
By: Senator Jimeno

Introduced and read first time: February 1, 1996

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 15, 1996

CHAPTER ____

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 establishing certain requirements for performance standards; prohibiting a
8 franchise agreement or other contract offered to a dealer by a manufacturer,
9 distributor, or factory branch from containing certain provisions; ~~defining a certain~~
10 term to include certain actions by a manufacturer, distributor, or factory branch
11 thereby prohibiting those actions during the term of the franchise and upon its
12 renewal except under certain circumstances; authorizing a dealer, without the prior
13 consent of a manufacturer, distributor, or factory branch, to designate a successor to
14 the dealership in the event of the death or incapacity of the dealer; requiring the
15 dealer to provide certain notice of the designation of a successor to the
16 manufacturer, distributor, or factory branch; prohibiting a manufacturer,
17 distributor, or factory branch from exercising a certain right of first refusal under
18 certain circumstances or preventing the dealer from designating a successor under
19 this Act; providing for a certain hearing when a manufacturer, distributor, or factory
20 branch objects to the designation of a successor by a dealer under this Act and
21 providing for the right to appeal an adverse ruling of the hearing officer authorizing
22 a designated family member to succeed a dealer in the ownership or operation of
23 the dealership under certain circumstances; requiring the designated family member
24 to provide a certain notice; requiring the designated family member to provide
25 certain information; establishing that a manufacturer, distributor, or factory branch
26 may refuse to honor a franchise agreement with a designated family member for
27 good cause; requiring a manufacturer, distributor, or factory branch to provide
28 notice to a designated family member in certain situations; authorizing dealers to

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1 ~~make certain designations~~; establishing a general right to a hearing to resolve
2 certain disputes between a dealer or designated dealer successor and a
3 manufacturer, distributor, or factory branch ~~and requiring the hearing officer to~~
4 ~~consider certain facts in making a determination regarding the dispute; defining~~
5 ~~certain terms~~; and generally relating to dealers, manufacturers, distributors, and
6 factory branches.

7 BY repealing and reenacting, without amendments,

8 Article - Transportation

9 Section 15-201

10 Annotated Code of Maryland

11 (1992 Replacement Volume and 1995 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article - Transportation

14 Section ~~15-201~~ and 15-207

15 Annotated Code of Maryland

16 (1992 Replacement Volume and 1995 Supplement)

17 BY adding to

18 Article - Transportation

19 Section 15-211.1 and 15-214

20 Annotated Code of Maryland

21 (1992 Replacement Volume and 1995 Supplement)

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

24 **Article - Transportation**

25 15-201.

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

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

31 ~~{(b)}~~ ~~(C)~~ "Distributor" means a distributor who is authorized by the manufacturer
32 or the manufacturer's authorized importer to enter into franchise agreements with
33 dealers of:

34 (1) New motor vehicles constructed or assembled outside of the United
35 States; or

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

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1 {(c)} ~~(D)~~ "Factory branch" means a branch office of a manufacturer from which
2 the manufacturer:

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

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

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

7 {(d)} ~~(E)~~ "License" means a manufacturer's, distributor's, or factory branch's
8 license issued by the Administration under this subtitle.

9 {(e)} ~~(F)~~ "Manufacturer" means:

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

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

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

16 {(f)} ~~(G)~~ "Second-stage manufacturer" has the meaning stated in § 13-113.2 of
17 this article.

18 15-207.

19 (a) In this section:

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

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

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

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

31 (D) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
32 DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE, MAY NOT
33 REQUIRE OR COERCE A DEALER, BY FRANCHISE AGREEMENT OR OTHERWISE, OR
34 AS A CONDITION TO THE GRANT RENEWAL OR CONTINUATION OF A FRANCHISE
35 AGREEMENT, TO: ~~UNDERUTILIZE FACILITIES OWNED BY THE DEALER IF THE~~
36 ~~UNDERUTILIZATION WOULD HAVE A MATERIAL ADVERSE IMPACT ON THE~~
37 ~~BUSINESS OF THE DEALER~~

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

4 (2) MATERIALLY CHANGE THE DEALER'S FACILITIES OR METHOD OF
5 CONDUCTING BUSINESS IF THE CHANGE WOULD IMPOSE SUBSTANTIAL FINANCIAL
6 HARDSHIP ON THE BUSINESS OF THE DEALER.

7 (E) (1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH,
8 WHETHER DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE,
9 MAY NOT REQUIRE OR COERCE A DEALER TO ADHERE TO PERFORMANCE
10 STANDARDS THAT ARE NOT APPLIED UNIFORMLY TO OTHER DEALERS
11 FRANCHISED IN THE STATE BY THAT MANUFACTURER, DISTRIBUTOR, OR FACTORY
12 BRANCH SIMILARLY SITUATED DEALERS.

