

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1197

A bill to amend 1981 PA 118, entitled

"An act to regulate motor vehicle manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate dealings between manufacturers and distributors or wholesalers and their dealers; to regulate dealings between manufacturers, distributors, wholesalers, dealers, and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal certain acts and parts of acts,"

by amending section 14 (MCL 445.1574), as amended by 1998 PA 456.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 14. (1) A manufacturer, importer, or distributor shall
2 not do any of the following:

3 (a) Adopt, change, establish, or implement a plan or system
4 for the allocation and distribution of new motor vehicles to new
5 motor vehicle dealers that is arbitrary or capricious, or modify
6 an existing plan or system that causes the plan or system to be
7 arbitrary or capricious.

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1 (b) Fail or refuse to advise or disclose to any new motor
2 vehicle dealer having a dealer agreement, upon written request
3 therefore, the basis upon which new motor vehicles of the same
4 line make are allocated or distributed to new motor vehicle deal-
5 ers in the state and the basis upon which the current allocation
6 or distribution is being made or will be made to that new motor
7 vehicle dealer.

8 (c) Refuse to deliver in reasonable quantities and within a
9 reasonable time after receipt of a dealer's order, to any new
10 motor vehicle dealer having a dealer agreement for the retail
11 sale of new motor vehicles sold or distributed by a manufacturer
12 or distributor any such motor vehicles as are covered by such
13 dealer agreement specifically publicly advertised in the state by
14 the manufacturer or distributor to be available for immediate
15 delivery. However, the failure to deliver any motor vehicle
16 shall not be considered a violation of this act if the failure is
17 due to an act of God, a work stoppage or delay due to a strike or
18 labor difficulty, a shortage of materials, a lack of manufactur-
19 ing capacity, a freight embargo or other cause over which the
20 manufacturer or distributor has no control. If the manufacturer
21 or distributor requires a new motor vehicle dealer to purchase
22 essential service tools with a purchase price in the aggregate of
23 more than \$7,500.00 in order to receive a specific model vehicle,
24 the manufacturer or distributor shall upon written request pro-
25 vide the dealer with a good faith estimate in writing of the
26 number of vehicles of that specific model the dealer will be

1 allocated during that model year in which the tool is required to
2 be purchased.

3 (d) Increase prices of new motor vehicles which the new
4 motor vehicle dealer had ordered and then eventually delivered
5 to, the same retail consumer for whom the vehicle was ordered, if
6 the order was made prior to the dealer's receipt of the written
7 official price increase notification. A sales contract signed by
8 a private retail consumer and binding on the dealer shall consti-
9 tute evidence of each order. In the event of manufacturer or
10 distributor price reductions or cash rebates, the amount of any
11 reduction or rebate received by a dealer shall be passed on to
12 the private retail consumer by the dealer. Any price reduction
13 in excess of \$5.00 shall apply to all vehicles in the dealer's
14 inventory which were subject to the price reduction. A price
15 difference applicable to new model or series motor vehicles at
16 the time of the introduction of the new models or the series
17 shall not be considered a price increase or price decrease. This
18 subdivision shall not apply to price changes caused by ANY OF the
19 following:

20 (i) The addition to a motor vehicle of required or optional
21 equipment pursuant to state or federal law.

22 (ii) In the case of foreign made vehicles or components,
23 revaluation of the United States dollar.

24 (iii) Any increase in transportation charges due to an
25 increase in rates charged by a common carrier and transporters.

26 (e) Offer any refunds or other types of inducements to any
27 dealer for the purchase of new motor vehicles of a certain line

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1 make to be sold to this state or any political subdivision of
2 this state without making the same offer available upon request
3 to all other new motor vehicle dealers of the same line make.

4 (f) Release to an outside party, except under subpoena or in
5 an administrative or judicial proceeding to which the new motor
6 vehicle dealer or the manufacturer or distributor are parties,
7 any business, financial, or personal information which has been
8 provided by the dealer to the manufacturer or distributor, unless
9 the new motor vehicle dealer gives his or her written consent.

10 (g) Deny a new motor vehicle dealer the right to associate
11 with another new motor vehicle dealer for any lawful purpose.

12 ~~(h) Establish a dealership which would unfairly compete~~
13 ~~with a new motor vehicle dealer of the same line make operating~~
14 ~~under a dealer agreement with the manufacturer or distributor in~~
15 ~~the relevant market area. A manufacturer or distributor shall~~
16 ~~not be considered to be unfairly competing if the manufacturer or~~
17 ~~distributor is:~~

18 ~~(i) Operating a dealership temporarily for a reasonable~~
19 ~~period.~~

20 ~~(ii) Operating a dealership which is for sale at a reason=~~
21 ~~able price.~~

22 ~~(iii) Operating a dealership with another person who has~~
23 ~~made a significant investment in the dealership and who will~~
24 ~~acquire full ownership of the dealership under reasonable terms~~
25 ~~and conditions.~~

26 (H) DIRECTLY OR INDIRECTLY OWN, OPERATE, OR CONTROL A NEW
27 MOTOR VEHICLE DEALER INCLUDING, BUT NOT LIMITED TO, A NEW MOTOR

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1 VEHICLE DEALER ENGAGED PRIMARILY IN PERFORMING WARRANTY REPAIR
2 SERVICES ON MOTOR VEHICLES PURSUANT TO THE MANUFACTURER'S
3 WARRANTY. THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE
4 FOLLOWING:

5 (i) THE OWNERSHIP, OPERATION, OR CONTROL BY A MANUFACTURER
6 OR DISTRIBUTOR OF A NEW MOTOR VEHICLE DEALER FOR A PERIOD OF NOT
7 MORE THAN 24 MONTHS DURING THE TRANSITION FROM 1 OWNER OR OPERA-
8 TOR TO ANOTHER. THE CIRCUIT COURT MAY EXTEND THE 24-MONTH TIME
9 PERIOD FOR AN ADDITIONAL 12 MONTHS UPON RECEIPT OF AN APPLICATION
10 FROM A MANUFACTURER OR DISTRIBUTOR AND A SHOWING OF GOOD CAUSE.

