

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1156\*  
Committee Substitute Favorable 4/23/07

Short Title: Fair Compensation for MV Dealer Termination.

(Public)

Sponsors:

Referred to:

March 29, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT FAIR COMPENSATION BE PAID TO  
FRANCHISED MOTOR VEHICLE DEALERS TERMINATED AS A RESULT  
OF INDUSTRY REORGANIZATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 20-305(6) reads as rewritten:

"(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of ~~subparagraph e.~~ sub-subdivision c. of this subdivision and the Commissioner has determined, if requested in writing by the dealer within the time period ~~specified in G.S. 20-305(6)c.III, III or IV, as applicable, or~~ between the date the dealer received notice in accordance with sub-subdivision c. of this subdivision and the effective date of the franchise termination specified or proposed by the manufacturer in the notice of termination, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall ~~try to~~ conduct the hearing and render a final determination within 180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to ~~G.S. 20-305(6)c.III~~ G.S. 20-305(6)c.1.III.

1 then the Commissioner shall give the proceeding priority consideration  
2 and shall try to render his final determination no later than 90 days  
3 after the petition has been filed. Any parties to a hearing by the  
4 Commissioner under this section shall have a right of review of the  
5 decision in a court of competent jurisdiction pursuant to Chapter 150B  
6 of the General Statutes. Any determination of the Commissioner under  
7 this section finding that good cause exists for the nonrenewal,  
8 cancellation, or termination of any franchise shall automatically be  
9 stayed during any period that the affected dealer shall have the right to  
10 judicial review or appeal of the determination before the superior court  
11 or any other appellate court and during the pendency of any appeal;  
12 provided, however, that within 30 days of entry of the Commissioner's  
13 order, the affected dealer provide such security as the reviewing court,  
14 in its discretion, may deem appropriate for payment of such costs and  
15 damages as may be incurred or sustained by the manufacturer by  
16 reason of and during the pendency of the stay. Although the right of  
17 the affected dealer to such stay is automatic, the procedure for  
18 providing such security and for the award of damages, if any, to the  
19 manufacturer upon dissolution of the stay shall be in accordance with  
20 G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on  
21 behalf of any affected dealer shall be forfeited or damages awarded  
22 against a dealer who obtains a stay under this subdivision in the event  
23 the ownership of the affected dealership is subsequently transferred,  
24 sold, or assigned to a third party in accordance with this subdivision or  
25 subdivision (4) of this section and the closing on such transfer, sale, or  
26 assignment occurs no later than 180 days after the date of entry of the  
27 Commissioner's order. Furthermore, unless and until the termination,  
28 cancellation, or nonrenewal of a dealer's franchise shall finally become  
29 effective, in light of any stay or any order of the Commissioner  
30 determining that good cause exists for the termination, cancellation, or  
31 nonrenewal of a dealer's franchise as provided in this paragraph, a  
32 dealer who receives a notice of termination, cancellation, or  
33 nonrenewal from a manufacturer as provided in this subdivision shall  
34 continue to have the same rights to assign, sell, or transfer the  
35 franchise to a third party under the franchise and as permitted under  
36 G.S. 20-305(4) as if notice of the termination had not been given by  
37 the manufacturer. Any franchise under notice or threat of termination,  
38 cancellation, or nonrenewal by the manufacturer which is duly  
39 transferred in accordance with G.S. 20-305(4) shall not be subject to  
40 termination by reason of failure of performance or breaches of the  
41 franchise on the part of the transferor.

