

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 668

(Senator Raskin, *et al.*)

Judicial Proceedings

Environmental Matters

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

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

This bill takes effect June 1, 2009.

Fiscal Summary

State Effect: The bill primarily regulates the activities of private entities. Any impact on the Motor Vehicle Administration (MVA), District Court, or Attorney General can likely be handled with existing resources.

Local Effect: Potential minimal increase in circuit court caseloads.

Small Business Effect: Potential meaningful impact on small business car dealerships, manufacturers, distributors, and factory branches.

Analysis

Bill Summary: The bill prohibits a manufacturer, distributor, or factory branch, or their agents or affiliates from:

- varying a price or incentive for new vehicles, or accessories or parts thereof, sold by a dealer on the basis of the dealer's lack of agreement to maintain an exclusive

facility; purchase, construct, relocate, remodel, renovate, or repair existing dealership facilities; or participate in a particular form of financing;

- refusing to pay, or claim reimbursement from, a dealer due to a subsequent sale or export of the vehicle by the purchaser, unless it can be shown that the dealer knew or should have known of the purchaser's intentions; and
- giving anything over \$200 in value to a dealer's employee, unless first provided to the dealer to disburse.

Any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms that a manufacturer, distributor, or factory branch offers or advertises must be offered to all dealers of the same vehicle line make. Any rebate, incentive, or promotion based on the sale of a vehicle may not be increased for meeting a performance standard unless the standard is reasonable.

Any performance standard or sales objective that may have a material effect on the dealer, including provision of incentive payments or rights under a reimbursement program, have to be fair, reasonable, equitable, and based on accurate information. A dealer may file a claim in court to determine whether a performance standard or program is unfair or unreasonable due to the demographic characteristics of the dealer's assigned market area. Under such a claim, the burden of proof is on the manufacturer, distributor, or factory branch.

Notwithstanding the terms of specified franchise related agreements, a manufacturer, distributor, or factory branch may not exercise a right of first refusal in the event of a proposed transfer of any interest in a dealer's business to: (1) a member of the dealer's family; (2) a qualified manager with at least two years management experience at the dealer's business; or (3) an existing dealer in good standing, if any of these three parties also meets reasonable qualifications. If the dealer gives the 45 days notice of such a transfer and the manufacturer, distributor, or factory branch exercises its right of first refusal, the acting party is liable for reasonable expenses and attorney's fees incurred in implementing the contract.

In addition, the bill prohibits a manufacturer, distributor, or factory branch from imposing a condition on the transfer of an ownership interest in a dealership if the condition violates another State law regarding the licensing of motor vehicle businesses. This prohibition is also violated if an action is taken to prevent or refuse to approve the transfer of an ownership interest without specifically stating the grounds for the action. To enforce the prohibition, the Motor Vehicle Administrator is authorized, following a hearing, to order the transfer of an ownership interest be approved without the condition. The bill authorizes a cause of action in circuit court for damages related to the failure of a contract for the transfer of an ownership interest of which a violation of the bill's

prohibition is the proximate cause; this action may only be instituted if the dealer does not request a hearing by the administrator.

The bill also alters the timeframe during which a manufacturer, distributor, or factory branch may charge back a claim shown to be false or unsubstantiated to within six months from the date of the payment or reimbursement.

A manufacturer, distributor, or factory branch that suspends, terminates, closes, or refuses to renew a dealership franchise, or that refuses to supply a dealer with vehicles, must pay to the dealer certain consequential damages, including reimbursement for dealership improvements, specified values of certain vehicles, parts, and equipment, and other fees, charges, and taxes paid or otherwise incurred by the dealer within specified periods of time.

If a manufacturer of motor homes terminates or cancels a motor home dealer, the manufacturer must reimburse the dealer, less any allowances, discounts, or rebates, for specified inventory-related costs, charges, and taxes. To qualify for the reimbursement, the inventory must be new and untitled, acquired within the preceding 18 months, and not damaged or altered.

Current Law: A manufacturer, distributor, or factory branch may not coerce a dealer of new motor vehicles to (1) make any agreement; (2) order or accept delivery of any vehicle, equipment, parts, or accessories; (3) prevent a dealer from using its facilities for another dealership franchise; (4) materially change its facilities or methods of business in a way that would impose substantial financial hardship; or (5) adhere to performance standards not uniformly applied to other similarly situated dealers. A performance standard and its application must be fair, reasonable, equitable, and based on accurate information.

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

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

A manufacturer, distributor, or factory branch must be licensed by MVA to transfer any new motor vehicle in the State. MVA may refuse to grant a license and may suspend, revoke, or refuse to renew the license of any person if it finds (1) a violation or attempt to violate any provision of applicable law; or (2) a violation or attempt to violate any of the other provisions of the Maryland Vehicle Law that relate to the business or activity of that person.

Upon the filing of a claim, a manufacturer, factory branch, or distributor must compensate a dealer for any incentive or reimbursement program. If a claim is shown to be false or unsubstantiated, the manufacturer, factory branch, or distributor may charge back the claim within nine months from the end of the incentive or reimbursement program.

Background: There are 1,475 vehicle dealers in Maryland, including 462 new vehicle dealers and 88 motorcycle dealers. There are also 102 manufacturers, 51 distributors, and 4 factory branches in the State.

State Fiscal Effect: MVA estimates that the bill may lead to around 10 additional investigations per year but advises that enforcement of the bill's provisions can be handled within its existing licensing regulation and approval capacity.

Additional Information

Prior Introductions: None.

Cross File: HB 1250 (Delegate Frush) - Environmental Matters.

Information Source(s): Maryland Department of Transportation, Department of Legislative Services

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