

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 428

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, after the semicolon insert “establishing certain requirements for performance standards;”; strike beginning with “defining” in line 9 down through “officer” in line 21 and substitute “authorizing a designated family member to succeed a dealer in the ownership or operation of the dealership under certain circumstances; requiring the designated family member to provide a certain notice; requiring the designated family member to provide certain information; establishing that a manufacturer, distributor, or factory branch may refuse to honor a franchise agreement with a designated family member for good cause; requiring a manufacturer, distributor, or factory branch to provide notice to a designated family member in certain situations; authorizing dealers to make certain designations;”; in line 22, after “dealer” insert “or designated dealer successor”; and strike beginning with the second “and” in line 22 down through “terms” in line 24; in line 28, strike “15-201 and”; and after line 25 insert:

“BY repealing and reenacting, without amendments,

Article - Transportation

Section 15-201

Annotated Code of Maryland

(1992 Replacement Volume and 1995 Supplement)”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 7 through 10, inclusive; in lines 11, 18, 24, 26, and 33, in each instance, strike the brackets; and in the same lines, strike “(C)”, “(D)”, “(E)”, “(F)”, and “(G)”, respectively.

AMENDMENT NO. 3

On page 3, in line 14, after “REQUIRE” insert “OR COERCE”; in line 15, strike “GRANT” and substitute “RENEWAL”; in line 15, after the second “TO” insert a colon; and strike beginning

(Over)

with “UNDERUTILIZE” in line 16 down through “DEALER” in line 17 and substitute:

“(1) ELIMINATE FROM THE USE OF THE DEALER’S FACILITIES A DEALERSHIP FOR WHICH THE DEALER HAS A FRANCHISE AGREEMENT TO UTILIZE THE FACILITIES AS OF MARCH 1, 1996; OR

(2) MATERIALLY CHANGE THE DEALER’S FACILITIES OR METHOD OF CONDUCTING BUSINESS IF THE CHANGE WOULD IMPOSE SUBSTANTIAL FINANCIAL HARDSHIP ON THE BUSINESS OF THE DEALER”.

AMENDMENT NO. 4

On page 3, in line 18, after “(E)” insert “(1)”; strike beginning with “DEALERS” in line 21 down through “BRANCH” in line 22 and substitute “SIMILARLY SITUATED DEALERS”; and after line 22, insert:

“(2) A PERFORMANCE STANDARD OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE THAT MAY HAVE A MATERIAL EFFECT ON A DEALER AND THE APPLICATION OF THE STANDARD OR PROGRAM BY A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL BE FAIR, REASONABLE, EQUITABLE, AND BASED ON ACCURATE INFORMATION.

(3) (I) IF THE PERFORMANCE STANDARD IS BASED ON A SURVEY, IT MUST BE SHOWN THAT:

1. THE SURVEY WAS DESIGNED WITH EXPERTS;
2. THE PROPER UNIVERSE WAS EXAMINED;
3. A REPRESENTATIVE SAMPLE WAS CHOSEN; AND
4. THE DATA WAS ACCURATELY REPORTED.

(II) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL ESTABLISH THE OBJECTIVITY OF THE SURVEY PROCESS AND PROVIDE THIS INFORMATION TO ANY DEALER OF THE SAME LINE MAKE COVERED BY THE SURVEY ON REQUEST.”.

AMENDMENT NO. 5

On page 3, strike beginning with the colon in line 25 down through “STATE” in line 32 and substitute “A DEALER TO PAY THE ATTORNEY’S FEES OF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH RELATED TO DISPUTES INVOLVING THE FRANCHISE”.