42 a. Notwithstanding the terms, provisions or conditions of any  
43 franchise or the terms or provisions of any waiver, good cause

1 shall exist for the purposes of a termination, cancellation or  
2 nonrenewal when:

3 1. There is a failure by the new motor vehicle dealer to  
4 comply with a provision of the franchise which provision  
5 is both reasonable and of material significance to the  
6 franchise relationship provided that the dealer has been  
7 notified in writing of the failure within 180 days after the  
8 manufacturer first acquired knowledge of such failure;

9 2. If the failure by the new motor vehicle dealer relates to  
10 the performance of the new motor vehicle dealer in sales  
11 or service, then good cause shall be defined as the failure  
12 of the new motor vehicle dealer to comply with  
13 reasonable performance criteria established by the  
14 manufacturer if the new motor vehicle dealer was  
15 apprised by the manufacturer in writing of the failure;  
16 and

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

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

22 III. The new motor vehicle dealer failed to  
23 demonstrate substantial progress towards  
24 compliance with the manufacturer's performance  
25 criteria during such period and the new motor  
26 vehicle dealer's failure was not primarily due to  
27 economic or market factors within the dealer's  
28 relevant market area which were beyond the  
29 dealer's control.

30 b. The manufacturer shall have the burden of proof under this  
31 section.

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

33 1. Notwithstanding the terms, provisions or conditions of  
34 any franchise prior to the termination, cancellation or  
35 nonrenewal of any franchise, the manufacturer shall  
36 furnish notification of termination, cancellation or  
37 nonrenewal to the new motor vehicle dealer as follows:

38 I. In the manner described in G.S. 20-305(6)e2  
39 G.S. 20-305(6)c.2. below; and

40 II. Not less than 90 days prior to the effective date of  
41 such termination, cancellation or nonrenewal; or

42 III. Not less than 15 days prior to the effective date of  
43 such termination, cancellation or nonrenewal with  
44 respect to any of the following:

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- A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
  - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
  - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
  - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
- IV. Not less than 180 days prior to the effective date of such ~~termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.~~ termination, cancellation, or nonrenewal which occurs as a result of any change in ownership, operation, or control of all or any part of the business of the manufacturer, factory branch, distributor, or distributor branch whether by sale or transfer of assets, corporate stock or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, operation of law or otherwise; or the termination, suspension, or cessation of a part or all of the business operations of the manufacturers, factory branch, distributor, or distributor branch; or discontinuance of the sale of the product line or a change in distribution system by the manufacturer whether through a change in distributors or the manufacturer's decision to cease conducting business through a distributor altogether.
- V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired

- 1 knowledge of the basic facts comprising the  
2 failure.
- 3 2. Notification under this section shall be in writing; shall  
4 be by certified mail or personally delivered to the new  
5 motor vehicle dealer; and shall contain:
- 6 I. A statement of intention to terminate, cancel or  
7 not to renew the franchise;
- 8 II. A detailed statement of all of the material reasons  
9 for the termination, cancellation or nonrenewal;  
10 and
- 11 III. The date on which the termination, cancellation or  
12 nonrenewal takes effect.
- 13 3. Notification provided in ~~G.S. 20-305(6)e1H~~  
14 G.S. 20-305(6)c.1.II. of 90 days prior to the effective  
15 date of such termination, cancellation or renewal may  
16 run concurrent with the 180 days designated in  
17 ~~G.S. 20-305(6)a2H~~ G.S. 20-305(6)a.2.II. provided the  
18 notification is clearly designated by a separate written  
19 document mailed by certified mail or personally  
20 delivered to the new motor vehicle dealer.
- 21 d. Payments. –
- 22 1. Upon the termination, nonrenewal or cancellation of any  
23 franchise by the manufacturer or distributor, pursuant to  
24 this section, the new motor vehicle dealer shall be  
25 allowed fair and reasonable compensation by the  
26 manufacturer for the:
- 27 I. New motor vehicle inventory that has been  
28 acquired from the manufacturer within 18 months,  
29 at a price not to exceed the original  
30 manufacturer's price to the dealer, and which has  
31 not been altered or damaged, and which has not  
32 been driven more than 200 miles, and for which  
33 no certificate of title has been issued;
- 34 II. Unused, undamaged and unsold supplies and parts  
35 purchased from the manufacturer, at a price not to  
36 exceed the original manufacturer's price to the  
37 dealer, provided such supplies and parts are  
38 currently offered for sale by the manufacturer or  
39 distributor in its current parts catalogs and are in  
40 salable condition;
- 41 III. Equipment, signs, and furnishings that have not  
42 been altered or damaged and that have been  
43 required by the manufacturer or distributor to be  
44 purchased by the new motor vehicle dealer from

