

# SENATE BILL 668

R4

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By: **Senators Raskin, Forehand, and Stone**

Introduced and read first time: February 6, 2009

Assigned to: Judicial Proceedings

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 dealership; establishing that a manufacturer, distributor, or factory branch  
 2 commits a certain violation for taking certain actions; authorizing a dealer to  
 3 request a certain hearing under certain circumstances; authorizing the Motor  
 4 Vehicle Administrator to take certain actions; authorizing an applicant for  
 5 approval of a sale, assignment, or transfer of ownership of a dealership or a  
 6 dealer to bring a certain action in the circuit court under certain circumstances  
 7 and within a certain period of time; altering the period of time during which a  
 8 certain claim may be charged back under certain circumstances; prohibiting a  
 9 manufacturer, distributor, or factory branch from refusing to pay or claiming  
 10 reimbursement from a dealer for sales, incentives, or payments related to a  
 11 motor vehicle sold by a dealer and exported or resold by the purchaser under  
 12 certain circumstances; establishing a conclusive presumption that a dealer has  
 13 no knowledge of certain facts under certain circumstances; prohibiting a  
 14 manufacturer, distributor, or factory branch from giving certain benefits,  
 15 payments, or gifts directly to an employee; requiring that certain benefits,  
 16 payments, or gifts from a manufacturer, distributor, or factory branch to an  
 17 employee be given to the dealer and distributed in a certain manner;  
 18 authorizing a dealer to retain certain costs; requiring a manufacturer,  
 19 distributor, or factory branch to make certain payments or reimbursements to a  
 20 dealer under certain circumstances; altering a certain definition; and generally  
 21 relating to manufacturers, distributors, and factory branches.

22 BY repealing and reenacting, with amendments,  
 23 Article – Transportation  
 24 Section 15–207, 15–208, 15–211, and 15–212.1  
 25 Annotated Code of Maryland  
 26 (2006 Replacement Volume and 2008 Supplement)

27 BY adding to  
 28 Article – Transportation  
 29 Section 15–212.2  
 30 Annotated Code of Maryland  
 31 (2006 Replacement Volume and 2008 Supplement)

32 BY repealing and reenacting, without amendments,  
 33 Article – Transportation  
 34 Section 15–213  
 35 Annotated Code of Maryland  
 36 (2006 Replacement Volume and 2008 Supplement)

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

39 **Article – Transportation**

40 15–207.

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

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

4                           (II)   “COERCE” INCLUDES TO ACT IN A MANNER THAT  
5 **VIOLATES § 15-206.1 OF THIS SUBTITLE.**

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

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

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

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

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

26                           (1)   Exclude from the use of the dealer’s facilities a dealership for  
27 which the dealer has a franchise agreement to utilize the facilities; or

28                           (2)   Materially change the dealer’s facilities or method of conducting  
29 business if the change would impose substantial financial hardship on the business of  
30 the dealer.

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

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

7                           **1.   THE DEMOGRAPHIC CHARACTERISTICS OF THE**  
8 **POPULATION IN THE DEALER'S ASSIGNED MARKET AREA, WITH EMPHASIS ON**  
9 **CAR AND TRUCK BRAND PREFERENCES OF CONSUMERS WHO PURCHASE NEW**  
10 **CARS AND TRUCKS AT RETAIL; AND**

11                           **2.   THE GEOGRAPHIC CHARACTERISTICS THAT**  
12 **AFFECT CAR AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED**  
13 **MARKET AREA.**

14                           **(II)   A MANUFACTURER, DISTRIBUTOR, OR FACTORY**  
15 **BRANCH MAY NOT DENY THE BENEFITS OF MEETING A STANDARD OR SALES**  
16 **OBJECTIVE TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE**  
17 **EVIDENCE THAT THE STANDARD OR SALES OBJECTIVE WAS MET AND THE**  
18 **BENEFIT WAS PROVIDED TO THE CONSUMER.**

