

SENATE BILL 813

R4

0lr2060
CF HB 1064

By: **Senator Waldstreicher**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 9, 2020

CHAPTER _____

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers and Dealers – Transfers of Franchises**

3 FOR the purpose of ~~requiring, within a certain time period, vehicle manufacturers to~~
4 ~~consent to the transfer of a vehicle dealer franchise or provide a written statement~~
5 ~~with specific grounds for the refusal of the manufacturer to consent to the transfer;~~
6 ~~altering the standards for determining reasonable compensation to be paid by vehicle~~
7 ~~manufacturers to vehicle dealers for warranty work; and generally relating to vehicle~~
8 ~~manufacturers and dealers~~ requiring a vehicle manufacturer to make certain
9 requests of a person seeking to transfer a vehicle dealer franchise or any right under
10 a vehicle dealer franchise within a certain period of time after receiving notice of the
11 proposed transfer; requiring a vehicle manufacturer to consent to a transfer or
12 provide a written statement with specific grounds for refusing consent within a
13 certain period of time after receiving certain information; and generally relating to
14 transfers of vehicle dealer franchises.

15 BY repealing and reenacting, without amendments,
16 Article – Transportation
17 Section 15–211(d) and (k) ~~and 15–212(e)(1)~~
18 Annotated Code of Maryland
19 (2012 Replacement Volume and 2019 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Transportation
22 Section 15–211(e) ~~and 15–212(e)(2), (4), and (6)~~
23 Annotated Code of Maryland

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.



(2012 Replacement Volume and 2019 Supplement)

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

Article – Transportation

15–211.

(d) (1) A dealer or an owner, partner, or stockholder of a dealership may not sell, assign, or otherwise transfer a franchise or any right under a franchise without the consent of the manufacturer.

(2) Notwithstanding the terms of any franchise agreement or agreement related to a franchise, a manufacturer may not exercise a right of first refusal in the event of a sale or transfer or proposed sale or transfer of a dealer’s business or any equity interest in a dealer’s business to a person who meets the manufacturer’s reasonable qualifications for ownership and is:

(i) A member of the dealer’s immediate family;

(ii) A qualified manager with at least 2 years management experience at the dealer’s business;

(iii) An existing dealer in good standing; or

(iv) A business entity controlled by a person described in item (i), (ii), or (iii) of this paragraph.

(3) If a manufacturer exercises a right of first refusal in the event of a sale or transfer or proposed sale or transfer of the dealer’s business or an equity interest in the dealer’s business, the manufacturer shall pay the reasonable expenses, including customary attorney’s fees, incurred by the prospective purchaser in negotiating and implementing the contract for the proposed sale or transfer, provided that the dealer has given the manufacturer at least 45 days’ notice of an intent to sell or transfer.

(e) (1) A manufacturer may not unreasonably withhold consent to the transfer of a franchise under subsection (d) of this section.

~~(2) A MANUFACTURER SHALL BE DEEMED TO HAVE CONSENTED TO THE TRANSFER OF A FRANCHISE IF THE MANUFACTURER FAILS, WITHIN 60 DAYS AFTER RECEIVING NOTICE OF THE PROPOSED TRANSFER, TO:~~

(2) IF AN OWNER, PARTNER, OR STOCKHOLDER OF A DEALERSHIP SEEKS TO SELL, ASSIGN, OR OTHERWISE TRANSFER A FRANCHISE OR ANY RIGHT

1 UNDER A FRANCHISE, THE OWNER, PARTNER, OR STOCKHOLDER SHALL PROVIDE
2 WRITTEN NOTICE TO THE MANUFACTURER OF THE PROPOSED TRANSFER.

3 (3) WITHIN 20 DAYS AFTER A MANUFACTURER RECEIVES WRITTEN
4 NOTICE OF A PROPOSED TRANSFER FROM A TRANSFEROR, THE MANUFACTURER
5 SHALL PROVIDE THE TRANSFEROR WITH ALL FORMS AND REQUESTS FOR
6 INFORMATION THAT THE MANUFACTURER CONSIDERS NECESSARY TO EVALUATE
7 THE PROPOSED TRANSFER.

8 (4) WITHIN 75 DAYS AFTER A MANUFACTURER RECEIVES ALL
9 COMPLETED FORMS AND REQUESTED INFORMATION FROM A TRANSFEROR, THE
10 MANUFACTURER SHALL:

11 (I) GIVE CONSENT TO THE TRANSFER; OR

12 (II) PROVIDE A WRITTEN STATEMENT OF THE SPECIFIC
13 GROUNDS FOR ITS REFUSAL TO CONSENT TO THE TRANSFER, CONSISTENT WITH THE
14 REQUIREMENTS UNDER SUBSECTION (K) OF THIS SECTION.

15 (k) (1) A manufacturer, distributor, or factory branch violates this section if,
16 without a statement of specific grounds consistent with this title for the action, the
17 manufacturer, distributor, or factory branch takes action to prevent or refuse to approve:

18 (i) The sale, assignment, or transfer of the ownership of a dealership
19 by the sale of the business, stock transfer, or otherwise;

20 (ii) The sale, transfer, or assignment of a dealer franchise; or

21 (iii) A change in the executive management or principal operator of
22 the dealership.

23 (2) (i) An existing dealer denied the sale, assignment, transfer, or
24 change under this section may request that the Administrator conduct a hearing to review
25 the denial or the imposition of a condition in violation of this section.

26 (ii) If the Administrator finds that the action leading to the denial or
27 the imposition of a condition was in violation of this section, the Administrator may order
28 the sale, assignment, or transfer to be approved by the manufacturer, distributor, or factory
29 branch without imposition of the condition.

