

CHAPTER 747

(Senate Bill 668)

AN ACT concerning

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

FOR the purpose of establishing that a manufacturer, distributor, or factory branch may not take certain actions through an affiliate; requiring a sales objective or other program for measuring the performance of vehicle dealers to be fair and based on ~~certain factors under certain circumstances~~ accurate information; ~~prohibiting a manufacturer, distributor, or factory branch from denying certain benefits to a dealer under certain circumstances~~ authorizing a dealer that claims that application of a performance standard or program is unfair or unreasonable to request a certain hearing under certain circumstances; establishing that a manufacturer, distributor, or factory branch has a certain burden of proof; prohibiting a manufacturer, distributor, or factory branch from offering or advertising, or allowing its dealers to offer or advertise, certain programs or terms unless all dealers of the same line make are allowed to offer or advertise the programs or terms; establishing the burden of proof when a manufacturer, distributor, or factory branch denies certain benefits to a dealer under certain circumstances; prohibiting a manufacturer, distributor, or factory branch from requiring a dealer to alter or replace an existing dealership facility or from denying or threatening to deny certain benefits to a dealer under certain circumstances; prohibiting a manufacturer, distributor, or factory branch from reducing the price of a motor vehicle charged to a dealer or providing different financing terms to a dealer in exchange for a certain agreement by the dealer; specifying the conditions under which a manufacturer, distributor, or factory branch may offer certain promotional items for the sale of a vehicle by its dealers; prohibiting a manufacturer, distributor, or factory branch from discriminating among its dealers under certain circumstances; requiring a manufacturer, distributor, or factory branch that has a certain franchise or other contract with a dealer to allow the dealer to make certain purchases in a certain manner and to receive certain rights to incentive payments; prohibiting a manufacturer, distributor, or factory branch from exercising a right of first refusal under certain circumstances related to a transfer of a dealer's business ~~or a proposed change in the executive management of a dealer's business~~; requiring a manufacturer, distributor, or factory branch to pay certain expenses when exercising a certain right of first refusal under certain circumstances; prohibiting a manufacturer, distributor, or factory branch from imposing certain conditions on the approval of a certain sale or transfer of the ownership of a dealership; establishing that a manufacturer, distributor, or factory branch commits a certain violation for taking certain actions; authorizing a dealer to

request a certain hearing under certain circumstances; authorizing the Motor Vehicle Administrator to take certain actions; authorizing an applicant for approval of a sale, assignment, or transfer of ownership of a dealership or a dealer to bring a certain action in the circuit court under certain circumstances and within a certain period of time; altering the period of time during which a certain claim may be charged back under certain circumstances; prohibiting a manufacturer, distributor, or factory branch from refusing to pay or claiming reimbursement from a dealer for sales, incentives, or payments related to a motor vehicle sold by a dealer and exported or resold by the purchaser under certain circumstances; ~~establishing a conclusive presumption that a dealer has no knowledge of certain facts under certain circumstances;~~ prohibiting a manufacturer, distributor, or factory branch from giving certain benefits, payments, or gifts directly to an employee; requiring that certain benefits, payments, or gifts from a manufacturer, distributor, or factory branch to an employee be given to the dealer and distributed in a certain manner; authorizing a dealer to retain certain costs; requiring a manufacturer, distributor, or factory branch, or a manufacturer of motor homes, to make certain payments or reimbursements to ~~a dealer~~ certain dealers under certain circumstances; altering a certain definition; and generally relating to manufacturers, distributors, and factory branches.

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

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

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

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

Article – Transportation

15–207.

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

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

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

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

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

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

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

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

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

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

(e) (1) A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, **AFFILIATE**, or representative, may not require or coerce

a dealer to adhere to performance standards that are not applied uniformly to other similarly situated dealers.

