

SENATE No. 183

The Commonwealth of Massachusetts

PRESENTED BY:

Brendan P. Crighton

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act further regulating business practices between motor vehicle dealers, manufacturers, and distributors.

PETITION OF:

NAME:

Brendan P. Crighton

DISTRICT/ADDRESS:

Third Essex

SENATE No. 183

By Mr. Crighton, a petition (accompanied by bill, Senate, No. 183) of Brendan P. Crighton for legislation to further regulate business practices between motor vehicle dealers, manufacturers, and distributors. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act further regulating business practices between motor vehicle dealers, manufacturers, and distributors.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (c) of section 4 of chapter 93B, as appearing in the 2020 Official
2 Edition, is hereby amended by striking out paragraph (5) and inserting in place thereof the
3 following paragraph:-

4 (5) to offer to sell or to sell any new motor vehicle to any person located in the
5 commonwealth at a lower actual price therefor than the actual price offered contemporaneously
6 to any other motor vehicle dealer located in the commonwealth for the same model vehicle
7 similarly equipped or to utilize any device, including, but not limited to, sales promotion plans or
8 programs, facility compliance or any form of incentive program, which result in the lesser actual
9 price unless available on equal terms to all dealers located in the commonwealth; provided,
10 however, that, for the purposes of this paragraph, “equal terms” shall not include the opportunity
11 to participate in any program that requires facility investment; provided further, that this
12 paragraph shall not apply to sales to a motor vehicle dealer for resale to any unit of the federal

13 government or any agency thereof or to the commonwealth or any of its political subdivisions;
14 provided further, that this paragraph shall not apply to sales to a motor vehicle dealer of any
15 motor vehicle ultimately sold, donated or used by the dealer in a driver education program. The
16 preceding provisions of this paragraph shall not apply so long as a manufacturer, distributor or
17 franchisor representative offers to sell or sells new motor vehicles to all motor vehicle dealers
18 located in the commonwealth at an equal price. In connection with a sale of a motor vehicle or
19 vehicles to a motor vehicle dealer for resale to any unit of the federal government or any agency
20 thereof or to the commonwealth or to any political subdivision thereof, no manufacturer or
21 distributor shall offer any discounts, refunds or any other similar type of inducement to any
22 dealer without making the same offer available to all other of its dealers within the relevant
23 market area, and if the inducements are made, the manufacturer or distributor shall give
24 simultaneous notice thereof to all of its dealers within the relevant market area. In addition, a
25 manufacturer, distributor, or franchisor representative shall not unreasonably withhold
26 participation in any lead generation marketing programs or warranty policy adjustments and shall
27 distribute leads from direct internet-based inquiries in an equitable manner to dealers based on
28 geographic proximity and vehicle availability. In order to prove a violation of the price
29 discrimination prohibitions in this paragraph, it shall be the dealer's burden to demonstrate a
30 price, discount or incentive provided to at least one other dealer was not reasonably available to
31 it.

32 SECTION 2. Said subsection (c) of said section 4 of said chapter 93B, as so appearing, is
33 hereby further amended by inserting after paragraph (12) the following six paragraphs:-

34 (13) to require, coerce, or attempt to coerce any dealer by program, policy, standard, or
35 otherwise to: (a) change location of the dealership; (b) construct, renovate, or make any

36 substantial changes, alterations, or remodeling to a dealer's sales or services facilities; or (c) add
37 to or replace a dealer's sales or services facilities; provided, however, that nothing herein shall
38 prohibit a manufacturer or distributor from continuing a facility improvement program that is in
39 effect as of the effective date of this paragraph with more than one dealer in the commonwealth
40 or to renewing or modifying such program, or providing lump sum or regularly-scheduled
41 payments to assist a dealer in making a facility improvement, including construction, alteration
42 or remodeling, or installing signage or an image element of the manufacturer or distributor;
43 provided further, that the provisions of the facility improvement program in which such dealer
44 participates be contained in a written agreement voluntarily entered into by the dealer and must
45 be made available, on substantially similar terms, to any of the manufacturer's or distributor's
46 other same line-make dealers in the commonwealth with whom the manufacturer or distributor
47 offers to enter into such an agreement; provided further, that, except as necessary to comply with
48 a health or safety law or to comply with a technology requirement which is necessary to sell or
49 service a motor vehicle that the motor vehicle dealer is authorized or licensed by the
50 manufacturer or distributor, a manufacturer, distributor, or franchisor representative shall not
51 require, coerce, or attempt to coerce a motor vehicle dealer, by program, policy, facility guide,
52 standard or otherwise, to change the location of the dealership, replace, or construct a new dealer
53 facility or substantially alter or remodel an existing dealer facility before the date that is ten years
54 after the date the construction of the new dealer facility or substantial alteration or remodeling at
55 that location was completed regardless of whether a successor dealer has been appointed;
56 provided further, that such construction, alteration or remodeling substantially complied with the
57 manufacturer's or distributor's brand image standards or plans that the manufacturer or
58 distributor provided at the time the construction, alteration, or remodeling was completed.