AMENDMENT NO. 6

On pages 3 through 5, strike in their entirety the lines beginning with line 34 on page 3 down through line 11 on page 5, inclusive, and substitute:

“(A)(1) A DESIGNATED FAMILY MEMBER OF A DECEASED OR INCAPACITATED DEALER MAY SUCCEED THE DEALER IN THE OWNERSHIP OR OPERATION OF THE DEALERSHIP UNDER THE EXISTING FRANCHISE AGREEMENT IF THE DESIGNATED FAMILY MEMBER:

(I) GIVES THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH WRITTEN NOTICE OF THE DESIGNATED FAMILY MEMBER’S INTENTION TO SUCCEED TO THE DEALERSHIP WITHIN 120 DAYS AFTER THE DEALER’S DEATH OR INCAPACITY;

(II) AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE FRANCHISE AGREEMENT; AND

(III) MEETS THE CURRENT CRITERIA THAT THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH GENERALLY APPLIES IN QUALIFYING DEALERS.

(2) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY REFUSE TO HONOR THE EXISTING FRANCHISE AGREEMENT WITH THE DESIGNATED FAMILY MEMBER ONLY FOR GOOD CAUSE.

(B)(1) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY REQUEST FROM A DESIGNATED FAMILY MEMBER PERSONAL AND FINANCIAL DATA

REASONABLY NECESSARY TO DETERMINE WHETHER THE EXISTING FRANCHISE AGREEMENT SHOULD BE HONORED.

(2) THE DESIGNATED FAMILY MEMBER SHALL SUPPLY THE PERSONAL AND FINANCIAL DATA PROMPTLY UPON THE REQUEST.

(C) IF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH BELIEVES THAT GOOD CAUSE EXISTS FOR REFUSING TO HONOR THE SUCCESSION, THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY, WITHIN 60 DAYS AFTER RECEIPT OF THE NOTICE OF THE DESIGNATED FAMILY MEMBER'S INTENT TO SUCCEED THE DEALER OR, IF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH REQUESTED PERSONAL OR FINANCIAL DATA, WITHIN 60 DAYS AFTER THE RECEIPT OF THE REQUESTED DATA, PROVIDE WRITTEN NOTICE TO THE DESIGNATED FAMILY MEMBER OF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH'S REFUSAL TO APPROVE THE SUCCESSION.

(D) THE NOTICE OF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH PROVIDED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION SHALL STATE THE SPECIFIC GROUNDS FOR THE REFUSAL TO APPROVE THE SUCCESSION AND THAT DISCONTINUANCE OF THE FRANCHISE AGREEMENT SHALL TAKE EFFECT NOT LESS THAN 90 DAYS AFTER THE DATE THE NOTICE IS PROVIDED.

(E) IF WRITTEN NOTICE OF REFUSAL IS NOT PROVIDED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, THE FRANCHISE AGREEMENT SHALL CONTINUE IN EFFECT AND SHALL BE SUBJECT TO TERMINATION ONLY AS OTHERWISE PERMITTED BY THIS TITLE.

(F) THIS SECTION DOES NOT PRECLUDE A DEALER FROM DESIGNATING ANY PERSON AS THE DEALER'S SUCCESSOR BY WRITTEN INSTRUMENT FILED WITH THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH. IF A WRITTEN INSTRUMENT IS FILED, THE INSTRUMENT ALONE SHALL DETERMINE THE SUCCESSION RIGHTS TO THE MANAGEMENT AND OPERATION OF THE DEALERSHIP."

On page 5, in line 13, strike “(A)”; in line 14, after “SUBTITLE” insert “AND NOTWITHSTANDING ANY PROVISIONS OF THE FRANCHISE AGREEMENT TO THE CONTRARY”; in the same line, after “DEALER” insert “, DESIGNATED DEALER SUCCESSOR AS PROVIDED IN § 15-211.1 OF THIS SUBTITLE”; in lines 16 and 17, strike “INVOLVING A FRANCHISE AGREEMENT OR CONTRACT” and substitute “UNDER ANY PROVISION OF THIS TITLE”; in line 17, after “DEALER” insert “OR A DESIGNATED DEALER SUCCESSOR”; and strike in their entirety lines 21 through 35, inclusive.