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

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

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

~~(II) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT DENY THE BENEFITS OF MEETING A STANDARD OR SALES OBJECTIVE TO A DEALER WHO PRESENTS DOCUMENTATION OR REASONABLE EVIDENCE THAT THE STANDARD OR SALES OBJECTIVE WAS MET AND THE BENEFIT WAS PROVIDED TO THE CONSUMER~~ A DEALER THAT CLAIMS THAT THE APPLICATION OF A PERFORMANCE STANDARD, SALES OBJECTIVE, OR PROGRAM FOR MEASURING DEALERSHIP PERFORMANCE IS UNFAIR OR UNREASONABLE DUE TO THE DEMOGRAPHIC CHARACTERISTICS OF THE POPULATION IN THE DEALER'S ASSIGNED MARKET AREA, INCLUDING CAR AND TRUCK PREFERENCES OF CONSUMERS, OR DUE TO THE GEOGRAPHIC CHARACTERISTICS THAT AFFECT CAR AND TRUCK SHOPPING PATTERNS IN THE DEALER'S ASSIGNED MARKETING AREA, MAY FILE A CLAIM IN A COURT OF COMPETENT JURISDICTION TO DETERMINE WHETHER THE APPLICATION OF THE PERFORMANCE STANDARD OR PROGRAM IS UNFAIR OR UNREASONABLE UNDER THIS PARAGRAPH.

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

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

1. The survey was designed with experts;

2. The proper universe was examined;
3. A representative sample was chosen; and
4. The data was accurately reported.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) MAINTAIN AN EXCLUSIVE SALES OR SERVICE FACILITY;

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

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

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

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

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

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

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

15-208.

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

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

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

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

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

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

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

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

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

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

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

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

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

15-211.

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

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

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

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

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

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

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

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

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

(III) AN EXISTING DEALER IN GOOD STANDING; OR

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

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

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

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

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

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

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

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

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

(III) AN EXISTING DEALER IN GOOD STANDING; OR

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

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

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

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

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

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

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

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

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

(III) AN EXISTING DEALER IN GOOD STANDING; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15-212.1.

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

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

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

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

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

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

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

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

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

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

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

(D) ~~(4)~~ A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT REFUSE TO PAY, OR CLAIM REIMBURSEMENT FROM, A DEALER FOR SALES, INCENTIVES, OR PAYMENTS RELATED TO A MOTOR VEHICLE SOLD BY THE DEALER BECAUSE THE PURCHASER OF THE MOTOR VEHICLE EXPORTED OR RESOLD THE MOTOR VEHICLE IN VIOLATION OF THE POLICY OF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH UNLESS THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH CAN SHOW THAT, AT THE TIME OF SALE, THE DEALER ~~HAD SPECIFIC KNOWLEDGE~~ KNEW OR SHOULD HAVE KNOWN OF THE PURCHASER'S INTENTION TO EXPORT OR RESELL THE MOTOR VEHICLE.

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

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

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

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

15-212.2.

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

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

(2) PAY THE DEALER AT LEAST THE DEALER COST, PLUS ANY CHARGES BY THE FRANCHISOR, DISTRIBUTOR, OR FACTORY BRANCH, FOR DISTRIBUTION, DELIVERY, AND TAXES PAID BY THE DEALER, LESS ALL ALLOWANCES PAID TO THE DEALER BY THE FRANCHISOR FOR ANY NEW, UNDAMAGED MOTOR VEHICLES ~~OF THE CURRENT OR 1-YEAR PRIOR MODEL YEAR~~ PURCHASED WITHIN 18 MONTHS OF THE DATE OF THE TERMINATION, SUSPENSION, REFUSAL TO RENEW, CLOSURE, OR REFUSAL TO SUPPLY, WHETHER ACQUIRED FROM THE FRANCHISOR OR FROM ANOTHER DEALER OF THE SAME LINE MAKE IN THE ORDINARY COURSE OF BUSINESS;

(3) PAY THE DEALER AT LEAST THE DEALER ACQUISITION COST, ~~AS SHOWN IN THE PRICE CATALOG OF THE FRANCHISOR CURRENT AT THE TIME~~

~~OF REPURCHASE,~~ OF EACH NEW, UNUSED, UNDAMAGED, AND UNSOLD PART OR ACCESSORY IF THE PART OR ACCESSORY IS IN THE CURRENT PARTS CATALOG AND IS:

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

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

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

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

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

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

(I) THE TOTAL NET INVENTORY INVOICE COSTS;

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

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

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

(I) ARE NEW AND UNTITLED;

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

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

(IV) HAVE NOT BEEN ALTERED OR DAMAGED.

15-213.

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

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

Approved by the Governor, May 19, 2009.