required and considered; license~~**
22 **requirements; expiration of license; supplemental license; bond.**

23 (a) Application for a license shall be made to the Division at such time, in such
24 form, and contain such information as the Division shall require, and shall be
25 accompanied by the required fee.

26 (b) The Division shall require in such application, or otherwise, information
27 relating to matters set forth in G.S. 20-294 as grounds for the refusing of licenses, and to
28 other pertinent ~~matter~~ matters commensurate with the safeguarding of the public interest,
29 all of which shall be considered by the Division in determining the fitness of the
30 applicant to engage in the business for which he seeks a license.

31 (c) All licenses that are granted shall expire unless sooner revoked or suspended,
32 on June 30 of the year following date of issue.

33 (d) ~~Supplemental licenses shall be issued for each place of business, operated or~~
34 ~~proposed to be operated by the licensee, that is not contiguous to other premises for~~
35 ~~which a license is issued.~~ To obtain a license as a wholesaler, the applicant must have an
36 established office in this State. To obtain a license as a motor vehicle dealer, an
37 applicant must have an established salesroom in this State.

38 An applicant for a license as a manufacturer, a factory branch, a distributor, a
39 distributor branch, a wholesaler, or a motor vehicle dealer must have a separate license
40 for each established office, established salesroom, or other place of business in this
41 State. An application for any of these licenses shall include a list of the applicant's
42 places of business in this State.

43 (e) Each applicant approved by the Division for license as a motor vehicle dealer,
44 manufacturer, factory branch, distributor, distributor branch, ~~or factory branch or~~

1 ~~wholesaler shall furnish a corporate surety bond or cash bond or fixed value equivalent~~
2 ~~thereof in the principal sum of fifteen thousand dollars (\$15,000) and an additional principal~~
3 ~~sum of five thousand dollars (\$5,000) for each additional place of business within this State at~~
4 ~~which motor vehicles are sold. of the bond. The amount of the bond for an applicant for a~~
5 ~~motor vehicle dealer's license is fifteen thousand dollars (\$15,000) for one established~~
6 ~~salesroom of the applicant and five thousand dollars (\$5,000) for each of the applicant's~~
7 ~~additional established salesrooms. The amount of the bond for other applicants required~~
8 ~~to furnish a bond is fifteen thousand dollars (\$15,000) for one place of business of the~~
9 ~~applicant and five thousand dollars (\$5,000) for each of the applicant's additional places~~
10 ~~of business. Each application for a license or a renewal of a license shall be accompanied by a~~
11 ~~list of locations at which the applicant engages in the business of selling motor vehicles in this~~
12 ~~State.~~

13 A corporate surety bond shall be approved by the Commissioner as to form and shall
14 be conditioned that the obligor will faithfully conform to and abide by the provisions of
15 this Article and Article 15. A cash bond or fixed value equivalent thereof shall be
16 approved by the Commissioner as to form and terms of deposits as will secure the
17 ultimate beneficiaries of the bond; and such bond shall not be available for delivery to
18 any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle
19 who shall have suffered any loss or damage by any act of a ~~motor vehicle dealer license~~
20 ~~holder subject to this subsection~~ that constitutes a violation of this Article or Article 15
21 shall have the right to institute an action to recover against ~~such motor vehicle dealer the~~
22 ~~license holder~~ and the surety. Every ~~licensee license holder~~ against whom ~~such an~~ action
23 is instituted shall notify the Commissioner of the action within 10 days after ~~process is~~
24 ~~served on the licensee. served with process.~~ A corporate surety bond shall remain in force
25 and effect and may not be canceled by the surety unless the ~~motor vehicle dealer,~~
26 ~~manufacturer, distributor branch, or factory branch has terminated the operations of its business~~
27 ~~nor unless its bonded person stops engaging in business or the person's license has been is~~
28 denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only
29 upon 30 days' written notice to the Commissioner and shall not affect any liability
30 incurred or accrued prior to the termination of such 30-day period. ~~Provided nothing~~
31 ~~herein shall apply to a motor vehicle dealer, manufacturer, distributor branch or factory branch~~
32 ~~which~~ This subsection does not apply to a license holder who deals only in trailers
33 having an empty weight of 4,000 pounds or less. This subsection ~~shall does not~~ apply to
34 manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate
35 surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

