

HOUSE BILL 571

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R4

2001 Regular Session
11r2552
CF 11r1832

By: **Delegate Malone**

Introduced and read first time: February 5, 2001

Assigned to: Commerce and Government Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 6, 2001

CHAPTER 667

1 AN ACT concerning

2 **Vehicle Laws - Manufacturers, Distributors, and Factory Branches - Good**
3 **Faith Dealings**

4 FOR the purpose of defining the term "good faith" for purposes of certain business
5 transactions involving vehicle manufacturers, distributors, and factory
6 branches; prohibiting a vehicle manufacturer, distributor, or factory branch in
7 the conduct of certain business transactions from failing to act in good faith;
8 providing for the application of this Act; and generally relating to a requirement
9 that vehicle manufacturers, distributors, and factory branches act in good faith.

10 ~~BY repealing and reenacting, with amendments,~~
11 ~~Article - Transportation~~
12 ~~Section 15-207~~
13 ~~Annotated Code of Maryland~~
14 ~~(1999 Replacement Volume and 2000 Supplement)~~

15 BY adding to
16 Article - Transportation
17 Section 15-206.1
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2000 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Transportation2 ~~15-207.~~

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) (i) "Coerce" means to ~~compel or attempt to compel by threat of~~
5 ~~harm, breach of contract, or other adverse consequences.~~6 (ii) "Coerce" ~~does not include to argue, urge, recommend, or~~
7 ~~persuade.~~8 (3) "GOOD FAITH" ~~MEANS HONESTY IN FACT AND THE OBSERVANCE OF~~
9 ~~REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING IN THE TRADE.~~10 ~~[(3)]~~ (4) "Require" means to impose upon a dealer a provision not
11 required by law or previously agreed to by a dealer in a franchise agreement,
12 excluding business decisions by a manufacturer, distributor, or factory branch which
13 are uniformly applied to all Maryland dealers in new vehicles of the manufacturer,
14 distributor, or factory branch.15 (b) (1) A manufacturer, distributor, or factory branch, whether directly or
16 through an agent, employee, or representative, may not coerce any dealer to make
17 any agreement with the manufacturer, distributor, or factory branch.18 (2) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
19 DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE, MAY NOT, IN
20 ACTING OR PURPORTING TO ACT UNDER THE TERMS, PROVISIONS, OR CONDITIONS
21 OF ANY FRANCHISE AGREEMENT, OR OTHERWISE, FAIL TO ACT IN GOOD FAITH.22 (c) A manufacturer, distributor, or factory branch, whether directly or through
23 an agent, employee, or representative, may not coerce any dealer to order or accept
24 delivery of any vehicle, any equipment, parts, or accessories for a vehicle, or any other
25 commodity that is not required by law or by the dealer's franchise or that was not
26 ordered voluntarily by the dealer.27 (d) A manufacturer, distributor, or factory branch, whether directly or through
28 an agent, employee, or representative, may not require or coerce a dealer, by
29 franchise agreement or otherwise, or as a condition to the renewal or continuation of
30 a franchise agreement, to:31 (1) Eliminate from the use of the dealer's facilities a dealership for which
32 the dealer has a franchise agreement to utilize the facilities as of March 1, 1996; or33 (2) Materially change the dealer's facilities or method of conducting
34 business if the change would impose substantial financial hardship on the business of
35 the dealer.36 (e) (1) A manufacturer, distributor, or factory branch, whether directly or
37 through an agent, employee, or representative, may not require or coerce a dealer to

1 adhere to performance standards that are not applied uniformly to other similarly
2 situated dealers.

3 (2) A performance standard or program for measuring dealership
4 performance that may have a material effect on a dealer and the application of the
5 standard or program by a manufacturer, distributor, or factory branch shall be fair,
6 reasonable, equitable, and based on accurate information.

7 (3) (i) If the performance standard is based on a survey, it must be
8 shown that:

9 1. The survey was designed with experts;

10 2. The proper universe was examined;

11 3. A representative sample was chosen; and

12 4. The data was accurately reported.

13 (ii) The manufacturer, distributor, or factory branch shall establish
14 the objectivity of the survey process and provide this information to any dealer of the
15 same line make covered by the survey on request.

16 (f) A franchise agreement or other contract offered to a dealer by a
17 manufacturer, distributor, or factory branch may not contain any provision requiring
18 a dealer to pay the attorney's fees of the manufacturer, distributor, or factory branch
19 related to disputes involving the franchise.

20 15-206.1.

21 (A) IN THIS SECTION, "GOOD FAITH" MEANS HONESTY IN FACT AND THE
22 OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING IN THE
23 TRADE.

24 (B) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
25 DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE, MAY NOT FAIL
26 TO ACT IN GOOD FAITH:

27 (1) IN ACTING OR PURPORTING TO ACT UNDER THE TERMS, PROVISIONS,
28 OR CONDITIONS OF ANY FRANCHISE AGREEMENT; OR

29 (2) IN ANY TRANSACTION OR CONDUCT GOVERNED BY THIS SUBTITLE.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
31 applicable to any franchise agreement in existence on or after the effective date of
32 this Act.

33 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take
34 effect October 1, 2001.

