

SENATE No. 151

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. 151

By Mr. Crighton, a petition (accompanied by bill, Senate, No. 151) 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-Third General Court
(2023-2024)**

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 said section 4 of said chapter 93B, as appearing in the
2 2020 Official Edition, is hereby amended by inserting after paragraph (12) the following six
3 paragraphs: -

4 (13) to require, coerce, or attempt to coerce any dealer by program, policy, standard, or
5 otherwise to: (a) change location of the dealership; (b) construct, renovate, or make any
6 substantial changes, alterations, or remodeling to a dealer’s sales or services facilities; or (c) add
7 to or replace a dealer’s sales or services facilities; provided, however, that nothing herein shall
8 prohibit a manufacturer or distributor from continuing a facility improvement program that is in
9 effect as of the effective date of this paragraph with more than one dealer in the commonwealth
10 or to renewing or modifying such program, or providing lump sum or regularly-scheduled
11 payments to assist a dealer in making a facility improvement, including construction, alteration
12 or remodeling, or installing signage or an image element of the manufacturer or distributor;

13 provided further, that the provisions of the facility improvement program in which such dealer
14 participates be contained in a written agreement voluntarily entered into by the dealer and must
15 be made available, on substantially similar terms, to any of the manufacturer's or distributor's
16 other same line-make dealers in the commonwealth with whom the manufacturer or distributor
17 offers to enter into such an agreement; provided further, that, except as necessary to comply with
18 a health or safety law or to comply with a technology requirement which is necessary to sell or
19 service a motor vehicle that the motor vehicle dealer is authorized or licensed by the
20 manufacturer or distributor to sell or service, a manufacturer, distributor, or franchisor
21 representative shall not require, coerce, or attempt to coerce a motor vehicle dealer, by program,
22 policy, facility guide, standard or otherwise, to change the location of the dealership, replace, or
23 construct a new dealer facility or substantially alter or remodel an existing dealer facility before
24 the date that is ten years after the date the construction of the new dealer facility or substantial
25 alteration or remodeling at that location was completed regardless of whether a successor dealer
26 has been appointed; provided further, that such construction, alteration or remodeling
27 substantially complied with the manufacturer's or distributor's brand image standards or plans
28 that the manufacturer or distributor provided at the time the construction, alteration, or
29 remodeling was completed.

30 (14) to require a dealer to provide to the franchisor representative, manufacturer or
31 distributor its customer lists, service files, or information about a retail customer unless
32 necessary: (a) for the sale and delivery of a new motor vehicle to a retail buyer; (b) to validate
33 and pay customer or dealer incentives; (c) for reasonable marketing purposes; (d) for warranty
34 reimbursement substantiation under this chapter; or (e) to enable the manufacturer to fulfill
35 safety, recall, or other legal obligations imposed by state or federal law. A manufacturer or

36 distributor shall not share, sell, or transfer to other dealers or third party's customer information
37 obtained from a dealer and not otherwise publicly available unless otherwise agreed to by the
38 originating dealer or unless the franchise has been terminated. Notwithstanding any consent,
39 authorization, release, franchise agreement or other agreement or contract, a manufacturer or
40 distributor, or any third party acting on behalf or through a manufacturer or distributor, having
41 electronic access to consumer or customer data or other information in a computer system
42 utilized by a dealer, or who has otherwise been provided consumer or customer data or
43 information by the dealer, shall fully indemnify and hold harmless the dealer from whom it has
44 acquired the consumer or customer data or other information from all claims, demands, damages,
45 liabilities, costs, and expenses incurred by the dealer, arising out of any alleged or actual data
46 security breaches or other unlawful use of said customer or consumer data or other information
47 by said manufacturer, distributor or third party acting on behalf of same, including, but not
48 limited to, judgments, settlements, fines, penalties, expenses related to the disclosure of security
49 breaches to customers and consumers, and attorneys' fees and expenses arising out of
50 complaints, claims, demands, security breaches, civil or administrative actions, and, to the fullest
51 extent allowable under the law, attorneys' fees and expenses arising from governmental
52 investigations and prosecutions relating to the access, storage, maintenance, use, sharing,
53 disclosure, or retention of the dealer's consumer or customer data or other information, or
54 maintenance or services provided to any computer system utilized by the dealer, by the
55 manufacturer, distributor or third party acting on behalf of or through the manufacturer or
56 distributor.

