

SENATE BILL 18

R4

EMERGENCY BILL
(PRE-FILED)

0lr0491
CF 0lr1100

By: **Senators Raskin, Stone, Colburn, DeGrange, Exum, ~~and Glassman~~
Glassman, Edwards, Klausmeier, Frosh, Gladden, Brochin, Forehand,
Haines, Jacobs, Mooney, Muse, and Simonaire**

Requested: August 18, 2009

Introduced and read first time: January 13, 2010

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: January 22, 2010

CHAPTER _____

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers, Distributors, and Factory Branches – Benefits**
3 **to Employees of Dealers**

4 FOR the purpose of repealing certain provisions relating to a manufacturer,
5 distributor, or factory branch providing certain benefits, payments, or gifts to an
6 employee of a vehicle dealer; providing that an incentive payment, a
7 reimbursement payment, cash, a gift, or a thing of value to be given by a
8 manufacturer, distributor, or factory branch to an employee of a dealer may be
9 given directly to the employee or to the dealer to be distributed to the employee
10 in a certain manner; requiring a manufacturer, distributor, or factory branch to
11 make certain information available to a dealer about an incentive payment, a
12 reimbursement payment, cash, a gift, or a thing of value totaling more than a
13 certain amount that is given directly to an employee of the dealer; providing for
14 the application of this Act; making this Act an emergency measure; and
15 generally relating to manufacturers, distributors, and factory branches.

16 BY repealing and reenacting, with amendments,
17 Article – Transportation
18 Section 15–212.1
19 Annotated Code of Maryland
20 (2009 Replacement Volume and 2009 Supplement)

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.



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

Article – Transportation

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 6 months from the payment of the incentive or reimbursement.

(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) 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 knew or should have known of the purchaser's intention to export or resell the motor vehicle.

[(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.]

(E) (1) THIS SUBSECTION APPLIES ONLY TO AN INCENTIVE PAYMENT, A REIMBURSEMENT PAYMENT, CASH, A GIFT, OR A THING OF VALUE EARNED BY AN EMPLOYEE OF A DEALER ON OR AFTER MAY 1, 2009.

(2) (I) AN INCENTIVE PAYMENT, A REIMBURSEMENT PAYMENT, CASH, A GIFT, OR A THING OF VALUE TO BE GIVEN BY A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH TO AN EMPLOYEE OF A DEALER MAY BE GIVEN:

1. DIRECTLY TO THE EMPLOYEE; OR

2. TO THE DEALER TO BE DISTRIBUTED TO THE EMPLOYEE.

(II) AN INCENTIVE PAYMENT, A REIMBURSEMENT PAYMENT, OR CASH GIVEN TO A DEALER FOR DISTRIBUTION TO AN EMPLOYEE UNDER THIS PARAGRAPH SHALL BE DISTRIBUTED TO THE EMPLOYEE AS PART OF THE PAYROLL PROCESS AFTER THE APPROPRIATE PAYROLL DEDUCTIONS HAVE BEEN MADE BY THE DEALER.

(3) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL MAKE INFORMATION AVAILABLE TO A DEALER ABOUT ANY INCENTIVE PAYMENT, REIMBURSEMENT PAYMENT, CASH, GIFT, OR THING OF VALUE TOTALING MORE THAN \$200 IN A CALENDAR YEAR THAT IS GIVEN DIRECTLY TO AN EMPLOYEE OF THE DEALER.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect~~
~~October 1, 2010.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members

1 elected to each of the two Houses of the General Assembly, and shall take effect from
2 the date it is enacted.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.