- 1 the manufacturer or distributor, or their approved  
2 sources; and
- 3 IV. Special tools that have not been altered or  
4 damaged and that have been required by the  
5 manufacturer or distributor to be purchased by the  
6 new motor vehicle dealer from the manufacturer  
7 or distributor, or their approved sources within  
8 five years immediately preceding the termination,  
9 nonrenewal or cancellation of the franchise.
- 10 2. Fair and reasonable compensation for the above shall be  
11 paid by the manufacturer within 90 days of the effective  
12 date of termination, cancellation or nonrenewal,  
13 provided the new motor vehicle dealer has clear title to  
14 the inventory and has conveyed title and possession of  
15 the same to the manufacturer. The manufacturer shall be  
16 obligated to pay or reimburse the dealer for any  
17 transportation charges associated with the manufacturer's  
18 repurchase obligations under this ~~sub-subparagraph~~  
19 sub-subdivision. The manufacturer may not charge the  
20 dealer any handling, restocking, or other similar costs or  
21 fees associated with items repurchased by the  
22 manufacturer under this ~~sub-subparagraph~~  
23 sub-subdivision.
- 24 3. In addition to the other payments set forth in this section,  
25 if a termination, cancellation, or nonrenewal is premised  
26 upon any of the occurrences set forth in  
27 G.S. 20-305(6)c.1.IV., then the manufacturer shall be  
28 liable to the dealer for an amount not less than the fair  
29 market value of the franchise on (i) the day prior to  
30 which the franchisor announces the action which results  
31 in termination, cancellation, or nonrenewal; or (ii) the  
32 day prior to the action which results in termination,  
33 cancellation, or nonrenewal first became general  
34 knowledge; or (iii) the day three years prior to the date  
35 on which the notice of termination, cancellation, or  
36 nonrenewal is issued, whichever amount is higher.  
37 Payment is due within 90 days of the effective date of  
38 the termination, cancellation, or nonrenewal. If the  
39 termination, cancellation, or nonrenewal is due to a  
40 manufacturer's change in distributors, the manufacturer  
41 may avoid paying fair market value to the dealer if the  
42 new distributor or the manufacturer offers the dealer a  
43 franchise agreement with terms acceptable to the dealer.

1 e. Dealership Facilities Assistance upon Termination,  
2 Cancellation or Nonrenewal. –

3 In the event of the termination, cancellation or nonrenewal  
4 by the manufacturer or distributor under this section, except  
5 termination, cancellation or nonrenewal for insolvency, license  
6 revocation, conviction of a crime involving moral turpitude, or  
7 fraud by a dealer-owner:

