

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 sections 4 and 14 (MCL 445.1564 and 445.1574),
section 14 as amended by 1998 PA 456.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) "Good faith" means honesty in fact and the
2 observation of reasonable commercial standards of fair dealing in
3 the trade, as defined and interpreted under section 2103 of ~~Act~~
4 ~~No. 174 of the Public Acts of 1962, being section 440.2103 of the~~
5 ~~Michigan Compiled Laws~~ THE UNIFORM COMMERCIAL CODE, 1962 PA 174,
6 MCL 440.2103.

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1 (2) "Manufacturer" means any person who manufactures or
2 assembles new motor vehicles; or any distributor, factory branch,
3 or factory representative.

4 (3) "Motor vehicle" means that term as defined in section 33
5 of ~~Act No. 300 of the Public Acts of 1949, being section 257.33~~
6 ~~of the Michigan Compiled Laws~~ THE MICHIGAN VEHICLE CODE, 1949
7 PA 300, MCL 257.33, but does not include a bus, tractor, or farm
8 equipment.

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

11 (a) Adopt, change, establish, or implement a plan or system
12 for the allocation and distribution of new motor vehicles to new
13 motor vehicle dealers that is arbitrary or capricious, or modify
14 an existing plan or system that causes the plan or system to be
15 arbitrary or capricious.

16 (b) Fail or refuse to advise or disclose to any new motor
17 vehicle dealer having a dealer agreement, upon written request
18 therefore, the basis upon which new motor vehicles of the same
19 line make are allocated or distributed to new motor vehicle deal-
20 ers in the state and the basis upon which the current allocation
21 or distribution is being made or will be made to that new motor
22 vehicle dealer.

23 (c) Refuse to deliver in reasonable quantities and within a
24 reasonable time after receipt of a dealer's order, to any new
25 motor vehicle dealer having a dealer agreement for the retail
26 sale of new motor vehicles sold or distributed by a manufacturer
27 or distributor any such motor vehicles as are covered by such

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1 dealer agreement specifically publicly advertised in the state by
2 the manufacturer or distributor to be available for immediate
3 delivery. However, the failure to deliver any motor vehicle
4 shall not be considered a violation of this act if the failure is
5 due to an act of God, a work stoppage or delay due to a strike or
6 labor difficulty, a shortage of materials, a lack of manufactur-
7 ing capacity, a freight embargo or other cause over which the
8 manufacturer or distributor has no control. If the manufacturer
9 or distributor requires a new motor vehicle dealer to purchase
10 essential service tools with a purchase price in the aggregate of
11 more than \$7,500.00 in order to receive a specific model vehicle,
12 the manufacturer or distributor shall upon written request pro-
13 vide the dealer with a good faith estimate in writing of the
14 number of vehicles of that specific model the dealer will be
15 allocated during that model year in which the tool is required to
16 be purchased.

17 (d) Increase prices of new motor vehicles which the new
18 motor vehicle dealer had ordered and then eventually delivered
19 to, the same retail consumer for whom the vehicle was ordered, if
20 the order was made prior to the dealer's receipt of the written
21 official price increase notification. A sales contract signed by
22 a private retail consumer and binding on the dealer shall consti-
23 tute evidence of each order. In the event of manufacturer or
24 distributor price reductions or cash rebates, the amount of any
25 reduction or rebate received by a dealer shall be passed on to
26 the private retail consumer by the dealer. Any price reduction
27 in excess of \$5.00 shall apply to all vehicles in the dealer's

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1 inventory which were subject to the price reduction. A price
2 difference applicable to new model or series motor vehicles at
3 the time of the introduction of the new models or the series
4 shall not be considered a price increase or price decrease. This
5 subdivision shall not apply to price changes caused by ANY OF the
6 following:

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

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

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

13 (e) Offer any refunds or other types of inducements to any
14 dealer for the purchase of new motor vehicles of a certain line
15 make to be sold to this state or any political subdivision of
16 this state without making the same offer available upon request
17 to all other new motor vehicle dealers of the same line make.

18 (f) Release to an outside party, except under subpoena or in
19 an administrative or judicial proceeding to which the new motor
20 vehicle dealer or the manufacturer or distributor are parties,
21 any business, financial, or personal information which has been
22 provided by the dealer to the manufacturer or distributor, unless
23 the new motor vehicle dealer gives his or her written consent.

