

HOUSE BILL 833

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CF SB 558

By: **Delegates Frush, Davis, Fraser-Hidalgo, Gilchrist, Healey, Holmes, A. Miller, S. Robinson, Tarlau, Valderrama, Waldstreicher, M. Washington, and C. Wilson**

Introduced and read first time: February 13, 2015

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers, Distributors, and Factory Branches –**
3 **Relationship With Dealers**

4 FOR the purpose of requiring a manufacturer to make certain payments to dealers based
5 on the average benefit, incentive, and rebate amounts paid to all dealers in the State;
6 altering the application of a certain prohibition against a manufacturer coercing the
7 purchase of goods by dealers to include the purchase of certain promotional
8 materials; repealing the authority of a manufacturer, distributor, or factory branch
9 to offer certain goods or services to a dealer subject to a certain approval; prohibiting
10 a manufacturer, distributor, or factory branch from requiring or coercing a dealer to
11 waive the dealer's right to a jury trial; prohibiting a manufacturer, distributor, or
12 factory branch from retaliating against certain persons because of certain legislation
13 that regulates the franchise relationship; prohibiting a manufacturer, distributor, or
14 factory branch from sanctioning or denying benefits to a dealer because of certain
15 speech used by the dealer; altering certain provisions relating to advertising to
16 prohibit manufacturers, distributors, and factory branches from allowing their
17 franchised dealers to use deceptive advertising; requiring a manufacturer to consent
18 or object to a certain transfer of a franchise within a certain period of time; repealing
19 a requirement that a certain claim be made in the manner and form reasonably
20 prescribed by the manufacturer or distributor; repealing a requirement that certain
21 claims by dealers be substantiated by evidence that the claims were handled
22 according to manufacturer warranty guidelines; increasing the maximum fine for
23 certain violations committed by manufacturers, distributors, and factory branches;
24 providing for the recovery of reasonable court costs resulting from certain violations
25 committed by manufacturers, distributors, and factory branches under certain
26 circumstances; clarifying that certain costs and attorney's fees arising out of a
27 certain administrative hearing are recoverable; and generally relating to the
28 relationship between dealers and manufacturers, distributors, and factory branches.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Transportation
3 Section 15–207(h)(1) and (k), 15–210, 15–211(e), 15–212(c) and (d), and 15–213
4 Annotated Code of Maryland
5 (2012 Replacement Volume and 2014 Supplement)

6 BY adding to
7 Article – Transportation
8 Section 15–207(l) and 15–207.1
9 Annotated Code of Maryland
10 (2012 Replacement Volume and 2014 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Transportation
13 Section 15–211(d)
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2014 Supplement)

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

18 **Article – Transportation**

19 15–207.

20 (h) (1) (i) Any consumer rebates, dealer incentives, price or interest rate
21 reductions, or finance terms that a manufacturer, distributor, or factory branch offers or
22 advertises, or allows its dealers to offer or advertise, shall be offered to all dealers of the
23 same line make.

24 (ii) Any manufacturer, distributor, or factory branch that denies the
25 benefit of any consumer rebates, dealer incentives, price or interest rate reductions, or
26 finance terms to a dealer on the basis that the dealer failed to comply with performance
27 standards has the burden of proving that the performance standards comply with the
28 provisions of this section.

29 **(III) A MANUFACTURER SHALL PAY EACH DEALER NO LESS THAN**
30 **THE AVERAGE BENEFIT, INCENTIVE, OR REBATE AMOUNT PER VEHICLE THAT THE**
31 **MANUFACTURER PAID ALL DEALERS IN THE STATE DURING THE BENEFIT,**
32 **INCENTIVE, OR REBATE PERIOD.**

33 (k) (1) This subsection does not apply to:

34 (i) The purchase or procurement of:

35 1. [Moveable displays;

1 (ii) Erect or maintain signs that do not conform to the intellectual
2 property usage guidelines of the manufacturer, distributor, factory branch, or one of its
3 affiliates.

4 ~~[(5)]~~ (4) (i) A manufacturer, distributor, factory branch, or one of its
5 affiliates may not penalize a dealer for failure to participate in an optional program.

6 (ii) Withholding the benefits of an optional program in which the
7 dealer failed to participate may not be construed to be a penalty imposed by the
8 manufacturer, distributor, factory branch, or affiliate.

9 (L) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
10 DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN AFFILIATE, OR A
11 REPRESENTATIVE, MAY NOT REQUIRE OR COERCE A DEALER, BY FRANCHISE
12 AGREEMENT OR OTHERWISE OR AS A CONDITION OF THE RENEWAL OR
13 CONTINUATION OF A FRANCHISE AGREEMENT, TO WAIVE THE DEALER'S RIGHT TO A
14 JURY TRIAL.

