
By: **Senator Forehand**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws - Vehicle Dealers - Succession**

3 FOR the purpose of authorizing the officers or other authorized representatives of
4 certain business entities to sign certain license applications; prohibiting the
5 exclusion of certain vehicle dealerships from the use of a dealer's facilities under
6 certain circumstances; requiring a sales objective or other program for
7 measuring the performance of vehicle dealers to be fair and based on certain
8 factors under certain circumstances; prohibiting a manufacturer, distributor, or
9 factory branch from denying certain benefits to a dealer under certain
10 circumstances; requiring the designation of certain individuals to represent
11 certain vehicle dealers and prohibiting the withholding of approval of certain
12 designated individuals as successors under certain circumstances; establishing
13 the burden of proof at certain hearings under certain circumstances; providing
14 for continuation of certain vehicle dealerships and franchises under certain
15 circumstances; providing for replacement of certain individuals who are vehicle
16 dealers under certain circumstances; making technical changes; providing for
17 the application of certain provisions of law; and generally relating to the
18 succession of automobile dealerships.

19 BY repealing and reenacting, without amendments,
20 Article - Transportation
21 Section 15-101(b)
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2005 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Transportation
26 Section 15-102(c), 15-207, 15-209, and 15-211.1
27 Annotated Code of Maryland
28 (2002 Replacement Volume and 2005 Supplement)

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

1

Article - Transportation

2 15-101.

3 (b) (1) "Dealer" means, except as provided in paragraph (3) of this
4 subsection, a dealer in vehicles of a type required to be registered under Title 13 of
5 this article.

6 (2) (i) "Dealer" includes:

7 1. A person who is in the business of buying, selling, or
8 exchanging vehicles, including a person who during any 12-month period offers to
9 sell three or more of these vehicles, the ownership of which was acquired for resale
10 purposes; and

11 2. For the purposes of §§ 15-301 through 15-315, inclusive,
12 of this title, any person who sells vehicles, whether or not that person acquired the
13 vehicles for personal or business use, if the vehicles are displayed at a fixed location
14 used principally for the purpose of selling vehicles on a regular basis.

15 (ii) 1. For the purposes of subparagraph (i)1 of this paragraph, a
16 person who offers to sell three or more vehicles during any 12-month period is
17 presumed to have acquired the vehicles for resale purposes.

18 2. The vehicle owner has the burden of rebutting the
19 presumption established under sub-subparagraph 1 of this subparagraph by a
20 preponderance of the evidence.

21 (3) "Dealer" does not include:

22 (i) A public official who sells or disposes of vehicles in the
23 performance of his official duties;

24 (ii) An insurance company, finance company, bank, or other lending
25 institution licensed or otherwise authorized to do business in this State that, to save
26 it from loss, sells or disposes of vehicles under a contractual right and in the regular
27 course of its business;

28 (iii) A licensed auctioneer acting on behalf of a seller, secured party
29 or owner and where title does not pass to the auctioneer and the auction is not for the
30 purpose of avoiding the provisions of this title;

31 (iv) A receiver, trustee, personal representative, or other person
32 appointed by or acting under the authority of any court;

33 (v) Either a manufacturer or distributor who sells or distributes
34 vehicles to licensed dealers or a person employed by a manufacturer or distributor to
35 promote the sale of the vehicles of the manufacturer or distributor, if that
36 manufacturer, distributor, or person does not sell vehicles to retail buyers;

1 (vi) A person who sells or disposes of vehicles acquired and used for
2 personal or business use and not for the purpose of avoiding the provisions of this
3 title, if that person is not engaged in buying, selling, or exchanging vehicles as a
4 business;

5 (vii) An automotive dismantler and recycler who during the normal
6 course of business acquires a salvage vehicle and transfers the vehicle on a salvage
7 certificate. However, if the automotive dismantler and recycler rebuilds and sells
8 more than 5 vehicles during a 12-month period to a person other than another
9 automotive dismantler and recycler or licensed dealer, the automotive dismantler and
10 recycler must be licensed as a dealer under § 15-302 of this subtitle;

11 (viii) A person engaged in the leasing of motor vehicles under leases
12 not intended as security; or

13 (ix) A religious, charitable, or volunteer organization exempt from
14 taxation under § 501(c) of the Internal Revenue Code, the Department of Human
15 Resources, or a local department of social services transferring a vehicle under §
16 13-810 of this article.

17 15-102.

18 (c) Each application for a license under this title shall:

19 (1) Contain a certification by the applicant that the information given in
20 it is true; and

21 (2) Be signed by:

22 (i) The applicant, if the applicant is an individual;

23 (ii) A partner or other authorized representative, if the application
24 is made for a partnership; or

25 (iii) An officer or other authorized representative, if the application
26 is made for a corporation OR ANY OTHER BUSINESS ENTITY.

27 15-207.