57 (15) to arbitrarily or unreasonably alter the geographic area of responsibility within which
58 it measures the dealer's performance. A manufacturer or distributor shall give advance notice of

59 any proposed alteration of a dealer's so-called area of responsibility at least 60 days before the
60 effective date of a proposed alteration. Notice shall include an explanation of the basis for the
61 change, and, upon request by such motor vehicle dealer within 30 days of the manufacturers or
62 distributor's notice, the manufacturer or distributor immediately shall provide sufficient
63 supporting documentation. At any time prior to the effective date of such alteration, and after
64 completion of any internal appeal process provided by a manufacturer or distributor, a dealer
65 may protest the proposed alteration pursuant to section 15. Filing of a protest shall mean no
66 alteration is effective until an agreement is reached by the parties, or a court makes a final
67 determination. The court may affirm, deny, or modify the proposed alteration of the dealer's area
68 of responsibility, may enter any other orders necessary to ensure that an alteration of the dealer's
69 area of responsibility is reasonable in light of all the relevant circumstances, and may assess the
70 attorneys' fees and expenses among the parties to the protest as appropriate. A manufacturer or
71 distributor shall not take any adverse action against a dealer as a result of a change to the dealer's
72 area of responsibility for at least 18 months after the effective date of the change.

73 (16) to require a dealer to purchase goods or services from a vendor selected, identified,
74 or designated by a manufacturer or distributor by agreement, program, incentive provision, or
75 otherwise in connection with a dealer expanding, constructing, or significantly modifying its
76 dealership facility without allowing the dealer the option to obtain a good or service of
77 substantially similar quality from a vendor chosen by the dealer and approved by the
78 manufacturer, which approval may not be unreasonably withheld. For purposes of this
79 subdivision, the term "goods" does not include moveable displays, brochures, and promotional
80 materials containing material subject to intellectual property rights of, or parts to be used in
81 repairs under warranty obligations of, a manufacturer or a distributor, or special tools and

82 training as required by the manufacturer or distributor. Nothing under this paragraph shall be
83 construed to (i) allow a dealer or vendor to eliminate or impair a manufacturer's or distributor's
84 intellectual property rights, including trademarks, or (ii) permit a dealer to erect or maintain signs
85 that do not conform to the intellectual property usage guidelines of the manufacturer.

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

96 (18) to require, attempt to require, coerce, or attempt to coerce a motor vehicle dealer to
97 sell exclusively an extended service contract, extended maintenance plan or similar products,
98 including, but not limited to, guaranteed automobile protection or guaranteed asset protection
99 products, offered, endorsed or sponsored by the motor vehicle manufacturer, distributor or
100 franchisor representative by any of the following means: (i) a statement made by the motor
101 vehicle manufacturer, distributor or franchisor representative that failure to sell exclusively an
102 extended service contract, extended maintenance plan or similar products will substantially and
103 adversely impact the dealer; (ii) a provision in a franchise agreement that the dealer sell
104 exclusively an extended service contract, extended maintenance plan or similar product offered,

105 endorsed or sponsored by the motor vehicle manufacturer, distributor or franchisor
106 representative; (iii) measuring the dealer's performance under the franchise based on the sale of
107 extended service contracts, extended maintenance plans or similar products offered, endorsed or
108 sponsored by the motor vehicle manufacturer, distributor or franchisor representative; or (iv)
109 requiring the dealer to exclusively promote the sale of extended service contracts, extended
110 maintenance plans or similar products offered, endorsed or sponsored by the motor vehicle
111 manufacturer, distributor or franchisor representative; provided, however, that nothing in this
112 paragraph shall prohibit a motor vehicle manufacturer, distributor or franchisor representative
113 from providing incentives to a dealer that encourages a voluntary decision to sell exclusively an
114 extended service contract, extended maintenance plan or similar product, including, but not
115 limited to, guaranteed automobile protection or guaranteed asset protection products offered,
116 endorsed or sponsored by the manufacturer, distributor or franchisor; provided, further, that
117 nothing in this paragraph shall require or prohibit a motor vehicle manufacturer, distributor, or
118 franchisor representative from enforcing a requirement that a dealer provide the following notice
119 prior to the sale of the service contract if the service contract is not provided or backed by the
120 motor vehicle manufacturer and the vehicle is of the franchised line-make: "The service contract
121 you are purchasing is not provided or backed by the manufacturer of the vehicle you are
122 purchasing. The manufacturer of this vehicle is not responsible for claims or repairs under this
123 service contract."