15 **15-207.1.**

16 (A) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
17 DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN AFFILIATE, OR A
18 REPRESENTATIVE, MAY NOT RETALIATE OR CONTINUE TO RETALIATE AGAINST A
19 DEALER, A DEALER'S EMPLOYEES, OR A DEALER'S CUSTOMERS BECAUSE OF
20 LEGISLATION PASSED BY THE GENERAL ASSEMBLY AND ENACTED INTO LAW THAT
21 REGULATES THE FRANCHISE RELATIONSHIP.

22 (B) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT
23 SANCTION OR DENY BENEFITS TO A DEALER BECAUSE OF SPEECH USED BY THE
24 DEALER IF THE SPEECH IS LAWFUL AND NOT DECEPTIVE.

25 **15-210.**

26 (a) A manufacturer, whether directly or through an agent, employee, or
27 representative, may not use, **OR ALLOW ITS FRANCHISED DEALERS TO USE**, any
28 advertisement that is in any way false, deceptive, or misleading.

29 (b) A distributor, whether directly or through an agent, employee, or
30 representative, may not use, **OR ALLOW ITS FRANCHISED DEALERS TO USE**, any
31 advertisement that is in any way false, deceptive, or misleading.

32 (c) A factory branch, whether directly or through an agent, employee, or
33 representative, may not use, **OR ALLOW ITS FRANCHISED DEALERS TO USE**, any
34 advertisement that is in any way false, deceptive, or misleading.

1 15-211.

2 (d) (1) A dealer or an owner, partner, or stockholder of a dealership may not
3 sell, assign, or otherwise transfer a franchise or any right under a franchise without the
4 consent of the manufacturer.

5 (2) Notwithstanding the terms of any franchise agreement or agreement
6 related to a franchise, a manufacturer may not exercise a right of first refusal in the event
7 of a sale or transfer or proposed sale or transfer of a dealer's business or any equity interest
8 in a dealer's business to a person who meets the manufacturer's reasonable qualifications
9 for ownership and is:

10 (i) A member of the dealer's immediate family;

11 (ii) A qualified manager with at least 2 years management
12 experience at the dealer's business;

13 (iii) An existing dealer in good standing; or

14 (iv) A business entity controlled by a person described in item (i), (ii),
15 or (iii) of this paragraph.

16 (3) If a manufacturer exercises a right of first refusal in the event of a sale
17 or transfer or proposed sale or transfer of the dealer's business or an equity interest in the
18 dealer's business, the manufacturer shall pay the reasonable expenses, including
19 customary attorney's fees, incurred by the prospective purchaser in negotiating and
20 implementing the contract for the proposed sale or transfer, provided that the dealer has
21 given the manufacturer at least 45 days' notice of an intent to sell or transfer.

22 (e) **(1) A MANUFACTURER SHALL CONSENT OR OBJECT TO THE**
23 **TRANSFER OF A FRANCHISE UNDER SUBSECTION (D) OF THIS SECTION WITHIN 30**
24 **DAYS AFTER RECEIVING NOTICE OF THE INTENT TO TRANSFER.**

25 **(2)** A manufacturer may not unreasonably withhold consent to the transfer
26 of a franchise under subsection (d) of this section.

27 15-212.

28 (c) (1) A licensee shall specify in writing to each of its motor vehicle dealers
29 licensed in the State:

30 (i) The dealer's obligation for vehicle preparation, delivery,
31 warranties, and recalls on its products;

32 (ii) The schedule of compensation to be paid to the dealers for parts,
33 including parts assemblies, and labor, including diagnostic labor and associated

1 administrative requirements, in connection with the service obligations established under
2 item (i) of this paragraph; and

3 (iii) A time allowance for the performance of labor described in this
4 paragraph that is reasonable and adequate.

5 (2) Reasonable compensation under this section may not be less than:

6 (i) With respect to labor for warranty or recall repairs, the dealer's
7 current labor rate for nonwarranty repairs of a like kind for retail customers; and

8 (ii) With respect to any part, the dealer's cost plus its current retail
9 mark-up percentage charged to retail customers for nonwarranty repairs of a like kind.

10 (3) (i) For purposes of paragraph (2) of this subsection, the dealer's
11 labor rate or parts mark-up percentage shall be established by a submission to the licensee
12 of whichever of the following produces fewer repair orders closed, as of the date of
13 submission, within the preceding 180 days:

14 1. 100 qualifying sequential customer-paid repair orders; or

15 2. 90 days of qualifying customer-paid repair orders.

