SB 666

Department of Legislative Services

Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 666 (Senator Lee, *et al.*)
Judicial Proceedings and Finance

Vehicle Laws - Manufacturers and Dealers

This bill authorizes a motor vehicle dealer to disclose to a consumer the terms and conditions of any motor vehicle manufacturer warranty adjustment program of which the motor vehicle dealer has knowledge, and to make any necessary repairs under the adjustment program. The bill prohibits a motor vehicle manufacturer from retaliating against a motor vehicle dealer or an employee or consumer of a motor vehicle dealer because the dealer, employee, or consumer exercises or attempts to exercise a right or asserts a protection under State law. A violation of this prohibition is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

The bill establishes protections for dealers, in part by prohibiting certain actions by manufacturers, distributors, and factory branches that are coercive, including (1) causing a dealer to relinquish control of a dealer website; (2) requiring waiver of a dealer's right to a jury trial; and (3) using the conditional renewal or continuation of a franchise agreement as a mechanism to force a dealer to comply.

Fiscal Summary

State Effect: Potential significant increase in Transportation Trust Fund (TTF) revenues due to increased penalties that may be assessed by the Motor Vehicle Administration (MVA). General fund revenues increase minimally due to the bill's consumer protection penalty provisions. General fund expenditures increase by $125,800 in FY 2017 for the Consumer Protection Division of the Office of the Attorney General (OAG) to hire three half-time employees to handle the additional workload under the bill. Future year expenditures reflect annualization and inflation. The Judiciary can handle the bill's requirements with existing resources.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
GF Expenditure	$125,800	$150,800	$156,500	$162,500	$168,700
Net Effect	($125,800)	($150,800)	($156,500)	($162,500)	($168,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines "dealer facility" as a fixed location specified in the license application required under the Transportation Article where the dealer conducts business authorized under the license. A dealer facility includes any website or other Internet presence of the dealer that facilitates the conduct of business authorized under the license.

Coercion of Vehicle Dealers

A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, affiliate, or representative, may not require or coerce a dealer, by franchise agreement or otherwise, or as a condition to the renewal or continuation of a franchise agreement, to relinquish control of a display on the Internet, including a dealer website, of consumer information or the advertising, pricing, or merchandising for vehicle sales or services. The prohibitions against coercion may not be construed to allow a dealer or a dealer's vendor to directly or indirectly eliminate or impair the intellectual property, trademark, or trade dress rights of a manufacturer.

Dealer Purchases of Goods or Services from Vendors

The bill removes exemptions under current law for (1) the purchase or procurement of any goods or services for which a manufacturer, a distributor, a factory branch, or an affiliate provides a credit, stipend, payment, or reimbursement to the dealer that covers all or a substantial portion of the dealer's program costs; (2) optional programs; and (3) a program, or the renewal or modification of a program, in existence on October 1, 2014. The bill also clarifies that requirements for dealer purchases of goods or services from vendors do not apply to an agreement between the manufacturer, distributor, factory branch, or affiliate and the dealer that is directly related to the dealer's completion of a program *and otherwise complies with State law* if separate and valuable consideration has been offered to the dealer and accepted.

The bill requires a manufacturer, distributor, factory branch, or one of its affiliates to 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. In addition, 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 as a condition for renewal or continuation of a franchise agreement, to waive the right to a jury trial.

Vehicle Dealer Claims

A dealer's failure to comply with a manufacturer's or distributor's specific requirements for claim processing cannot be used as a basis to deny the claim (or reduction of the amount of compensation paid to the dealer) as long as the dealer presents reasonable documentation or other reasonable evidence to substantiate the claim. The bill reduces the amount of time from 9 months to 30 days that the manufacturer or distributor can charge back a false or unsubstantiated claim by a dealer. The bill also raises the amount of the fine MVA may impose for noncompliance on a licensed manufacturer, distributor, or factory branch from $50,000 to $200,000 per violation.

Likewise, the bill reduces the amount of time from 6 months to 30 days that the manufacturer or distributor can charge back a false or unsubstantiated claim by a dealer for claims related to an incentive or reimbursement program sponsored by the manufacturer, factory branch, or distributor.

Finally, the bill clarifies that a person who sues for a violation of the provisions governing licensing of vehicle manufacturers, distributors, and factory branch owners may recover reasonable court and administrative costs in addition to attorneys' fees arising out of an administrative hearing.

Current Law: A warranty adjustment program is a program or policy (1) that expands or extends a warranty beyond its stated limit or (2) under which a manufacturer undertakes or offers to pay or reimburse a consumer, whether directly or indirectly, for all or a part of the cost of repairing a condition that may substantially affect the durability, reliability, or performance of a motor vehicle. An adjustment program does not include (1) service provided under a safety or emissions related recall campaign or (2) adjustments made by a manufacturer on a case-by-case basis.

Under the Transportation Article, "coerce" means to compel or attempt to compel by threat of harm, breach of contract, or other adverse consequences, including the loss of any benefit made available to other dealers of the same line make in the State. "Coerce" does not include to argue, urge, recommend, or persuade.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

State Revenues: General fund revenues increase minimally from the consumer protection penalty provisions established under the bill as OAG is newly tasked with resolving disputes involving motor vehicle manufacturers, dealers, their employees, and consumers.

TTF revenues may increase, potentially significantly, as the bill authorizes MVA to fine manufacturers, distributors and factory branch owners up to $200,000 per violation of the licensing provisions governing these business entities.

State Expenditures: The bill requires OAG to address disputes between automobile manufacturers and dealers that are currently not within the jurisdiction of the division. As a result, OAG requires three half-time employees (assistant Attorney General, investigator, mediation unit supervisor) to handle the additional workload under the bill.

General fund expenditures increase by $125,789 in fiscal 2017 for OAG to hire three half-time staff positions, for a total of 1.5 additional positions to implement the bill, which accounts for the bill's October 1, 2016 effective date. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Future year administrative expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Positions	1.5
Salary and Fringe Benefits	$112,022
Operating Expenses	13,767
Total FY 2017 General Fund Expenditures	**$125,789**

Small Business Effect: Vehicle dealers that are small businesses may benefit from shorter wait times for charge backs on disputed claims with manufacturers or distributors. Such businesses also benefit from provisions in the bill that are intended to offer increased protection to vehicle dealers from coercion by manufacturers, distributors, and factory branches.

Additional Information

Prior Introductions: None.

Cross File: HB 982 (Delegate Fraser-Hidalgo, *et al.*) - Environment and Transportation and Economic Matters.

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md/kdm

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