

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 943 (Senator Forehand)
Judicial Proceedings

Vehicle Laws - Manufacturers, Distributors, and Factory Branches - Prohibited Acts

This bill adds and clarifies prohibitions for the protection of new motor vehicle dealerships from discriminatory or coercive business practices by manufacturers, distributors, and factory branches and otherwise strengthens various dealership franchise rights.

Fiscal Summary

State Effect: None. The bill primarily regulates the actions of private entities.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A manufacturer, distributor, or factory branch may not discriminate among its dealers in any program that provides assistance to its dealers. If a dealer has a contract for the sale of a vehicle or part, the manufacturer, distributor, or factory branch must allow the dealer to purchase the vehicle or part at the same price and terms and receive the same right to incentive payments as all other dealers.

A wholly owned financial subsidiary of a manufacturer, distributor, or factory branch that provides consumer rebates, dealer incentives, price or interest rate reductions, or finance terms advertised by the manufacturer, distributor, or factory branch must provide such

financing benefits to all dealers and cannot deny any such benefit to any dealer on the basis of a failure to comply with a performance standard unless the standard complies with Maryland law. Such financing benefits may be offered or advertised but must be offered to all dealers, may not be enhanced in exchange for meeting certain performance standards, and may not be enhanced based on additional sales volume. In addition, a financial subsidiary may not provide discounted prices in exchange for an agreement to maintain exclusive sales or facilities, build or alter a dealer's facilities, or participate in any particular form of financing arrangement.

Unless a dealer violates a law for the protection of the public, a manufacturer, distributor, or factory branch may not require a dealer to alter or replace one of its facilities or threaten to deny a benefit that is available to other dealers due to the failure to alter or replace one of the dealer's facilities.

A manufacturer, distributor, or factory branch may not exercise a right of first refusal in the event of a proposed sale or transfer of any equity interest in a dealer's business or any proposed change in the business's executive management.

The bill requires that any performance standard or sales objective that may have a material effect on the dealer, including on the provision of incentive payments or rights under a reimbursement program, be fair, reasonable, equitable, and based on accurate information, including geographic or demographic characteristics and brand preferences.

The bill alters the definition of "coerce" as it pertains to an act of a manufacturer, distributor, or factory branch to include the loss of any benefit made available to other dealers in the State, or the lack of good faith as defined in the Maryland Vehicle Law.

A manufacturer, distributor, or factory branch may not refuse to pay, or claim reimbursement from, a dealer due to a subsequent sale or export of the vehicle by the purchaser, unless it can be shown that the dealer knew of the purchaser's intention to export or resell the vehicle. The bill also alters the timeframe during which a manufacturer, distributor, or factory branch may charge back a claim shown to be false or unsubstantiated.

Current Law: A manufacturer, distributor, or factory branch may not coerce a dealer of new motor vehicles to • make any agreement; • order or accept delivery of any vehicle, equipment, parts, or accessories; • prevent a dealer from using its facilities for another dealership franchise; • materially change its facilities or methods of business in a way that would impose substantial financial hardship; or • adhere to performance standards not uniformly applied to other similarly situated dealers. A performance standard and its application must be fair, reasonable, equitable, and based on accurate information.

In addition, a manufacturer, distributor, or factory branch may not:

- withhold the approval of an individual designated as representative for a dealer except for concern about good moral character or lack of reasonable business experience;
- refuse to deliver a new motor vehicle or part if it has specifically advertised that the vehicle or part is available for immediate delivery and there is a franchise or other contract for the sale of the vehicle or part; or
- prevent any owner of any dealership from transferring an ownership interest in the dealership.

A manufacturer, distributor, or factory branch must be licensed by the Motor Vehicle Administration to transfer any new motor vehicle in the State. MVA may refuse to grant a license and may suspend, revoke, or refuse to renew the license of any person if it finds

- a violation or attempt to violate any provision of applicable law; or
- a violation or attempt to violate any of the other provisions of the Maryland Vehicle Law that relate to the business or activity of that person.

Background: There are 1,357 new vehicle dealers in Maryland, including 84 motorcycle dealers and 803 wholesale dealers. There are also 100 manufacturers, 46 distributors and 4 factory branches in the State.

State Fiscal Effect: MVA advises that enforcement of the bill's provisions could be handled within its existing licensing regulation and approval capacity. The Attorney General advises that the bill would have no fiscal impact on its office.

Small Business Effect: The new provisions of this bill could potentially have a meaningful benefit on small business automobile dealership franchises. In addition, to the extent that any manufacturer, distributor, or factory branch is a small business entity, the bill creates additional prohibitions which subject their business license to the suspension and revocation authority of MVA.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Office of the Attorney General (Consumer Protection Division), Department of Legislative Services

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