

SENATE BILL 668

R4

(9lr1706)

ENROLLED BILL

—Judicial Proceedings / Environmental Matters—

Introduced by **Senators Raskin, Forehand, and Stone**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of establishing that a manufacturer, distributor, or factory branch
5 may not take certain actions through an affiliate; requiring a sales objective or
6 other program for measuring the performance of vehicle dealers to be fair and
7 based on ~~certain factors under certain circumstances~~ accurate information;
8 ~~prohibiting a manufacturer, distributor, or factory branch from denying certain~~
9 ~~benefits to a dealer under certain circumstances~~ authorizing a dealer that
10 claims that application of a performance standard or program is unfair or
11 unreasonable to request a certain hearing under certain circumstances;
12 establishing that a manufacturer, distributor, or factory branch has a certain
13 burden of proof; prohibiting a manufacturer, distributor, or factory branch from
14 offering or advertising, or allowing its dealers to offer or advertise, certain
15 programs or terms unless all dealers of the same line make are allowed to offer

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 or advertise the programs or terms; establishing the burden of proof when a
2 manufacturer, distributor, or factory branch denies certain benefits to a dealer
3 under certain circumstances; prohibiting a manufacturer, distributor, or factory
4 branch from requiring a dealer to alter or replace an existing dealership facility
5 or from denying or threatening to deny certain benefits to a dealer under certain
6 circumstances; prohibiting a manufacturer, distributor, or factory branch from
7 reducing the price of a motor vehicle charged to a dealer or providing different
8 financing terms to a dealer in exchange for a certain agreement by the dealer;
9 specifying the conditions under which a manufacturer, distributor, or factory
10 branch may offer certain promotional items for the sale of a vehicle by its
11 dealers; prohibiting a manufacturer, distributor, or factory branch from
12 discriminating among its dealers under certain circumstances; requiring a
13 manufacturer, distributor, or factory branch that has a certain franchise or
14 other contract with a dealer to allow the dealer to make certain purchases in a
15 certain manner and to receive certain rights to incentive payments; prohibiting
16 a manufacturer, distributor, or factory branch from exercising a right of first
17 refusal under certain circumstances related to a transfer of a dealer's business
18 ~~or a proposed change in the executive management of a dealer's business;~~
19 requiring a manufacturer, distributor, or factory branch to pay certain expenses
20 when exercising a certain right of first refusal under certain circumstances;
21 prohibiting a manufacturer, distributor, or factory branch from imposing certain
22 conditions on the approval of a certain sale or transfer of the ownership of a
23 dealership; establishing that a manufacturer, distributor, or factory branch
24 commits a certain violation for taking certain actions; authorizing a dealer to
25 request a certain hearing under certain circumstances; authorizing the Motor
26 Vehicle Administrator to take certain actions; authorizing an applicant for
27 approval of a sale, assignment, or transfer of ownership of a dealership or a
28 dealer to bring a certain action in the circuit court under certain circumstances
29 and within a certain period of time; altering the period of time during which a
30 certain claim may be charged back under certain circumstances; prohibiting a
31 manufacturer, distributor, or factory branch from refusing to pay or claiming
32 reimbursement from a dealer for sales, incentives, or payments related to a
33 motor vehicle sold by a dealer and exported or resold by the purchaser under
34 certain circumstances; ~~establishing a conclusive presumption that a dealer has~~
35 ~~no knowledge of certain facts under certain circumstances;~~ prohibiting a
36 manufacturer, distributor, or factory branch from giving certain benefits,
37 payments, or gifts directly to an employee; requiring that certain benefits,
38 payments, or gifts from a manufacturer, distributor, or factory branch to an
39 employee be given to the dealer and distributed in a certain manner;
40 authorizing a dealer to retain certain costs; requiring a manufacturer,
41 distributor, or factory branch, or a manufacturer of motor homes, to make
42 certain payments or reimbursements to ~~a dealer~~ certain dealers under certain
43 circumstances; altering a certain definition; and generally relating to
44 manufacturers, distributors, and factory branches.

45 BY repealing and reenacting, with amendments,
46 Article – Transportation

1 Section 15–207, 15–208, 15–211, and 15–212.1
2 Annotated Code of Maryland
3 (2006 Replacement Volume and 2008 Supplement)

4 BY adding to
5 Article – Transportation
6 Section 15–212.2
7 Annotated Code of Maryland
8 (2006 Replacement Volume and 2008 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article – Transportation
11 Section 15–213
12 Annotated Code of Maryland
13 (2006 Replacement Volume and 2008 Supplement)

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

16 **Article – Transportation**

17 15–207.