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

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

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

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

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

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

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

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

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

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

15 **(H) (1) (I) ANY CONSUMER REBATES, DEALER INCENTIVES, PRICE**  
16 **OR INTEREST RATE REDUCTIONS, OR FINANCE TERMS THAT A MANUFACTURER,**  
17 **DISTRIBUTOR, OR FACTORY BRANCH OFFERS OR ADVERTISES, OR ALLOWS ITS**  
18 **DEALERS TO OFFER OR ADVERTISE, SHALL BE OFFERED TO ALL DEALERS.**

19 **(II) A MANUFACTURER, DISTRIBUTOR, OR FACTORY**  
20 **BRANCH SHALL PROVIDE FOR OR PAY TO EACH DEALER AT LEAST THE AVERAGE**  
21 **BENEFIT, INCENTIVE, OR REBATE PER VEHICLE THAT THE MANUFACTURER,**  
22 **DISTRIBUTOR, OR FACTORY BRANCH PAID TO ALL DEALERS DURING THE SALES**  
23 **PROGRAM TIME PERIOD.**

24 **(III) ANY MANUFACTURER, DISTRIBUTOR, OR FACTORY**  
25 **BRANCH THAT DENIES THE BENEFIT OF ANY CONSUMER REBATES, DEALER**  
26 **INCENTIVES, PRICE OR INTEREST RATE REDUCTIONS, OR FINANCE TERMS TO A**  
27 **DEALER ON THE BASIS THAT THE DEALER FAILED TO COMPLY WITH**  
28 **PERFORMANCE STANDARDS HAS THE BURDEN OF PROVING THAT THE**  
29 **PERFORMANCE STANDARDS COMPLY WITH THE PROVISIONS OF THIS SECTION.**

30 **(2) UNLESS A DEALER VIOLATES A STATE OR LOCAL LAW**  
31 **INTENDED TO PROTECT THE PUBLIC, A MANUFACTURER, DISTRIBUTOR, OR**  
32 **FACTORY BRANCH MAY NOT:**

33 **(I) REQUIRE A DEALER TO ALTER OR REPLACE AN**  
34 **EXISTING DEALERSHIP FACILITY; OR**

1                   **(II) DENY, OR THREATEN TO DENY, ANY BENEFIT**  
2 **GENERALLY AVAILABLE TO ALL DEALERS FOR A DEALER'S FAILURE TO ALTER**  
3 **OR REPLACE AN EXISTING DEALERSHIP FACILITY.**

4                   **(3) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY**  
5 **NOT REDUCE THE PRICE OF A MOTOR VEHICLE CHARGED TO A DEALER OR**  
6 **PROVIDE DIFFERENT FINANCING TERMS TO A DEALER IN EXCHANGE FOR THE**  
7 **DEALER'S AGREEMENT TO:**

8                   **(I) MAINTAIN AN EXCLUSIVE SALES OR SERVICE FACILITY;**

9                   **(II) BUILD OR ALTER A SALES OR SERVICE FACILITY; OR**

10                   **(III) PARTICIPATE IN A FLOOR PLAN OR OTHER FINANCING**  
11 **ARRANGEMENT.**

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

15                   **(1) THE SAME REBATE, CASH INCENTIVE, OR PROMOTION IS**  
16 **OFFERED TO ALL OF ITS DEALERS;**

17                   **(2) THE REBATE, CASH INCENTIVE, OR PROMOTION IS BASED**  
18 **SOLELY ON THE SALE OF AN INDIVIDUAL VEHICLE AND IS NOT INCREASED FOR**  
19 **MEETING A PERFORMANCE STANDARD; AND**

20                   **(3) THERE IS NO INCREASED REBATE, CASH INCENTIVE, OR**  
21 **PROMOTION FOR MULTIPLE SALES OF A VEHICLE THAT EXCEEDS THE PRODUCT**  
22 **OF THE INDIVIDUAL VEHICLE REBATE, INCENTIVE, OR PROMOTION MULTIPLIED**  
23 **BY THE NUMBER OF VEHICLES SOLD.**

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

29 15-208.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 15-211.

