

# SENATE BILL 943

R4

8lr3121

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By: **Senator Forehand**

Introduced and read first time: February 25, 2008

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers, Distributors, and Factory Branches –**  
3 **Prohibited Acts**

4 FOR the purpose of requiring a sales objective or other program for measuring the  
5 performance of vehicle dealers to be fair and based on certain factors under  
6 certain circumstances; prohibiting a manufacturer, distributor, or factory  
7 branch from denying certain benefits to a dealer under certain circumstances;  
8 prohibiting a manufacturer, distributor, or factory branch from offering or  
9 advertising, or allowing its captive finance companies or dealers to offer or  
10 advertise, certain programs or terms unless all dealers are allowed to offer or  
11 advertise the programs or terms; establishing the burden of proof when a  
12 manufacturer, distributor, factory branch, or captive finance company denies  
13 certain benefits to a dealer under certain circumstances; prohibiting a  
14 manufacturer, distributor, or factory branch from requiring a dealer to alter or  
15 replace an existing dealership facility or from denying or threatening to deny  
16 certain benefits to a dealer under certain circumstances; prohibiting a  
17 manufacturer, distributor, or factory branch from reducing the price of a motor  
18 vehicle charged to a dealer or providing different financing terms to a dealer in  
19 exchange for a certain agreement by the dealer; specifying the conditions under  
20 which a manufacturer, distributor, or factory branch may offer certain  
21 promotional items for the sale of a vehicle by its dealers; prohibiting a  
22 manufacturer, distributor, or factory branch from discriminating among its  
23 dealers under certain circumstances; requiring a manufacturer, distributor, or  
24 factory branch that has a certain franchise or other contract with a dealer to  
25 allow the dealer to make certain purchases in a certain manner and to receive  
26 certain rights to incentive payments; prohibiting a manufacturer, distributor, or  
27 factory branch from exercising a right of first refusal under certain  
28 circumstances related to a transfer of a dealer's business or a proposed change  
29 in the executive management of a dealer's business; altering the period of time  
30 during which a certain claim may be charged back under certain circumstances;  
31 prohibiting a manufacturer, distributor, or factory branch from refusing to pay

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 or claiming reimbursement from a dealer for sales, incentives, or payments  
2 related to a motor vehicle sold by a dealer and exported or resold by the  
3 purchaser under certain circumstances; altering a certain definition; defining a  
4 certain term; and generally relating to manufacturers, distributors, and factory  
5 branches.

6 BY repealing and reenacting, with amendments,  
7 Article – Transportation  
8 Section 15–207, 15–208, 15–211, and 15–212.1  
9 Annotated Code of Maryland  
10 (2006 Replacement Volume and 2007 Supplement)

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

13 **Article – Transportation**

14 15–207.

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

16 (2) (i) “Coerce” means to compel or attempt to compel by threat of  
17 harm, **INCLUDING THE LOSS OF ANY BENEFIT MADE AVAILABLE TO OTHER**  
18 **DEALERS IN THE STATE**, breach of contract, or other adverse consequences.

19 **(II) “COERCE” INCLUDES TO ACT IN A MANNER THAT**  
20 **VIOLATES § 15–206.1 OF THIS SUBTITLE.**

21 [(ii)] **(III)** “Coerce” does not include to argue, urge, recommend,  
22 or persuade.

23 (3) “Require” means to impose upon a dealer a provision not required  
24 by law or previously agreed to by a dealer in a franchise agreement, excluding  
25 business decisions by a manufacturer, distributor, or factory branch which are  
26 uniformly applied to all Maryland dealers in new vehicles of the manufacturer,  
27 distributor, or factory branch.

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

31 (c) A manufacturer, distributor, or factory branch, whether directly or  
32 through an agent, employee, or representative, may not coerce any dealer to order or  
33 accept delivery of any vehicle, any equipment, parts, or accessories for a vehicle, or  
34 any other commodity that is not required by law or by the dealer’s franchise or that  
35 was not ordered voluntarily by the dealer.

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

5 (1) Exclude from the use of the dealer's facilities a dealership for  
6 which the dealer has a franchise agreement to utilize the facilities; or

7 (2) Materially change the dealer's facilities or method of conducting  
8 business if the change would impose substantial financial hardship on the business of  
9 the dealer.