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

19 (2) (i) “Coerce” means to compel or attempt to compel by threat of
20 harm, breach of contract, or other adverse consequences, **INCLUDING THE LOSS OF**
21 **ANY BENEFIT MADE AVAILABLE TO OTHER DEALERS OF THE SAME LINE MAKE IN**
22 **THE STATE.**

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

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

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

32 (b) A manufacturer, distributor, or factory branch, whether directly or
33 through an agent, employee, **AFFILIATE**, or representative, may not coerce any dealer
34 to make any agreement with the manufacturer, distributor, or factory branch **OR**
35 **THEIR AGENT, EMPLOYEE, AFFILIATE, OR REPRESENTATIVE.**

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

6 (d) A manufacturer, distributor, or factory branch, whether directly or
 7 through an agent, employee, **AFFILIATE**, or representative, may not require or coerce
 8 a dealer, by franchise agreement or otherwise, or as a condition to the renewal or
 9 continuation of a franchise agreement, to:

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

12 (2) Materially change the dealer's facilities or method of conducting
 13 business if the change would impose substantial financial hardship on the business of
 14 the dealer.

15 (e) (1) A manufacturer, distributor, or factory branch, whether directly or
 16 through an agent, employee, **AFFILIATE**, or representative, may not require or coerce
 17 a dealer to adhere to performance standards that are not applied uniformly to other
 18 similarly situated dealers.

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

25 ~~1. THE DEMOGRAPHIC CHARACTERISTICS OF THE~~
 26 ~~POPULATION IN THE DEALER'S ASSIGNED MARKET AREA, WITH EMPHASIS ON~~
 27 ~~CAR AND TRUCK BRAND PREFERENCES OF CONSUMERS WHO PURCHASE NEW~~
 28 ~~CARS AND TRUCKS AT RETAIL; AND~~

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

32 (II) ~~A MANUFACTURER, DISTRIBUTOR, OR FACTORY~~
 33 ~~BRANCH MAY NOT DENY THE BENEFITS OF MEETING A STANDARD OR SALES~~
 34 ~~OBJECTIVE TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE~~
 35 ~~EVIDENCE THAT THE STANDARD OR SALES OBJECTIVE WAS MET AND THE~~
 36 ~~BENEFIT WAS PROVIDED TO THE CONSUMER A DEALER THAT CLAIMS THAT THE~~

1 APPLICATION OF A PERFORMANCE STANDARD, SALES OBJECTIVE, OR PROGRAM
2 FOR MEASURING DEALERSHIP PERFORMANCE IS UNFAIR OR UNREASONABLE
3 DUE TO THE DEMOGRAPHIC CHARACTERISTICS OF THE POPULATION IN THE
4 DEALER'S ASSIGNED MARKET AREA, INCLUDING CAR AND TRUCK PREFERENCES
5 OF CONSUMERS, OR DUE TO THE GEOGRAPHIC CHARACTERISTICS THAT AFFECT
6 CAR AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED MARKETING
7 AREA, MAY FILE A CLAIM IN A COURT OF COMPETENT JURISDICTION TO
8 DETERMINE WHETHER THE APPLICATION OF THE PERFORMANCE STANDARD OR
9 PROGRAM IS UNFAIR OR UNREASONABLE UNDER THIS PARAGRAPH.

10 (III) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
11 HAS THE BURDEN OF PROVING THAT THE PERFORMANCE STANDARD, SALES
12 OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE IS FAIR
13 AND REASONABLE UNDER THIS PARAGRAPH.

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

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

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

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

27 (g) (1) (i) If the dealer is an entity other than an individual, the dealer
28 shall designate an individual to represent the dealer to do business with the
29 manufacturer, distributor, or factory branch.

30 (ii) Approval of the individual may not be withheld by the
31 manufacturer, distributor, or factory branch unless the individual is unfit due to lack
32 of good moral character or fails to meet reasonable general business experience
33 requirements.

34 (2) A dealer shall have a reasonable amount of time to:

1 (i) Designate a representative or a successor if a change is
2 required for any reason; and

3 (ii) Obtain approval of the representative or successor
4 designated under item (i) of this paragraph, including time for a hearing, in the event
5 of any objection by the manufacturer, distributor, or factory branch.