59 (14) to require a dealer to provide to the franchisor representative, manufacturer or
60 distributor its customer lists, service files, or information about a retail customer unless
61 necessary: (a) for the sale and delivery of a new motor vehicle to a retail buyer; (b) to validate
62 and pay customer or dealer incentives; (c) for reasonable marketing purposes; (d) for warranty
63 reimbursement substantiation under this chapter; or (e) to enable the manufacturer to fulfill
64 safety, recall, or other legal obligations imposed by state or federal law. A manufacturer or
65 distributor shall not share, sell, or transfer to other dealers or third parties customer information
66 obtained from a dealer and not otherwise publically available unless otherwise agreed to by the
67 originating dealer or unless the franchise has been terminated. Notwithstanding any consent,
68 authorization, release, franchise agreement or other agreement or contract, a manufacturer or
69 distributor, or any third party acting on behalf or through a manufacturer or distributor, having
70 electronic access to consumer or customer data or other information in a computer system
71 utilized by a dealer, or who has otherwise been provided consumer or customer data or
72 information by the dealer, shall fully indemnify and hold harmless the dealer from whom it has
73 acquired the consumer or customer data or other information from all claims, demands, damages,
74 liabilities, costs, and expenses incurred by the dealer, arising out of any alleged or actual data
75 security breaches or other unlawful use of said customer or consumer data or other information
76 by said manufacturer, distributor or third party acting on behalf of same, including, but not
77 limited to, judgments, settlements, fines, penalties, expenses related to the disclosure of security
78 breaches to customers and consumers, and attorneys' fees and expenses arising out of
79 complaints, claims, demands, security breaches, civil or administrative actions, and, to the fullest
80 extent allowable under the law, attorneys' fees and expenses arising from governmental
81 investigations and prosecutions relating to the access, storage, maintenance, use, sharing,

82 disclosure, or retention of the dealer's consumer or customer data or other information, or
83 maintenance or services provided to any computer system utilized by the dealer, by the
84 manufacturer, distributor or third party acting on behalf of or through the manufacturer or
85 distributor.

86 (15) to arbitrarily or unreasonably alter the geographic area of responsibility within which
87 it measures the dealer's performance. A manufacturer or distributor shall give advance notice of
88 any proposed alteration of a dealer's so-called area of responsibility at least 60 days before the
89 effective date of a proposed alteration. Notice shall include an explanation of the basis for the
90 change, and, upon request by such motor vehicle dealer within 30 days of the manufacturer's or
91 distributor's notice, the manufacturer or distributor immediately shall provide sufficient
92 supporting documentation. At any time prior to the effective date of such alteration, and after
93 completion of any internal appeal process provided by a manufacturer or distributor, a dealer
94 may protest the proposed alteration pursuant to section 15. Filing of a protest shall mean no
95 alteration is effective until an agreement is reached by the parties or a court makes a final
96 determination. The court may affirm, deny, or modify the proposed alteration of the dealer's area
97 of responsibility, may enter any other orders necessary to ensure that an alteration of the dealer's
98 area of responsibility is reasonable in light of all the relevant circumstances, and may assess the
99 attorneys' fees and expenses among the parties to the protest as appropriate. A manufacturer or
100 distributor shall not take any adverse action against a dealer as a result of a change to the dealer's
101 area or responsibility for at least 18 months after the effective date of the change.

