

HOUSE BILL 499

Unofficial Copy
R4

1998 Regular Session
8r1649
CF 8r1440

By: **Delegate Wood**

Introduced and read first time: February 5, 1998

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws - Vehicle Franchise Agreements - Manufacturer/Dealer**
3 **Relations**

4 FOR the purpose of defining "require" and redefining "coercion" as the terms apply to
5 certain provisions pertaining to the relationship between vehicle manufacturers,
6 distributors, or factory branches and vehicle dealers; prohibiting a
7 manufacturer, distributor, or factory branch from requiring a dealer to order or
8 accept delivery of vehicles or equipment, parts, or accessories for a vehicle, or
9 other commodities, that are not required by law, the dealer's franchise
10 agreement, or that are not voluntarily ordered; modifying a certain provision
11 relating to imposition of substantial financial hardship; providing for the
12 construction and effect of this Act; and generally relating to the regulation of
13 vehicle dealer and manufacturer, distributor, and factory branch relations.

14 BY repealing and reenacting, with amendments,
15 Article - Transportation
16 Section 15-207
17 Annotated Code of Maryland
18 (1992 Replacement Volume and 1997 Supplement)

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

21 **Article - Transportation**

22 15-207.

23 (a) (1) In this section[:] THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 [(1)] (2) "Coerce" means to [compel or attempt to compel by threat of
26 harm, breach of contract, or other adverse consequences; and

1 (2) "Coerce" does not mean to argue, urge, recommend, or persuade]
2 INTIMIDATE, PRESSURE, OR THREATEN OR TO ATTEMPT TO INTIMIDATE, PRESSURE,
3 OR THREATEN.

4 (3) "REQUIRE" MEANS TO IMPOSE OR ATTEMPT TO IMPOSE UPON A
5 DEALER A PROVISION NOT REQUIRED BY LAW OR PREVIOUSLY AGREED TO BY A
6 DEALER IN A FRANCHISE AGREEMENT, EXCLUDING BUSINESS DECISIONS BY A
7 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH WHICH ARE UNIFORMLY
8 APPLIED TO ALL DEALERS IN NEW VEHICLES OF THE MANUFACTURER,
9 DISTRIBUTOR, OR FACTORY BRANCH.

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

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

18 (d) A manufacturer, distributor, or factory branch, whether directly or through
19 an agent, employee, or representative, may not require or coerce a dealer, by
20 franchise agreement or otherwise, or as a condition to the renewal or continuation of
21 a franchise agreement, to:

22 (1) Eliminate from the use of the dealer's facilities a dealership for which
23 the dealer has a franchise agreement to utilize the facilities as of March 1, 1996; or

24 (2) Materially change the dealer's facilities or method of conducting
25 business if the change would impose substantial financial hardship on the business of
26 the dealer AT THE LOCATION DESCRIBED IN THE FRANCHISE AGREEMENT.

27 (e) (1) A manufacturer, distributor, or factory branch, whether directly or
28 through an agent, employee, or representative, may not require or coerce a dealer to
29 adhere to performance standards that are not applied uniformly to other similarly
30 situated dealers.

31 (2) A performance standard or program for measuring dealership
32 performance that may have a material effect on a dealer and the application of the
33 standard or program by a manufacturer, distributor, or factory branch shall be fair,
34 reasonable, equitable, and based on accurate information.

35 (3) (i) If the performance standard is based on a survey, it must be
36 shown that:

37 1. The survey was designed with experts;

38 2. The proper universe was examined;

1 3. A representative sample was chosen; and

2 4. The data was accurately reported.

3 (ii) The manufacturer, distributor, or factory branch shall establish
4 the objectivity of the survey process and provide this information to any dealer of the
5 same line make covered by the survey on request.

6 (f) A franchise agreement or other contract offered to a dealer by a
7 manufacturer, distributor, or factory branch may not contain any provision requiring
8 a dealer to pay the attorney's fees of the manufacturer, distributor, or factory branch
9 related to disputes involving the franchise.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 interpreted as superseding the construction and interpretation of § 15-207 of the
12 Transportation Article as set forth in the Memorandum and Order of the United
13 States District Court of Maryland dated December 2, 1996, in the case of Colonial
14 Dodge, Inc., et al. v. Chrysler Corporation (Civil Action No. CCB-95-592) and the
15 opinion of the Court of Special Appeals of Maryland in Antwerpen Dodge, Ltd., et al.
16 v. Herb Gordon Auto World, Inc., 117 Md. App. 290 (1997), and that § 15-207 of the
17 Transportation Article as enacted by this Act shall not be construed or interpreted in
18 accordance with the interpretations under these decisions.

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
20 construed to apply to any franchise agreement in effect on or entered into on or after
21 July 1, 1998.

22 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 July 1, 1998.