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

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

20 **1. THE DEMOGRAPHIC CHARACTERISTICS OF THE**  
21 **POPULATION, WITH EMPHASIS ON CAR AND TRUCK BRAND PREFERENCES OF**  
22 **CONSUMERS WHO PURCHASE NEW CARS AND TRUCKS AT RETAIL; AND**

23 **2. THE GEOGRAPHIC CHARACTERISTICS THAT**  
24 **AFFECT CAR AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED**  
25 **MARKET AREA.**

26 **(II) A MANUFACTURER, DISTRIBUTOR, OR FACTORY**  
27 **BRANCH MAY NOT DENY THE BENEFITS OF MEETING A STANDARD OR SALES**  
28 **OBJECTIVE TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE**  
29 **EVIDENCE THAT THE STANDARD OR SALES OBJECTIVE WAS MET AND THE**  
30 **BENEFIT WAS PROVIDED TO THE CONSUMER.**

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

33 1. The survey was designed with experts;

34 2. The proper universe was examined;

35 3. A representative sample was chosen; and



1 CONSUMER REBATES, DEALER INCENTIVES, PRICE OR INTEREST RATE  
2 REDUCTIONS, OR FINANCE TERMS TO A DEALER ON THE BASIS THAT THE  
3 DEALER FAILED TO COMPLY WITH PERFORMANCE STANDARDS SHALL HAVE THE  
4 BURDEN OF PROVING THAT THE PERFORMANCE STANDARDS COMPLY WITH THE  
5 PROVISIONS OF THIS SECTION.

6 (3) AS LONG AS A DEALER DOES NOT VIOLATE ANY STATE OR  
7 LOCAL LAW INTENDED TO PROTECT THE PUBLIC, A MANUFACTURER,  
8 DISTRIBUTOR, OR FACTORY BRANCH MAY NOT:

9 (I) REQUIRE A DEALER TO ALTER OR REPLACE AN  
10 EXISTING DEALERSHIP FACILITY; OR

11 (II) DENY OR THREATEN TO DENY ANY BENEFIT GENERALLY  
12 AVAILABLE TO ALL DEALERS FOR A DEALER'S FAILURE TO ALTER OR REPLACE  
13 AN EXISTING DEALERSHIP FACILITY.

14 (4) A MANUFACTURER, DISTRIBUTOR, FACTORY BRANCH, OR  
15 CAPTIVE FINANCE COMPANY MAY NOT REDUCE THE PRICE OF A MOTOR  
16 VEHICLE CHARGED TO A DEALER OR PROVIDE DIFFERENT FINANCING TERMS  
17 TO A DEALER IN EXCHANGE FOR THE DEALER'S AGREEMENT TO:

18 (I) MAINTAIN AN EXCLUSIVE SALES OR SERVICE FACILITY;

19 (II) BUILD OR ALTER A SALES OR SERVICE FACILITY; OR

20 (III) PARTICIPATE IN A FLOOR PLAN OR OTHER FINANCING  
21 ARRANGEMENT.

22 (I) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY  
23 OFFER REBATES, CASH INCENTIVES, OR OTHER PROMOTIONAL ITEMS FOR THE  
24 SALE OF A VEHICLE BY ITS DEALERS AS LONG AS:

25 (1) THE SAME REBATE, CASH INCENTIVE, OR PROMOTION IS  
26 OFFERED TO ALL OF ITS DEALERS;

27 (2) THE REBATE, CASH INCENTIVE, OR PROMOTION IS BASED  
28 SOLELY ON THE SALE OF AN INDIVIDUAL VEHICLE AND MAY NOT BE INCREASED  
29 FOR MEETING A PERFORMANCE STANDARD; AND

30 (3) THERE IS NO INCREASED REBATE, CASH INCENTIVE, OR  
31 PROMOTION FOR MULTIPLE SALES OF A VEHICLE THAT EXCEEDS THE PRODUCT  
32 OF THE INDIVIDUAL VEHICLE REBATE, INCENTIVE, OR PROMOTION AND THE  
33 NUMBER OF VEHICLES SOLD.

1           **(J) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT**  
2 **DISCRIMINATE AMONG ITS DEALERS IN ANY PROGRAM, INCLUDING INTERNET**  
3 **LISTINGS, SALES LEADS, WARRANTY POLICY ADJUSTMENTS, MARKETING**  
4 **PROGRAMS, AND DEALER RECOGNITION PROGRAMS, THAT PROVIDES**  
5 **ASSISTANCE TO ITS DEALERS.**

6 15–208.