124 SECTION 2. Subsection (b) of section 9 of said chapter 93B, as so appearing, is hereby
125 amended by inserting after paragraph (4) the following paragraph: -

126 (5)(i) A manufacturer or distributor shall not require, influence, or attempt to influence a
127 motor vehicle dealer to implement or change the prices for which it sells parts or labor in retail

128 customer repairs. A manufacturer or distributor shall not implement or continue a policy,
129 procedure, or program with any of its dealers in this state for compensation under this section
130 which is inconsistent with this section.

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

136 SECTION 3. Said section 9 of said chapter 93B, as so appearing, is hereby further
137 amended by inserting after subsection (j) the following subsections (k) and (l): -

138 (k) (1) Notwithstanding any provision of a franchise agreement, it shall be a violation of
139 this chapter for a manufacturer, distributor, or franchisor representative, when providing a new
140 motor vehicle to a dealer for offer or sale to the public, to fail to provide to such dealer a written
141 disclosure that may be provided to a potential buyer of the new motor vehicle of each accessory
142 or function of the vehicle that may be initiated, updated, changed, or maintained by the
143 manufacturer, distributor, or franchisor representative through over the air or remote means, and
144 the charge to the customer at the time of sale for such initiation, update, change or maintenance;
145 provided, however, that the manufacturer, distributor, or franchisor representative may comply
146 with this subsection by notifying the dealer that any such information is available on a website or
147 by other digital means.

148 (2) Notwithstanding any provision of a franchise agreement, it shall be a violation of this
149 chapter for a manufacturer, distributor, or franchisor representative to fail to provide reasonable

150 compensation to a dealer for assistance requested by a customer whose vehicle was subjected to
151 an over the air or remote change, repair, or update to any part, system, accessory, or function by
152 the manufacturer, distributor, or franchisor representative and performed at the dealer's
153 dealership in order to satisfy the customer.

154 (l) Notwithstanding any provision of a franchise agreement, it shall be a violation of this
155 chapter for a manufacturer, distributor, or franchisor representative to charge back or otherwise
156 hold liable a franchised motor vehicle dealer for sales incentives or charges, deny vehicle
157 allocation, withhold payments or other things of value for which the dealer is eligible, or take or
158 threaten to take any other adverse action against the dealer, in connection with or as a result of
159 any new motor vehicle sold by the dealer and subsequently exported from the United States;
160 provided, however, that such dealer can demonstrate that after exercising due diligence and
161 acting in good faith such dealer did not know nor reasonably should have known of the
162 purchaser's intention to export the motor vehicle. A franchised motor vehicle dealer which
163 causes a new motor vehicle to be registered in the commonwealth or in a foreign state and causes
164 to be collected the appropriate sales and use tax, or that reasonably relied on a franchisor to
165 complete a sale shall be presumed to have exercised due diligence and acted in good faith. Prior
166 to taking an adverse action against a dealer, including, but not limited to, a chargeback, as a
167 result of an export, a manufacturer or distributor shall provide written notice to the franchised
168 motor vehicle dealer of the adverse action, and, if a chargeback, the specific amount of the
169 chargeback, and the vehicle or vehicles at issue. A dealer shall not be liable under this subsection
170 for the delivery of any vehicle sold through a franchisor's fleet program where the sale or lease
171 was not initiated or negotiated by the dealer and dealer's function was solely to provide delivery
172 on behalf of the manufacturer or distributor.

173 SECTION 4. Section 15 of said chapter 93B, as so appearing, is hereby amended by
174 striking out subsection (a) and inserting in place thereof the following subsection: -

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