SENATE BILL 1031

R4   8lr2732

By: **Senators Hough and Lee**
Introduced and read first time: February 5, 2018
Assigned to: Finance
Reassigned: Judicial Proceedings, February 8, 2018

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 31, 2018

CHAPTER _____

1   AN ACT concerning

2   **Vehicle Laws – Manufacturers and Dealers – Consumer Data Protection**

3   FOR the purpose of ~~prohibiting manufacturers, distributors, and factory branches, or their~~
4   ~~agents, from requiring or coercing a dealer to share consumer data from the dealer's~~
5   ~~data management system in certain manners;~~ requiring vehicle manufacturers,
6   distributors, and factory branches, or their agents, to allow vehicle dealers to furnish
7   certain consumer data in a certain manner; authorizing manufacturers, distributors,
8   and factory branches, or their agents, to access data management systems with
9   express written consent of the dealer; establishing standards for express written
10   consent for access to a dealer's data management system; prohibiting manufacturers,
11   distributors, and factory branches~~, or their agents,~~ from taking adverse action
12   against ~~a dealer for refusing~~ dealers that refuse to ~~share~~ grant access to certain
13   ~~consumer~~ data; authorizing manufacturers, distributors, and factory branches to
14   require certain data from dealers regarding warranty repair, certain vehicle sales,
15   safety or recall obligations, or validation and payment of certain incentives;
16   prohibiting manufacturers, distributors, and factory branches, or their agents, from
17   requiring a dealer to grant access to the dealer's data management systems through
18   a franchise agreement; requiring manufacturers, distributors, and factory branches,
19   or their agents, to provide certain indemnification to dealers for a violation of this
20   Act; defining certain terms; and generally relating to consumer data protection by
21   vehicle manufacturers and dealers.

22   BY adding to
23   Article – Transportation

1   Section 15–207.1
2   Annotated Code of Maryland
3   (2012 Replacement Volume and 2017 Supplement)

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

6   **Article – Transportation**

7 **15–207.1.**

8   (A)   (1)   IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10   (2)   (I)   "CONSUMER DATA" MEANS NONPUBLIC PERSONAL
11 INFORMATION, AS DEFINED IN 15 U.S.C. § 6809(4), COLLECTED BY A DEALER AND
12 PROVIDED BY THE DEALER DIRECTLY TO A MANUFACTURER, DISTRIBUTOR, OR
13 FACTORY BRANCH, OR ITS AGENT.

14   (II)   "CONSUMER DATA" DOES NOT INCLUDE THE SAME OR
15 SIMILAR DATA THAT IS OBTAINED BY A MANUFACTURER FROM ANY OTHER SOURCE.

16   (3)   "DATA MANAGEMENT SYSTEM" MEANS A COMPUTER HARDWARE
17 OR SOFTWARE SYSTEM THAT:

18   (I)   IS OWNED, LEASED, OR LICENSED BY A DEALER, INCLUDING
19 A SYSTEM OF WEB–BASED APPLICATIONS;

20   (II)   IS LOCATED AT THE DEALERSHIP OR HOSTED REMOTELY;
21 AND

22   (III)   STORES AND PROVIDES ACCESS TO CONSUMER DATA
23 COLLECTED AND STORED BY THE DEALER.

24   (B)   ~~A~~ NOTWITHSTANDING THE PROVISIONS OF ANY FRANCHISE
25 AGREEMENT, A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, OR ITS
26 AGENT:

27   ~~(1)~~ ~~MAY NOT REQUIRE OR COERCE A DEALER TO SHARE CONSUMER~~
28 ~~DATA FROM THE DEALER'S DATA MANAGEMENT SYSTEM:~~