36 Sec. 4. G.S. 20-289 reads as rewritten:

37 "**§ 20-289. License fees.**

38 (a) The license fee for each fiscal year, or part thereof, shall be as follows:

- 39 (1) For motor vehicle dealers, distributors, distributor branches, and
40 wholesalers, thirty dollars (\$30.00) for each ~~principal~~ place of business,
41 plus eight dollars (\$8.00) for a supplementary license for each car lot not
42 ~~immediately adjacent thereto; business.~~
- 43 (2) For manufacturers, seventy-five dollars (\$75.00), and for each factory
44 branch in this State, forty-five dollars ~~(\$45.00); (\$45.00).~~

1 (3) For motor vehicle salesmen, sales representatives, five dollars (\$5.00);
2 (\$5.00).

3 (4) For factory representatives, or distributor ~~branch~~—representatives, six
4 dollars ~~(\$6.00);~~ (\$6.00).

5 (5) ~~Manufacturers, wholesalers, and distributors may operate as a motor~~
6 ~~vehicle dealer, without any additional fee or license.~~

7 (b) ~~The fees and licenses collected under this section shall be placed in~~ credited
8 to the Highway Fund. Provided, that nothing contained in this section or in any other
9 section of this Article shall be construed as exempting any person from any license tax
10 or fee imposed by any other provision of the law. These fees are in addition to all other
11 taxes and fees."

12 Sec. 5. G.S. 20-290(a) reads as rewritten:

13 "(a) ~~The licenses~~ The license of a motor vehicle dealer shall list each of the dealer's
14 established salesrooms in this State. A license of new motor vehicle dealers, used motor
15 vehicle dealers, manufacturers, factory branches, distributors, and distributor branches a
16 manufacturer, factory branch, distributor, distributor branch, or wholesaler shall specify
17 the location of each place of business or branch or other location occupied or to be occupied by
18 the licensee in conducting his business as such, and the license or supplementary license issued
19 therefor list each of the license holder's places of business in this State. A license shall
20 be conspicuously displayed on at each of such premises. place of business. In the event
21 any such location is changed, the location of a business changes, the Division shall
22 endorse the change of location on the license, without charge."

23 Sec. 6. G.S. 20-291 reads as rewritten:

24 "**§ 20-291. Salesman, etc., Representatives to carry license and display it on request;**
25 **license to name employer.**

26 Every ~~salesman, person to whom a sales representative, factory representative and~~
27 ~~distributor representative representative, or distributor representative license is issued~~
28 ~~shall carry his the license when engaged in his business, and shall display the same it~~
29 ~~upon request. The licensee license shall name his employer, and in the event of a change of~~
30 ~~employer, he state the name of the representative's employer. If the representative~~
31 ~~changes employers, the representative shall immediately mail his the license to the~~
32 ~~Division, which shall endorse such the change on the license without charge."~~

33 Sec. 7. G.S. 20-292 reads as rewritten:

34 "**§ 20-292. Use of unimproved lots and premises. Dealers may display motor vehicles**
35 **for sale at retail only at established salesrooms.**

36 A ~~licensed motor vehicle dealer may use vacant lots and premises for the sale and~~
37 ~~display of motor vehicles: Provided, that if such lots and premises are not immediately~~
38 ~~adjacent to the dealer's established place of business, a supplementary license shall be~~
39 ~~obtained for each lot or premises. A new or used motor vehicle dealer may display a~~
40 ~~motor vehicle for sale at retail only at the dealer's established salesroom, unless the~~
41 ~~display is of a motor vehicle that meets any of the following descriptions:~~

42 (1) Contains the dealer's name or other sales information and is used by
43 the dealer as a 'demonstrator' for transportation purposes.

- 1 (2) Is displayed at a trade show or exhibit at which no selling activities
2 relating to the vehicle take place.
3 (3) Is displayed at the home or place of business of a customer at the
4 request of the customer."

5 Sec. 8. This act becomes effective October 1, 1991. A supplemental license
6 issued to a motor vehicle dealer before the effective date of this act shall expire, if not
7 sooner upon its own terms, 120 days after the effective date of this act.