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

26 ~~(h) Establish a dealership which would unfairly compete~~
27 ~~with a new motor vehicle dealer of the same line make operating~~

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1 ~~under a dealer agreement with the manufacturer or distributor in~~
2 ~~the relevant market area. A manufacturer or distributor shall~~
3 ~~not be considered to be unfairly competing if the manufacturer or~~
4 ~~distributor is:~~

5 ~~(i) Operating a dealership temporarily for a reasonable~~
6 ~~period.~~

7 ~~(ii) Operating a dealership which is for sale at a reason-~~
8 ~~able price.~~

9 ~~(iii) Operating a dealership with another person who has~~
10 ~~made a significant investment in the dealership and who will~~
11 ~~acquire full ownership of the dealership under reasonable terms~~
12 ~~and conditions.~~

13 (H) DIRECTLY OR INDIRECTLY OWN, OPERATE, OR CONTROL A NEW
14 MOTOR VEHICLE DEALER INCLUDING, BUT NOT LIMITED TO, A NEW MOTOR
15 VEHICLE DEALER ENGAGED PRIMARILY IN PERFORMING WARRANTY REPAIR
16 SERVICES ON MOTOR VEHICLES PURSUANT TO THE MANUFACTURER'S
17 WARRANTY. THIS SUBDIVISION DOES NOT APPLY TO ANY OF THE
18 FOLLOWING:

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

25 (ii) THE OWNERSHIP, OPERATION, OR CONTROL OF A NEW MOTOR
26 VEHICLE DEALER BY A MANUFACTURER OR DISTRIBUTOR WHILE IT IS BEING

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1 SOLD UNDER A BONA FIDE CONTRACT OR PURCHASE OPTION TO THE
2 OPERATOR OF THE NEW MOTOR VEHICLE DEALER.

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

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

10 (B) ALL OF THE NEW MOTOR VEHICLE DEALERS SELLING THE
11 MANUFACTURER'S MOTOR VEHICLES IN THIS STATE TRADE EXCLUSIVELY IN
12 THE MANUFACTURER'S LINE MAKE.

13 (C) AS OF JANUARY 1, 2000, NOT FEWER THAN 1/2 OF THE NEW
14 MOTOR VEHICLE DEALERS OF THE LINE MAKE WITHIN THIS STATE OWN AND
15 OPERATE 2 OR MORE NEW MOTOR VEHICLE DEALER FACILITIES IN THE GEO-
16 GRAPHIC TERRITORY OR AREA COVERED BY THE FRANCHISE AGREEMENT WITH
17 THE MANUFACTURER.

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

23 (I) SELL ANY NEW MOTOR VEHICLE DIRECTLY TO A RETAIL CUSTOMER
24 OTHER THAN THROUGH ITS FRANCHISED DEALERS, UNLESS THE RETAIL CUS-
25 TOMER IS A NONPROFIT ORGANIZATION OR A FEDERAL, STATE, OR LOCAL
26 GOVERNMENT OR AGENCY. THIS SUBDIVISION DOES NOT PROHIBIT A
27 MANUFACTURER FROM PROVIDING INFORMATION TO A CONSUMER FOR THE

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1 PURPOSE OF MARKETING OR FACILITATING THE SALE OF NEW MOTOR
2 VEHICLES OR FROM ESTABLISHING A PROGRAM TO SELL OR OFFER TO SELL
3 NEW MOTOR VEHICLES THROUGH THE MANUFACTURER'S NEW MOTOR VEHICLE
4 DEALERS.

5 (J) ~~(i)~~ Prevent or attempt to prevent by contract or oth-
6 erwise any new motor vehicle dealer from changing the executive
7 management of a new motor vehicle dealer unless the manufacturer
8 or distributor, having the burden of proof, can show that the
9 change of executive management will result in executive manage-
10 ment by a person or persons who are not of good moral character
11 or who do not meet reasonable, preexisting, and equitably applied
12 standards of the manufacturer or distributor. If a manufacturer
13 or distributor rejects a proposed change in the executive manage-
14 ment, the manufacturer or distributor shall give written notice
15 of its reasons to the dealer within 60 days after receiving writ-
16 ten notice from the dealer of the proposed change and all related
17 information reasonably requested by the manufacturer or distribu-
18 tor, or the change in executive management shall be considered
19 approved.

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

23 (l) ~~(k)~~ Fail to respond in writing to a request for con-
24 sent to a sale, transfer, or exchange of a dealership within 60
25 days after receipt of a written application from the new motor
26 vehicle dealer on the forms generally utilized by the
27 manufacturer or distributor for such purpose and containing the

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1 information required therein. Failure to respond to the request
2 within the 60 days shall be considered consent.

3 (M) ~~(t)~~ Unfairly prevent a new motor vehicle dealer from
4 receiving reasonable compensation for the value of the new motor
5 vehicle dealership.

6 (2) A manufacturer or distributor, either directly or
7 through any subsidiary, shall not terminate, cancel, fail to
8 renew, or discontinue any lease of the new motor vehicle dealer's
9 established place of business except for a material breach of the
10 lease.