

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 919

Short Title: Motor Vehicle Dealer Succession.

(Public)

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

Referred to: Transportation

May 1, 1995

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

5 The General Assembly of North Carolina enacts:

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

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

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

17 b. ~~Unless there exists good cause for refusal to honor succession on~~
18 ~~the part of the manufacturer or distributor, any designated family~~
19 ~~member of a deceased or incapacitated owner of a new motor~~

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

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

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

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

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

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

41 2. ~~Any personal or financial data which it has requested,~~
42 ~~serve upon the designated family member and the~~
43 ~~Commissioner notice of its refusal to honor the succession~~

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

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

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

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

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

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

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

16 c. Any designated successor of a deceased or incapacitated owner
17 of a new motor vehicle dealership appointed by such owner in
18 substantial compliance with this section shall, by operation of
19 law, succeed at the time of such death or incapacity to all of the
20 ownership rights and obligations of the owner in the new motor
21 vehicle dealership and under the existing franchise.

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

42 e. The designated successor shall agree to be bound by all terms
43 and conditions of the franchise in effect between the

1 manufacturer or distributor and the owner at the time of the
2 owner's death or incapacity, if so requested in writing by the
3 manufacturer or distributor subsequent to the owner's death or
4 incapacity.

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

15 Sec. 2. Any owner of a new motor vehicle dealership who, prior to the
16 effective date of this act, previously named or appointed a successor to succeed in the
17 ownership interest of the said owner in such dealership, may obtain the benefits of this
18 act by, at any time subsequent to the effective date of this act, providing or reproviding
19 notice of such appointment or reappointment to the affected manufacturer or distributor
20 and otherwise complying with the provisions of G.S. 20-305(7) a. through f. above.

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

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