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

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

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

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

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

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

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

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

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

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

33 (I) **A SALE OR TRANSFER OR PROPOSED SALE OR**  
34 **TRANSFER OF A DEALER'S BUSINESS OR ANY EQUITY INTEREST IN A DEALER'S**  
35 **BUSINESS; OR**



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

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

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

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

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

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

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

18           **(J) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT**  
19 **IMPOSE A CONDITION ON THE APPROVAL OF THE SALE OR TRANSFER OF THE**  
20 **OWNERSHIP OF A DEALERSHIP, BY THE SALE OF THE BUSINESS, STOCK**  
21 **TRANSFER, OR OTHERWISE, IF THE CONDITION WOULD VIOLATE THE**  
22 **PROVISIONS OF THIS TITLE IF IMPOSED ON AN EXISTING DEALER.**

23           **(K) (1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH**  
24 **VIOLATES THIS SECTION IF, WITHOUT A STATEMENT OF SPECIFIC GROUNDS**  
25 **CONSISTENT WITH THIS TITLE FOR THE ACTION, THE MANUFACTURER,**  
26 **DISTRIBUTOR, OR FACTORY BRANCH TAKES ACTION TO PREVENT OR REFUSE TO**  
27 **APPROVE:**

28                   **(I) THE SALE, ASSIGNMENT, OR TRANSFER OF THE**  
29 **OWNERSHIP OF A DEALERSHIP BY THE SALE OF THE BUSINESS, STOCK**  
30 **TRANSFER, OR OTHERWISE;**

31                   **(II) THE SALE, TRANSFER, OR ASSIGNMENT OF A DEALER**  
32 **FRANCHISE; OR**

1                   (III) A CHANGE IN THE EXECUTIVE MANAGEMENT OR  
2 PRINCIPAL OPERATOR OF THE DEALERSHIP.

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

7                   (II) IF THE ADMINISTRATOR FINDS THAT THE ACTION  
8 LEADING TO THE DENIAL OR THE IMPOSITION OF A CONDITION WAS IN  
9 VIOLATION OF THIS SECTION, THE ADMINISTRATOR MAY ORDER THE SALE,  
10 ASSIGNMENT, OR TRANSFER TO BE APPROVED BY THE MANUFACTURER,  
11 DISTRIBUTOR, OR FACTORY BRANCH WITHOUT IMPOSITION OF THE CONDITION.

12                  (3) (I) AN APPLICANT FOR APPROVAL OF A SALE,  
13 ASSIGNMENT, OR TRANSFER OF OWNERSHIP OF A DEALERSHIP OR AN EXISTING  
14 DEALER DENIED THE SALE, ASSIGNMENT, OR TRANSFER MAY INSTITUTE AN  
15 ACTION FOR DAMAGES IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE  
16 DEALER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED, IF:

17                               1. THE EXISTING DEALER DOES NOT REQUEST A  
18 HEARING BY THE ADMINISTRATOR; AND

19                               2. THE ACTION TAKEN IN VIOLATION OF THIS  
20 SECTION TO DENY THE SALE, ASSIGNMENT, OR TRANSFER OF OWNERSHIP OR  
21 THE CHANGE IN EXECUTIVE MANAGEMENT OR THE CONDITION IMPOSED ON THE  
22 SALE, ASSIGNMENT, OR TRANSFER IS THE PROXIMATE CAUSE OF THE FAILURE  
23 OF THE CONTRACT FOR THE SALE, ASSIGNMENT, OR TRANSFER OF OWNERSHIP  
24 OF THE DEALERSHIP.

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

27 15-212.1.

