

# SENATE BILL 558

R4

5lr2589  
CF 5lr0467

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By: **Senators Lee, Kagan, and Raskin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

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## 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.

29 BY repealing and reenacting, with amendments,  
30 Article – Transportation

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 15–207(h)(1) and (k), 15–210, 15–211(e), 15–212(c) and (d), and 15–213  
 2 Annotated Code of Maryland  
 3 (2012 Replacement Volume and 2014 Supplement)

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

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

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

16 **Article – Transportation**

17 15–207.

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

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

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

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

32 (i) The purchase or procurement of:

33 1. [Moveable displays;

34 2. Brochures or other promotional materials;

1                               3.] Special tools and training as required by the  
2 manufacturer;

3                               [4.] 2. Parts for repairs made under warranty obligations of a  
4 manufacturer, distributor, or factory branch; or

5                               [5.] 3. Any goods or services for which a manufacturer, a  
6 distributor, a factory branch, or an affiliate provides a credit, stipend, payment, or  
7 reimbursement to the dealer that covers all or a substantial portion of the dealer's program  
8 costs;

9                               (ii) Optional programs;

10                              (iii) A program, or the renewal or modification of a program, in  
11 existence on October 1, 2014; or

12                              (iv) An agreement between the manufacturer, distributor, factory  
13 branch, or affiliate and the dealer that is directly related to the dealer's completion of a  
14 program if separate and valuable consideration has been offered to the dealer and accepted.

15                              (2) [(i) Subject to subparagraph (ii) of this paragraph, a] A  
16 manufacturer, distributor, factory branch, or one of its affiliates may not, directly or  
17 through an agent, an employee, an affiliate, or a representative, require or coerce by  
18 agreement, program, or incentive provision, a dealer to purchase goods or services from a  
19 vendor that is selected, identified, or designated by the manufacturer, distributor, factory  
20 branch, or one of its affiliates.

21                              [(ii) A manufacturer, distributor, factory branch, or one of its  
22 affiliates may offer a dealer the option to obtain goods or services under this subsection of  
23 substantially similar quality and design from a vendor chosen by the dealer subject to the  
24 advanced approval of the manufacturer, distributor, factory branch, or one of its affiliates.]

25                              (3) [A manufacturer, distributor, factory branch, or one of its affiliates may  
26 not unreasonably withhold the approval required under paragraph (2) of this subsection.

27                              (4)] Nothing in this subsection may be construed to allow a dealer or vendor  
28 to:

29                              (i) Directly or indirectly eliminate or impair in any way a  
30 manufacturer's intellectual property, trademark, or trade dress rights; or

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

1            ~~[(5)] (4)~~ (i) A manufacturer, distributor, factory branch, or one of its  
2 affiliates may not penalize a dealer for failure to participate in an optional program.

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

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

12 **15-207.1.**

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

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

22 **15-210.**

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

26            (b) A distributor, 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            (c) A factory branch, 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 **15-211.**

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

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

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

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

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

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

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

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

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

26 15-212.

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

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

31 (ii) The schedule of compensation to be paid to the dealers for parts,  
32 including parts assemblies, and labor, including diagnostic labor and associated  
33 administrative requirements, in connection with the service obligations established under  
34 item (i) of this paragraph; and

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

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

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

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

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

12 1. 100 qualifying sequential customer-paid repair orders; or

13 2. 90 days of qualifying customer-paid repair orders.

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

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

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

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

25 (i) Accessories;

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

28 (iii) Repairs related to collision;

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

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

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

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

5 (viii) Tires;

6 (ix) Vehicle reconditioning;

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

8 (xi) Repairs on vehicles from a different line–make.

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

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

15 (ii) The licensee shall approve or rebut the dealer’s submission  
16 within 30 days of receipt.

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

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

22 (v) Any rebuttal of the schedule of compensation by the licensee  
23 shall:

24 1. Be delivered to the dealer within 30 days of the licensee’s  
25 receipt of the schedule; and

26 2. Consist of reasonable substantiating evidence that the  
27 declared rate is materially inaccurate.

28 (vi) In the event of a timely rebuttal, on resolution of the matter by  
29 agreement of the parties or by administrative, judicial, or other action, a licensee’s payment  
30 obligations under the resulting schedule of compensation shall begin on the 31st day  
31 following a final order unless otherwise provided for by the fact finder.

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

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

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

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

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

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

19 1. A part–by–part or transaction–by–transaction  
20 calculation; or

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

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

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

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

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

33 2. Failing to act in good faith;



1 (v) Conduct any warranty or retail customer repair audit, or other  
2 service-related audit, solely because the dealer makes a request for warranty  
3 reimbursement at retail rates in the ordinary course of business; or

4 (vi) Establish, implement, enforce, or apply any policy, standard,  
5 rule, program, or incentive regarding the compensation due under this section other than  
6 in a uniform manner among the licensee's dealers in the State.

7 (8) The provisions of paragraphs (1) through (7) of this subsection do not  
8 apply to travel trailers or parts of systems, fixtures, appliances, furnishings, accessories,  
9 and features of motor homes that are not manufactured by the manufacturer of the motor  
10 home as a part of the unit.

11 (9) (i) A claim filed under this section by a dealer with a manufacturer  
12 or distributor shall be[:

13 1. In the manner and form reasonably prescribed by the  
14 manufacturer or distributor; and

15 2. Approved] **APPROVED** or disapproved within 30 days of  
16 receipt.

17 (ii) A claim not approved or disapproved within 30 days of receipt  
18 shall be deemed approved.

19 (iii) Payment of or credit issued on a claim filed under this section  
20 shall be made within 30 days of approval.

21 (10) A dealer's failure to comply with a specific requirement of the  
22 manufacturer or distributor **FOR PROCESSING A CLAIM** may not constitute grounds for  
23 denial of the claim or reduction of the amount of compensation paid to the dealer if the  
24 dealer presents documentation or other reasonable evidence to substantiate [that the  
25 repair and the claim were done according to manufacturer warranty guidelines] **THE**  
26 **CLAIM**.

27 (11) (i) If a claim filed under this section is shown by the manufacturer  
28 or distributor to be false or unsubstantiated, the manufacturer or distributor may charge  
29 back the claim within 9 months from the date the claim was paid or credit issued.

30 (ii) This paragraph does not limit the right of a manufacturer or  
31 distributor to:

32 1. Conduct an audit of any claim filed under this section; or

33 2. Charge back for any claim that is proven to be fraudulent.

1 (iii) An audit under this paragraph shall be conducted according to  
2 generally accepted accounting principles.

3 (d) As to any person licensed under this subtitle, instead of or in addition to  
4 revocation, suspension, or nonrenewal of a license under this section, the Administrator:

5 (1) May order the licensee to pay a fine not exceeding ~~[\$50,000]~~ **\$500,000**  
6 for each violation of this subtitle; and

7 (2) May order the licensee to compensate any person for financial injury or  
8 other damage suffered as a result of the violation.

9 15-213.

10 Notwithstanding any administrative or criminal sanctions imposed by this subtitle,  
11 if a person suffers financial injury or other damage as a result of a violation of this subtitle  
12 by any other person, whether or not that other person has been found guilty of a criminal  
13 violation, the injured person may recover damages and reasonable **COURT COSTS AND**  
14 **attorneys' fees, INCLUDING COSTS AND ATTORNEYS' FEES ARISING OUT OF AN**  
15 **ADMINISTRATIVE HEARING**, in any court of competent jurisdiction.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2015.