6 (3) At a hearing resulting from an objection to the approval of the
7 designated individual, the manufacturer, distributor, or factory branch has the burden
8 of proving that the designated individual is not of good moral character or fails to meet
9 reasonable general business experience requirements.

10 (H) (1) (I) ANY CONSUMER REBATES, DEALER INCENTIVES, PRICE
11 OR INTEREST RATE REDUCTIONS, OR FINANCE TERMS THAT A MANUFACTURER,
12 DISTRIBUTOR, OR FACTORY BRANCH OFFERS OR ADVERTISES, OR ALLOWS ITS
13 DEALERS TO OFFER OR ADVERTISE, SHALL BE OFFERED TO ALL DEALERS OF
14 THE SAME LINE MAKE.

15 (II) ~~A MANUFACTURER, DISTRIBUTOR, OR FACTORY~~
16 ~~BRANCH SHALL PROVIDE FOR OR PAY TO EACH DEALER AT LEAST THE AVERAGE~~
17 ~~BENEFIT, INCENTIVE, OR REBATE PER VEHICLE THAT THE MANUFACTURER,~~
18 ~~DISTRIBUTOR, OR FACTORY BRANCH PAID TO ALL DEALERS DURING THE SALES~~
19 ~~PROGRAM TIME PERIOD.~~

20 ~~(H)~~ ANY MANUFACTURER, DISTRIBUTOR, OR FACTORY
21 BRANCH THAT DENIES THE BENEFIT OF ANY CONSUMER REBATES, DEALER
22 INCENTIVES, PRICE OR INTEREST RATE REDUCTIONS, OR FINANCE TERMS TO A
23 DEALER ON THE BASIS THAT THE DEALER FAILED TO COMPLY WITH
24 PERFORMANCE STANDARDS HAS THE BURDEN OF PROVING THAT THE
25 PERFORMANCE STANDARDS COMPLY WITH THE PROVISIONS OF THIS SECTION.

26 (2) UNLESS A DEALER VIOLATES A STATE OR LOCAL LAW
27 INTENDED TO PROTECT THE PUBLIC, A MANUFACTURER, DISTRIBUTOR, OR
28 FACTORY BRANCH MAY NOT:

29 (I) REQUIRE A DEALER TO ALTER OR REPLACE AN
30 EXISTING DEALERSHIP FACILITY; OR

31 (II) DENY, OR THREATEN TO DENY, ANY BENEFIT
32 GENERALLY AVAILABLE TO ALL DEALERS FOR A DEALER'S FAILURE TO ALTER
33 OR REPLACE AN EXISTING DEALERSHIP FACILITY.

34 (3) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY
35 NOT REDUCE THE PRICE OF A MOTOR VEHICLE CHARGED TO A DEALER OR

1 PROVIDE DIFFERENT FINANCING TERMS TO A DEALER IN EXCHANGE FOR THE
2 DEALER'S AGREEMENT TO:

- 3 (I) MAINTAIN AN EXCLUSIVE SALES OR SERVICE FACILITY;
4 (II) BUILD OR ALTER A SALES OR SERVICE FACILITY; OR
5 (III) PARTICIPATE IN A FLOOR PLAN OR OTHER FINANCING
6 ARRANGEMENT.

7 (I) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY
8 OFFER REBATES, CASH INCENTIVES, OR OTHER PROMOTIONAL ITEMS FOR THE
9 SALE OF A VEHICLE BY ITS DEALERS IF:

10 (1) THE SAME REBATE, CASH INCENTIVE, OR PROMOTION IS
11 OFFERED TO ALL OF ITS ~~DEALERS~~; DEALERS OF THE SAME LINE MAKE; AND

12 (2) ~~THE REBATE, CASH INCENTIVE, OR PROMOTION IS BASED~~
13 ~~SOLELY ON THE SALE OF AN INDIVIDUAL VEHICLE AND IS NOT INCREASED FOR~~
14 ~~MEETING A PERFORMANCE STANDARD; AND~~

15 (3) ~~THERE IS NO INCREASED REBATE, CASH INCENTIVE, OR~~
16 ~~PROMOTION FOR MULTIPLE SALES OF A VEHICLE THAT EXCEEDS THE PRODUCT~~
17 ~~OF THE INDIVIDUAL VEHICLE REBATE, INCENTIVE, OR PROMOTION MULTIPLIED~~
18 ~~BY THE NUMBER OF VEHICLES SOLD~~ ANY REBATE, CASH INCENTIVE, OR
19 PROMOTION THAT IS BASED ON THE SALE OF AN INDIVIDUAL VEHICLE IS NOT
20 INCREASED FOR MEETING A PERFORMANCE STANDARD UNLESS THE STANDARD
21 IS REASONABLE CONSIDERING ALL EXISTING CIRCUMSTANCES.

