

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 568 (Delegate Davis, *et al.*)

Environment and Transportation and
Economic Matters

Commercial Law - Consumer Protection - Motor Vehicle Manufacturers,
Distributors, and Factory Branches

This bill establishes requirements and restrictions applicable to the relationship between motor vehicle dealers, manufacturers, distributors, factory branches, and consumers. Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can likely be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill prohibits a manufacturer, distributor, or factory branch from committing any act that directly or indirectly (1) prevents a consumer from having the same opportunity to negotiate a lower price for a new motor vehicle that is available to all dealers of the same line make or (2) causes a reduction in the final price paid for a new motor vehicle by at least one dealer but not all dealers of the same line make.

The bill requires that, in any advertisement to consumers, a manufacturer, distributor, or factory branch must ensure that (1) the price of a new motor vehicle or any savings claim involving a new motor vehicle reflects only rebates and sales incentives available to all consumers, and any rebate or sales incentive amount is shown in close proximity to the price or savings claim; (2) the time period during which a rebate or sales incentive is in effect is clearly and conspicuously stated; and (3) a savings or price reduction claim involving a new motor vehicle for which a rebate or sales incentive is available includes a statement of the minimum and maximum possible savings and does not include a misleading display of the maximum possible savings.

The bill prohibits a manufacturer, distributor, or factory branch from retaliating or continuing to retaliate (directly or through an agent, employee, or affiliate) against a dealer, a dealer's employees, or a dealer's consumers because of legislation passed by the General Assembly and enacted into law that regulates the franchise relationship. The bill also prohibits a manufacturer, distributor, or factory branch from sanctioning or denying benefits to a dealer because of the dealer's speech if the speech is lawful and not deceptive.

The bill authorizes a manufacturer to charge a dealer only for the portion of the sales incentive that exceeds the sales incentive amount paid to other dealers in the State for vehicles of the same line make, if a dealer can show that a sales incentive was given to a consumer in the normal course of the dealer's business and that no fraud was involved.

Current Law:

Unfair or Deceptive Trade Practices

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person

who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Motor Vehicle Manufacturer and Dealer Relationships

One of the core functions of the Motor Vehicle Administration (MVA) is to issue licenses for vehicle-related business activities. MVA issues licenses to vehicle dealers, salesmen, manufacturers, distributors, factory branches, and for several other types of business activities. Subtitles 2 through 4 of Title 15 of the Transportation Article contain numerous provisions that generally regulate vehicle dealer, manufacturer, distributor, and factory branch licensees, as well as the relationship between the licensees.

Any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms that a manufacturer, distributor, or factory branch offers or advertises, or allows its dealers to offer or advertise, must be offered to all dealers of the same line make. Any manufacturer, distributor, or factory branch that denies the benefit of any consumer rebates, dealer incentives, price or interest rate reductions, or finance terms to a dealer on the basis that the dealer failed to comply with performance standards has the burden of proving that the performance standards comply with the Maryland Vehicle Law.

A manufacturer, distributor, factory branch, or one of its affiliates may not (directly or through an agent, an employee, an affiliate, or a representative) require or coerce (by agreement, program, or incentive provision) a dealer to purchase goods or services from a vendor that is selected, identified, or designated by the manufacturer, distributor, factory branch, or one of its affiliates. This does not apply to, among other things, the purchase or procurement of moveable displays, brochures, or other promotional materials. A manufacturer, distributor, factory branch, or one of its affiliates may offer a dealer the option to obtain goods or services of substantially similar quality and design from a vendor chosen by the dealer subject to the advanced approval of the manufacturer, distributor, factory branch, or one of its affiliates. A manufacturer, distributor, factory branch, or one of its affiliates may not unreasonably withhold that approval.

A manufacturer, distributor, or factory branch, whether directly or through an agent, employee, or representative, may not use any advertisement that is in any way false, deceptive, or misleading.

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. A manufacturer may not unreasonably withhold consent to the transfer of a franchise.

A claim for compensation by a dealer with a manufacturer or distributor must be made in the manner and form reasonably prescribed by the manufacturer or distributor and be approved or disapproved within 30 days of receipt. A claim not approved or disapproved within 30 days of receipt is deemed approved. Payment of or credit issued on a claim must be made within 30 days of approval.

MVA may, instead of or in addition to revocation, suspension, or nonrenewal of a license, order a manufacturer, distributor, or factory branch licensee to pay a fine of up to \$50,000 per violation.

In addition to any administrative or criminal sanctions, if a person suffers financial injury or other damage as a result of a violation of the subtitle of the Maryland Vehicle Law regulating manufacturer, distributor, or factory branch licensees, the injured person may recover damages and reasonable attorney's fees, regardless of whether the licensee has been found guilty of a criminal violation.

Small Business Effect: It is unknown how many licensed manufacturers, distributors, or factory branches currently do not comply with the bill's restrictions and requirements. However, a small business dealer realizes a meaningful benefit to the extent that the bill provides significant additional protections from existing practices by licensed manufacturers, distributors, or factory branches or provides a disincentive from future harmful practices. To the extent that any manufacturer, distributor, or factory branch is a small business entity, the bill creates additional restrictions and requirements. According to MVA, there were 2,126 used car, new car, and wholesale dealers licensed in fiscal 2013, as well as 19 manufacturers or distributors, and 2 factory branches.

Additional Information

Prior Introductions: None.

Cross File: SB 587 (Senator Middleton) - Finance and Judicial Proceedings.

Information Source(s): Office of the Attorney General (Consumer Protection Division), Maryland Department of Transportation, Department of Legislative Services

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Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510