11 (ii) THE OWNERSHIP, OPERATION, OR CONTROL OF A NEW MOTOR
12 VEHICLE DEALER BY A MANUFACTURER OR DISTRIBUTOR WHILE IT IS BEING
13 SOLD UNDER A BONA FIDE CONTRACT OR PURCHASE OPTION TO THE OPERA-
14 TOR OF THE NEW MOTOR VEHICLE DEALER.

15 (iii) THE DIRECT OR INDIRECT OWNERSHIP BY A MANUFACTURER OF
16 AN ENTITY THAT OWNS, OPERATES, OR CONTROLS A NEW MOTOR VEHICLE
17 DEALER OF THE SAME LINE MAKE FRANCHISED BY THE MANUFACTURER, IF
18 ALL OF THE FOLLOWING CONDITIONS ARE MET:

19 (A) AS OF MAY 1, 2000, THE MANUFACTURER FOR A PERIOD OF NOT
20 LESS THAN 12 MONTHS HAS CONTINUOUSLY OWNED, DIRECTLY OR INDIRECT-
21 LY, 1 OR MORE NEW MOTOR VEHICLE DEALERS IN THIS STATE.

22 (B) ALL OF THE NEW MOTOR VEHICLE DEALERS SELLING THE
23 MANUFACTURER'S MOTOR VEHICLES IN THIS STATE TRADE EXCLUSIVELY IN
24 THE MANUFACTURER'S LINE MAKE.

25 (C) AS OF JANUARY 1, 2000, NOT FEWER THAN 1/2 OF THE NEW
26 MOTOR VEHICLE DEALERS OF THE LINE MAKE WITHIN THIS STATE OWN AND
27 OPERATE 2 OR MORE NEW MOTOR VEHICLE DEALER FACILITIES IN THE

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1 GEOGRAPHIC TERRITORY OR AREA COVERED BY THE FRANCHISE AGREEMENT
2 WITH THE MANUFACTURER.

3 (D) FOR A MANUFACTURER OR ANY ENTITY IN WHICH THE MANUFAC-
4 TURER HAS MORE THAN A 45% OWNERSHIP INTEREST, THE MANUFACTURER OR
5 ENTITY HAS NOT ACQUIRED, OPERATED, OR CONTROLLED A NEW MOTOR
6 VEHICLE DEALER THAT THE MANUFACTURER DID NOT DIRECTLY OR INDI-
7 RECTLY OWN AS OF MAY 1, 2000.

8 (I) SELL ANY NEW MOTOR VEHICLE DIRECTLY TO A RETAIL CUSTOMER
9 OTHER THAN THROUGH ITS FRANCHISED DEALERS, UNLESS THE RETAIL CUS-
10 TOMER IS A NONPROFIT ORGANIZATION OR A FEDERAL, STATE, OR LOCAL
11 GOVERNMENT OR AGENCY. THIS SUBDIVISION DOES NOT PROHIBIT A MANU-
12 FACTURER FROM PROVIDING INFORMATION TO A CONSUMER FOR THE PURPOSE
13 OF MARKETING OR FACILITATING THE SALE OF NEW MOTOR VEHICLES OR
14 FROM ESTABLISHING A PROGRAM TO SELL OR OFFER TO SELL NEW MOTOR
15 VEHICLES THROUGH THE MANUFACTURER'S NEW MOTOR VEHICLE DEALERS.

16 (J) ~~(i)~~ Prevent or attempt to prevent by contract or oth-
17 erwise any new motor vehicle dealer from changing the executive
18 management of a new motor vehicle dealer unless the manufacturer
19 or distributor, having the burden of proof, can show that the
20 change of executive management will result in executive manage-
21 ment by a person or persons who are not of good moral character
22 or who do not meet reasonable, preexisting, and equitably applied
23 standards of the manufacturer or distributor. If a manufacturer
24 or distributor rejects a proposed change in the executive manage-
25 ment, the manufacturer or distributor shall give written notice
26 of its reasons to the dealer within 60 days after receiving
27 written notice from the dealer of the proposed change and all

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1 related information reasonably requested by the manufacturer or
2 distributor, or the change in executive management shall be con-
3 sidered approved.

4 (K) ~~(j)~~ Unreasonably withhold consent to the sale, trans-
5 fer, or exchange of the dealership to a qualified buyer capable
6 of being licensed as a new motor vehicle dealer in this state.

7 (l) ~~(k)~~ Fail to respond in writing to a request for con-
8 sent to a sale, transfer, or exchange of a dealership within 60
9 days after receipt of a written application from the new motor
10 vehicle dealer on the forms generally utilized by the manufac-
11 turer or distributor for such purpose and containing the informa-
12 tion required therein. Failure to respond to the request within
13 the 60 days shall be considered consent.

14 (M) ~~(l)~~ Unfairly prevent a new motor vehicle dealer from
15 receiving reasonable compensation for the value of the new motor
16 vehicle dealership.

17 (2) A manufacturer or distributor, either directly or
18 through any subsidiary, shall not terminate, cancel, fail to
19 renew, or discontinue any lease of the new motor vehicle dealer's
20 established place of business except for a material breach of the
21 lease.

22 Enacting section 1. This amendatory act does not take
23 effect unless House Bill No. 5554 of the 90th Legislature is
24 enacted into law.