22 (J) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT
23 DISCRIMINATE AMONG ITS DEALERS IN ANY PROGRAM THAT PROVIDES
24 ASSISTANCE TO ITS DEALERS, INCLUDING INTERNET LISTINGS, SALES LEADS,
25 WARRANTY POLICY ADJUSTMENTS, MARKETING PROGRAMS, AND DEALER
26 RECOGNITION PROGRAMS.

27 15-208.

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

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

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

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

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

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

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

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

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

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

20 **(E) IF A DEALER HAS A FRANCHISE OR OTHER CONTRACT WITH A**
21 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH FOR THE SALE OF**
22 **VEHICLES OR TRUCK COMPONENT PARTS OF A SPECIFIC LINE OR MAKE, THE**
23 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL ALLOW THE**
24 **DEALER TO:**

25 **(1) PURCHASE THE VEHICLES OR TRUCK COMPONENT PARTS AT**
26 **THE SAME PRICE AND ON THE SAME TERMS AS ALL OTHER DEALERS WITH A**
27 **FRANCHISE OR OTHER CONTRACT FOR THE SALE OF VEHICLES OR TRUCK**
28 **COMPONENT PARTS OF THE SAME LINE OR MAKE; AND**

29 **(2) RECEIVE THE SAME RIGHT TO INCENTIVE PAYMENTS THAT IS**
30 **GIVEN TO ALL OTHER DEALERS WITH A FRANCHISE OR OTHER CONTRACT FOR**
31 **THE SALE OF VEHICLES OR TRUCK COMPONENT PARTS OF THE SAME LINE OR**
32 **MAKE.**

33 15-211.

1 (a) A manufacturer, whether directly or through an agent, employee,
 2 **AFFILIATE**, or representative, may not prevent, by contract or otherwise, any owner,
 3 partner, or stockholder of any dealership from transferring any ownership interest in
 4 the dealership to any other person.

5 (b) A distributor, whether directly or through an agent, employee,
 6 **AFFILIATE**, or representative, may not prevent, by contract or otherwise, any owner,
 7 partner, or stockholder of any dealership from transferring any ownership interest in
 8 the dealership to any other person.

9 (c) A factory branch, whether directly or through an agent, employee,
 10 **AFFILIATE**, or representative, may not prevent, by contract or otherwise, any owner,
 11 partner, or stockholder of any dealership from transferring any ownership interest in
 12 the dealership to any other person.

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

16 (2) **NOTWITHSTANDING THE TERMS OF ANY FRANCHISE**
 17 **AGREEMENT OR AGREEMENT RELATED TO A FRANCHISE, A MANUFACTURER**
 18 **MAY NOT EXERCISE A RIGHT OF FIRST REFUSAL IN THE EVENT OF:**

19 ~~(I) A SALE OR TRANSFER OR PROPOSED SALE OR~~
 20 ~~TRANSFER OF A DEALER'S BUSINESS OR ANY EQUITY INTEREST IN A DEALER'S~~
 21 ~~BUSINESS; OR~~

22 ~~(II) ANY PROPOSED CHANGE IN THE EXECUTIVE~~
 23 ~~MANAGEMENT OF A DEALER'S BUSINESS TO A PERSON WHO MEETS THE~~
 24 ~~MANUFACTURER'S REASONABLE QUALIFICATIONS FOR OWNERSHIP AND IS:~~

25 (I) A MEMBER OF THE DEALER'S IMMEDIATE FAMILY;

26 (II) A QUALIFIED MANAGER WITH AT LEAST 2 YEARS
 27 MANAGEMENT EXPERIENCE AT THE DEALER'S BUSINESS;

