

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 635
Finance

(Senator Forehand)

Vehicle Laws - Motor Vehicle Franchise Agreements

This bill prohibits a motor vehicle manufacturer, distributor, or factory branch from entering into a franchise agreement that establishes or relocates a dealer within a “relevant market area” under specified conditions.

Fiscal Summary

State Effect: None. The bill’s requirement for administrative hearings in certain cases could be handled with existing resources.

Local Effect: Minimal or none.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill states that a manufacturer, distributor, or factory branch may not enter into an agreement that establishes or moves a dealership within a relevant market area where the same line make is represented unless: (1) the manufacturer, distributor, or factory branch notifies each dealer of the same line make in the relevant market area of the proposed establishment or relocation and none of those dealers files a protest; or (2) the Motor Vehicle Administration (MVA) determines that good cause does not exist to prohibit the establishment or relocation.

The bill defines a relevant market area as: (1) the area within a six-mile radius of the intended site of the proposed or relocated dealership in a county with a population over

150,000; and (2) the area within a ten-mile radius of the intended site in counties with a population over 150,000. The proposed requirements do not apply to the reopening of a dealership that was closed for less than a year or the relocation of a dealership to a site that is less than five miles from the existing location.

Within 30 days after receiving notice of a proposed relocation or establishment of a dealership following the end of an appeal to the manufacturer, a vehicle dealer must be granted a hearing upon request to determine if good cause exists to refuse the proposed dealership. In determining good cause, the MVA must consider several specified circumstances such as the permanency of the investment, whether an additional franchise would injure or benefit the public welfare, and the impact on the relocating dealer if the relocation is denied.

If an owner, partner, or stockholder proposes to transfer over 50% of the ownership interest in a dealership, the manufacturer, distributor, or factory branch must have a right of first refusal to acquire the interest if:

- the entity notifies the owner, etc., in writing of the intent to exercise the right of first refusal within 60 days of receiving the completed application forms, any related information generally used to review a proposed transfer, and all agreements regarding the proposed transfer;
- the exercise of the right of first refusal will result in the owner, partner, or stockholder receiving terms that are at least as great as those that the interest holder contracted to receive; and
- the proposed transfer does not involve the transfer to designated family members, a manager employed by the dealership, a partnership or corporation controlled by a family member or manager, or certain trust arrangements.

The manufacturer, distributor, or factory branch is not required to pay the proposed transferee's expenses except under specified conditions.

The bill also prohibits a manufacturer from disapproving a claim of compensation if: (1) the dealer received preauthorization for the claim from the manufacturer or the manufacturer's representative; or (2) because of the dealer's failure to comply with a claim processing requirement that does not result in a material defect.

Current Law: State law does not provide for procedures to refuse the relocation or establishment of a vehicle dealership or for right of first refusal for transfer of ownership interests in a dealership. However, a manufacturer, factory branch, or distributor may not prevent any owner, partner, or stockholder of any dealership from transferring any ownership interest to any other person. A designated family member of a deceased or

incapacitated dealer may succeed the dealer under the existing franchise agreement, pending certain conditions.

The MVA may revoke or suspend the license of any person who has failed to comply with any written warranty agreement or reasonably compensate any franchised dealer who does work under the dealer's vehicle preparation and delivery obligations or any outstanding express or implied new vehicle component parts warranty.

Three factors must be included among those considered in determining whether a dealer has been reasonably compensated – the prevailing wage and labor rate being charged by these dealers and the compensation paid to other licensees. A claim filed by a dealer must be in the manner prescribed by the manufacturer and approved or disapproved within 30 days of receipt. A claim not approved in 30 days is considered to be approved.

Background: According to the Maryland New Dealers' Association, approximately 340 dealerships operate in Maryland and only 8 new dealerships started in 2002. The association advises that few dealers relocate due to the expense, unless the dealer is in a congested urban area such as Bethesda, where expansion is limited. It also acknowledges that in some areas, there are several dealerships in close proximity that sell the same vehicle make.

Ten local jurisdictions have populations that exceed 150,000, including Baltimore City and Anne Arundel, Montgomery, Howard, Charles, and Prince George's counties.

Small Business Effect: Of the 400 dealerships reported by the 2000 U.S. Census, approximately half were small businesses. The impact on the bill could be mixed. To the extent that the bill allows existing dealerships to protest an incoming dealer that would provide additional competition, those dealerships would benefit. However, if a small business dealership seeks to begin or relocate an establishment and is subject to the bill's requirements, the dealership would be adversely affected if the MVA did not find good cause to support the move. Given the limited number of relocations and new dealerships and declining number of vehicle dealerships, the impact is not expected to be significant.

Additional Information

Prior Introductions: None.

Cross File: HB 626 (Delegate Wood) – Environmental Matters.

Information Source(s): Department of Business and Economic Development, Office of Administrative Hearings, Maryland State Department of Transportation, Department of Legislative Services

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mld/jr

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