7           (a) A manufacturer may not refuse to deliver new motor vehicles, new  
8 two-stage vehicles, or truck component parts, as the case may be, to a licensed dealer  
9 or distributor, in reasonable quantities and within a reasonable time after receipt of a  
10 written order, if:

11           (1) The manufacturer specifically advertises that these vehicles or  
12 truck component parts are available for immediate delivery; and

13           (2) The dealer or distributor has a franchise or other contract with the  
14 manufacturer for the sale of these vehicles or truck component parts to the public.

15           (b) A distributor may not refuse to deliver new motor vehicles, or new  
16 two-stage vehicles, as the case may be, to a licensed dealer, in reasonable quantities  
17 and within a reasonable time after receipt of a written order, if:

18           (1) The distributor specifically advertises that these vehicles are  
19 available for immediate delivery; and

20           (2) The dealer has a franchise or other contract with the distributor  
21 for the sale of these vehicles to the public.

22           (c) A factory branch may not refuse to deliver new motor vehicles, or new  
23 two-stage vehicles, as the case may be, to a licensed dealer, in reasonable quantities  
24 and within a reasonable time after receipt of a written order, if:

25           (1) The factory branch specifically advertises that these vehicles are  
26 available for immediate delivery; and

27           (2) The dealer has a franchise or other contract with the factory  
28 branch for the sale of these vehicles to the public.

29           (d) A failure to deliver vehicles because of a labor strike, government  
30 regulation, or other cause not the fault of the manufacturer, distributor, or factory  
31 branch is not a violation of this section.

32           **(E) IF A DEALER HAS A FRANCHISE OR OTHER CONTRACT WITH A**  
33 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH FOR THE SALE OF**  
34 **VEHICLES OR TRUCK COMPONENT PARTS OF A SPECIFIC LINE OR MAKE, THE**

1 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL ALLOW THE  
2 DEALER TO:

3 (1) PURCHASE THE VEHICLES OR TRUCK COMPONENT PARTS AT  
4 THE SAME PRICE AND ON THE SAME TERMS AS ALL OTHER DEALERS WITH A  
5 FRANCHISE OR OTHER CONTRACT FOR THE SALE OF VEHICLES OR TRUCK  
6 COMPONENT PARTS OF THE SAME LINE OR MAKE; AND

7 (2) RECEIVE THE SAME RIGHT TO INCENTIVE PAYMENTS THAT IS  
8 GIVEN TO ALL OTHER DEALERS WITH A FRANCHISE OR OTHER CONTRACT FOR  
9 THE SALE OF VEHICLES OR TRUCK COMPONENT PARTS OF THE SAME LINE OR  
10 MAKE.

11 15-211.

12 (a) A manufacturer, whether directly or through an agent, employee, or  
13 representative, may not prevent, by contract or otherwise, any owner, partner, or  
14 stockholder of any dealership from transferring any ownership interest in the  
15 dealership to any other person.

16 (b) A distributor, whether directly or through an agent, employee, or  
17 representative, may not prevent, by contract or otherwise, any owner, partner, or  
18 stockholder of any dealership from transferring any ownership interest in the  
19 dealership to any other person.

20 (c) A factory branch, whether directly or through an agent, employee, or  
21 representative, may not prevent, by contract or otherwise, any owner, partner, or  
22 stockholder of any dealership from transferring any ownership interest in the  
23 dealership to any other person.

24 (d) (1) A dealer or an owner, partner, or stockholder of a dealership may  
25 not sell, assign, or otherwise transfer a franchise or any right under a franchise  
26 without the consent of the manufacturer.

27 (2) NOTWITHSTANDING THE TERMS OF ANY FRANCHISE  
28 AGREEMENT OR AGREEMENT RELATED TO A FRANCHISE, A MANUFACTURER  
29 MAY NOT EXERCISE A RIGHT OF FIRST REFUSAL IN THE EVENT OF:

30 (I) A SALE OR TRANSFER OR PROPOSED SALE OR  
31 TRANSFER OF A DEALER'S BUSINESS OR ANY EQUITY INTEREST IN A DEALER'S  
32 BUSINESS; OR

33 (II) ANY PROPOSED CHANGE IN THE EXECUTIVE  
34 MANAGEMENT OF A DEALER'S BUSINESS.

