

SENATE BILL 813

R4

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CF HB 1064

By: **Senator Waldstreicher**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Manufacturers and Dealers**

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.

9 BY repealing and reenacting, without amendments,
10 Article – Transportation
11 Section 15–211(d) and (k) and 15–212(c)(1)
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2019 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Transportation
16 Section 15–211(e) and 15–212(c)(2), (4), and (6)
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2019 Supplement)

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

21 **Article – Transportation**

22 15–211.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

9 (iii) An existing dealer in good standing; or

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

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

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

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

23 **(I) GIVE CONSENT TO THE TRANSFER; OR**

24 **(II) PROVIDE A WRITTEN STATEMENT OF THE SPECIFIC**
25 **GROUND FOR ITS REFUSAL TO CONSENT TO THE TRANSFER, CONSISTENT WITH THE**
26 **REQUIREMENTS UNDER SUBSECTION (K) OF THIS SECTION.**

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

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

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

1 (iii) A change in the executive management or principal operator of
2 the dealership.

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

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

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

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

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

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

22 15-212.

23 (c) (1) A licensee shall specify in writing to each of its motor vehicle dealers
24 licensed in the State:

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

27 (ii) The schedule of compensation to be paid to the dealers for parts,
28 including parts assemblies, and labor, including diagnostic labor and associated
29 administrative requirements, in connection with the service obligations established under
30 item (i) of this paragraph; and

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

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

34 (i) With respect to labor for warranty or recall repairs, [for

1 nonwarranty repairs of a like kind for retail customers] **A LABOR RATE THAT IS**
2 **EQUIVALENT TO** the dealer's current **RETAIL** labor rate **MULTIPLIED BY THE RETAIL**
3 **TIME ALLOWANCE CHARGED TO CUSTOMERS FOR REPAIR ORDERS COMPLETED FOR**
4 **RETAIL CUSTOMERS THAT WOULD HAVE BEEN COVERED BY THE MANUFACTURER'S**
5 **WARRANTY BUT FOR TIME AND MILEAGE LIMITATIONS STATED IN THE**
6 **MANUFACTURER'S WARRANTY AGREEMENT**; and

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

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

13 (i) Accessories;

14 (ii) Repairs for manufacturer, distributor, or factory branch special
15 events, promotions, or service campaigns;

16 (iii) Repairs related to collision;

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

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

20 (vi) Routine maintenance not covered under **[any] THE**
21 **MANUFACTURER'S** warranty **OR ANY MANUFACTURER SCHEDULED MAINTENANCE**
22 **PLAN**, including maintenance involving fluids, filters, and belts not provided in the course
23 of **WARRANTY** repairs;

24 (vii) Nuts, bolts, fasteners, and similar items that do not have an
25 individual parts number;

26 (viii) Tires;

27 (ix) Vehicle reconditioning;

28 (x) Goodwill or policy repairs or replacements; or

29 (xi) Repairs on vehicles from a different line-make.

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

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

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

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

8 (v) Any rebuttal of the schedule of compensation by the licensee
9 shall:

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

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

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

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

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

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

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

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

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