

SENATE BILL 666

R4

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CF 6lr0981

By: **Senators Lee, Hough, Benson, Feldman, Kagan, King, Madaleno, Manno, Pinsky, Raskin, Ready, and Rosapepe**
Introduced and read first time: February 5, 2016
Assigned to: Judicial Proceedings and Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers and Dealers**

3 FOR the purpose of authorizing a motor vehicle dealer to disclose to a consumer the terms
4 and conditions of any motor vehicle manufacturer warranty adjustment program of
5 which the dealer has knowledge and to make any necessary repairs under the
6 adjustment program; prohibiting a manufacturer from retaliating against certain
7 persons because the persons exercise certain rights or assert certain protections, and
8 making a violation an unfair or deceptive trade practice under the Maryland
9 Consumer Protection Act subject to certain penalty and enforcement provisions;
10 repealing a certain standard that applies to the prohibition against a manufacturer,
11 distributor, or factory branch requiring or coercing a dealer in certain manners to
12 change the dealer's facilities or method of conducting business; prohibiting a
13 manufacturer, distributor, or factory branch from requiring or coercing a dealer in
14 certain manners to relinquish control of the display of certain information on the
15 Internet; prohibiting a manufacturer, distributor, or factory branch from requiring
16 or coercing a dealer in certain manners to waive the right of the dealer to a jury trial;
17 altering certain provisions of law governing the authorized purchase of certain goods
18 and services by a dealer; altering certain provisions of law governing the payment of
19 warranty claims made by dealers; altering the maximum administrative fine to
20 which a manufacturer is subject for certain violations; authorizing the recovery of
21 certain court and administrative costs and attorneys' fees in certain civil actions
22 involving manufacturers or dealers; providing for the construction of certain
23 provisions of this Act; defining certain terms; and generally relating to motor vehicle
24 manufacturers and dealers.

25 BY repealing and reenacting, without amendments,
26 Article – Commercial Law
27 Section 14–1402(a)
28 Annotated Code of Maryland
29 (2013 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, with amendments,
2 Article – Commercial Law
3 Section 14–1402(c)
4 Annotated Code of Maryland
5 (2013 Replacement Volume and 2015 Supplement)
- 6 BY adding to
7 Article – Commercial Law
8 Section 14–14A–01 through 14–14A–03 to be under the new subtitle “Subtitle 14A.
9 Retaliation Against Motor Vehicle Dealers”
10 Annotated Code of Maryland
11 (2013 Replacement Volume and 2015 Supplement)
- 12 BY repealing and reenacting, with amendments,
13 Article – Transportation
14 Section 15–207(a), (d), and (k)(1) and (2), 15–212(c)(10) and (11) and (d), 15–212.1(c),
15 and 15–213
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2015 Supplement)
- 18 BY repealing and reenacting, without amendments,
19 Article – Transportation
20 Section 15–207(k)(3) and 15–212(c)(1)
21 Annotated Code of Maryland
22 (2012 Replacement Volume and 2015 Supplement)
- 23 BY adding to
24 Article – Transportation
25 Section 15–207(l)
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2015 Supplement)
- 28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
29 That the Laws of Maryland read as follows:
- 30 **Article – Commercial Law**
- 31 14–1402.
- 32 (a) A manufacturer of motor vehicles sold in the State shall establish procedures
33 under which each consumer in the State who owns or leases a motor vehicle to which an
34 adjustment program of the manufacturer applies:
- 35 (1) Is notified of the adjustment program;

1 (2) On request, is provided with a copy of any service bulletin or any other
2 document issued by the manufacturer pertaining to an adjustment program or to a
3 condition that may substantially affect motor vehicle durability, reliability, or performance;
4 and

5 (3) Within 90 days after the establishment of a new adjustment program,
6 is sent written notice by first-class mail of the terms and conditions of the adjustment
7 program.

8 (c) **(1)** A manufacturer shall provide to its dealers information about each
9 adjustment program of the manufacturer in a format that facilitates the disclosure of the
10 terms and conditions of the adjustment program to a consumer seeking repairs at the
11 dealer's repair facility.