30 (3) (i) An applicant for approval of a sale, assignment, or transfer of
31 ownership of a dealership or an existing dealer denied the sale, assignment, or transfer
32 may institute an action for damages in the circuit court for the county in which the dealer's
33 principal place of business is located, if:

1 1. The existing dealer does not request a hearing by the
2 Administrator; and

3 2. The action taken in violation of this section to deny the
4 sale, assignment, or transfer of ownership or the change in executive management or the
5 condition imposed on the sale, assignment, or transfer is the proximate cause of the failure
6 of the contract for the sale, assignment, or transfer of ownership of the dealership.

7 (ii) An action for damages under this section must be instituted
8 within 2 years of the violation of this section.

9 ~~15-212.~~

10 ~~(e) (1) A licensee shall specify in writing to each of its motor vehicle dealers
11 licensed in the State:~~

12 ~~(i) The dealer's obligation for vehicle preparation, delivery,
13 warranties, and recalls on its products;~~

14 ~~(ii) The schedule of compensation to be paid to the dealers for parts,
15 including parts assemblies, and labor, including diagnostic labor and associated
16 administrative requirements, in connection with the service obligations established under
17 item (i) of this paragraph; and~~

18 ~~(iii) A time allowance for the performance of labor described in this
19 paragraph that is reasonable and adequate.~~

20 ~~(2) Reasonable compensation under this section may not be less than:~~

21 ~~(i) With respect to labor for warranty or recall repairs, [for
22 nonwarranty repairs of a like kind for retail customers] A LABOR RATE THAT IS
23 EQUIVALENT TO the dealer's current RETAIL labor rate MULTIPLIED BY THE RETAIL
24 TIME ALLOWANCE CHARGED TO CUSTOMERS FOR REPAIR ORDERS COMPLETED FOR
25 RETAIL CUSTOMERS THAT WOULD HAVE BEEN COVERED BY THE MANUFACTURER'S
26 WARRANTY BUT FOR TIME AND MILEAGE LIMITATIONS STATED IN THE
27 MANUFACTURER'S WARRANTY AGREEMENT; and~~

28 ~~(ii) With respect to any part, the dealer's cost plus its current retail
29 mark-up percentage charged to retail customers for nonwarranty repairs of a like kind.~~

30 ~~(4) [Repair] RETAIL REPAIR ORDERS SUBMITTED BY A DEALER SHALL
31 BE QUALIFYING EXCEPT THAT REPAIR orders for labor or parts in connection with any
32 of the following may not constitute a qualifying repair order under paragraph (2) of this
33 subsection:~~

34 ~~(i) Accessories;~~

1 (ii) ~~Repairs for manufacturer, distributor, or factory branch special~~
2 ~~events, promotions, or service campaigns;~~

3 (iii) ~~Repairs related to collision;~~

4 (iv) ~~Vehicle emission or safety inspections required by law;~~

5 (v) ~~Parts sold, or repairs performed, at wholesale or for insurance~~
6 ~~carriers, or other third-party payors;~~

7 (vi) ~~Routine maintenance not covered under [any] THE~~
8 ~~MANUFACTURER'S warranty OR ANY MANUFACTURER SCHEDULED MAINTENANCE~~
9 ~~PLAN, including maintenance involving fluids, filters, and belts not provided in the course~~
10 ~~of WARRANTY repairs;~~

11 (vii) ~~Nuts, bolts, fasteners, and similar items that do not have an~~
12 ~~individual parts number;~~

13 (viii) ~~Tires;~~

14 (ix) ~~Vehicle reconditioning;~~

15 (x) ~~Goodwill or policy repairs or replacements; or~~

16 (xi) ~~Repairs on vehicles from a different line make.~~

17 ~~(6) (i) The schedule of compensation submitted under paragraph (3) of~~
18 ~~this subsection shall be presumed to be accurate and reasonable.~~

19 ~~(ii) The licensee shall approve or rebut the dealer's submission~~
20 ~~within 30 days of receipt.~~

21 ~~(iii) If the licensee approves a dealer's submission, the licensee shall~~
22 ~~begin compensating the dealer under the schedule within 30 days after the date of approval.~~

23 ~~(iv) In the absence of a timely rebuttal by the licensee, the schedule~~
24 ~~of compensation submitted by the dealer shall go into effect on the 31st day following the~~
25 ~~licensee's receipt of the schedule.~~

26 ~~(v) Any rebuttal of the schedule of compensation by the licensee~~
27 ~~shall:~~

28 ~~1. Be delivered to the dealer within 30 days of the licensee's~~
29 ~~receipt of the schedule; [and]~~

~~2. Consist of reasonable substantiating evidence that the declared rate is materially inaccurate; AND~~

~~3. OFFER TO REIMBURSE THE DEALER AT THE RATE CALCULATED BY THE MANUFACTURER BASED ON THE REPAIR ORDERS IN THE DEALER'S SUBMISSION.~~

~~(vi) In the event of a timely rebuttal, on resolution of the matter by agreement of the parties or by administrative, judicial, or other action, a licensee's payment obligations under the resulting schedule of compensation shall begin on the 31st day following a final order unless otherwise provided for by the fact finder.~~

~~(vii) 1. To the extent that any action commenced under subsection (d) of this section or § 15-213 or § 15-214 of this subtitle involves the application of paragraph (3) of this subsection, the issues shall be limited to whether the labor rate or parts mark-up percentage stated in the dealer's submission was materially inaccurate.~~

~~2. A licensee shall have the burden of proving under this subparagraph that the dealer's submission was materially inaccurate.~~

~~(viii) 1. A licensee may verify a dealer's effective rates once annually.~~

~~2. If a licensee finds that a dealer's effective rates have increased or decreased, the licensee may increase or decrease, respectively, the warranty reimbursement rate prospectively.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.