
By: Senator Jimeno

Introduced and read first time: February 1, 1996

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws - Vehicle Dealer Franchises and Manufacturers, Distributors, and Factory**
3 **Branches**

4 FOR the purpose of prohibiting a manufacturer, distributor, or factory branch from
5 imposing certain requirements on a dealer relating to the utilization of the dealer's
6 facilities or the adherence by the dealer to certain performance standards;
7 prohibiting a franchise agreement or other contract offered to a dealer by a
8 manufacturer, distributor, or factory branch from containing certain provisions;
9 defining a certain term to include certain actions by a manufacturer, distributor, or
10 factory branch thereby prohibiting those actions during the term of the franchise
11 and upon its renewal except under certain circumstances; authorizing a dealer,
12 without the prior consent of a manufacturer, distributor, or factory branch, to
13 designate a successor to the dealership in the event of the death or incapacity of the
14 dealer; requiring the dealer to provide certain notice of the designation of a
15 successor to the manufacturer, distributor, or factory branch; prohibiting a
16 manufacturer, distributor, or factory branch from exercising a certain right of first
17 refusal under certain circumstances or preventing the dealer from designating a
18 successor under this Act; providing for a certain hearing when a manufacturer,
19 distributor, or factory branch objects to the designation of a successor by a dealer
20 under this Act and providing for the right to appeal an adverse ruling of the hearing
21 officer; establishing a general right to a hearing to resolve certain disputes between
22 a dealer and a manufacturer, distributor, or factory branch and requiring the
23 hearing officer to consider certain facts in making a determination regarding the
24 dispute; defining certain terms; and generally relating to dealers, manufacturers,
25 distributors, and factory branches.

26 BY repealing and reenacting, with amendments,
27 Article - Transportation
28 Section 15-201 and 15-207
29 Annotated Code of Maryland
30 (1992 Replacement Volume and 1995 Supplement)

31 BY adding to
32 Article - Transportation
33 Section 15-211.1 and 15-214
34 Annotated Code of Maryland

2

1 (1992 Replacement Volume and 1995 Supplement)

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

4 **Article - Transportation**

5 15-201.

6 (a) In this subtitle the following words have the meanings indicated.

7 (B) "CANCEL" INCLUDES A MODIFICATION OF A FRANCHISE OR OTHER
8 ACTION AGAINST A DEALER BY A MANUFACTURER, DISTRIBUTOR, OR FACTORY
9 BRANCH, WHETHER DURING THE TERM OF THE FRANCHISE OR UPON ITS RENEWAL,
10 THAT HAS A MATERIAL ADVERSE IMPACT ON THE BUSINESS OF THE DEALER.

11 [(b)] (C) "Distributor" means a distributor who is authorized by the manufacturer
12 or the manufacturer's authorized importer to enter into franchise agreements with
13 dealers of:

14 (1) New motor vehicles constructed or assembled outside of the United
15 States; or

16 (2) New two-stage vehicles completed outside of the United States by a
17 second-stage manufacturer.

18 [(c)] (D) "Factory branch" means a branch office of a manufacturer from which
19 the manufacturer:

20 (1) Sells or promotes the sale to dealers in this State of a particular brand or
21 make of new motor vehicles, or new completed two-stage vehicles;

22 (2) Directs and supervises its representatives in this State; or

23 (3) Supervises or contacts its dealers or prospective dealers in this State.

24 [(d)] (E) "License" means a manufacturer's, distributor's, or factory branch's
25 license issued by the Administration under this subtitle.

26 [(e)] (F) "Manufacturer" means:

27 (1) A manufacturer of new motor vehicles constructed or assembled in the
28 United States;

29 (2) A second-stage manufacturer of new two-stage vehicles completed in
30 the United States; and

31 (3) In the case of trucks, a person engaged in the business of manufacturing
32 truck component parts.

33 [(f)] (G) "Second-stage manufacturer" has the meaning stated in § 13-113.2 of
34 this article.

35 15-207.

36 (a) In this section:

3

1 (1) "Coerce" means to compel or attempt to compel by threat of harm,
2 breach of contract, or other adverse consequences; and

3 (2) "Coerce" does not mean to argue, urge, recommend, or persuade.

4 (b) A manufacturer, distributor, or factory branch, whether directly or through an
5 agent, employee, or representative, may not coerce any dealer to make any agreement
6 with the manufacturer, distributor, or factory branch.

