

SENATE BILL 1004

R4

7lr2156
CF HB 1120

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

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 2, 2017

CHAPTER _____

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~~ establishing that certain
6 provisions of State law governing performance standards for vehicle dealers apply to
7 vehicle manufacturers notwithstanding certain other agreements; requiring that the
8 assignment of a dealer's market area meet certain standards; requiring vehicle
9 manufacturers to consider certain factors in assigning a market area and applying
10 performance standards, sales objectives, or programs for measuring dealer
11 performance; making certain conforming changes; altering certain definitions; and
12 generally relating to market areas and performance standards for vehicle dealers.

13 BY repealing and reenacting, with amendments,
14 Article – Transportation
15 Section 15–207(a) and (e)
16 Annotated Code of Maryland
17 (2012 Replacement Volume and 2016 Supplement)

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

20 **Article – Transportation**

21 15–207.

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.



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

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

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

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

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

15 (e) (1) **THE PROVISIONS OF THIS SUBSECTION APPLY**
16 **NOTWITHSTANDING THE TERMS OF ANY FRANCHISE AGREEMENT OR AGREEMENT**
17 **RELATED TO A FRANCHISE.**

18 **(2)** ~~]~~ A manufacturer, distributor, or factory branch, whether directly or
19 through an agent, employee, affiliate, or representative, may not require or coerce a dealer
20 to adhere to performance standards that are not applied uniformly to other similarly
21 situated dealers.

22 ~~(2)~~ **(3)** (i) **[A] WHETHER OR NOT UNIFORMLY APPLIED TO**
23 **OTHER SIMILARLY SITUATED DEALERS, AN ASSIGNED MARKET AREA OR A**
24 performance standard, sales objective, or program for measuring dealership performance
25 that may have a material effect on a dealer, including the dealer’s right to **A BENEFIT OR**
26 payment under any incentive or reimbursement program, and the application of the
27 standard, sales objective, or program by a manufacturer, distributor, or factory branch shall
28 **[be]:**

29 1. **BE** fair, reasonable, **AND** equitable~~],~~ and based];

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

31 3. **INCLUDE CONSIDERATIONS OF THE DEMOGRAPHIC**
32 **CHARACTERISTICS AND CONSUMER PREFERENCES OF THE POPULATION IN THE**
33 **DEALER’S ASSIGNED MARKET AREA, INCLUDING:**

1 A. CAR AND TRUCK ~~BRAND~~ PREFERENCES OF
2 CONSUMERS; AND

3 B. GEOGRAPHIC CHARACTERISTICS, SUCH AS NATURAL
4 BOUNDARIES, ROAD CONDITIONS, AND TERRAIN, THAT AFFECT CAR AND TRUCK
5 SHOPPING PATTERNS.

6 (ii) A dealer that claims that the **ASSIGNMENT OF A MARKET AREA**
7 **OR** application of a performance standard, sales objective, or program for measuring
8 dealership performance is unfair or unreasonable due to the **MANUFACTURER,**
9 **DISTRIBUTOR, OR FACTORY BRANCH FAILING TO REASONABLY CONSIDER**
10 demographic characteristics of the population in the dealer's assigned market area,
11 including car and truck ~~BRAND~~ preferences of consumers, or due to the geographic
12 characteristics, **SUCH AS NATURAL BOUNDARIES, ROAD CONDITIONS, AND TERRAIN,**
13 that affect car and truck shopping patterns in the dealer's assigned marketing area, may
14 file a claim in a court of competent jurisdiction to determine whether the **DESIGN OF THE**
15 **ASSIGNED MARKET AREA OR THE** application of the performance standard, **SALES**
16 **OBJECTIVE,** or program is unfair or unreasonable under this paragraph.

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

21 [(3)] ~~(2)~~ (4) (i) If the performance standard is based on a survey, it must
22 be shown that:

- 23 1. The survey was designed with experts;
- 24 2. The proper universe was examined;
- 25 3. A representative sample was chosen; and
- 26 4. The data was accurately reported.

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

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