

HOUSE BILL 571

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2001 Regular Session
1lr2552
CF 1lr1832

By: **Delegate Malone**

Introduced and read first time: February 5, 2001

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws - Manufacturers, Distributors, and Factory Branches - Good**
3 **Faith Dealings**

4 FOR the purpose of defining the term "good faith" for purposes of certain business
5 transactions involving vehicle manufacturers, distributors, and factory
6 branches; prohibiting a vehicle manufacturer, distributor, or factory branch in
7 the conduct of certain business transactions from failing to act in good faith; and
8 generally relating to a requirement that vehicle manufacturers, distributors,
9 and factory branches act in good faith.

10 BY repealing and reenacting, with amendments,
11 Article - Transportation
12 Section 15-207
13 Annotated Code of Maryland
14 (1999 Replacement Volume and 2000 Supplement)

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

17 **Article - Transportation**

18 15-207.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) (i) "Coerce" means to compel or attempt to compel by threat of
21 harm, breach of contract, or other adverse consequences.

22 (ii) "Coerce" does not include to argue, urge, recommend, or
23 persuade.

24 (3) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF
25 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING IN THE TRADE.

26 [(3)] (4) "Require" means to impose upon a dealer a provision not
27 required by law or previously agreed to by a dealer in a franchise agreement,

1 excluding business decisions by a manufacturer, distributor, or factory branch which
2 are uniformly applied to all Maryland dealers in new vehicles of the manufacturer,
3 distributor, or factory branch.

4 (b) (1) A manufacturer, distributor, or factory branch, whether directly or
5 through an agent, employee, or representative, may not coerce any dealer to make
6 any agreement with the manufacturer, distributor, or factory branch.

7 (2) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, WHETHER
8 DIRECTLY OR THROUGH AN AGENT, EMPLOYEE, OR REPRESENTATIVE, MAY NOT, IN
9 ACTING OR PURPORTING TO ACT UNDER THE TERMS, PROVISIONS, OR CONDITIONS
10 OF ANY FRANCHISE AGREEMENT, OR OTHERWISE, FAIL TO ACT IN GOOD FAITH.

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

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

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

22 (2) Materially change the dealer's facilities or method of conducting
23 business if the change would impose substantial financial hardship on the business of
24 the dealer.

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

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

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

- 35 1. The survey was designed with experts;
36 2. The proper universe was examined;
37 3. A representative sample was chosen; and

1 4. The data was accurately reported.

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

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2001.