1 (e) However, the manufacturer may not unreasonably withhold consent to  
2 the transfer of a franchise under subsection (d) of this section.

3 (f) (1) A dealer or an owner, partner, or stockholder of a dealership may  
4 not sell, assign, or otherwise transfer a franchise or any right under a franchise  
5 without the consent of the distributor.

6 (2) **NOTWITHSTANDING THE TERMS OF ANY AGREEMENT**  
7 **RELATED TO THE FRANCHISE, A DISTRIBUTOR MAY NOT EXERCISE A RIGHT OF**  
8 **FIRST REFUSAL IN THE EVENT OF:**

9 (I) **A SALE OR TRANSFER OR PROPOSED SALE OR**  
10 **TRANSFER OF A DEALER'S BUSINESS OR ANY EQUITY INTEREST IN A DEALER'S**  
11 **BUSINESS; OR**

12 (II) **ANY PROPOSED CHANGE IN THE EXECUTIVE**  
13 **MANAGEMENT OF A DEALER'S BUSINESS.**

14 (g) However, the distributor may not unreasonably withhold consent to the  
15 transfer of a franchise under subsection (f) of this section.

16 (h) (1) A dealer or an owner, partner, or stockholder of a dealership may  
17 not sell, assign, or otherwise transfer a franchise or any right under a franchise  
18 without the consent of the factory branch.

19 (2) **NOTWITHSTANDING THE TERMS OF ANY AGREEMENT**  
20 **RELATED TO THE FRANCHISE, A FACTORY BRANCH MAY NOT EXERCISE A RIGHT**  
21 **OF FIRST REFUSAL IN THE EVENT OF:**

22 (I) **A SALE OR TRANSFER OR PROPOSED SALE OR**  
23 **TRANSFER OF A DEALER'S BUSINESS OR ANY EQUITY INTEREST IN A DEALER'S**  
24 **BUSINESS; OR**

25 (II) **ANY PROPOSED CHANGE IN THE EXECUTIVE**  
26 **MANAGEMENT OF A DEALER'S BUSINESS.**

27 (i) However, the factory branch may not unreasonably withhold consent to  
28 the transfer of a franchise under subsection (h) of this section.

29 15-212.1.

30 (a) Upon the filing of a claim, a manufacturer, factory branch, or distributor  
31 shall compensate a dealer for any incentive or reimbursement program sponsored by  
32 the manufacturer, factory branch, or distributor, under the terms of which the dealer  
33 is eligible for compensation.



1 (b) (1) A claim filed under this section shall be:

2 (i) In the manner and form prescribed by the manufacturer,  
3 factory branch, or distributor; and

4 (ii) Approved or disapproved within 30 days of receipt.

5 (2) A claim not approved or disapproved within 30 days of receipt shall  
6 be deemed approved.

7 (3) Payment of a claim filed under this section shall be made within 30  
8 days of approval.

9 (c) (1) If a claim filed under this section is shown by the manufacturer,  
10 factory branch, or distributor to be false or unsubstantiated, the manufacturer, factory  
11 branch, or distributor may charge back the claim within [9] 2 months from the [end]  
12 **PAYMENT** of the incentive or reimbursement [program].

13 (2) This paragraph does not limit the right of a manufacturer, factory  
14 branch, or distributor to:

15 (i) Conduct an audit of any claim filed under this section; or

16 (ii) Charge back for any claim that is proven to be fraudulent.

17 (3) An audit under this paragraph shall be conducted according to  
18 generally accepted accounting principles.

19 **(D) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT**  
20 **REFUSE TO PAY, OR CLAIM REIMBURSEMENT FROM, A DEALER FOR SALES,**  
21 **INCENTIVES, OR PAYMENTS RELATED TO A MOTOR VEHICLE SOLD BY THE**  
22 **DEALER BECAUSE THE PURCHASER OF THE MOTOR VEHICLE EXPORTED OR**  
23 **RESOLD THE MOTOR VEHICLE IN VIOLATION OF THE POLICY OF THE**  
24 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH UNLESS THE**  
25 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH CAN SHOW THAT, AT THE**  
26 **TIME OF SALE, THE DEALER HAD SPECIFIC KNOWLEDGE OF THE PURCHASER'S**  
27 **INTENTION TO EXPORT OR RESELL THE MOTOR VEHICLE.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2008.