

§ 20-297.1. Franchise-related form agreements.

(a) All franchise-related form agreements, as defined in this subsection, offered to a motor vehicle dealer in this State shall provide that all terms and conditions in the agreement inconsistent with any of the laws or rules of this State are of no force and effect. For purposes of this section, the term "franchise-related form agreements" means one or more contracts between a franchised motor vehicle dealer and a manufacturer, factory branch, distributor, or distributor branch, including a written communication from a manufacturer or distributor in which a duty is imposed on the franchised motor vehicle dealer under which:

- (1) The franchised motor vehicle dealer is granted the right to sell and service new motor vehicles manufactured or distributed by the manufacturer or distributor or only to service motor vehicles under the contract and a manufacturer's warranty;
- (2) The franchised motor vehicle dealer is a component of the manufacturer or distributor's distribution system as an independent business;
- (3) The franchised motor vehicle dealer is substantially associated with the manufacturer or distributor's trademark, trade name, and commercial symbol;
- (4) The franchised motor vehicle dealer's business substantially relies on the manufacturer or distributor for a continued supply of motor vehicles, parts, and accessories; or
- (5) Any right, duty, or obligation granted or imposed by this Chapter is affected.

(b) Notwithstanding the terms of any franchise or agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch to offer to a dealer, revise, modify, or replace a franchise-related form agreement, as defined above in this section, which agreement, modification, or replacement may adversely affect or alter the rights, obligations, or liability of a motor vehicle dealer or may adversely impair the sales, service obligations, investment, or profitability of any motor vehicle dealer located in this State, unless:

- (1) The manufacturer, factory branch, distributor, or distributor branch provides prior written notice by registered or certified mail to each affected dealer, the Commissioner, and the North Carolina Automobile Dealers Association, Inc., of the modification or replacement in the form and within the time frame set forth within this section and in subsection (c) of this section; and
- (2) If a protest is filed under this section, the Commissioner approves the modification or replacement.

(c) The notice required by subdivision (b)(1) of this section shall:

- (1) Be given not later than the 60th day before the effective date of the modification or replacement;
- (2) Contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE COMMISSIONER OF THE NORTH CAROLINA DIVISION OF MOTOR VEHICLES AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED INITIAL OFFERING, MODIFICATION, OR REPLACEMENT OF CERTAIN FRANCHISE-RELATED FORM AGREEMENTS UNDER THE TERMS OF THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW, IF YOU OPPOSE THIS ACTION"; and
- (3) Contain a separate letter or statement that identifies all substantive modifications or revisions and the principal reasons for each such modification or revision.

(d) A franchised dealer may file a protest with the Commissioner of the offering, modification, or replacement pursuant to this section not later than the latter of:

- (1) The 60th day after the date of the receipt of the notice; or
- (2) The time specified in the notice.

(e) After a protest is filed, the Commissioner shall determine whether the manufacturer, factory branch, distributor, or distributor branch has established by a preponderance of the evidence that there is good cause for the proposed offering, modification, or replacement. The prior franchise-related form agreement, if any, continues in effect until the Commissioner resolves the protest.

(f) The Commissioner is authorized and directed to investigate and prevent violations of this section, including inconsistencies of any franchise-related form agreement with the provisions of this Article.

(g) Nothing contained in this section shall in any way limit a dealer's rights under any other provision of this Article or other applicable law. (1997-319, s. 1; 2005-409, s. 1.)