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

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

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

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

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

- 31 ~~(1) ARBITRATION OF DISPUTES AT THE SOLE OPTION OF A PARTY;~~
32 ~~(2) REFERRAL OF DISPUTES TO A DEALER BOARD OR COURT IN~~
33 ~~ANOTHER JURISDICTION;~~
34 ~~(3) PAYMENT BY THE DEALER OF LEGAL EXPENSES INCURRED BY THE~~
35 ~~MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH; OR~~
36 ~~(4) REMOVAL OF SUITS OR OTHER ACTIONS TO A VENUE OUTSIDE OF~~
37 ~~THE STATE A DEALER TO PAY THE ATTORNEY'S FEES OF THE MANUFACTURER,~~
38 ~~DISTRIBUTOR, OR FACTORY BRANCH RELATED TO DISPUTES INVOLVING THE~~
39 ~~FRANCHISE.~~

5

1 15-211.1.

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

3 (1) ~~A DEALER'S SPOUSE, SON, DAUGHTER, GRANDCHILD, PARENT,~~
4 ~~SISTER, BROTHER, GRANDPARENT, FATHER-IN-LAW, MOTHER-IN-LAW,~~
5 ~~SON-IN-LAW, OR DAUGHTER-IN-LAW;~~

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

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

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

13 (2) ~~IF A DEALER INTENDS TO DESIGNATE A QUALIFIED PERSON AS~~
14 ~~SUCCESSOR TO THE DEALERSHIP IN ACCORDANCE WITH PARAGRAPH (1) OF THIS~~
15 ~~SUBSECTION, THE DEALER SHALL NOTIFY THE MANUFACTURER, DISTRIBUTOR, OR~~
16 ~~FACTORY BRANCH, IN WRITING, OF THE DESIGNATION.~~

17 (3) ~~THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF THIS~~
18 ~~SUBSECTION SHALL IDENTIFY THE QUALIFIED PERSON AND DESCRIBE THE~~
19 ~~FINANCIAL MANAGEMENT CAPABILITIES AND OTHER RELEVANT QUALIFICATIONS~~
20 ~~OF THE QUALIFIED PERSON.~~

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

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

26 (2) ~~EXERCISE A RIGHT OF FIRST REFUSAL TO ACQUIRE A DEALERSHIP~~
27 ~~IN THE EVENT OF:~~

28 (i) ~~A PROPOSED SALE OR TRANSFER OF THE DEALERSHIP TO A~~
29 ~~QUALIFIED PERSON; OR~~

30 (ii) ~~THE SUCCESSION TO THE DEALERSHIP BY A QUALIFIED~~
31 ~~PERSON DUE TO THE DEATH OR INCAPACITY OF A DEALER.~~

32 (D) ~~(1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY~~
33 ~~REQUEST A HEARING UNDER TITLE 12, SUBTITLE 2 OF THIS ARTICLE DURING~~
34 ~~WHICH:~~

35 (i) ~~THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH~~
36 ~~MAY STATE ITS OBJECTIONS TO THE DESIGNATION OF A PARTICULAR QUALIFIED~~
37 ~~PERSON TO BE A SUCCESSOR TO A DEALERSHIP AND MAY PRESENT EVIDENCE TO~~
38 ~~DEMONSTRATE THAT THE DESIGNATION OF THE QUALIFIED PERSON IS~~
39 ~~UNREASONABLE; AND~~

1 ~~(H) THE DEALER AND THE QUALIFIED PERSON MAY PROVIDE~~
2 ~~EVIDENCE TO REBUT ANY OBJECTIONS MADE BY THE MANUFACTURER,~~
3 ~~DISTRIBUTOR, OR FACTORY BRANCH AND DEMONSTRATE THAT THE DESIGNATION~~
4 ~~OF THE QUALIFIED PERSON IS REASONABLE.~~

5 ~~(2) IF THE HEARING OFFICER DETERMINES THAT THE DESIGNATION OF~~
6 ~~THE QUALIFIED PERSON IS:~~

7 ~~(I) REASONABLE UNDER THE CIRCUMSTANCES, THE HEARING~~
8 ~~OFFICER SHALL FIND IN FAVOR OF THE DEALER AND THE DESIGNATION OF THE~~
9 ~~QUALIFIED PERSON AS A SUCCESSOR TO THE DEALERSHIP SHALL BE GIVEN EFFECT~~
10 ~~IN THE EVENT OF THE DEATH OR INCAPACITY OF THE DEALER; OR~~

