

Chapter 560

(House Bill 1120)

AN ACT concerning

Vehicle Laws – Dealers – Performance Standards

FOR the purpose of ~~repealing a certain provision of law prohibiting vehicle manufacturers from requiring or coercing a dealer to adhere to performance standards that are not applied uniformly to other similarly situated dealers~~ establishing that certain provisions of State law governing performance standards for vehicle dealers apply to vehicle manufacturers notwithstanding certain other agreements; requiring that the assignment of a dealer's market area meet certain standards; requiring vehicle manufacturers to consider certain factors in assigning a market area and applying performance standards, sales objectives, or programs for measuring dealer performance; making certain conforming changes; altering certain definitions; and generally relating to market areas and performance standards for vehicle dealers.

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

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

Article – Transportation

15–207.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) A dealer that claims that the **ASSIGNMENT OF A MARKET AREA OR** application of a performance standard, sales objective, or program for measuring dealership performance is unfair or unreasonable due to the **MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH FAILING TO REASONABLY CONSIDER** demographic characteristics of the population in the dealer’s assigned market area, including car and truck ~~BRAND~~ preferences of consumers, or due to the geographic

characteristics, **SUCH AS NATURAL BOUNDARIES, ROAD CONDITIONS, AND TERRAIN**, that affect car and truck shopping patterns in the dealer's assigned marketing area, may file a claim in a court of competent jurisdiction to determine whether the **DESIGN OF THE ASSIGNED MARKET AREA OR THE** application of the performance standard, **SALES OBJECTIVE**, or program is unfair or unreasonable under this paragraph.

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

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

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

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

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

Approved by the Governor, May 4, 2017.