

SENATE BILL 408

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R4

1998 Regular Session
8r1440
CF 8r1649

By: **Senator Jimeno**
Introduced and read first time: February 6, 1998
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 25, 1998

CHAPTER _____

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
5 term applies to certain provisions pertaining to the relationship between vehicle
6 manufacturers, distributors, or factory branches and vehicle dealers; ~~prohibiting~~
7 ~~a manufacturer, distributor, or factory branch from requiring a dealer to order~~
8 ~~or 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; providing for the application of this Act; and~~
13 generally relating to the regulation of vehicle dealer and manufacturer,
14 distributor, and factory branch relations.

15 BY repealing and reenacting, with amendments,
16 Article - Transportation
17 Section 15-207
18 Annotated Code of Maryland
19 (1992 Replacement Volume and 1997 Supplement)

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

1

Article - Transportation

2 15-207.

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

5 [(1)] (2) (I) "Coerce" means to {compel or attempt to compel by threat
6 of harm, breach of contract, or other adverse consequences; ~~and,~~

7 ~~(2)~~ (II) "Coerce" does not ~~mean~~ INCLUDE to argue, urge, recommend, or
8 persuade; ~~INTIMIDATE, PRESSURE, OR THREATEN OR TO ATTEMPT TO INTIMIDATE,~~
9 ~~PRESSURE, OR THREATEN.~~

10 (3) "REQUIRE" MEANS TO IMPOSE ~~OR ATTEMPT TO IMPOSE~~ UPON A
11 DEALER A PROVISION NOT REQUIRED BY LAW OR PREVIOUSLY AGREED TO BY A
12 DEALER IN A FRANCHISE AGREEMENT, EXCLUDING BUSINESS DECISIONS BY A
13 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH WHICH ARE UNIFORMLY
14 APPLIED TO ALL MARYLAND DEALERS IN NEW VEHICLES OF THE MANUFACTURER,
15 DISTRIBUTOR, OR FACTORY BRANCH.

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

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

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

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

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

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

37 (2) A performance standard or program for measuring dealership
38 performance that may have a material effect on a dealer and the application of the

1 standard or program by a manufacturer, distributor, or factory branch shall be fair,
2 reasonable, equitable, and based on accurate information.

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

- 5 1. The survey was designed with experts;
- 6 2. The proper universe was examined;
- 7 3. A representative sample was chosen; and
- 8 4. The data was accurately reported.

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

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

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

25 ~~SECTION 3. 2.~~ AND BE IT FURTHER ENACTED, That this Act shall be
26 construed to apply to any franchise agreement in effect on or entered into on or after
27 July 1, 1998.

28 ~~SECTION 4. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take
29 effect July 1, 1998.