

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 833 (Delegate Frush, *et al.*)
Environment and Transportation

Vehicle Laws - Manufacturers, Distributors, and Factory Branches -
Relationship With Dealers

This bill establishes numerous requirements and restrictions applicable to the relationship between motor vehicle dealers and motor vehicle manufacturers, distributors, and/or factory branches.

Fiscal Summary

State Effect: Transportation Trust Fund revenues increase minimally due to the application of the bill's enhanced administrative penalties to any future violations of the bill's restrictions and requirements and other existing provisions of the Maryland Vehicle Law relevant to motor vehicle manufacturers, distributors, and/or factory branches. Expenditures are not materially affected.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires manufacturers to pay each dealer no less than the average benefit, incentive, or rebate amount per vehicle that the manufacturer paid all dealers in the State during the benefit, incentive, or rebate period.

The bill also prohibits a manufacturer, distributor, or factory branch from requiring or coercing a dealer into purchasing a moveable display, brochure, or other promotional material from a particular vendor. The bill also repeals the exemption allowing a

manufacturer, distributor, or factory branch to offer to a dealer the option to obtain specified goods or services subject to the advanced approval of the manufacturer, distributor, or factory branch.

A manufacturer, distributor, or factory branch, whether directly or through an agent, an employee, an affiliate, or a representative, may not require or coerce a dealer, by franchise agreement or otherwise, or as a condition of the renewal or continuation of a franchise agreement, to waive the dealer's right to a jury trial.

The bill also prohibits a manufacturer, distributor, or factory branch from retaliating against a dealer, a dealer's employees, or a dealer's customers because of enacted legislation that regulates the franchise relationship. A manufacturer, distributor, or factory branch may not sanction or deny benefits to a dealer because of speech used by the dealer if the speech is lawful and not deceptive.

The bill specifies that a manufacturer, distributor, or factory branch may not *allow its franchised dealers to use* any advertisement that is in any way false, deceptive, or misleading, which is similar to the existing prohibition that prohibits these licensees from *using* any advertisement in a way that is false, deceptive, or misleading.

The bill requires a manufacturer to either consent or object to the transfer of a franchise within 30 days after receiving notice of the intent to transfer.

The bill repeals the requirement that a claim filed by a dealer with a manufacturer or distributor be in the manner and form prescribed by the manufacturer or distributor.

The bill increases, from \$50,000 to \$500,000, the administrative fine applicable to a manufacturer, distributor, or factory branch licensee for any violation of the subtitle of the Maryland Vehicle Law affecting manufacturer, distributor, and factory branch licensees.

Finally, the bill authorizes the recovery of reasonable court costs and costs and attorney's fees arising out of an administrative hearing if a person suffers financial injury or other damage as a result of a violation of the subtitle of the Maryland Vehicle Law regulating manufacturers, distributors, and factory branches.

Current Law: One of the core functions of the Motor Vehicle Administration (MVA) is to issue licenses for vehicle-related business activities. MVA issues licenses to vehicle dealers, salesmen, manufacturers, distributors, factory branches, and for several other types of business activities. Subtitles 2 through 4 of Title 15 of the Transportation Article contain numerous provisions that generally regulate vehicle dealer, manufacturer, distributor, and factory branch licensees, as well as the relationship between the licensees.

Any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms that a manufacturer, distributor, or factory branch offers or advertises, or allows its dealers

to offer or advertise, must be offered to all dealers of the same line make. Any manufacturer, distributor, or factory branch that denies the benefit of any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms to a dealer on the basis that the dealer failed to comply with performance standards has the burden of proving that the performance standards comply with the Maryland Vehicle Law.

A manufacturer, distributor, factory branch, or one of its affiliates may not (directly or through an agent, an employee, an affiliate, or a representative) require or coerce (by agreement, program, or incentive provision) a dealer to purchase goods or services from a vendor that is selected, identified, or designated by the manufacturer, distributor, factory branch, or one of its affiliates. This does not apply to, among other things, the purchase or procurement of moveable displays, brochures, or other promotional materials. A manufacturer, distributor, factory branch, or one of its affiliates may offer a dealer the option to obtain goods or services of substantially similar quality and design from a vendor chosen by the dealer subject to the advanced approval of the manufacturer, distributor, factory branch, or one of its affiliates. A manufacturer, distributor, factory branch, or one of its affiliates may not unreasonably withhold that approval.

A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, or representative, may not use any advertisement that is in any way false, deceptive, or misleading.

A dealer or an owner, partner, or stockholder of a dealership may not sell, assign, or otherwise transfer a franchise or any right under a franchise without the consent of the manufacturer. A manufacturer may not unreasonably withhold consent to the transfer of a franchise.

A claim for compensation by a dealer with a manufacturer or distributor must be made in the manner and form reasonably prescribed by the manufacturer or distributor and be approved or disapproved within 30 days of receipt. A claim not approved or disapproved within 30 days of receipt is deemed approved. Payment of or credit issued on a claim must be made within 30 days of approval.

MVA may, instead of or in addition to revocation, suspension, or nonrenewal of a license, order a manufacturer, distributor, or factory branch licensee to pay a fine of up to \$50,000 per violation.

In addition to any administrative or criminal sanctions, if a person suffers financial injury or other damage as a result of a violation of the subtitle of the Maryland Vehicle Law regulating manufacturer, distributor, or factory branch licensees, the injured person may recover damages and reasonable attorney's fees, regardless of whether the licensee has been found guilty of a criminal violation.

Small Business Effect: It is unknown how many licensed manufacturers, distributors, or factory branches currently do not comply with the bill's restrictions and requirements. However, a small business dealer realizes a meaningful benefit to the extent that the bill provides significant additional protections from existing practices by licensed manufacturers, distributors, or factory branches or provides a disincentive from future harmful practices. To the extent that any manufacturer, distributor, or factory branch is a small business entity, the bill creates additional restrictions and requirements. According to MVA, there were 2,126 used car, new car, and wholesale dealers licensed in fiscal 2013, as well as 19 manufacturers or distributors, and 2 factory branches.

Additional Information

Prior Introductions: None.

Cross File: SB 558 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Legislative Services

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