29   ~~(I)~~ ~~THROUGH THE FRANCHISE AGREEMENT;~~

30   ~~(II)~~ ~~AS A CONDITION OF RENEWAL OR CONTINUATION OF THE~~
31 ~~FRANCHISE AGREEMENT; OR~~

1   ~~(III)   AS A CONDITION OF RECEIVING A BENEFIT OR PAYMENT~~
2 ~~UNDER AN INCENTIVE OR REIMBURSEMENT PROGRAM;~~

3   (1)   SHALL ALLOW A DEALER TO FURNISH CONSUMER DATA IN A
4 WIDELY ACCEPTED FILE FORMAT, SUCH AS COMMA–SEPARATED VALUES, AND
5 THROUGH A THIRD–PARTY VENDOR SELECTED BY THE DEALER;

6   (2)   MAY ACCESS OR OBTAIN CONSUMER DATA DIRECTLY FROM A
7 DEALER'S DATA MANAGEMENT SYSTEM ONLY WITH THE EXPRESS WRITTEN
8 CONSENT OF THE DEALER;

9   ~~(2)~~ (3)   MAY NOT TAKE ANY ADVERSE ACTION AGAINST A DEALER
10 FOR REFUSING TO ~~SHARE CONSUMER DATA FROM~~ GRANT ACCESS TO THE DEALER'S
11 DATA MANAGEMENT SYSTEM; ~~AND~~

12   (4)   MAY REQUIRE THAT A FRANCHISED DEALER OF THE
13 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH PROVIDE CONSUMER DATA
14 OR TRANSACTIONAL DATA THAT PERTAINS TO:

15   (I)   CLAIMS FOR WARRANTY PARTS OR REPAIRS;

16   (II)   SALES AND DELIVERIES OF NEW OR CERTIFIED PRE–OWNED
17 VEHICLES OF ANY LINE MAKE OF THE MANUFACTURER, DISTRIBUTOR, OR FACTORY
18 BRANCH;

19   (III)   SAFETY OR RECALL OBLIGATIONS; OR

20   (IV)   VALIDATION AND PAYMENT OF CUSTOMER OR DEALER
21 INCENTIVES; AND

22   ~~(3)~~ (5)   SHALL INDEMNIFY THE DEALER FOR ANY THIRD–PARTY
23 CLAIMS ASSERTED AGAINST OR DAMAGES INCURRED BY THE DEALER ~~OR A~~
24 ~~CUSTOMER~~ TO THE EXTENT THE CLAIMS OR DAMAGES ARE CAUSED BY ACCESS TO
25 ~~OR USE OR~~ AND UNLAWFUL DISCLOSURE OF CONSUMER DATA RESULTING FROM A
26 BREACH CAUSED BY THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, OR
27 ITS AGENT, OR A THIRD PARTY TO WHICH THE MANUFACTURER, DISTRIBUTOR, OR
28 FACTORY BRANCH, OR ITS AGENT, HAS PROVIDED THE CONSUMER DATA IN
29 VIOLATION OF THIS SECTION.

30   (C)   A MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH, OR ITS AGENT,
31 MAY NOT REQUIRE THAT A DEALER GRANT THE MANUFACTURER, DISTRIBUTOR, OR
32 FACTORY BRANCH, OR ITS AGENT, ACCESS TO THE DEALER'S DATA MANAGEMENT

1 **SYSTEM THROUGH A FRANCHISE AGREEMENT OR AS A CONDITION OF RENEWAL OR**
2 **CONTINUATION OF THE FRANCHISE AGREEMENT.**

3   (D)   WRITTEN CONSENT UNDER SUBSECTION (B)(2) OF THIS SECTION:

4   (1)   SHALL   BE   SEPARATE   FROM   THE   DEALER   FRANCHISE
5 **AGREEMENT;**

6   (2)   SHALL BE EXECUTED BY THE DEALER; AND

7   (3)   MAY BE WITHDRAWN BY THE DEALER ON 30 DAYS' WRITTEN
8 **NOTICE TO THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.**

9   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2018.

Approved:

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                                                      Governor.

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                                        President of the Senate.

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                                Speaker of the House of Delegates.