28 (III) AN EXISTING DEALER IN GOOD STANDING; OR

29 (IV) A BUSINESS ENTITY CONTROLLED BY A PERSON
 30 DESCRIBED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

31 (3) IF A MANUFACTURER EXERCISES A RIGHT OF FIRST REFUSAL
 32 IN THE EVENT OF A SALE OR TRANSFER OR PROPOSED SALE OR TRANSFER OF
 33 THE DEALER'S BUSINESS OR AN EQUITY INTEREST IN THE DEALER'S BUSINESS,
 34 THE MANUFACTURER SHALL PAY THE REASONABLE EXPENSES, INCLUDING

1 CUSTOMARY ATTORNEY'S FEES, INCURRED BY THE PROSPECTIVE PURCHASER IN
 2 NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE OR
 3 TRANSFER, PROVIDED THAT THE DEALER HAS GIVEN THE MANUFACTURER AT
 4 LEAST 45 DAYS' NOTICE OF AN INTENT TO SELL OR TRANSFER.

5 (e) [However, the] A manufacturer may not unreasonably withhold consent
 6 to the transfer of a franchise under subsection (d) of this section.

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

10 (2) NOTWITHSTANDING THE TERMS OF ANY AGREEMENT
 11 RELATED TO THE FRANCHISE, A DISTRIBUTOR MAY NOT EXERCISE A RIGHT OF
 12 FIRST REFUSAL IN THE EVENT OF:

13 ~~(I) A SALE OR TRANSFER OR PROPOSED SALE OR~~
 14 ~~TRANSFER OF A DEALER'S BUSINESS OR ANY EQUITY INTEREST IN A DEALER'S~~
 15 ~~BUSINESS; OR~~

16 ~~(II) ANY PROPOSED CHANGE IN THE EXECUTIVE~~
 17 ~~MANAGEMENT OF A DEALER'S BUSINESS TO A PERSON WHO MEETS THE~~
 18 ~~DISTRIBUTOR'S REASONABLE QUALIFICATIONS FOR OWNERSHIP AND IS:~~

19 (I) A MEMBER OF THE DEALER'S IMMEDIATE FAMILY;

20 (II) A QUALIFIED MANAGER WITH AT LEAST 2 YEARS
 21 MANAGEMENT EXPERIENCE AT THE DEALER'S BUSINESS;

22 (III) AN EXISTING DEALER IN GOOD STANDING; OR

23 (IV) A BUSINESS ENTITY CONTROLLED BY A PERSON
 24 DESCRIBED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

25 (3) IF A DISTRIBUTOR EXERCISES A RIGHT OF FIRST REFUSAL IN
 26 THE EVENT OF A SALE OR TRANSFER OR PROPOSED SALE OR TRANSFER OF THE
 27 DEALER'S BUSINESS OR AN EQUITY INTEREST IN THE DEALER'S BUSINESS, THE
 28 DISTRIBUTOR SHALL PAY THE REASONABLE EXPENSES, INCLUDING CUSTOMARY
 29 ATTORNEY'S FEES, INCURRED BY THE PROSPECTIVE PURCHASER IN
 30 NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE OR
 31 TRANSFER, PROVIDED THAT THE DEALER HAS GIVEN THE DISTRIBUTOR AT
 32 LEAST 45 DAYS' NOTICE OF AN INTENT TO SELL OR TRANSFER.

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

3 (h) (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 factory branch.

6 (2) NOTWITHSTANDING THE TERMS OF ANY AGREEMENT
7 RELATED TO THE FRANCHISE, A FACTORY BRANCH MAY NOT EXERCISE A RIGHT
8 OF 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 TO A PERSON WHO MEETS THE~~
14 ~~FACTORY BRANCH'S REASONABLE QUALIFICATIONS FOR OWNERSHIP AND IS:~~

15 (I) A MEMBER OF THE DEALER'S IMMEDIATE FAMILY;

16 (II) A QUALIFIED MANAGER WITH AT LEAST 2 YEARS
17 MANAGEMENT EXPERIENCE AT THE DEALER'S BUSINESS;

18 (III) AN EXISTING DEALER IN GOOD STANDING; OR

19 (IV) A BUSINESS ENTITY CONTROLLED BY A PERSON
20 DESCRIBED IN ITEM (I), (II), OR (III) OF THIS PARAGRAPH.

