

SENATE BILL No. 1197

April 4, 2000, Introduced by Senators DUNASKISS, YOUNG, BULLARD, HAMMERSTROM, NORTH, BENNETT, JOHNSON, MC COTTER, GOSCHKA, HART and LELAND and referred to the Committee on Transportation and Tourism.

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.

1 (2) "Manufacturer" means any person who manufactures or
2 assembles new motor vehicles; or any distributor, factory branch,
3 or factory representative. MANUFACTURER INCLUDES A PERSON AFFIL-
4 IATED WITH A MANUFACTURER, AND ANY PERSON WHO DIRECTLY, OR INDI-
5 RECTLY THROUGH AN INTERMEDIARY, IS CONTROLLED BY OR IS UNDER
6 COMMON CONTROL WITH A MANUFACTURER.

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

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

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

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

26 (c) Refuse to deliver in reasonable quantities and within a
27 reasonable time after receipt of a dealer's order, to any new

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

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

1 reduction or rebate received by a dealer shall be passed on to
2 the private retail consumer by the dealer. Any price reduction
3 in excess of \$5.00 shall apply to all vehicles in the dealer's
4 inventory which were subject to the price reduction. A price
5 difference applicable to new model or series motor vehicles at
6 the time of the introduction of the new models or the series
7 shall not be considered a price increase or price decrease. This
8 subdivision shall not apply to price changes caused by ANY OF the
9 following:

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

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

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

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

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

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

3 ~~(h) Establish a dealership which would unfairly compete~~
4 ~~with a new motor vehicle dealer of the same line make operating~~
5 ~~under a dealer agreement with the manufacturer or distributor in~~
6 ~~the relevant market area. A manufacturer or distributor shall~~
7 ~~not be considered to be unfairly competing if the manufacturer or~~
8 ~~distributor is:~~

9 ~~(i) Operating a dealership temporarily for a reasonable~~
10 ~~period.~~

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

13 ~~(iii) Operating a dealership with another person who has~~
14 ~~made a significant investment in the dealership and who will~~
15 ~~acquire full ownership of the dealership under reasonable terms~~
16 ~~and conditions.~~

17 (H) OWN AN INTEREST IN A DEALERSHIP, OPERATE OR CONTROL A
18 DEALERSHIP, ACT IN THE CAPACITY OF A NEW MOTOR VEHICLE DEALER, OR
19 DIRECTLY OR INDIRECTLY SELL OR OFFER TO SELL A NEW MOTOR VEHICLE
20 TO A PERSON IN THIS STATE OTHER THAN A NEW MOTOR VEHICLE DEALER.

21 THIS SUBDIVISION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

22 (i) THE OPERATION BY A MANUFACTURER OR DISTRIBUTOR OF A
23 DEALERSHIP FOR A PERIOD OF NOT MORE THAN 1 YEAR, DURING THE TRAN-
24 SITION FROM 1 OWNER OR OPERATOR TO ANOTHER.

25 (ii) THE OWNERSHIP OR CONTROL OF A DEALERSHIP BY A MANUFAC-
26 TURER OR DISTRIBUTOR WHILE THE DEALERSHIP IS BEING SOLD UNDER A

1 BONA FIDE CONTRACT OR PURCHASE OPTION TO THE OPERATOR OF THE
2 DEALERSHIP.

3 (I) ENGAGE IN BUSINESS AS A DEALER OR MANAGE, CONTROL, OPER-
4 ATE, OR DIRECTLY OR INDIRECTLY OWN ANY INTEREST IN A DEALERSHIP,
5 IF THE PRIMARY BUSINESS OF THE DEALER OR DEALERSHIP IS TO PERFORM
6 REPAIR SERVICES ON NEW MOTOR VEHICLES OTHER THAN MOTOR HOMES PUR-
7 SUANT TO A MANUFACTURER'S OR FRANCHISOR'S WARRANTY.

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

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

26 (L) ~~(k)~~ Fail to respond in writing to a request for
27 consent to a sale, transfer, or exchange of a dealership within

1 60 days after receipt of a written application from the new motor
2 vehicle dealer on the forms generally utilized by the manufac-
3 turer or distributor for such purpose and containing the informa-
4 tion required therein. Failure to respond to the request within
5 the 60 days shall be considered consent.

6 (M) ~~(t)~~ Unfairly prevent a new motor vehicle dealer from
7 receiving reasonable compensation for the value of the new motor
8 vehicle dealership.

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