

SENATE BILL 1004

R4

7lr2156

By: **Senators Hough, Lee, and Ready**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Dealers – Performance Standards**

3 FOR the purpose of repealing a certain provision of law prohibiting vehicle manufacturers
4 from requiring or coercing a dealer to adhere to performance standards that are not
5 applied uniformly to other similarly situated dealers; requiring that the assignment
6 of a dealer's market area meet certain standards; requiring vehicle manufacturers
7 to consider certain factors in assigning a market area and applying performance
8 standards, sales objectives, or programs for measuring dealer performance; making
9 certain conforming changes; altering certain definitions; and generally relating to
10 market areas and performance standards for vehicle dealers.

11 BY repealing and reenacting, with amendments,
12 Article – Transportation
13 Section 15–207(a) and (e)
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2016 Supplement)

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

18 **Article – Transportation**

19 15–207.

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

21 (2) (i) “Coerce” means to compel or attempt to compel by threat of harm,
22 breach of contract, or other adverse **ACTION OR** consequences, including the loss of any
23 **INCENTIVE OR OTHER** benefit made available to other dealers of the same line make in
24 the State.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) “Coerce” includes to act in a manner that violates § 15–206.1 of
2 this subtitle.

3 (iii) “Coerce” does not include to argue, urge, recommend, or
4 persuade.

5 (3) “Require” means to impose upon a dealer a provision not required by
6 law [or previously agreed to by a dealer in a franchise agreement], excluding business
7 decisions **MADE TO COMPLY WITH THE REQUIREMENTS OF THIS TITLE** by a
8 manufacturer, distributor, or factory branch which are uniformly applied to all Maryland
9 dealers in new vehicles of the manufacturer, distributor, or factory branch.

10 (e) (1) [A manufacturer, distributor, or factory branch, whether directly or
11 through an agent, employee, affiliate, or representative, may not require or coerce a dealer
12 to adhere to performance standards that are not applied uniformly to other similarly
13 situated dealers.

14 (2) (i) **[A] WHETHER OR NOT UNIFORMLY APPLIED TO OTHER**
15 **SIMILARLY SITUATED DEALERS, AN ASSIGNED MARKET AREA OR A** performance
16 standard, sales objective, or program for measuring dealership performance that may have
17 a material effect on a dealer, including the dealer’s right to **A BENEFIT OR** payment under
18 any incentive or reimbursement program, and the application of the standard, sales
19 objective, or program by a manufacturer, distributor, or factory branch shall [be]:

20 1. **BE** fair, reasonable, **AND** equitable[, and based];

21 2. **BE BASED** on accurate information; **AND**

22 3. **INCLUDE CONSIDERATIONS OF THE DEMOGRAPHIC**
23 **CHARACTERISTICS AND CONSUMER PREFERENCES OF THE POPULATION IN THE**
24 **DEALER’S ASSIGNED MARKET AREA, INCLUDING:**

25 **A. CAR AND TRUCK BRAND PREFERENCES OF**
26 **CONSUMERS; AND**

27 **B. GEOGRAPHIC CHARACTERISTICS, SUCH AS NATURAL**
28 **BOUNDARIES, ROAD CONDITIONS, AND TERRAIN, THAT AFFECT CAR AND TRUCK**
29 **SHOPPING PATTERNS.**

30 (ii) A dealer that claims that the **ASSIGNMENT OF A MARKET AREA**
31 **OR** application of a performance standard, sales objective, or program for measuring
32 dealership performance is unfair or unreasonable due to the **MANUFACTURER,**
33 **DISTRIBUTOR, OR FACTORY BRANCH FAILING TO REASONABLY CONSIDER**
34 demographic characteristics of the population in the dealer’s assigned market area,

1 including car and truck **BRAND** preferences of consumers, or due to the geographic
2 characteristics, **SUCH AS NATURAL BOUNDARIES, ROAD CONDITIONS, AND TERRAIN,**
3 that affect car and truck shopping patterns in the dealer's assigned marketing area, may
4 file a claim in a court of competent jurisdiction to determine whether the **DESIGN OF THE**
5 **ASSIGNED MARKET AREA OR THE** application of the performance standard, **SALES**
6 **OBJECTIVE,** or program is unfair or unreasonable under this paragraph.

7 (iii) A manufacturer, distributor, or factory branch has the burden of
8 proving that the **DESIGN OF THE ASSIGNED MARKET AREA,** performance standard, sales
9 objective, or program for measuring dealership performance is fair and reasonable under
10 this paragraph.

11 **[(3)] (2)** (i) If the performance standard is based on a survey, it must
12 be shown that:

- 13 1. The survey was designed with experts;
- 14 2. The proper universe was examined;
- 15 3. A representative sample was chosen; and
- 16 4. The data was accurately reported.

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2017.