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

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

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

33 (3) "Require" means to impose upon a dealer a provision not required by
34 law or previously agreed to by a dealer in a franchise agreement, excluding business
35 decisions by a manufacturer, distributor, or factory branch which are uniformly

1 applied to all Maryland dealers in new vehicles of the manufacturer, distributor, or
2 factory branch.

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

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

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

15 (1) [Eliminate] EXCLUDE from the use of the dealer's facilities a
16 dealership for which the dealer has a franchise agreement to utilize the facilities [as
17 of March 1, 1996]; or

18 (2) Materially change the dealer's facilities or method of conducting
19 business if the change would impose substantial financial hardship on the business of
20 the dealer.

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

25 (2) (I) A performance standard, SALES OBJECTIVE, or program for
26 measuring dealership performance that may have a material effect on a dealer,
27 INCLUDING THE DEALER'S RIGHT TO PAYMENT UNDER ANY INCENTIVE OR
28 REIMBURSEMENT PROGRAM, and the application of the standard, OBJECTIVE, or
29 program by a manufacturer, distributor, or factory branch shall be fair, reasonable,
30 equitable, and based on accurate information, INCLUDING:

31 1. THE DEMOGRAPHIC CHARACTERISTICS OF THE
32 POPULATION, WITH EMPHASIS ON CAR AND TRUCK PREFERENCES; AND

33 2. THE GEOGRAPHIC CHARACTERISTICS THAT AFFECT CAR
34 AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED MARKET AREA.

35 (II) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY
36 NOT DENY THE BENEFITS OF MEETING A STANDARD, SALES OBJECTIVE, OR
37 PROGRAM TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE
38 EVIDENCE THAT IT WAS MET.

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

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

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

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

14 (G) (1) (I) IF THE DEALER IS AN ENTITY OTHER THAN AN INDIVIDUAL,
15 THE DEALER SHALL DESIGNATE AN INDIVIDUAL TO REPRESENT THE DEALER TO DO
16 BUSINESS WITH THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

17 (II) APPROVAL OF THE INDIVIDUAL MAY NOT BE WITHHELD BY THE
18 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH UNLESS THE INDIVIDUAL IS
19 UNFIT DUE TO LACK OF GOOD MORAL CHARACTER.

20 (2) A DEALER SHALL HAVE A REASONABLE AMOUNT OF TIME TO:

21 (I) DESIGNATE A REPRESENTATIVE OR A SUCCESSOR IF A CHANGE
22 IS REQUIRED FOR ANY REASON; AND

23 (II) OBTAIN APPROVAL OF THE REPRESENTATIVE OR SUCCESSOR
24 DESIGNATED UNDER ITEM (I) OF THIS PARAGRAPH, INCLUDING TIME FOR A
25 HEARING, IN THE EVENT OF ANY OBJECTION BY THE MANUFACTURER, DISTRIBUTOR,
26 OR FACTORY BRANCH.

27 (3) AT A HEARING RESULTING FROM AN OBJECTION TO THE APPROVAL
28 OF THE DESIGNATED INDIVIDUAL, THE MANUFACTURER, DISTRIBUTOR, OR FACTORY
29 BRANCH HAS THE BURDEN OF PROVING THAT THE DESIGNATED INDIVIDUAL IS NOT
30 OF GOOD MORAL CHARACTER.

31 15-209.

32 (a) A manufacturer may not terminate, cancel, or fail to renew the franchise of
33 a dealer, notwithstanding any term or provision of the franchise, unless:

34 (1) The dealer has failed to comply substantially with the reasonable
35 requirements of the franchise; and

1 (2) Except as otherwise provided by subsection (d) of this section, the
2 manufacturer:

3 (i) Gives the dealer at least 90 days' prior written notice of the
4 termination, cancellation, or nonrenewal and of the specific grounds for the action;
5 and

6 (ii) Provides the Administration with a copy of that notice.

7 (b) A distributor may not terminate, cancel, or fail to renew the franchise of a
8 dealer, notwithstanding any term or provision of the franchise, unless:

9 (1) The dealer has failed to comply substantially with the reasonable
10 requirements of the franchise; and

11 (2) Except as otherwise provided by subsection (d) of this section, the
12 distributor:

13 (i) Gives the dealer at least 90 days' prior written notice of the
14 termination, cancellation, or nonrenewal and of the specific grounds for the action;
15 and

16 (ii) Provides the Administration with a copy of that notice.

17 (c) A factory branch may not terminate, cancel, or fail to renew the franchise
18 of a dealer, notwithstanding any term or provision of the franchise, unless:

19 (1) The dealer has failed to comply substantially with the reasonable
20 requirements of the franchise; and

21 (2) Except as otherwise provided by subsection (d) of this section, the
22 factory branch:

23 (i) Gives the dealer at least 90 days' prior written notice of the
24 termination, cancellation, or nonrenewal and of the specific grounds for the action;
25 and

26 (ii) Provides the Administration with a copy of that notice.

27 (d) The 90-day notice period required by subsection (a) of this section:

28 (1) May be reduced to not less than 15 days, if the ground for the
29 termination, cancellation, or nonrenewal is the dealer's inability to reasonably serve
30 the interests of the public; and

31 (2) Is not required, if the dealer waives it in writing.