12 **(2) IF A DEALER IS NOTIFIED OR OTHERWISE HAS KNOWLEDGE OF AN**
13 **ADJUSTMENT PROGRAM, THE DEALER MAY:**

14 **(I) DISCLOSE TO A CONSUMER IN ANY MANNER THE DEALER**
15 **CONSIDERS APPROPRIATE THE TERMS AND CONDITIONS OF THE ADJUSTMENT**
16 **PROGRAM; AND**

17 **(II) MAKE ANY NECESSARY REPAIRS UNDER THE ADJUSTMENT**
18 **PROGRAM.**

19 **SUBTITLE 14A. RETALIATION AGAINST MOTOR VEHICLE DEALERS.**

20 **14-14A-01.**

21 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
22 **INDICATED.**

23 **(B) "CONSUMER" HAS THE MEANING STATED IN § 14-1401(C) OF THIS**
24 **TITLE.**

25 **(C) "DEALER" HAS THE MEANING STATED IN § 14-1401(D) OF THIS TITLE.**

26 **(D) "MANUFACTURER" HAS THE MEANING STATED IN § 14-1401(F) OF THIS**
27 **TITLE.**

28 **14-14A-02.**

29 **A MANUFACTURER MAY NOT RETALIATE AGAINST A DEALER OR AN EMPLOYEE**
30 **OR CONSUMER OF A DEALER BECAUSE THE DEALER, EMPLOYEE, OR CONSUMER**

1 **EXERCISES OR ATTEMPTS TO EXERCISE A RIGHT OR ASSERTS A PROTECTION UNDER**
2 **STATE LAW.**

3 **14-14A-03.**

4 **A VIOLATION OF THIS SUBTITLE IS:**

5 **(1) AN UNFAIR AND DECEPTIVE TRADE PRACTICE WITHIN THE**
6 **MEANING OF TITLE 13 OF THIS ARTICLE; AND**

7 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
8 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

9 **Article – Transportation**

10 15-207.

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

12 (2) (i) “Coerce” means to compel or attempt to compel by threat of harm,
13 breach of contract, or other adverse consequences, including the loss of any benefit made
14 available to other dealers of the same line make in the State.

15 (ii) “Coerce” includes to act in a manner that violates § 15-206.1 of
16 this subtitle.

17 (iii) “Coerce” does not include to argue, urge, recommend, or
18 persuade.

19 (3) (I) **“DEALER FACILITY” MEANS THE FIXED LOCATION**
20 **SPECIFIED IN THE LICENSE APPLICATION AS REQUIRED UNDER § 15-304 OF THIS**
21 **TITLE WHERE THE DEALER CONDUCTS BUSINESS AUTHORIZED UNDER THE**
22 **LICENSE.**

23 (II) **“DEALER FACILITY” INCLUDES ANY WEB SITE OR OTHER**
24 **INTERNET PRESENCE OF THE DEALER THAT FACILITATES THE CONDUCT OF**
25 **BUSINESS AUTHORIZED UNDER THE LICENSE.**

26 (4) “Require” means to impose upon a dealer a provision not required by
27 law or previously agreed to by a dealer in a franchise agreement, excluding business
28 decisions by a manufacturer, distributor, or factory branch which are uniformly applied to
29 all Maryland dealers in new vehicles of the manufacturer, distributor, or factory branch.

30 (d) (1) A manufacturer, distributor, or factory branch, whether directly or
31 through an agent, employee, affiliate, or representative, may not require or coerce a dealer,

1 by franchise agreement or otherwise, or as a condition to the renewal or continuation of a
2 franchise agreement, to:

3 **[(1)] (I)** Exclude from the use of the dealer's facilities a dealership for
4 which the dealer has a franchise agreement to utilize the facilities; **[or]**

5 **[(2)] (II)** Materially change the dealer's facilities or method of conducting
6 business **[if the change would impose substantial financial hardship on the business of the**
7 **dealer]; OR**

8 **(III) RELINQUISH CONTROL OF THE DISPLAY ON THE INTERNET,**
9 **INCLUDING A DEALER WEB SITE, OF CONSUMER INFORMATION OR THE**
10 **ADVERTISING, PRICING, OR MERCHANDISING FOR VEHICLE SALES OR SERVICES.**