11 ~~(II) UNREASONABLE UNDER THE CIRCUMSTANCES, THE HEARING~~
12 ~~OFFICER SHALL FIND IN FAVOR OF THE MANUFACTURER, DISTRIBUTOR, OR~~
13 ~~FACTORY BRANCH AND THE DESIGNATION OF THE QUALIFIED PERSON AS A~~
14 ~~SUCCESSOR TO THE DEALERSHIP MAY NOT BE GIVEN EFFECT.~~

15 ~~(3) AN AGGRIEVED PARTY TO A HEARING UNDER THIS SUBSECTION~~
16 ~~MAY APPEAL THE FINDING OF THE HEARING OFFICER AS PROVIDED IN § 12-209 OF~~
17 ~~THIS ARTICLE.~~

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

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

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

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

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

34 (B) (1) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY
35 REQUEST FROM A DESIGNATED FAMILY MEMBER PERSONAL AND FINANCIAL DATA
36 REASONABLY NECESSARY TO DETERMINE WHETHER THE EXISTING FRANCHISE
37 AGREEMENT SHOULD BE HONORED.

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

40 (C) IF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH BELIEVES
41 THAT GOOD CAUSE EXISTS FOR REFUSING TO HONOR THE SUCCESSION, THE

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1 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY, WITHIN 60 DAYS
2 AFTER RECEIPT OF THE NOTICE OF THE DESIGNATED FAMILY MEMBER'S INTENT TO
3 SUCCEED THE DEALER OR, IF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY
4 BRANCH REQUESTED PERSONAL OR FINANCIAL DATA, WITHIN 60 DAYS AFTER THE
5 RECEIPT OF THE REQUESTED DATA, PROVIDE WRITTEN NOTICE TO THE
6 DESIGNATED FAMILY MEMBER OF THE MANUFACTURER, DISTRIBUTOR, OR
7 FACTORY BRANCH'S REFUSAL TO APPROVE THE SUCCESSION.

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

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

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

22 15-214.

23 ~~(A)~~ IN ADDITION TO ANY OTHER RIGHT TO REQUEST A HEARING UNDER
24 THIS SUBTITLE AND NOTWITHSTANDING ANY PROVISIONS OF THE FRANCHISE
25 AGREEMENT TO THE CONTRARY, A DEALER, DESIGNATED DEALER SUCCESSOR AS
26 PROVIDED IN § 15-211.1 OF THIS SUBTITLE, MANUFACTURER, DISTRIBUTOR, OR
27 FACTORY BRANCH MAY REQUEST A HEARING UNDER TITLE 12, SUBTITLE 2 OF THIS
28 ARTICLE TO:

29 (1) RESOLVE A DISPUTE ~~INVOLVING A FRANCHISE AGREEMENT OR~~
30 CONTRACT UNDER ANY PROVISION OF THIS TITLE BETWEEN A DEALER OR A
31 DESIGNATED DEALER SUCCESSOR AND A MANUFACTURER, DISTRIBUTOR, OR
32 FACTORY BRANCH; OR

33 (2) SEEK CLARIFICATION OR INTERPRETATION OF ANY PROVISION OF
34 THIS SUBTITLE.

35 ~~(B) IN MAKING A DETERMINATION REGARDING THE RIGHTS AND~~
36 ~~RESPONSIBILITIES OF THE PARTIES TO A HEARING UNDER THIS SUBTITLE, OR IN~~
37 ~~INTERPRETING OR APPLYING ANY PROVISION OF THIS SUBTITLE OR A FRANCHISE~~
38 ~~AGREEMENT, CONTRACT, OR DOCUMENT, THE HEARING OFFICER SHALL~~
39 ~~CONSIDER:~~

40 ~~(1) THAT THERE IS A PRESUMPTION THAT THE RELATIONSHIP~~
41 ~~BETWEEN DEALERS AND MANUFACTURERS, DISTRIBUTORS, OR FACTORY~~
42 ~~BRANCHES REGULATED UNDER THIS SUBTITLE IS GOVERNED BY GOOD FAITH AND~~
43 ~~FAIR DEALING PRACTICES; AND~~

1 ~~(2) THAT A DEALER IS ENTITLED TO ACT IN RELIANCE ON A~~
2 ~~REASONABLE INTERPRETATION OF THE REQUIREMENTS OF A FRANCHISE AND,~~
3 ~~UNLESS THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH~~
4 ~~DEMONSTRATES THAT THE INTERPRETATION WAS UNREASONABLE UNDER THE~~
5 ~~CIRCUMSTANCES, ANY ACTION TAKEN BY THE DEALER IN RELIANCE ON THE~~
6 ~~INTERPRETATION SHALL BE DEEMED TO BE IN COMPLIANCE WITH THE FRANCHISE.~~

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