SENATE DOCKET, NO. 1036 FILED ON: 1/18/2023

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:	DISTRICT/ADDRESS:
Brendan P. Crighton	*Third Essex*

SENATE DOCKET, NO. 1036 FILED ON: 1/18/2023

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:

SECTION 1. Subsection (c) of said section 4 of said chapter 93B, as appearing in the 2020 Official Edition, is hereby amended by inserting after paragraph (12) the following six paragraphs: -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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