21 (3) IF A FACTORY BRANCH EXERCISES A RIGHT OF FIRST REFUSAL
22 IN THE EVENT OF A SALE OR TRANSFER OR PROPOSED SALE OR TRANSFER OF
23 THE DEALER'S BUSINESS OR AN EQUITY INTEREST IN THE DEALER'S BUSINESS,
24 THE FACTORY BRANCH SHALL PAY THE REASONABLE EXPENSES, INCLUDING
25 CUSTOMARY ATTORNEY'S FEES, INCURRED BY THE PROSPECTIVE PURCHASER IN
26 NEGOTIATING AND IMPLEMENTING THE CONTRACT FOR THE PROPOSED SALE OR
27 TRANSFER, PROVIDED THAT THE DEALER HAS GIVEN THE FACTORY BRANCH AT
28 LEAST 45 DAYS' NOTICE OF AN INTENT TO SELL OR TRANSFER.

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

31 (J) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT
32 IMPOSE A CONDITION ON THE APPROVAL OF THE SALE OR TRANSFER OF THE
33 OWNERSHIP OF A DEALERSHIP, BY THE SALE OF THE BUSINESS, STOCK

1 TRANSFER, OR OTHERWISE, IF THE CONDITION WOULD VIOLATE THE
2 PROVISIONS OF THIS TITLE IF IMPOSED ON AN EXISTING DEALER.

3 (K) (1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
4 VIOLATES THIS SECTION IF, WITHOUT A STATEMENT OF SPECIFIC GROUNDS
5 CONSISTENT WITH THIS TITLE FOR THE ACTION, THE MANUFACTURER,
6 DISTRIBUTOR, OR FACTORY BRANCH TAKES ACTION TO PREVENT OR REFUSE TO
7 APPROVE:

8 (I) THE SALE, ASSIGNMENT, OR TRANSFER OF THE
9 OWNERSHIP OF A DEALERSHIP BY THE SALE OF THE BUSINESS, STOCK
10 TRANSFER, OR OTHERWISE;

11 (II) THE SALE, TRANSFER, OR ASSIGNMENT OF A DEALER
12 FRANCHISE; OR

13 (III) A CHANGE IN THE EXECUTIVE MANAGEMENT OR
14 PRINCIPAL OPERATOR OF THE DEALERSHIP.

15 (2) (I) AN EXISTING DEALER DENIED THE SALE, ASSIGNMENT,
16 TRANSFER, OR CHANGE UNDER THIS SECTION MAY REQUEST THAT THE
17 ADMINISTRATOR CONDUCT A HEARING TO REVIEW THE DENIAL OR THE
18 IMPOSITION OF A CONDITION IN VIOLATION OF THIS SECTION.

19 (II) IF THE ADMINISTRATOR FINDS THAT THE ACTION
20 LEADING TO THE DENIAL OR THE IMPOSITION OF A CONDITION WAS IN
21 VIOLATION OF THIS SECTION, THE ADMINISTRATOR MAY ORDER THE SALE,
22 ASSIGNMENT, OR TRANSFER TO BE APPROVED BY THE MANUFACTURER,
23 DISTRIBUTOR, OR FACTORY BRANCH WITHOUT IMPOSITION OF THE CONDITION.

24 (3) (I) AN APPLICANT FOR APPROVAL OF A SALE,
25 ASSIGNMENT, OR TRANSFER OF OWNERSHIP OF A DEALERSHIP OR AN EXISTING
26 DEALER DENIED THE SALE, ASSIGNMENT, OR TRANSFER MAY INSTITUTE AN
27 ACTION FOR DAMAGES IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE
28 DEALER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED, IF:

29 1. THE EXISTING DEALER DOES NOT REQUEST A
30 HEARING BY THE ADMINISTRATOR; AND

31 2. THE ACTION TAKEN IN VIOLATION OF THIS
32 SECTION TO DENY THE SALE, ASSIGNMENT, OR TRANSFER OF OWNERSHIP OR
33 THE CHANGE IN EXECUTIVE MANAGEMENT OR THE CONDITION IMPOSED ON THE
34 SALE, ASSIGNMENT, OR TRANSFER IS THE PROXIMATE CAUSE OF THE FAILURE

1 **OF THE CONTRACT FOR THE SALE, ASSIGNMENT, OR TRANSFER OF OWNERSHIP**
2 **OF THE DEALERSHIP.**

3 **(II) AN ACTION FOR DAMAGES UNDER THIS SECTION MUST**
4 **BE INSTITUTED WITHIN 2 YEARS OF THE VIOLATION OF THIS SECTION.**

5 15-212.1.

