

SB0886/708677/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 886
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, strike “Compensation of” and substitute “Relationship with”; in line 4, after “of” insert “prohibiting, except under certain circumstances, a manufacturer, distributor, or factory branch from requiring, attempting to require, coercing, or attempting to coerce a dealer to purchase certain goods or services from certain vendors under certain circumstances; providing for the construction of a certain prohibition under this Act; repealing a requirement that certain factors be considered in determining whether a dealer has been reasonably compensated;”; strike beginning with “requiring” in line 11 down through “Act;” in line 13; in line 19, strike “a” and substitute “certain”; strike beginning with “prohibiting” in line 24 down through “costs;” in line 25; in lines 25 and 26, strike “or threatening to take”; strike beginning with “prohibiting” in line 27 down through “programs;” in line 28; in line 29, after “work;” insert “altering a certain provision relating to denial of a dealer’s claim to prohibit a manufacturer from basing a denial on certain technical or administrative errors under certain circumstances; repealing the authority of the Motor Vehicle Administrator to require a certain licensee to pay a certain fine for certain violations relating to the compensation of dealers;”; in line 30, strike “compensation of” and substitute “relationships between”; in the same line, strike “by” and substitute “and motor vehicle”; and after line 31, insert:

“BY adding to

Article - Transportation

Section 15-207(k)

Annotated Code of Maryland

(2012 Replacement Volume)”.

AMENDMENT NO. 2

(Over)

On page 2, after line 8, insert:

“15-207.

(K) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, AND EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT, DIRECTLY OR THROUGH AN AGENT, AN EMPLOYEE, AN AFFILIATE, OR A REPRESENTATIVE, REQUIRE, ATTEMPT TO REQUIRE, COERCE, OR ATTEMPT TO COERCE BY AGREEMENT, PROGRAM, INCENTIVE PROVISION, OR OTHERWISE, A DEALER TO PURCHASE GOODS OR SERVICES FOR THE CONSTRUCTION, RENOVATION, OR MODIFICATION OF A FACILITY FROM A VENDOR DESIGNATED BY THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

(II) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY OFFER A DEALER THE OPTION TO OBTAIN GOODS OR SERVICES UNDER THIS SUBSECTION OF SUBSTANTIALLY SIMILAR QUALITY AND DESIGN FROM A VENDOR CHOSEN BY THE DEALER SUBJECT TO APPROVAL BY THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

(2) A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH MAY NOT UNREASONABLY WITHHOLD THE APPROVAL REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO ALLOW A DEALER OR VENDOR TO:

(I) DIRECTLY OR INDIRECTLY ELIMINATE OR IMPAIR IN ANY WAY A MANUFACTURER’S INTELLECTUAL PROPERTY RIGHTS OR REASONABLE BUSINESS REQUIREMENTS; OR

(II) ERECT OR MAINTAIN SIGNS THAT DO NOT CONFORM TO THE INTELLECTUAL PROPERTY USAGE GUIDELINES OF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

(4) THIS SUBSECTION DOES NOT APPLY IF A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH PROVIDES A CREDIT OR STIPEND FOR, OR OTHER REIMBURSEMENT OF, A SUBSTANTIAL PORTION OF THE COST OF THE GOODS OR SERVICES OBTAINED UNDER THIS SECTION UNDER AN AGREEMENT MADE BEFORE THE BEGINNING OF CONSTRUCTION, RENOVATION, OR MODIFICATION OF THE FACILITY.”.

AMENDMENT NO. 3

On page 3, strike beginning with “The” in line 7 down through “**(2)**” in line 21; in line 23, after “FOR” insert “**WARRANTY**”; in line 24, strike “WARRANTY”; and in line 31, strike “**(3)**” and substitute “**(2)**”.

AMENDMENT NO. 4

On page 4, in lines 2 and 6, in each instance, strike “SIMILAR”; in lines 3 and 6, in each instance, after “REPAIRS” insert “**OF A LIKE KIND**”; in lines 7 and 30, strike “**(4)**” and “**(5)**”, respectively, and substitute “**(3)**” and “**(4)**”, respectively; in lines 7 and 32, in each instance, strike “**(3)**” and substitute “**(2)**”; in line 14, strike “**60**” and substitute “**90**”; in lines 18 and 19, strike “AVERAGE LABOR RATE” and substitute “**ARITHMETIC MEAN OF LABOR RATES AS REFLECTED IN QUALIFYING REPAIR ORDERS**”; in line 20, strike “AGGREGATE” and substitute “**ARITHMETIC MEAN OF THE**”; strike beginning with “A” in line 22 down through “**(IV)**” in line 25; and in line 26, strike “**6 MONTHS**” and substitute “**1 YEAR**”.

AMENDMENT NO. 5

On page 5, in line 3, after “EVENTS” insert “, PROMOTIONS, OR SERVICE CAMPAIGNS”; in line 8, strike beginning with “AT” through “AGENCIES,” and substitute “FOR”; in line 16, after “RECONDITIONING;” insert “OR”; strike beginning with the semicolon in line 17 down through “VEHICLE” in line 21; in lines 22 and 28, strike “(6)” and “(7)”, respectively, and substitute “(5)” and “(6)”, respectively; in line 29, strike “(4)” and substitute “(3)”; and in the same line, strike the comma.

AMENDMENT NO. 6

On page 6, in line 1, strike “FAIR,”; strike beginning with the second comma in line 1 down through “OR” in line 5 and substitute “.

(II) THE LICENSEE SHALL APPROVE OR REBUT THE DEALER’S SUBMISSION WITHIN 30 DAYS OF RECEIPT.