32 (e) (1) If a dealer receives written notice that his franchise is being
33 terminated, cancelled, or not renewed, the dealer may, within the notice period
34 required by this section, request a hearing under Title 12, Subtitle 2 of this article [to
35 determine whether] IN WHICH THE MANUFACTURER, DISTRIBUTOR, OR FACTORY

1 BRANCH MUST SHOW THAT the dealer has failed to comply substantially with the
2 reasonable requirements of the franchise.

3 (2) If the dealer requests a hearing under this subsection, the dealer's
4 franchise continues in effect, notwithstanding any term or provision of the franchise
5 or any other provision of this subtitle, until the Administration, after the hearing,
6 makes a final determination.

7 (3) A dealer, manufacturer, distributor, or factory branch may appeal the
8 determination of the Administration to the circuit court for the county in which the
9 [person's] DEALER'S principal place of business is located.

10 (4) IF THE DEALER, MANUFACTURER, DISTRIBUTOR, OR FACTORY
11 BRANCH APPEALS THE DETERMINATION OF THE ADMINISTRATION TO A CIRCUIT
12 COURT, THE DEALER'S FRANCHISE CONTINUES IN EFFECT, NOTWITHSTANDING ANY
13 TERM OR PROVISION OF THE FRANCHISE OR ANY OTHER PROVISION OF THIS
14 SUBTITLE, UNTIL THE CIRCUIT COURT MAKES A FINAL DETERMINATION.

15 [(4)] (5) A dealer, manufacturer, distributor, or factory branch may
16 appeal from a final judgment entered by a circuit court to the Court of Special
17 Appeals as provided in § 12-301 of the Courts and Judicial Proceedings Article.

18 (f) (1) In addition to any administrative and criminal sanctions imposed
19 under this subtitle, a manufacturer, distributor, or factory branch that terminates,
20 cancels, or fails to renew the franchise of a dealer in violation of this section shall pay
21 to the dealer the fair value of his business as a going concern.

22 (2) On payment, the dealer shall convey his business, free of liens and
23 encumbrances, to the manufacturer, distributor, or factory branch.

24 15-211.1.

25 (a) (1) A designated family member of a deceased or incapacitated dealer
26 may succeed the dealer in the ownership or operation of the dealership under the
27 existing franchise agreement if the designated family member:

28 (i) Gives the manufacturer, distributor, or factory branch written
29 notice of the designated family member's intention to succeed to the dealership within
30 120 days after the dealer's death or incapacity;

31 (ii) Agrees to be bound by all of the terms and conditions of the
32 franchise agreement; and

33 (iii) Meets the current criteria that the manufacturer, distributor, or
34 factory branch generally applies in qualifying dealers.

35 (2) A manufacturer, distributor, or factory branch may refuse to honor
36 the existing franchise agreement with the designated family member only for good
37 cause.

1 (b) (1) The manufacturer, distributor, or factory branch may request from a
2 designated family member personal and financial data reasonably necessary to
3 determine whether the existing franchise agreement should be honored.

4 (2) The designated family member shall supply the personal and
5 financial data promptly upon the request.

6 (c) If a manufacturer, distributor, or factory branch believes that good cause
7 exists for refusing to honor the succession, the manufacturer, distributor, or factory
8 branch may, within 60 days after receipt of the notice of the designated family
9 member's intent to succeed the dealer or, if the manufacturer, distributor, or factory
10 branch requested personal or financial data, within 60 days after the receipt of the
11 requested data, provide written notice to the designated family member of the
12 manufacturer, distributor, or factory branch's refusal to approve the succession.

13 (d) The notice of the manufacturer, distributor, or factory branch provided in
14 accordance with subsection (c) of this section shall state the specific grounds for the
15 refusal to approve the succession and that discontinuance of the franchise agreement
16 shall take effect not less than 90 days after the date the notice is provided.

17 (e) If written notice of refusal is not provided in accordance with subsection (c)
18 of this section, the franchise agreement shall continue in effect and shall be subject to
19 termination only as otherwise permitted by this title.

20 (f) This section does not preclude a dealer from designating any person as the
21 dealer's successor by written instrument filed with the manufacturer, distributor, or
22 factory branch. If a written instrument is filed, the instrument alone shall determine
23 the succession rights to the management and operation of the dealership.

24 (G) (1) THIS SECTION APPLIES ONLY TO A DEALER WHO IS AN INDIVIDUAL.

25 (2) IN THE EVENT OF THE INCAPACITY OR DEATH OF AN INDIVIDUAL
26 DESIGNATED TO ACT AS A REPRESENTATIVE OF A DEALER THAT IS AN ENTITY
27 UNDER § 15-207(G) OF THIS SUBTITLE, THE PROCEDURE FOR REPLACEMENT OF THE
28 INDIVIDUAL SHALL BE AS PROVIDED IN § 15-207(G) OF THIS SUBTITLE.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2006.