
By: **Senator Forehand**

Introduced and read first time: February 3, 2006

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

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CHAPTER _____

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~~ certain vehicle 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

1 Section 15-102(c), 15-207, 15-209, and 15-211.1
2 Annotated Code of Maryland
3 (2002 Replacement Volume and 2005 Supplement)

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

6 **Article - Transportation**

7 15-101.

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

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

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

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

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

23 2. The vehicle owner has the burden of rebutting the
24 presumption established under sub-subparagraph 1 of this subparagraph by a
25 preponderance of the evidence.

26 (3) "Dealer" does not include:

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

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

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

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

3 (v) Either a manufacturer or distributor who sells or distributes
4 vehicles to licensed dealers or a person employed by a manufacturer or distributor to
5 promote the sale of the vehicles of the manufacturer or distributor, if that
6 manufacturer, distributor, or person does not sell vehicles to retail buyers;

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

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

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

19 (ix) A religious, charitable, or volunteer organization exempt from
20 taxation under § 501(c) of the Internal Revenue Code, the Department of Human
21 Resources, or a local department of social services transferring a vehicle under §
22 13-810 of this article.

23 15-102.

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

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

27 (2) Be signed by:

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

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

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

33 15-207.

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

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

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

3 (3) "Require" means to impose upon a dealer a provision not required by
4 law or previously agreed to by a dealer in a franchise agreement, excluding business
5 decisions by a manufacturer, distributor, or factory branch which are uniformly
6 applied to all Maryland dealers in new vehicles of the manufacturer, distributor, or
7 factory branch.

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

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] EXCLUDE from the use of the dealer's facilities a
21 dealership for which the dealer has a franchise agreement to utilize the facilities [as
22 of March 1, 1996]; or

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

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

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

36 1. ~~THE DEMOGRAPHIC CHARACTERISTICS OF THE~~
37 ~~POPULATION, WITH EMPHASIS ON CAR AND TRUCK PREFERENCES; AND~~

38 2. ~~THE GEOGRAPHIC CHARACTERISTICS THAT AFFECT CAR~~
39 ~~AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED MARKET AREA.~~

1 ~~(H) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY~~
2 ~~NOT DENY THE BENEFITS OF MEETING A STANDARD, SALES OBJECTIVE, OR~~
3 ~~PROGRAM TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE~~
4 ~~EVIDENCE THAT IT WAS MET.~~

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

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

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

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

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

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

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

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

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

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

1 15-209.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (e) (1) If a dealer receives written notice that his franchise is being
6 terminated, cancelled, or not renewed, the dealer may, within the notice period
7 required by this section, request a hearing under Title 12, Subtitle 2 of this article [to
8 determine whether] **IN WHICH THE MANUFACTURER, DISTRIBUTOR, OR FACTORY
9 BRANCH MUST SHOW THAT** the dealer has failed to comply substantially with the
10 reasonable requirements of the franchise.

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

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

18 (4) **IF THE DEALER, MANUFACTURER, DISTRIBUTOR, OR FACTORY
19 BRANCH APPEALS THE DETERMINATION OF THE ADMINISTRATION TO A CIRCUIT
20 COURT, THE DEALER'S FRANCHISE CONTINUES IN EFFECT, NOTWITHSTANDING ANY
21 TERM OR PROVISION OF THE FRANCHISE OR ANY OTHER PROVISION OF THIS
22 SUBTITLE, UNTIL THE CIRCUIT COURT MAKES A FINAL DETERMINATION.**

23 [(4)] (5) A dealer, manufacturer, distributor, or factory branch may
24 appeal from a final judgment entered by a circuit court to the Court of Special
25 Appeals as provided in § 12-301 of the Courts and Judicial Proceedings Article.

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

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

32 15-211.1.

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

36 (i) Gives the manufacturer, distributor, or factory branch written
37 notice of the designated family member's intention to succeed to the dealership within
38 120 days after the dealer's death or incapacity;

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

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

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

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

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

13 (c) If a manufacturer, distributor, or factory branch believes that good cause
14 exists for refusing to honor the succession, the manufacturer, distributor, or factory
15 branch may, within 60 days after receipt of the notice of the designated family
16 member's intent to succeed the dealer or, if the manufacturer, distributor, or factory
17 branch requested personal or financial data, within 60 days after the receipt of the
18 requested data, provide written notice to the designated family member of the
19 manufacturer, distributor, or factory branch's refusal to approve the succession.

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

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

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

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

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

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