6 (a) Upon the filing of a claim, a manufacturer, factory branch, or distributor
7 shall compensate a dealer for any incentive or reimbursement program sponsored by
8 the manufacturer, factory branch, or distributor, under the terms of which the dealer
9 is eligible for compensation.

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

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

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

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

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

18 (c) (1) If a claim filed under this section is shown by the manufacturer,
19 factory branch, or distributor to be false or unsubstantiated, the manufacturer, factory
20 branch, or distributor may charge back the claim within [9] ~~2~~ 6 months from the [end]
21 **PAYMENT** of the incentive or reimbursement [program].

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

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

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

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

28 **(D) ~~(1)~~ A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY**
29 **NOT REFUSE TO PAY, OR CLAIM REIMBURSEMENT FROM, A DEALER FOR SALES,**
30 **INCENTIVES, OR PAYMENTS RELATED TO A MOTOR VEHICLE SOLD BY THE**
31 **DEALER BECAUSE THE PURCHASER OF THE MOTOR VEHICLE EXPORTED OR**
32 **RESOLD THE MOTOR VEHICLE IN VIOLATION OF THE POLICY OF THE**

1 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH UNLESS THE
 2 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH CAN SHOW THAT, AT THE
 3 TIME OF SALE, THE DEALER ~~HAD SPECIFIC KNOWLEDGE~~ KNEW OR SHOULD HAVE
 4 KNOWN OF THE PURCHASER'S INTENTION TO EXPORT OR RESELL THE MOTOR
 5 VEHICLE.

6 ~~(2) THERE IS A CONCLUSIVE PRESUMPTION THAT THE DEALER~~
 7 ~~HAD NO ACTUAL KNOWLEDGE UNDER PARAGRAPH (1) OF THIS SUBSECTION IF~~
 8 ~~THE VEHICLE IS TITLED OR REGISTERED IN ANY STATE IN THE UNITED STATES.~~

9 (E) (1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY
 10 NOT GIVE ANY INCENTIVE PAYMENT, REIMBURSEMENT PAYMENT, CASH, GIFT,
 11 OR ANYTHING OF VALUE TOTALING MORE THAN \$200 IN ANY CALENDAR YEAR
 12 DIRECTLY TO AN EMPLOYEE OF THE DEALER.

13 (2) ANY INCENTIVE PAYMENT, REIMBURSEMENT PAYMENT, CASH,
 14 GIFT, OR ANYTHING OF VALUE FROM A MANUFACTURER, DISTRIBUTOR, OR
 15 FACTORY BRANCH TO AN EMPLOYEE SHALL BE MADE TO THE DEALER WHO
 16 SHALL DISBURSE THE FUNDS TO THE EMPLOYEE AS PART OF THE PAYROLL
 17 PROCESS AFTER MAKING THE APPROPRIATE DEDUCTIONS.

18 (3) THE DEALER MAY RETAIN A REASONABLE PORTION OF ANY
 19 PAYMENTS UNDER PARAGRAPH (2) OF THIS SUBSECTION TO COVER THE COST
 20 OF PROCESSING THE PAYMENTS.

21 15-212.2.

22 (A) IF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
 23 TERMINATES, SUSPENDS, REFUSES TO RENEW, OR CLOSES A DEALER'S
 24 FRANCHISE OR REFUSES TO SUPPLY NEW VEHICLES TO A DEALER WHO HOLDS A
 25 FRANCHISE, THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL:

26 (1) REIMBURSE THE DEALER FOR ANY COSTS THE DEALER
 27 INCURRED FOR FACILITY UPGRADES OR ALTERATIONS ~~REQUESTED OR~~
 28 ~~SUGGESTED~~ REQUIRED BY THE MANUFACTURER, DISTRIBUTOR, OR FACTORY
 29 BRANCH WITHIN THE PREVIOUS 2 YEARS;

30 (2) PAY THE DEALER AT LEAST THE DEALER COST, PLUS ANY
 31 CHARGES BY THE FRANCHISOR, DISTRIBUTOR, OR FACTORY BRANCH, FOR
 32 DISTRIBUTION, DELIVERY, AND TAXES PAID BY THE DEALER, LESS ALL
 33 ALLOWANCES PAID TO THE DEALER BY THE FRANCHISOR FOR ANY NEW,
 34 UNDAMAGED MOTOR VEHICLES ~~OF THE CURRENT OR 1-YEAR PRIOR MODEL~~
 35 YEAR PURCHASED WITHIN 18 MONTHS OF THE DATE OF THE TERMINATION,
 36 SUSPENSION, REFUSAL TO RENEW, CLOSURE, OR REFUSAL TO SUPPLY,

