

**SENATE . . . . . No. 239**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Marc R. Pacheco*

*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:	DISTRICT/ADDRESS:	
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>	
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>3/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>4/28/2021</i>

**SENATE . . . . . No. 239**

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By Mr. Pacheco, a petition (accompanied by bill, Senate, No. 239) of Marc R. Pacheco and Marcos A. Devers for legislation to further regulate business practices between motor vehicle dealers, manufacturers, and distributors. Consumer Protection and Professional Licensure.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 179 OF 2019-2020.]

**The Commonwealth of Massachusetts**

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

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

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

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

224 (k) Notwithstanding any term of a franchise agreement, it shall be a violation of this  
225 chapter for a manufacturer, distributor, or franchisor representative to charge back or otherwise  
226 hold liable a franchised motor vehicle dealer for sales incentives or charges, deny vehicle  
227 allocation, withhold payments or other things of value for which the dealer is eligible, or take or  
228 threaten to take any other adverse actions against, in connection with or as a result of any new  
229 motor vehicle sold by the dealer and subsequently exported from the United States; provided,  
230 that such dealer can demonstrate that after exercising due diligence and acting in good faith he  
231 did not know nor reasonably should have known of the purchaser's intention to export the motor  
232 vehicle. A franchised motor vehicle dealer which causes a new motor vehicle to be registered in  
233 the commonwealth or in a foreign state and causes to be collected the appropriate sales and use

234 tax, or that reasonably relied on a franchisor to complete a sale shall be presumed to have  
235 exercised due diligence and acted in good faith. Prior to taking an adverse action against a dealer,  
236 including, but not limited to, a chargeback, as a result of an export, a manufacturer or distributor  
237 shall provide written notice to the franchised motor vehicle dealer of the adverse action, and, if a  
238 chargeback, the specific amount of the chargeback, and the vehicle or vehicles at issue. A dealer  
239 shall not be liable for the delivery of any vehicle sold through a franchisor's fleet program where  
240 the sale or lease was not initiated or negotiated by the dealer and dealer's function was solely to  
241 provide delivery on behalf of the manufacturer or distributor.

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

244 (a) Any manufacturer, distributor or motor vehicle dealer who alleges an unfair method  
245 of competition or an unfair or deceptive act or practice as defined by this chapter, any act  
246 prohibited or declared unlawful by this chapter, or any rule or regulation adopted under this  
247 chapter, may bring an action in the superior court, or if applicable in the federal district  
248 court for the district of Massachusetts, for damages and equitable relief, including injunctive  
249 relief, as described in the following sentence: The party filing suit may obtain equitable relief if  
250 it can demonstrate a substantial likelihood that the alleged conduct violates the provisions of this  
251 chapter.

252 SECTION 7. Subsection (f) of section 2 chapter 93K of the General Laws, as most  
253 recently amended by section 3 of chapter 386 of the Acts of 2020, is hereby amended by striking  
254 "2022" in the first sentence and replacing it with the following:- "2025".

255 SECTION 8. Said Chapter 93K is hereby amended by striking subsections (g) and (h) of  
256 Section 2, as most recently amended by section 4 of said chapter 386, and inserting in place  
257 thereof the following subsection (g):-

258 (g) The Attorney General is hereby directed to establish a motor vehicle telematics  
259 system notice which a vehicle manufacturer shall include in the owner's manual provided for its  
260 new motor vehicles beginning with model year 2025 vehicles and which shall include the  
261 following information: (i) an explanation of motor vehicle telematics and its purposes; (ii) a  
262 description summarizing the mechanical data collected, stored, and transmitted by a telematics  
263 system; (iii) the prospective owner's ability to access the vehicle's mechanical data through a  
264 mobile device; and (iv) an owner's right to authorize an independent repair facility to access the  
265 vehicle's mechanical data for vehicle diagnostics, repair, and maintenance purposes.