(III) IF THE LICENSEE APPROVES A DEALER’S SUBMISSION, THE LICENSEE SHALL BEGIN COMPENSATING THE DEALER UNDER THE SCHEDULE WITHIN 30 DAYS FOLLOWING APPROVAL.”;

in lines 6, 9, 12, and 17, strike “2.”, “(II)”, “(III)”, and “(IV)”, respectively, and substitute “(IV)”, “(V)”, “(VI)”, and “(VII)”, respectively; in line 7, after “LICENSEE,” insert “THE SCHEDULE OF COMPENSATION SUBMITTED BY THE DEALER SHALL GO INTO EFFECT”; in line 10, strike “BE” and substitute “:

1. BE”;

in line 11, after “SCHEDULE” insert “;AND

2. CONSIST OF REASONABLY SUBSTANTIATING EVIDENCE THAT THE DECLARED RATE IS MATERIALLY INACCURATE OR UNREASONABLE IN LIGHT OF THE PRACTICES OF ALL OTHER SAME LINE-MAKE

DEALERS IN THE CITY OR COMMUNITY OR IN AN ECONOMICALLY SIMILAR AREA OF THE STATE IF NO OTHER SAME LINE-MAKE DEALERS EXIST IN THE CITY OR COMMUNITY”;

in line 16, after “RESOLUTION” insert “UNLESS OTHERWISE PROVIDED FOR IN THE AGREEMENT OR BY THE FINDER OF FACT”; in line 19, strike “(4)” and substitute “(3)”; in line 20, strike “ISSUE” and substitute “ISSUES”; in the same line, strike the second “THE” and substitute “:

A. THE”;

in line 22, after “INACCURATE” insert “;AND

B. THE DECLARED RATE IS UNREASONABLE IN LIGHT OF THE PRACTICES OF ALL OTHER SAME LINE-MAKE DEALERS IN THE CITY OR COMMUNITY OR IN AN ECONOMICALLY SIMILAR AREA OF THE STATE IF NO OTHER SAME LINE-MAKE DEALERS EXIST IN THE CITY OR COMMUNITY”;

after line 25, insert:

“(VII) 1. A LICENSEE MAY VERIFY ONCE A YEAR THAT A DEALER’S EFFECTIVE RATES HAVE NOT DECREASED.

2. IF A LICENSEE FINDS THAT A DEALER’S EFFECTIVE RATES HAVE DECREASED, THE LICENSEE MAY REDUCE THE WARRANTY REIMBURSEMENT RATE PROSPECTIVELY.”;

in line 26, strike “(8)” and substitute “(7)”; in line 27, strike “CALCULATE” and substitute “DIRECTLY OR INDIRECTLY CALCULATE”; and in line 28, after

“PERCENTAGE” insert “ON A WARRANTY REIMBURSEMENT RATE SUBMISSION BY THE LICENSEE’S DEALER UNDER THIS SECTION”.

AMENDMENT NO. 7

On page 7, strike beginning with “OTHER” in line 2 down through “STATEMENTS” in line 3 and substitute “THE DEALER’S OR OTHER DEALERS’ WARRANTY COMPENSATION”; strike beginning with “PRE-DELIVERY” in line 5 down through “APPLICATIONS” in line 8 and substitute “WARRANTY FULFILLMENT”; in line 9, after “DEALER” insert “UNLESS THE PART IS USED FOR SPECIFIC, LIMITED REPAIR SITUATIONS”; strike beginning with “RECOVER” in line 13 down through “(V)” in line 16; in line 16, strike “OR THREATEN TO TAKE”; strike beginning with “OR” in line 17 down through the comma in line 18; and in line 22, after “SUBTITLE;” insert “OR”.

AMENDMENT NO. 8

On pages 7 and 8, strike beginning with the semicolon in line 24 on page 7 down through “SUBTITLE” in line 3 on page 8 and substitute “;”

(V) CONDUCT ANY WARRANTY OR RETAIL CUSTOMER REPAIR AUDIT, OR OTHER SERVICE-RELATED AUDIT, SOLELY BECAUSE THE DEALER MAKES A REQUEST FOR WARRANTY REIMBURSEMENT AT RETAIL RATES IN THE ORDINARY COURSE OF BUSINESS; OR

(VI) ESTABLISH, IMPLEMENT, ENFORCE, OR APPLY ANY POLICY, STANDARD, RULE, PROGRAM, OR INCENTIVE REGARDING THE COMPENSATION DUE UNDER THIS SECTION OTHER THAN IN A UNIFORM MANNER AMONG THE LICENSEE’S DEALERS IN THE STATE”.

AMENDMENT NO. 9

On page 8, in lines 4, 8, 17, and 21, strike “(9)”, “(10)”, “(11)”, and “(12)”, respectively, and substitute “(8)”, “(9)”, “(10)”, and “(11)”, respectively; in lines 4 and 5 strike “(2)” and “(8)”, respectively, and substitute “(1)” and “(7)”, respectively; strike beginning with “A” in line 17 down through “claim” in line 20 and substitute “A MANUFACTURER MAY NOT BASE A DENIAL OF A DEALER’S CLAIM SOLELY ON THE DEALER’S CLERICAL ERROR, INCIDENTAL FAILURE TO COMPLY WITH A SPECIFIC CLAIM PROCESSING REQUIREMENT, OR OTHER TECHNICAL OR ADMINISTRATIVE ERROR, PROVIDED THAT THE DEALER CORRECTS THE CLAIM IN ACCORDANCE WITH THE LICENSEE GUIDELINES”.

AMENDMENT NO. 10

On page 9, strike beginning with the colon in line 3 down through “May” in line 6 and substitute “MAY”.