7 (c) A manufacturer, distributor, or factory branch, whether directly or through an
8 agent, employee, or representative, may not coerce any dealer to order or accept delivery
9 of any vehicle, any equipment, parts, or accessories for a vehicle, or any other commodity
10 that is not required by law or by the dealer's franchise or that was not ordered voluntarily
11 by the dealer.

12 (D) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
13 DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE, MAY NOT
14 REQUIRE A DEALER, BY FRANCHISE AGREEMENT OR OTHERWISE, OR AS A
15 CONDITION TO THE GRANT OR CONTINUATION OF A FRANCHISE AGREEMENT, TO
16 UNDERUTILIZE FACILITIES OWNED BY THE DEALER IF THE UNDERUTILIZATION
17 WOULD HAVE A MATERIAL ADVERSE IMPACT ON THE BUSINESS OF THE DEALER.

18 (E) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
19 DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE, MAY NOT
20 REQUIRE OR COERCE A DEALER TO ADHERE TO PERFORMANCE STANDARDS THAT
21 ARE NOT APPLIED UNIFORMLY TO OTHER DEALERS FRANCHISED IN THE STATE BY
22 THAT MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

23 (F) A FRANCHISE AGREEMENT OR OTHER CONTRACT OFFERED TO A
24 DEALER BY A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT
25 CONTAIN ANY PROVISION REQUIRING:

26 (1) ARBITRATION OF DISPUTES AT THE SOLE OPTION OF A PARTY;

27 (2) REFERRAL OF DISPUTES TO A DEALER BOARD OR COURT IN
28 ANOTHER JURISDICTION;

29 (3) PAYMENT BY THE DEALER OF LEGAL EXPENSES INCURRED BY THE
30 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH; OR

31 (4) REMOVAL OF SUITS OR OTHER ACTIONS TO A VENUE OUTSIDE OF
32 THE STATE.

33 15-211.1.

34 (A) IN THIS SECTION, "QUALIFIED PERSON" MEANS:

35 (1) A DEALER'S SPOUSE, SON, DAUGHTER, GRANDCHILD, PARENT,
36 SISTER, BROTHER, GRANDPARENT, FATHER-IN-LAW, MOTHER-IN-LAW,
37 SON-IN-LAW, OR DAUGHTER-IN-LAW;

38 (2) A MANAGER OF THE DEALER'S DEALERSHIP; OR

4

1 (3) A PARTNERSHIP OR CORPORATION CONTROLLED BY ONE OR MORE
2 OF THE INDIVIDUALS SPECIFIED IN ITEMS (1) AND (2) OF THIS SUBSECTION.

3 (B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE AND
4 WITHOUT THE PRIOR CONSENT OF A MANUFACTURER, DISTRIBUTOR, OR FACTORY
5 BRANCH, A DEALER MAY DESIGNATE A QUALIFIED PERSON TO BE A SUCCESSOR TO
6 THE DEALERSHIP IN THE EVENT OF THE DEATH OR INCAPACITY OF THE DEALER.

7 (2) IF A DEALER INTENDS TO DESIGNATE A QUALIFIED PERSON AS
8 SUCCESSOR TO THE DEALERSHIP IN ACCORDANCE WITH PARAGRAPH (1) OF THIS
9 SUBSECTION, THE DEALER SHALL NOTIFY THE MANUFACTURER, DISTRIBUTOR, OR
10 FACTORY BRANCH, IN WRITING, OF THE DESIGNATION.

11 (3) THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS
12 SUBSECTION SHALL IDENTIFY THE QUALIFIED PERSON AND DESCRIBE THE
13 FINANCIAL MANAGEMENT CAPABILITIES AND OTHER RELEVANT QUALIFICATIONS
14 OF THE QUALIFIED PERSON.

15 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A
16 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT:

17 (1) PREVENT, BY CONTRACT OR OTHERWISE, A DEALER FROM
18 DESIGNATING A QUALIFIED PERSON AS A SUCCESSOR TO THE DEALERSHIP IN
19 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION; OR

20 (2) EXERCISE A RIGHT OF FIRST REFUSAL TO ACQUIRE A DEALERSHIP
21 IN THE EVENT OF:

22 (I) A PROPOSED SALE OR TRANSFER OF THE DEALERSHIP TO A
23 QUALIFIED PERSON; OR

24 (II) THE SUCCESSION TO THE DEALERSHIP BY A QUALIFIED
25 PERSON DUE TO THE DEATH OR INCAPACITY OF A DEALER.