102 (16) to require a dealer to purchase goods or services from a vendor selected, identified,
103 or designated by a manufacturer or distributor by agreement, program, incentive provision, or
104 otherwise in connection with a dealer expanding, constructing, or significantly modifying its

105 dealership facility without allowing the dealer the option to obtain a good or service of
106 substantially similar quality from a vendor chosen by the dealer and approved by the
107 manufacturer, which approval may not be unreasonably withheld. For purposes of this
108 subdivision, the term "goods" does not include moveable displays, brochures, and promotional
109 materials containing material subject to intellectual property rights of, or parts to be used in
110 repairs under warranty obligations of, a manufacturer or a distributor, or special tools and
111 training as required by the manufacturer or distributor. Nothing under this paragraph shall be
112 construed to (i) allow a dealer or vendor to eliminate or impair a manufacturer's or distributor's
113 intellectual property rights, including trademarks, or (ii) permit a dealer to erect or maintain signs
114 that do not conform to the intellectual property usage guidelines of the manufacturer.

115 (17) to offer, directly or indirectly, vehicles for lease or subscription in the
116 commonwealth of the same line make as any of the vehicles manufactured, assembled or
117 distributed by the manufacturer, distributor or franchise representative in the commonwealth and
118 sold or leased in the commonwealth by a dealer affiliated with such manufacturer, distributor or
119 franchisor representative, unless such lease or subscription is offered through, or in partnership
120 with, a dealer of the same line make affiliated with said manufacturer, distributor or franchisor
121 representative. For purposes of this paragraph, "subscription" means a contract or arrangement
122 whereby a person, for a recurring fee, secures the exclusive use of a specific vehicle of the same
123 line make for a term exceeding thirty days. This paragraph shall not apply to a rental company or
124 rental agreement regulated pursuant to Section 32E ½ of chapter 90 of the General Laws.

125 (18) to require, attempt to require, coerce, or attempt to coerce a motor vehicle dealer to
126 sell exclusively an extended service contract, extended maintenance plan or similar products,
127 including, but not limited to, guaranteed automobile protection or guaranteed asset protection

128 products, offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or
129 franchisor representative by any of the following means: (i) a statement made by the motor
130 vehicle manufacturer, distributor or franchisor representative that failure to sell exclusively an
131 extended service contract, extended maintenance plan or similar products will substantially and
132 adversely impact the dealer; (ii) a provision in a franchise agreement that the dealer sell
133 exclusively an extended service contract, extended maintenance plan or similar product offered,
134 endorsed or sponsored by the motor vehicle manufacturer, distributor or franchisor
135 representative; (iii) measuring the dealer's performance under the franchise based on the sale of
136 extended service contracts, extended maintenance plans or similar products offered, endorsed or
137 sponsored by the motor vehicle manufacturer, distributor or franchisor representative; or (iv)
138 requiring the dealer to exclusively promote the sale of extended service contracts, extended
139 maintenance plans or similar products offered, endorsed or sponsored by the motor vehicle
140 manufacturer, distributor or franchisor representative; provided, however, that nothing in this
141 paragraph shall prohibit a motor vehicle manufacturer, distributor or franchisor representative
142 from providing incentives to a dealer that encourages a voluntary decision to sell exclusively an
143 extended service contract, extended maintenance plan or similar product, including, but not
144 limited to, guaranteed automobile protection or guaranteed asset protection products offered,
145 endorsed or sponsored by the manufacturer, distributor or franchisor; provided, further, that
146 nothing in this paragraph shall require or prohibit a motor vehicle manufacturer, distributor, or
147 franchisor representative from enforcing a requirement that a dealer from requiring a franchisee
148 dealer to provide the following notice prior to the sale of the service contract if the service
149 contract is not provided or backed by the motor vehicle manufacturer and the vehicle is of the
150 franchised line-make: "The service contract you are purchasing is not provided or backed by the

151 manufacturer of the vehicle you are purchasing. The manufacturer of this vehicle is not
152 responsible for claims or repairs under this service contract.”