- 8 1. Subject to paragraph 3 of this sub-subdivision, if the new  
9 motor vehicle dealer is leasing the dealership facilities  
10 from a lessor other than the manufacturer, the  
11 manufacturer shall pay the new motor vehicle dealer a  
12 sum equivalent to the rent for the unexpired term of the  
13 lease or three year's rent, whichever is less, or such  
14 longer term as is provided in the franchise agreement  
15 between the dealer and manufacturer; except that, in the  
16 case of motorcycle dealerships, the manufacturer shall  
17 pay the new motor vehicle dealer the sum equivalent to  
18 the rent for the unexpired term of the lease or one year's  
19 rent, whichever is less, or such longer term as provided  
20 in the franchise agreement between the dealer and  
21 manufacturer; or
- 22 2. Subject to paragraph 3 of this sub-subdivision, if the new  
23 motor vehicle dealer owns the dealership facilities, the  
24 manufacturer shall pay the new motor vehicle dealer a  
25 sum equivalent to the reasonable rental value of the  
26 dealership facilities for three years, or for one year in the  
27 case of motorcycle dealerships.
- 28 3. In order to be entitled to facilities assistance from the  
29 manufacturer, as provided in this ~~paragraph e.,~~  
30 sub-subdivision e., the dealer, owner, or lessee, as the  
31 case may be, shall have the obligation to mitigate  
32 damages by listing the demised premises for lease or  
33 sublease with a licensed real estate agent within 30 days  
34 after the effective date of the termination of the franchise  
35 and thereafter by reasonably cooperating with said real  
36 estate agent in the performance of the agent's duties and  
37 responsibilities. In the event that the dealer, owner, or  
38 lessee is able to lease or sublease the demised premises,  
39 the dealer shall be obligated to pay the manufacturer the  
40 net revenue received from such mitigation up to the total  
41 amount of facilities assistance which the dealer has  
42 received from the manufacturer pursuant to  
43 ~~sub-subdivisions 1. and 2.~~ paragraphs 1. and 2. of this  
44 sub-subdivision. To the extent and for such uses and

1 purposes as may be consistent with the terms of the  
2 lease, a manufacturer who pays facilities assistance to a  
3 dealer under this ~~paragraph e.~~ sub-subdivision e. shall be  
4 entitled to occupy and use the dealership facilities during  
5 the years for which the manufacturer shall have paid rent  
6 under ~~sub-subdivisions 1. and 2.~~ paragraphs 1. and 2. of  
7 this sub-subdivision.

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

23 5. The compensation required for facilities assistance under  
24 this ~~paragraph e.~~ sub-subdivision e. shall be paid by the  
25 manufacturer within 90 days of the effective date of  
26 termination, cancellation, or nonrenewal.

27 f. The provisions of sub-subdivisions d. and e. above shall not be  
28 applicable when the termination, nonrenewal or cancellation of  
29 the franchise agreement is the result of the voluntary act of the  
30 dealer.

31 Notwithstanding the terms of any contract or agreement, any  
32 dealer's termination or resignation shall not be deemed to be  
33 voluntary if that termination or resignation occurred under the  
34 manufacturer's threat of nonrenewal, cancellation, or  
35 termination of the franchise.

36 g. Duty to continue franchise. – Every manufacturer, factory  
37 branch, distributor, or distributor branch that maintains a  
38 network of franchised dealers in this State, and that, by any  
39 means, acquires the right to sell or market vehicles in this State  
40 under the same line-make as dealers who either currently hold a  
41 franchise for that same line-make or whose franchise was  
42 terminated, cancelled, discontinued, or nonrenewed as the result  
43 of any of the occurrences set forth in G.S. 20-305(6)c.1.IV.  
44 above, shall be required to either: (i) continue such dealers'



1 franchises in effect under the same terms and conditions as  
2 provided in the former franchise; (ii) offer each such dealer a  
3 replacement franchise on such reasonable terms as may be  
4 acceptable to such dealer; or (iii) compensate such dealers as  
5 required in sub-subdivision d. of this subdivision to the extent  
6 that any such dealer has not been fully compensated as the  
7 result of the failure, refusal, or inability of the original  
8 franchisor to meet its financial obligations to such dealer under  
9 G.S. 20-305(6)d."

10 **SECTION 2.** If any provision of this act or its application is held invalid, the  
11 invalidity does not affect other provisions or applications of this act that can be given  
12 effect without the invalid provisions or application, and to this end the provisions of this  
13 act are severable.

14 **SECTION 3.** This act shall apply to all franchises, contracts, and agreements  
15 between motor vehicle dealers and manufacturers, factory branches, distributors, and  
16 distributor branches whether franchises, contracts, and agreements were entered into  
17 before or after the effective date of this act.

18 **SECTION 4.** This act becomes effective July 1, 2007.