

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1120

(Delegates Fraser-Hidalgo and Stein)

Environment and Transportation

Judicial Proceedings

Vehicle Laws - Dealers - Performance Standards

This bill establishes that provisions of State law governing performance standards for vehicle dealers apply to vehicle manufacturers notwithstanding other specified agreements. The bill further establishes that an assigned market area or a performance standard, sales objective, or program for measuring dealership performance has to take into consideration specified factors. A dealer that claims the assignment of a market area is unfair or unreasonable due to failure to consider specified factors may file a claim in a court of competent jurisdiction to determine whether the assignment is unfair or unreasonable.

Fiscal Summary

State Effect: The bill does not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill modifies the definitions of two terms. “Coerce” is expanded to include any attempt to compel by any adverse action and specifically includes the loss of an incentive or any other benefit. The definition of “require” is modified to mean 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 made to comply with the requirements of Title 15 of the Transportation Article and which are uniformly applied to all Maryland dealers in new vehicles of the manufacturer, distributor, or factory branch.

The bill requires that a performance standard, sales objective, or program for measuring dealership performance must meet certain requirements, regardless of whether or not the standard, objective, or program is uniformly applied to other similarly situated dealers. The dealer's right to a benefit or payment under any incentive or reimbursement program, and the application of the standard, sales objective, or program must (1) be fair, reasonable, and equitable; (2) be based on accurate information; and (3) take into account the demographic characteristics and consumer preferences of the population in the dealer's assigned market area. The characteristics considered must include car and truck preferences of consumers in the area, as well as geographic characteristics, such as natural boundaries, road conditions, and terrain that affect car and truck shopping patterns.

A dealer claiming that the assignment of a market area or application of a performance standard, sales objective, or program for measuring dealership performance is unfair or unreasonable may seek redress in a court of competent jurisdiction. Those items are unfair or unreasonable if a manufacturer, distributor, or factory branch fails to reasonably consider the demographic characteristics of the population in the market area, car and truck preferences, geographic characteristics such as natural boundaries, road conditions, and terrain, which affect car and truck shopping patterns in the marketing area. An aggrieved party may file a claim in a court to determine whether the design of the assigned market area, the application of the performance standard, the sales objective, or the program is unfair or unreasonable.

The bill specifies that a manufacturer, distributor, or factory branch has the burden of proving that the design of an assigned market area, or the performance standard, sales objective, or program is fair and reasonable.

Current Law: A manufacturer, distributor, or factory branch may not coerce a dealer to adhere to performance standards that are not applied uniformly to other similarly situated dealers. Currently, for a standard, reimbursement, or incentive to be valid, the program must be fair, reasonable, equitable, and based on accurate information.

An aggrieved dealer claiming the application of an unfair or unreasonable standard, reimbursement, or program is permitted to file a claim in a court of competent jurisdiction to determine whether the application of the performance standard or program is unfair or unreasonable.

Small Business Effect: Car dealerships that qualify as small businesses are likely positively affected as the bill requires specified factors to be taken into consideration in assignment of market areas and application of performance standards, such as consumer preferences of individual market areas.

Additional Information

Prior Introductions: None.

Cross File: SB 1004 (Senator Hough, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 27, 2017
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