11 **(2) THIS SUBSECTION MAY NOT BE CONSTRUED TO ALLOW A DEALER**
12 **OR A DEALER'S VENDOR TO DIRECTLY OR INDIRECTLY ELIMINATE OR IMPAIR THE**
13 **INTELLECTUAL PROPERTY, TRADEMARK, OR TRADE DRESS RIGHTS OF A**
14 **MANUFACTURER.**

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

16 (i) The purchase or procurement of:

17 1. Moveable displays;

18 2. Brochures or other promotional materials;

19 3. Special tools and training as required by the
20 manufacturer; **OR**

21 4. Parts for repairs made under warranty obligations of a
22 manufacturer, distributor, or factory branch; or

23 **[5. Any goods or services for which a manufacturer, a**
24 **distributor, a factory branch, or an affiliate provides a credit, stipend, payment, or**
25 **reimbursement to the dealer that covers all or a substantial portion of the dealer's program**
26 **costs;**

27 (ii) Optional programs;

28 (iii) A program, or the renewal or modification of a program, in
29 existence on October 1, 2014; or]

30 **[(iv)] (II)** An agreement between the manufacturer, distributor,
31 factory branch, or affiliate and the dealer that is directly related to the dealer's completion

1 of a program **AND OTHERWISE COMPLIES WITH STATE LAW** if separate and valuable
2 consideration has been offered to the dealer and accepted.

3 (2) (i) Subject to subparagraph (ii) of this paragraph, a manufacturer,
4 distributor, factory branch, or one of its affiliates may not, directly or through an agent, an
5 employee, an affiliate, or a representative, require or coerce by agreement, program, or
6 incentive provision, a dealer to purchase goods or services from a vendor that is selected,
7 identified, or designated by the manufacturer, distributor, factory branch, or one of its
8 affiliates.

9 (ii) A manufacturer, distributor, factory branch, or one of its
10 affiliates **[may] SHALL** offer a dealer the option to obtain goods or services under this
11 subsection of substantially similar quality and design from a vendor chosen by the dealer
12 subject to the advanced approval of the manufacturer, distributor, factory branch, or one of
13 its affiliates.

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

16 **(L) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER**
17 **DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN AFFILIATE, OR A**
18 **REPRESENTATIVE, MAY NOT REQUIRE OR COERCE A DEALER BY FRANCHISE**
19 **AGREEMENT, AS A CONDITION OF RENEWAL OR CONTINUATION OF A FRANCHISE**
20 **AGREEMENT, OR OTHERWISE TO WAIVE THE RIGHT OF THE DEALER TO A JURY**
21 **TRIAL.**

22 15–212.

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

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

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

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

33 (10) A dealer's failure to comply with **[a specific requirement] THE**
34 **SPECIFIC REQUIREMENTS** of the manufacturer or distributor **FOR PROCESSING A**
35 **CLAIM** may not constitute grounds for denial of the claim or reduction of the amount of
36 compensation paid to the dealer if the dealer presents **REASONABLE** documentation or

1 other reasonable evidence to substantiate [that the repair and the claim were done
2 according to manufacturer warranty guidelines] **THE CLAIM.**

3 (11) (i) If a claim filed under this section is shown by the manufacturer
4 or distributor to be false or unsubstantiated, the manufacturer or distributor may charge
5 back the claim within [9 months] **30 DAYS** from the date the claim was paid or credit
6 issued.

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

- 9 1. Conduct an audit of any claim filed under this section; or
- 10 2. Charge back for any claim that is proven to be fraudulent.

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

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

15 (1) May order the licensee to pay a fine not exceeding [\$50,000] **\$200,000**
16 for each violation of this subtitle; and

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

19 15-212.1.

20 (c) (1) If a claim filed under this section is shown by the manufacturer, factory
21 branch, or distributor to be false or unsubstantiated, the manufacturer, factory branch, or
22 distributor may charge back the claim within [6 months] **30 DAYS** from the payment of the
23 incentive or reimbursement.

24 (2) This paragraph does not limit the right of a manufacturer, factory
25 branch, or distributor to:

26 (i) Conduct an audit of any claim filed under this section; or

27 (ii) Charge back for any claim that is proven to be fraudulent.

28 (3) An audit under this paragraph shall be conducted according to
29 generally accepted accounting principles.

30 15-213.

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2016.