16 (ii) With respect to parts, a schedule of compensation established
17 under this subsection shall be equal to the parts mark-up percentage as reflected in
18 qualifying repair orders, calculated by dividing the total charges for parts in the repair
19 orders by the total dealer cost for the parts minus one.

20 (iii) 1. A dealer may not make a submission under this subsection
21 more than once in 1 year.

22 2. For purposes of subsubparagraph 1 of this subparagraph,
23 a revision or supplement to a submission to correct or clarify the submission does not
24 constitute a new submission.

25 (4) Repair orders for labor or parts in connection with any of the following
26 may not constitute a qualifying repair order under paragraph (2) of this subsection:

27 (i) Accessories;

28 (ii) Repairs for manufacturer, distributor, or factory branch special
29 events, promotions, or service campaigns;

30 (iii) Repairs related to collision;

31 (iv) Vehicle emission or safety inspections required by law;

1 (v) Parts sold, or repairs performed, at wholesale or for insurance
2 carriers, or other third-party payors;

3 (vi) Routine maintenance not covered under any warranty, including
4 maintenance involving fluids, filters, and belts not provided in the course of repairs;

5 (vii) Nuts, bolts, fasteners, and similar items that do not have an
6 individual parts number;

7 (viii) Tires;

8 (ix) Vehicle reconditioning;

9 (x) Goodwill or policy repairs or replacements; or

10 (xi) Repairs on vehicles from a different line-make.

11 (5) If a licensee gives a dealer a part at no cost to use in performing a repair
12 under a recall, campaign service action, or warranty repair, the licensee shall compensate
13 the dealer for the part by paying the dealer the parts mark-up percentage established
14 under this subsection on the cost for the part listed on the licensee's price schedule.

15 (6) (i) The schedule of compensation submitted under paragraph (3) of
16 this subsection shall be presumed to be accurate and reasonable.

17 (ii) The licensee shall approve or rebut the dealer's submission
18 within 30 days of receipt.

19 (iii) If the licensee approves a dealer's submission, the licensee shall
20 begin compensating the dealer under the schedule within 30 days after the date of approval.

21 (iv) In the absence of a timely rebuttal by the licensee, the schedule
22 of compensation submitted by the dealer shall go into effect on the 31st day following the
23 licensee's receipt of the schedule.

24 (v) Any rebuttal of the schedule of compensation by the licensee
25 shall:

26 1. Be delivered to the dealer within 30 days of the licensee's
27 receipt of the schedule; and

28 2. Consist of reasonable substantiating evidence that the
29 declared rate is materially inaccurate.

30 (vi) In the event of a timely rebuttal, on resolution of the matter by
31 agreement of the parties or by administrative, judicial, or other action, a licensee's payment

1 obligations under the resulting schedule of compensation shall begin on the 31st day
2 following a final order unless otherwise provided for by the fact finder.

3 (vii) 1. To the extent that any action commenced under subsection
4 (d) of this section or § 15–213 or § 15–214 of this subtitle involves the application of
5 paragraph (3) of this subsection, the issues shall be limited to whether the labor rate or
6 parts mark–up percentage stated in the dealer’s submission was materially inaccurate.

7 2. A licensee shall have the burden of proving under this
8 subparagraph that the dealer’s submission was materially inaccurate.

9 (viii) 1. A licensee may verify a dealer’s effective rates once
10 annually.

11 2. If a licensee finds that a dealer’s effective rates have
12 increased or decreased, the licensee may increase or decrease, respectively, the warranty
13 reimbursement rate prospectively.

14 (7) A licensee may not directly or indirectly:

15 (i) Calculate its own labor rate or parts mark–up percentage on a
16 warranty reimbursement rate submission by the licensee’s dealer under this section, or
17 require a dealer to calculate a labor rate or parts mark–up percentage, by any method not
18 required under this section, including a method that is unduly burdensome or
19 time–consuming or that requires information that is unduly burdensome or
20 time–consuming to provide such as:

21 1. A part–by–part or transaction–by–transaction
22 calculation; or

23 2. Presentation of information as to, or calculations based on,
24 the dealer’s or other dealers’ warranty compensation;

25 (ii) Establish or implement a special part or component number for
26 parts used in warranty fulfillment, if the special part or component number results in
27 reduced compensation for the dealer unless the part is used for specific, limited repair
28 situations;

29 (iii) Require or coerce a dealer to change the prices for which it sells
30 parts or labor for retail customer repairs;

31 (iv) Take adverse action against a dealer because the dealer seeks
32 compensation under this section, by:

33 1. Implementing a process that is inconsistent with the
34 licensee’s obligations to the dealer under this subtitle; or