153 SECTION 3. Said section 4 of said chapter 93B, as so appearing, is hereby further
154 amended by inserting at the end thereof the following subsection:-

155 (e)(1) It shall be a violation of this section for a manufacturer, distributor, or franchisor
156 representative to coerce or require any dealer, whether by agreement, program, incentive
157 provision, or provision for loss of incentive payments or other benefits, to refrain from selling
158 any used motor vehicle subject to (i) recall, (ii) stop sale or do not drive directive, (iii) technical
159 service bulletin, or (iv) other manufacturer, distributor, or franchisor representative notification
160 to perform work on such used motor vehicle, unless the manufacturer, distributor, or franchisor
161 representative has a remedy and parts available to the dealer to remediate the basis for the
162 coercion or requirement of the dealer to refrain from selling each affected used motor vehicle. If
163 there is no remedy or there are no parts available from the manufacturer, distributor, or
164 franchisor representative to remediate each affected used motor vehicle in the inventory of the
165 dealer, the manufacturer, distributor, or franchisor representative shall (i) compensate the dealer
166 for any affected used motor vehicle in the inventory of the dealer that it cannot sell because of
167 such coercion or requirement at the rate of at least three percent per month or any part thereof of
168 the cost of such used motor vehicle, including repairs and reconditioning expenses based on the
169 financial records of the dealer, and (ii) establish a written procedure to compensate dealers under
170 this subsection that it shall provide to dealers; provided, however, that such amount of
171 compensation shall not be less than the retail repair and parts rates set pursuant to section 9. Any
172 claim for compensation by a dealer shall be submitted on a monthly basis for the amount owed

173 pursuant to this section. The manufacturer or distributor shall process and pay the claim in the
174 same manner as a claim for warranty reimbursements as provided in section 9.

175 (2) This section shall not prevent a manufacturer or distributor from (i) requiring that a
176 motor vehicle not be subject to an open recall or stop sale or do not drive directive in order to be
177 qualified, remain qualified, or be sold as a certified pre-owned vehicle or similar designation; (ii)
178 paying incentives for selling used vehicles with no unremedied recalls; or (iii) paying incentives
179 for performing recall repairs on a vehicle in the dealer's inventory.

180 (3) Nothing in this subsection shall prevent a manufacturer or distributor from instructing
181 that a dealer repair used vehicles of the line-make for which the dealer holds a franchise with an
182 open recall; provided, that the instruction does not involve coercion that imposes a penalty or
183 provision of loss of benefits on the dealer.

184 (4) This section shall apply only to used vehicles subject to safety or emissions recalls
185 pursuant to and recalled in accordance with federal law and regulations adopted thereunder or
186 where a stop sale or do not drive notification has been issued, and to motor vehicle
187 manufacturers and new motor vehicle dealers with used vehicles of the line-make that the dealer
188 is franchised to sell or is authorized to perform recall repairs.

189 (5) It shall be a violation of this section for a manufacturer, distributor, or franchisor
190 representative to reduce the amount of compensation otherwise owed to a new motor vehicle
191 dealer, whether through a chargeback, removal from an incentive program, reduction in amount
192 owed under an incentive program, or any other means, because the dealer has submitted a claim
193 for reimbursement under this section or was otherwise compensated for a vehicle subject to a
194 recall.

195 (6) It shall be a violation of this chapter for a manufacturer, distributor, or franchisor
196 representative to refuse to accept the return of, or to refuse to reimburse a dealer for the total cost
197 of, any motor vehicle appliance, equipment, part or accessory that the manufacturer, distributor,
198 or franchisor representative required the dealer to accept, buy, order or purchase in relation to a
199 (i) recall, (ii) stop sale or do not drive directive, (iii) technical service bulletin, or (iv) other
200 manufacturer, distributor, or franchisor representative notification to perform work, if the dealer
201 has requested, in writing, that the manufacturer, distributor, or franchise representative accept
202 return of and reimburse the dealer for the total cost of said motor vehicle appliance, equipment,
203 part, or accessory, including the total cost of shipping such items to the manufacturer, distributor,
204 or franchise representative.

205 (7) For the purposes of this subsection, a “stop sale” or “do not drive” notification shall
206 be defined as a notification issued by a manufacturer or distributor to some or all of its
207 franchised dealerships stating that certain used vehicles in inventory should not be sold or leased,
208 at retail or wholesale, due to a federal safety defect or noncompliance recall, a federal or
209 California emissions recall, or for any other reason.