1 WHETHER ACQUIRED FROM THE FRANCHISOR OR FROM ANOTHER DEALER OF
2 THE SAME LINE MAKE IN THE ORDINARY COURSE OF BUSINESS;

3 (3) PAY THE DEALER AT LEAST THE DEALER ACQUISITION COST,
4 ~~AS SHOWN IN THE PRICE CATALOG OF THE FRANCHISOR CURRENT AT THE TIME~~
5 ~~OF REPURCHASE~~, OF EACH NEW, UNUSED, UNDAMAGED, AND UNSOLD PART OR
6 ACCESSORY IF THE PART OR ACCESSORY IS IN THE CURRENT PARTS CATALOG
7 AND IS:

8 (I) STILL IN THE ORIGINAL, RESALABLE MERCHANDISING
9 PACKAGE AND IN UNBROKEN LOTS; OR

10 (II) IN THE CASE OF SHEET METAL, IN THE ORIGINAL
11 PACKAGING OR A COMPARABLE SUBSTITUTE FOR THE ORIGINAL PACKAGING;

12 (4) PAY THE DEALER AT LEAST THE FAIR MARKET VALUE OF
13 EACH UNDAMAGED SIGN OWNED BY THE DEALER THAT BEARS A TRADEMARK,
14 TRADE NAME, OR COMMERCIAL SYMBOL USED OR CLAIMED BY THE
15 FRANCHISOR IF THE SIGN WAS PURCHASED FROM OR AT THE REQUEST OF THE
16 FRANCHISOR;

17 (5) PAY THE DEALER AT LEAST THE FAIR MARKET VALUE OF ALL
18 SPECIAL TOOLS AND AUTOMOTIVE SERVICE EQUIPMENT OWNED BY THE
19 DEALER THAT WERE RECOMMENDED AND DESIGNATED AS SPECIAL TOOLS OR
20 EQUIPMENT BY THE FRANCHISOR, IF THE TOOLS AND EQUIPMENT ARE IN
21 USEABLE AND GOOD CONDITION EXCEPT FOR NORMAL WEAR AND TEAR; AND

22 (6) PAY THE DEALER AT LEAST THE REASONABLE COST OF
23 TRANSPORTING, HANDLING, PACKING, AND LOADING MOTOR VEHICLE PARTS,
24 SIGNS, TOOLS, AND SPECIAL EQUIPMENT SUBJECT TO REPURCHASE UNDER
25 THIS SECTION.

26 (B) (1) IF A MANUFACTURER OF MOTOR HOMES TERMINATES OR
27 CANCELS A MOTOR HOME DEALER, THE MANUFACTURER SHALL REIMBURSE THE
28 DEALER, LESS ANY ALLOWANCES, DISCOUNTS, OR REBATES PAID TO THE
29 DEALER BY THE MANUFACTURER, FOR AT LEAST:

30 (I) THE TOTAL NET INVENTORY INVOICE COSTS;

31 (II) ANY CHARGES BY THE MANUFACTURER FOR
32 DISTRIBUTION DELIVERY; AND

33 (III) ANY INVENTORY RELATED TAXES PAID BY THE DEALER.

1 **(2) THIS SUBSECTION ONLY APPLIES TO MOTOR HOMES IN**
 2 **INVENTORY THAT:**

3 **(I) ARE NEW AND UNTITLED;**

4 **(II) WERE ACQUIRED FROM THE MANUFACTURER WITHIN 18**
 5 **MONTHS BEFORE THE EFFECTIVE DATE OF THE NOTICE OF TERMINATION OR**
 6 **CANCELLATION;**

7 **(III) HAVE NOT BEEN USED, OTHER THAN FOR**
 8 **DEMONSTRATION PURPOSES; AND**

9 **(IV) HAVE NOT BEEN ALTERED OR DAMAGED.**

10 15-213.

11 Notwithstanding any administrative or criminal sanctions imposed by this
 12 subtitle, if a person suffers financial injury or other damage as a result of a violation of
 13 this subtitle by any other person, whether or not that other person has been found
 14 guilty of a criminal violation, the injured person may recover damages and reasonable
 15 attorneys' fees in any court of competent jurisdiction.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 17 ~~October~~ June 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.