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

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

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

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

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

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

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

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

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

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

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

16 **(D) (1) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY**  
17 **NOT REFUSE TO PAY, OR CLAIM REIMBURSEMENT FROM, A DEALER FOR SALES,**  
18 **INCENTIVES, OR PAYMENTS RELATED TO A MOTOR VEHICLE SOLD BY THE**  
19 **DEALER BECAUSE THE PURCHASER OF THE MOTOR VEHICLE EXPORTED OR**  
20 **RESOLD THE MOTOR VEHICLE IN VIOLATION OF THE POLICY OF THE**  
21 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH UNLESS THE**  
22 **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH CAN SHOW THAT, AT THE**  
23 **TIME OF SALE, THE DEALER HAD SPECIFIC KNOWLEDGE OF THE PURCHASER'S**  
24 **INTENTION TO EXPORT OR RESELL THE MOTOR VEHICLE.**

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

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

32 **(2) ANY INCENTIVE PAYMENT, REIMBURSEMENT PAYMENT, CASH,**  
33 **GIFT, OR ANYTHING OF VALUE FROM A MANUFACTURER, DISTRIBUTOR, OR**  
34 **FACTORY BRANCH TO AN EMPLOYEE SHALL BE MADE TO THE DEALER WHO**

1 SHALL DISBURSE THE FUNDS TO THE EMPLOYEE AS PART OF THE PAYROLL  
2 PROCESS AFTER MAKING THE APPROPRIATE DEDUCTIONS.

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

6 **15-212.2.**

7 IF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH TERMINATES,  
8 SUSPENDS, REFUSES TO RENEW, OR CLOSES A DEALER'S FRANCHISE OR  
9 REFUSES TO SUPPLY NEW VEHICLES TO A DEALER WHO HOLDS A FRANCHISE,  
10 THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL:

11 (1) REIMBURSE THE DEALER FOR ANY COSTS THE DEALER  
12 INCURRED FOR FACILITY UPGRADES OR ALTERATIONS REQUESTED OR  
13 SUGGESTED BY THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH;

14 (2) PAY THE DEALER AT LEAST THE DEALER COST, PLUS ANY  
15 CHARGES BY THE FRANCHISOR, DISTRIBUTOR, OR FACTORY BRANCH, FOR  
16 DISTRIBUTION, DELIVERY, AND TAXES PAID BY THE DEALER, LESS ALL  
17 ALLOWANCES PAID TO THE DEALER BY THE FRANCHISOR FOR ANY NEW MOTOR  
18 VEHICLES OF THE CURRENT OR 1-YEAR PRIOR MODEL YEAR WHETHER  
19 ACQUIRED FROM THE FRANCHISOR OR FROM ANOTHER DEALER OF THE SAME  
20 LINE MAKE IN THE ORDINARY COURSE OF BUSINESS;

21 (3) PAY THE DEALER AT LEAST THE DEALER COST, AS SHOWN IN  
22 THE PRICE CATALOG OF THE FRANCHISOR CURRENT AT THE TIME OF  
23 REPURCHASE, OF EACH NEW, UNUSED, UNDAMAGED, AND UNSOLD PART OR  
24 ACCESSORY IF THE PART OR ACCESSORY IS IN THE CURRENT PARTS CATALOG  
25 AND IS:

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

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

30 (4) PAY THE DEALER AT LEAST THE FAIR MARKET VALUE OF  
31 EACH UNDAMAGED SIGN OWNED BY THE DEALER THAT BEARS A TRADEMARK,  
32 TRADE NAME, OR COMMERCIAL SYMBOL USED OR CLAIMED BY THE  
33 FRANCHISOR IF THE SIGN WAS PURCHASED FROM OR AT THE REQUEST OF THE  
34 FRANCHISOR;

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

6           **(6) PAY THE DEALER AT LEAST THE REASONABLE COST OF**  
7 **TRANSPORTING, HANDLING, PACKING, AND LOADING MOTOR VEHICLE PARTS,**  
8 **SIGNS, TOOLS, AND SPECIAL EQUIPMENT SUBJECT TO REPURCHASE UNDER**  
9 **THIS SECTION.**

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 1, 2009.