210 (8) A dealer that sells a used motor vehicle at retail that (i) is subject to a recall pursuant
211 to 49 U.S.C. § 30111 et seq. and (ii) remains unremedied at the time of sale shall provide to the
212 buyer a written disclosure of the recall. If, at the time of sale, there is a remedy available for such
213 used motor vehicle, the dealer shall disclose to the buyer that (a) there is a remedy for the recall
214 and the buyer must return to have the dealer provide the remedy, if the dealer holds a franchise to
215 sell as new and to service the line-make of such used motor vehicle, or (b) there is a remedy for
216 the recall and the buyer must contact a dealer of the line-make to provide the remedy, if the
217 dealer does not hold a franchise to sell as new and to service the line-make of such used motor

218 vehicle. If, at the time of sale, there is no remedy available for such used motor vehicle, the
219 dealer shall disclose to the buyer that (1) there is no remedy for the recall and the buyer must
220 return to have the dealer provide the remedy when the buyer learns or has notice that the remedy
221 is available, if the dealer holds a franchise to sell as new and to service the line-make of such
222 used motor vehicle, or (2) there is no remedy for the recall and the buyer must contact a dealer of
223 the line-make to provide the remedy when the buyer learns or has notice that the remedy is
224 available, if the dealer does not hold a franchise to sell as new and to service the line-make of
225 such used motor vehicle.

226 SECTION 4. Subsection (b) of section 9 of said chapter 93B, as so appearing, is hereby
227 amended by inserting after paragraph (4) the following paragraph:-

228 (5)(i) A manufacturer or distributor shall not require, influence, or attempt to influence a
229 motor vehicle dealer to implement or change the prices for which it sells parts or labor in retail
230 customer repairs. A manufacturer or distributor shall not implement or continue a policy,
231 procedure, or program with any of its dealers in this state for compensation under this section
232 which is inconsistent with this section.

233 (ii) A manufacturer or distributor shall not, pursuant to a surcharge or other assessment
234 stated on the vehicle invoice provided to the dealer or through such other charge or means,
235 otherwise recover its costs for reimbursing a dealer for parts and labor pursuant to this section;
236 provided, however, that a manufacturer or distributor shall not be prohibited from increasing
237 prices for vehicles or parts in the normal course of business.

238 SECTION 5. Said section 9 of said chapter 93B, as so appearing, is hereby further
239 amended by inserting after subsection (j) the following subsection:-

240 (k) Notwithstanding any term of a franchise agreement, it shall be a violation of this
241 chapter for a manufacturer, distributor, or franchisor representative to charge back or otherwise
242 hold liable a franchised motor vehicle dealer for sales incentives or charges, deny vehicle
243 allocation, withhold payments or other things of value for which the dealer is eligible, or take or
244 threaten to take any other adverse actions against, in connection with or as a result of any new
245 motor vehicle sold by the dealer and subsequently exported from the United States; provided,
246 that such dealer can demonstrate that after exercising due diligence and acting in good faith he
247 did not know nor reasonably should have known of the purchaser's intention to export the motor
248 vehicle. A franchised motor vehicle dealer which causes a new motor vehicle to be registered in
249 the commonwealth or in a foreign state and causes to be collected the appropriate sales and use
250 tax, or that reasonably relied on a franchisor to complete a sale shall be presumed to have
251 exercised due diligence and acted in good faith. Prior to taking an adverse action against a dealer,
252 including, but not limited to, a chargeback, as a result of an export, a manufacturer or distributor
253 shall provide written notice to the franchised motor vehicle dealer of the adverse action, and, if a
254 chargeback, the specific amount of the chargeback, and the vehicle or vehicles at issue. A dealer
255 shall not be liable for the delivery of any vehicle sold through a franchisor's fleet program where
256 the sale or lease was not initiated or negotiated by the dealer and dealer's function was solely to
257 provide delivery on behalf of the manufacturer or distributor.

258 SECTION 6. Section 15 of said chapter 93B, as so appearing, is hereby amended by
259 striking out subsection (a) and inserting in place thereof the following subsection:-

260 (a) Any manufacturer, distributor or motor vehicle dealer who alleges an unfair method
261 of competition or an unfair or deceptive act or practice as defined by this chapter, any act
262 prohibited or declared unlawful by this chapter, or any rule or regulation adopted under this

263 chapter, may bring an action in the superior court, or if applicable in the federal district court for
264 the district of Massachusetts, for damages and equitable relief, including injunctive relief, as
265 described in the following sentence: The party filing suit may obtain equitable relief if it can
266 demonstrate a substantial likelihood that the alleged conduct violates the provisions of this
267 chapter.