26 (D) (1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY
27 REQUEST A HEARING UNDER TITLE 12, SUBTITLE 2 OF THIS ARTICLE DURING
28 WHICH:

29 (I) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
30 MAY STATE ITS OBJECTIONS TO THE DESIGNATION OF A PARTICULAR QUALIFIED
31 PERSON TO BE A SUCCESSOR TO A DEALERSHIP AND MAY PRESENT EVIDENCE TO
32 DEMONSTRATE THAT THE DESIGNATION OF THE QUALIFIED PERSON IS
33 UNREASONABLE; AND

34 (II) THE DEALER AND THE QUALIFIED PERSON MAY PROVIDE
35 EVIDENCE TO REBUT ANY OBJECTIONS MADE BY THE MANUFACTURER,
36 DISTRIBUTOR, OR FACTORY BRANCH AND DEMONSTRATE THAT THE DESIGNATION
37 OF THE QUALIFIED PERSON IS REASONABLE.

38 (2) IF THE HEARING OFFICER DETERMINES THAT THE DESIGNATION OF
39 THE QUALIFIED PERSON IS:

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1 (I) REASONABLE UNDER THE CIRCUMSTANCES, THE HEARING
2 OFFICER SHALL FIND IN FAVOR OF THE DEALER AND THE DESIGNATION OF THE
3 QUALIFIED PERSON AS A SUCCESSOR TO THE DEALERSHIP SHALL BE GIVEN EFFECT
4 IN THE EVENT OF THE DEATH OR INCAPACITY OF THE DEALER; OR

5 (II) UNREASONABLE UNDER THE CIRCUMSTANCES, THE HEARING
6 OFFICER SHALL FIND IN FAVOR OF THE MANUFACTURER, DISTRIBUTOR, OR
7 FACTORY BRANCH AND THE DESIGNATION OF THE QUALIFIED PERSON AS A
8 SUCCESSOR TO THE DEALERSHIP MAY NOT BE GIVEN EFFECT.

9 (3) AN AGGRIEVED PARTY TO A HEARING UNDER THIS SUBSECTION
10 MAY APPEAL THE FINDING OF THE HEARING OFFICER AS PROVIDED IN § 12-209 OF
11 THIS ARTICLE.

12 15-214.

13 (A) IN ADDITION TO ANY OTHER RIGHT TO REQUEST A HEARING UNDER
14 THIS SUBTITLE, A DEALER, MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
15 MAY REQUEST A HEARING UNDER TITLE 12, SUBTITLE 2 OF THIS ARTICLE TO:

16 (1) RESOLVE A DISPUTE INVOLVING A FRANCHISE AGREEMENT OR
17 CONTRACT BETWEEN A DEALER AND A MANUFACTURER, DISTRIBUTOR, OR
18 FACTORY BRANCH; OR

19 (2) SEEK CLARIFICATION OR INTERPRETATION OF ANY PROVISION OF
20 THIS SUBTITLE.

21 (B) IN MAKING A DETERMINATION REGARDING THE RIGHTS AND
22 RESPONSIBILITIES OF THE PARTIES TO A HEARING UNDER THIS SUBTITLE, OR IN
23 INTERPRETING OR APPLYING ANY PROVISION OF THIS SUBTITLE OR A FRANCHISE
24 AGREEMENT, CONTRACT, OR DOCUMENT, THE HEARING OFFICER SHALL
25 CONSIDER:

26 (1) THAT THERE IS A PRESUMPTION THAT THE RELATIONSHIP
27 BETWEEN DEALERS AND MANUFACTURERS, DISTRIBUTORS, OR FACTORY
28 BRANCHES REGULATED UNDER THIS SUBTITLE IS GOVERNED BY GOOD FAITH AND
29 FAIR DEALING PRACTICES; AND

30 (2) THAT A DEALER IS ENTITLED TO ACT IN RELIANCE ON A
31 REASONABLE INTERPRETATION OF THE REQUIREMENTS OF A FRANCHISE AND,
32 UNLESS THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
33 DEMONSTRATES THAT THE INTERPRETATION WAS UNREASONABLE UNDER THE
34 CIRCUMSTANCES, ANY ACTION TAKEN BY THE DEALER IN RELIANCE ON THE
35 INTERPRETATION SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE FRANCHISE.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1996.