

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 480
SENATE BILL 754

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

The General Assembly of North Carolina enacts:

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

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

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

"§ 44A-6. Title of purchaser.

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

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

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

- a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated family member successor to succeed in the ownership interest of the said owner in the new motor vehicle ~~dealership~~ dealership, including the franchise, upon the death or incapacity of the owner.
- b. ~~Unless there exists good cause for refusal to honor succession on the part of the manufacturer or distributor, any designated family member of a deceased or incapacitated owner of a new~~

~~motor vehicle dealership may succeed to the ownership of the new motor vehicle dealership under the existing franchise provided that:~~

- ~~1. The designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the ownership of the new motor vehicle dealership within 60 days of the owner's death or incapacity; Provided, however, that the failure of the designated family member to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated family member's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated family member or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated family member may give the notice required hereunder, provided the designated family member or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity; and~~
 - ~~2. The designated family member agrees to be bound by all terms and conditions of the franchise.~~
- ~~e. The manufacturer or distributor may request, and the designated family member shall provide, promptly upon said request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.~~
- ~~d. If a manufacturer or distributor believes that good cause exists for refusing to honor the succession to the ownership of a new motor vehicle dealership by a family member of a deceased or incapacitated owner of a new motor vehicle dealership under the existing franchise agreement, the manufacturer or distributor may, not more than 60 days following receipt of:~~
- ~~1. Notice of the designated family member's intent to succeed to the ownership of the new motor vehicle dealer; or~~
 - ~~2. Any personal or financial data which it has requested, serve upon the designated family member and the Commissioner notice of its refusal to honor the~~

~~succession and of its intent to discontinue the existing franchise with the dealer.~~

- ~~e. The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise with the new motor vehicle dealer no sooner than 90 days from the date such notice is served.~~
- ~~f. If notice of refusal and discontinuance is not timely served upon the family member, the franchise shall continue in effect subject to termination only as otherwise permitted by this act.~~
- ~~g. Within 30 days of receiving the manufacturer's or distributor's notice of its intent to discontinue the existing franchise as provided in subsection d. above, the designated family member may file a written protest of the manufacturer's or distributor's decision with the Commissioner. When such a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the franchise shall continue in effect until the Commissioner has held a hearing, and thereafter, unless the Commissioner has determined that there is good cause for the manufacturer's or distributor's refusal to honor the succession. The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a protest is filed. Any parties to a hearing by the Commissioner concerning whether good cause exists for the refusal to honor the succession shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.~~
- ~~h. In determining whether good cause for the refusal to honor the succession exists, the manufacturer, distributor, factory branch, or importer has the burden of proving that the successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.~~
- b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:
 - 1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to

- the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated family member. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.
2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected manufacturer or distributor that a timely request has been filed.
 3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.
 4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from a dealer of identity of the dealer's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial

- ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
6. In the event death or incapacity of the owner occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.
- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased or incapacitated owner of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ownership rights and obligations of the owner in the new motor vehicle dealership and under the existing franchise.
- d. Within 60 days after the death or incapacity of the owner, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ownership of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the owner's death or incapacity shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the

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

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

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

Sec. 4. Any owner of a new motor vehicle dealership who, prior to the effective date of this act, previously named or appointed a successor to succeed in the ownership interest of the said owner in such dealership, may obtain the benefits of this act by, at any time subsequent to the effective date of this act, providing or reproviding

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

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

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

In the General Assembly read three times and ratified this the 26th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives