

HOUSE BILL No. 6100

April 29, 2010, Introduced by Reps. Roy Schmidt, Gregory, Byrum, Kandrevas, Caul, Wayne Schmidt, Young, Mayes, Melton, Hildenbrand, Walsh, Leland, Durhal, Lemmons, Slezak, McDowell, Terry Brown, Spade, LeBlanc, Johnson, Huckleberry, Haase, Corriveau, Scripps, Robert Jones, Segal, Dean, Switalski, Haugh, Gonzales, Womack, Meadows, Griffin, Miller, Rocca, Byrnes, Neumann, Daley, Kennedy, Donigan, Stanley, Bledsoe, Liss, Ebli, Nerat, Sheltroun, Espinoza, Lahti, Constan, Slavens, Roberts, Warren, Polidori, Lindberg, Bauer, Stamas, Moore, Crawford, Horn, Pavlov, Green, Opsommer, Denby, Tyler, Bolger, Agema, Meekhof, Haines, Pearce, Haveman, Paul Scott, Lund, Booher, Rogers, Kowall, Ball, Hansen, Schuitmaker, Knollenberg, Proos, Valentine and Smith and referred to the Committee on Regulatory Reform.

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 14, 15, 17, and 20 (MCL 445.1574, 445.1575, 445.1577, and 445.1580), section 14 as amended by 2000 PA 239 and section 17 as amended by 1983 PA 188, and by adding sections 14a and 14b.

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:

1 (a) Adopt, change, establish, or implement a plan or system
 2 for the allocation and distribution of new motor vehicles to new
 3 motor vehicle dealers that is arbitrary or capricious **OR BASED ON**
 4 **UNREASONABLE SALES AND SERVICE STANDARDS**, or modify an existing
 5 plan or system that causes the plan or system to be arbitrary or
 6 capricious **OR BASED ON UNREASONABLE SALES AND SERVICE STANDARDS**.

7 (b) ~~Fail~~ **IF REQUESTED IN WRITING BY A NEW MOTOR VEHICLE**
 8 **DEALER, FAIL** or refuse to advise or disclose to ~~any new motor~~
 9 ~~vehicle dealer having a dealer agreement, upon written request~~
 10 ~~therefore,~~ **THE DEALER** the basis ~~upon~~ **ON** which new motor vehicles of
 11 the same line make are allocated or distributed to new motor
 12 vehicle dealers in the state and the basis ~~upon~~ **ON** which the
 13 current allocation or distribution is being made or will be made to
 14 that new motor vehicle dealer.

15 (c) Refuse to deliver **TO A NEW MOTOR VEHICLE DEALER** in
 16 reasonable quantities and within a reasonable time after receipt of
 17 ~~a~~ **THE** dealer's order, ~~to any new motor vehicle dealer having a~~
 18 ~~dealer agreement for the retail sale of new motor vehicles sold or~~
 19 ~~distributed by a manufacturer or distributor any such~~ **NEW** motor
 20 vehicles ~~as~~ **THAT** are covered by such ~~THE~~ dealer agreement **AND**
 21 specifically publicly advertised in the state by the manufacturer
 22 ~~or distributor to be~~ **AS** available for immediate delivery. However,
 23 the failure to deliver any motor vehicle ~~shall not be~~ **IS NOT**
 24 considered a violation of this act if the failure is due to an act
 25 of God, a work stoppage or delay due to a strike or labor
 26 difficulty, a shortage of materials, a lack of manufacturing
 27 capacity, a freight embargo, or other cause over which the

1 manufacturer ~~or distributor~~ has no control. If ~~the~~ **A** manufacturer
 2 ~~or distributor~~ requires a new motor vehicle dealer to purchase
 3 essential service tools with a purchase price in the aggregate of
 4 more than \$7,500.00 in order to receive a specific model **OF**
 5 vehicle, the manufacturer ~~or distributor~~ shall ~~upon~~ **ON** written
 6 request provide the dealer with a good faith estimate in writing of
 7 the number of vehicles of that specific model the dealer will be
 8 allocated ~~during that~~ **IN THE** model year in which **THE DEALER IS**
 9 **REQUIRED TO PURCHASE** the tool. ~~is required to be purchased.~~

10 (d) Increase ~~prices of~~ **THE PRICE OF A** new motor vehicles which
 11 **VEHICLE THAT** the new motor vehicle dealer had ordered, and then
 12 eventually delivered to, the same retail consumer for whom the
 13 vehicle was ordered, if the order was made ~~prior to~~ **BEFORE** the
 14 dealer's receipt of ~~the~~ **A** written official price increase
 15 notification. A sales contract signed by a private retail consumer
 16 and binding on the dealer ~~shall constitute~~ **CONSTITUTES** evidence of
 17 each **A VEHICLE** order. In the event of manufacturer ~~or distributor~~
 18 price reductions or cash rebates, the **DEALER SHALL PASS ON THE**
 19 amount of any reduction or rebate received by a ~~THE~~ dealer ~~shall be~~
 20 ~~passed on to~~ the private retail consumer. ~~by the dealer.~~ Any price
 21 reduction in excess of \$5.00 shall apply to all vehicles in the
 22 dealer's inventory ~~which~~ **THAT** were subject to the price reduction.
 23 A price difference applicable to new model or series motor vehicles
 24 at the time of the introduction of the new models or the series
 25 ~~shall not be~~ **IS NOT** considered a price increase or price decrease.
 26 This subdivision ~~shall~~ **DOES** not apply to price changes caused by
 27 any of the following:

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

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

5 (iii) Any increase in transportation charges due to an increase
6 in rates charged by a common carrier ~~and transporters~~ **OR**
7 **TRANSPORTER.**

8 (e) Offer any ~~refunds or other types of inducements~~ **OF THE**
9 **FOLLOWING** to any ~~dealer for the purchase of new motor vehicles of a~~
10 ~~certain~~ **NEW MOTOR VEHICLE DEALER OF A SPECIFIC** line make ~~to be sold~~
11 ~~to this state or any political subdivision of this state without~~
12 making the same offer available ~~upon request~~ to all other new motor
13 vehicle dealers of the same line make: -

14 (i) **ANY SPECIFIC MODEL OR SERIES OF NEW MOTOR VEHICLES**
15 **MANUFACTURED FOR THAT LINE MAKE.**

16 (ii) **ANY INCENTIVES, REBATES, BONUSES, PROMOTIONAL ITEMS, OR**
17 **OTHER SIMILAR BENEFITS PAYABLE TO THE NEW MOTOR VEHICLE DEALER FOR**
18 **SELLING NEW MOTOR VEHICLES OR PURCHASING NEW MOTOR VEHICLES FROM**
19 **THE MANUFACTURER.**

20 (iii) **ANY CONSUMER REBATES, VEHICLE PRICE REDUCTIONS, OR**
21 **INTEREST RATE REDUCTIONS OR OTHER CHANGES TO FINANCE TERMS THAT**
22 **BENEFIT THE CONSUMER.**

23 (iv) **ANY PROGRAM THAT PROVIDES MARKETING AND SALES ASSISTANCE**
24 **TO NEW MOTOR VEHICLE DEALERS, INCLUDING, BUT NOT LIMITED TO,**
25 **INTERNET LISTINGS, SALES LEADS, WARRANTY POLICY ADJUSTMENTS,**
26 **MARKETING PROGRAMS, AND DEALER RECOGNITION PROGRAMS.**

27 (f) Release to an outside party, except under subpoena or in

1 an administrative or judicial proceeding to which the new motor
2 vehicle dealer or the manufacturer ~~or distributor~~ are parties, any
3 business, financial, or personal information ~~which~~ **THAT** has been
4 provided by the dealer to the manufacturer, ~~or distributor~~, unless
5 the new motor vehicle dealer gives ~~his or her~~ written consent.

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

8 (h) Directly or indirectly own, operate, or control a new
9 motor vehicle dealer, including, but not limited to, a new motor
10 vehicle dealer engaged primarily in performing warranty repair
11 services on motor vehicles pursuant to the manufacturer's warranty,
12 **OR A USED MOTOR VEHICLE DEALER**. This subdivision does not apply to
13 any of the following:

14 (i) The ownership, operation, or control by a manufacturer ~~or~~
15 ~~distributor~~ of a new motor vehicle dealer for a period of not more
16 than 24 months during the transition from 1 owner or operator to
17 another. The circuit court may extend the 24-month time period for
18 an additional 12 months upon receipt of an application from a
19 manufacturer ~~or distributor~~ and a showing of good cause.

20 (ii) The ownership, operation, or control of a new motor
21 vehicle dealer **OR A USED MOTOR VEHICLE DEALER** by a manufacturer ~~or~~
22 ~~distributor~~ while it is being sold under a bona fide contract or
23 purchase option to the operator of the new motor vehicle dealer **OR**
24 **THE USED MOTOR VEHICLE DEALER**.

25 (iii) The direct or indirect ownership by a manufacturer of an
26 entity that owns, operates, or controls a new motor vehicle dealer
27 of the same line make franchised by the manufacturer, if all of the

1 following conditions are met:

2 (A) As of May 1, 2000, the manufacturer for a period of not
3 less than 12 months has continuously owned, directly or indirectly,
4 1 or more new motor vehicle dealers in this state.

5 (B) All of the new motor vehicle dealers selling the
6 manufacturer's motor vehicles in this state trade exclusively in
7 the manufacturer's line make.

8 (C) As of January 1, 2000, not fewer than 1/2 of the new motor
9 vehicle dealers of the line make within this state own and operate
10 2 or more new motor vehicle dealer facilities in the geographic
11 territory or area covered by the franchise agreement with the
12 manufacturer.

13 (D) For a manufacturer or any entity in which the manufacturer
14 has more than a 45% ownership interest, the manufacturer or entity
15 has not acquired, operated, or controlled a new motor vehicle
16 dealer that the manufacturer did not directly or indirectly own as
17 of May 1, 2000.

18 (i) Sell any new motor vehicle directly to a retail customer
19 other than through its franchised dealers, unless the retail
20 customer is a nonprofit organization or a federal, state, or local
21 government or agency. This subdivision does not prohibit a
22 manufacturer from providing information to a consumer for the
23 purpose of marketing or facilitating the sale of new motor vehicles
24 or from establishing a program to sell or offer to sell new motor
25 vehicles through the manufacturer's new motor vehicle dealers.

26 (j) Prevent or attempt to prevent by contract or otherwise any
27 new motor vehicle dealer from changing the executive management of

1 a new motor vehicle dealer unless the manufacturer, ~~or distributor,~~
2 having the burden of proof, can show that the change of executive
3 management will result in executive management by a person or
4 persons who are not of good moral character or who do not meet
5 reasonable, preexisting, and equitably applied standards of the
6 manufacturer. ~~or distributor.~~ If a manufacturer ~~or distributor~~
7 rejects a proposed change in the executive management, the
8 manufacturer ~~or distributor~~ shall give written notice of its
9 reasons to the dealer within 60 days after receiving written notice
10 from the dealer of the proposed change and all related information
11 reasonably requested by the manufacturer, ~~or distributor,~~ or the
12 change in executive management ~~shall be~~ **IS** considered approved.

13 (k) ~~Unreasonably withhold~~ **WITHHOLD** consent to the sale,
14 transfer, or exchange of ~~the~~ **A NEW MOTOR VEHICLE** dealership to a
15 qualified buyer **THAT IS** capable of being licensed as a new motor
16 vehicle dealer in this state **WITHOUT GOOD CAUSE**.

17 (l) Fail to respond in writing to a request for consent to a
18 sale, transfer, or exchange of a **NEW MOTOR VEHICLE** dealership
19 within 60 days after ~~receipt of~~ **RECEIVING** a written application
20 from the new motor vehicle dealer on the forms generally utilized
21 by the manufacturer ~~or distributor~~ for ~~such~~ **THAT** purpose and
22 containing the information required ~~therein~~ **IN THAT APPLICATION**.
23 Failure to respond to ~~the~~ **A** request **FOR CONSENT** within the ~~60 days~~
24 ~~shall be~~ **60-DAY PERIOD IS** considered consent **TO THE SALE, TRANSFER,**
25 **OR EXCHANGE**.

26 (m) Unfairly prevent a new motor vehicle dealer **THAT SELLS,**
27 **TRANSFERS, OR EXCHANGES A NEW MOTOR VEHICLE DEALERSHIP** from

1 receiving reasonable compensation for the value of the new motor
2 vehicle dealership.

3 (N) OFFER ANY INCENTIVE, REBATE, BONUS, OR SIMILAR BENEFIT
4 THAT IS BASED ON THE SALE OF NEW MOTOR VEHICLES IF THE AMOUNT OF
5 THAT BENEFIT PER VEHICLE SOLD INCREASES IF THE DEALER MEETS A
6 PERFORMANCE STANDARD ESTABLISHED BY THE MANUFACTURER.

7 (O) UNLESS THE MANUFACTURER ENTERS INTO A WRITTEN AGREEMENT
8 WITH THE NEW MOTOR VEHICLE DEALER THAT CLEARLY STATES THE AMOUNT OF
9 THE INCENTIVE PAYMENTS AND THE PERIOD OF TIME DURING WHICH THE
10 INCENTIVE PAYMENTS ARE PAID, OFFER INCENTIVE PAYMENTS TO A NEW
11 MOTOR VEHICLE DEALER IN CONSIDERATION FOR A NEW MOTOR VEHICLE
12 DEALER'S PROMISE TO DO ANY OF THE FOLLOWING:

13 (i) MAKE MATERIAL ALTERATIONS TO ANY FACILITIES AT THE DEALER'S
14 PLACE OF BUSINESS.

15 (ii) CONSTRUCT NEW FACILITIES FOR THE CONDUCT OF THE BUSINESS
16 OF THE DEALERSHIP.

17 (P) REQUIRE UNREASONABLE IMPROVEMENTS TO A FACILITY AS A
18 CONDITION TO ENTERING INTO OR RENEWING A DEALER AGREEMENT.

19 (Q) AUTHORIZE A MOTOR VEHICLE SERVICE AND REPAIR FACILITY TO
20 PERFORM MOTOR VEHICLE SERVICE AND WARRANTY WORK.

21 (R) OWN A MOTOR VEHICLE SERVICE AND REPAIR FACILITY.

22 (S) ENGAGE IN ANY CONDUCT THAT IS CAPRICIOUS, IS NOT IN GOOD
23 FAITH, OR IS UNCONSCIONABLE, AND THAT CAUSES DAMAGE TO A NEW MOTOR
24 VEHICLE DEALER.

25 (T) IMPOSE UNREASONABLE STANDARDS OF PERFORMANCE ON A NEW
26 MOTOR VEHICLE DEALER OR REQUIRE, ATTEMPT TO REQUIRE, COERCE, OR
27 ATTEMPT TO COERCE A NEW MOTOR VEHICLE DEALER TO ADHERE TO

1 PERFORMANCE STANDARDS THAT ARE NOT APPLIED UNIFORMLY TO OTHER
2 SIMILARLY SITUATED NEW MOTOR VEHICLE DEALERS.

3 (U) USE OR CONSIDER THE PERFORMANCE OF A NEW MOTOR VEHICLE
4 DEALER IN SELLING THE MANUFACTURER'S VEHICLES OR THE NEW MOTOR
5 VEHICLE DEALER'S ABILITY TO SATISFY ANY MINIMUM SALES OR MARKET
6 SHARE QUOTA OR RESPONSIBILITY RELATING TO THE SALE OF THE NEW MOTOR
7 VEHICLES IN DETERMINING ANY OF THE FOLLOWING:

8 (i) THE NEW MOTOR VEHICLE DEALER'S ELIGIBILITY TO PURCHASE
9 PROGRAM, CERTIFIED, OR OTHER USED MOTOR VEHICLES FROM THE
10 MANUFACTURER.

11 (ii) THE VOLUME, TYPE, OR MODEL OF PROGRAM, CERTIFIED, OR OTHER
12 USED MOTOR VEHICLES THAT A NEW MOTOR VEHICLE DEALER IS ELIGIBLE TO
13 PURCHASE FROM THE MANUFACTURER.

14 (iii) THE PRICE OF ANY PROGRAM, CERTIFIED, OR OTHER USED MOTOR
15 VEHICLE THAT THE NEW MOTOR VEHICLE DEALER PURCHASES FROM THE
16 MANUFACTURER.

17 (iv) THE AVAILABILITY OR AMOUNT OF ANY DISCOUNT, CREDIT,
18 REBATE, OR SALES INCENTIVE THAT THE NEW MOTOR VEHICLE DEALER IS
19 ELIGIBLE TO RECEIVE FROM THE MANUFACTURER IN CONNECTION WITH ANY
20 PROGRAM, CERTIFIED, OR OTHER USED MOTOR VEHICLE OFFERED FOR SALE BY
21 THE MANUFACTURER.

22 (v) REQUIRE THAT A NEW MOTOR VEHICLE DEALER ALLOW A PERSON,
23 OTHER THAN A PERSON THAT ADMINISTERS THE MANUFACTURER'S WARRANTY
24 AND NOTICE OBLIGATIONS, TO USE CUSTOMER INFORMATION OBTAINED BY THE
25 NEW MOTOR VEHICLE DEALER. UNLESS THE CUSTOMER INFORMATION IS
26 OBTAINED FROM THE MANUFACTURER, CUSTOMER INFORMATION OBTAINED BY A
27 NEW MOTOR VEHICLE DEALER IS OWNED BY THE NEW MOTOR VEHICLE DEALER.

1 (V) ESTABLISH A PERFORMANCE STANDARD OR PROGRAM FOR MEASURING
2 NEW MOTOR VEHICLE DEALER PERFORMANCE THAT MAY HAVE A MATERIAL
3 IMPACT ON A NEW MOTOR VEHICLE DEALER THAT IS NOT FAIR, REASONABLE,
4 AND EQUITABLE. WITHIN 5 DAYS AFTER RECEIVING A REQUEST FROM THE NEW
5 MOTOR VEHICLE DEALER, A MANUFACTURER SHALL PROVIDE A NEW MOTOR
6 VEHICLE DEALER WITH A WRITTEN DESCRIPTION OF HOW A PERFORMANCE
7 STANDARD OR PROGRAM IS DESIGNED AND ALL RELEVANT INFORMATION USED
8 IN THE APPLICATION OF THE PERFORMANCE STANDARD OR PROGRAM TO THAT
9 NEW MOTOR VEHICLE DEALER.

10 (W) IF A NEW MOTOR VEHICLE DEALER SOLD OR LEASED A NEW MOTOR
11 VEHICLE TO A CUSTOMER THAT EXPORTED THE MOTOR VEHICLE TO A FOREIGN
12 COUNTRY OR RESOLD THE MOTOR VEHICLE, REFUSE TO ALLOCATE, SELL, OR
13 DELIVER NEW MOTOR VEHICLES TO THE DEALER; CHARGE BACK OR WITHHOLD
14 PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE DEALER IS OTHERWISE
15 ELIGIBLE UNDER A SALES PROMOTION, PROGRAM, OR CONTEST; PREVENT A
16 NEW MOTOR VEHICLE DEALER FROM PARTICIPATING IN ANY SALES PROMOTION,
17 PROGRAM, OR CONTEST; OR TAKE OR THREATEN TO TAKE ANY OTHER ADVERSE
18 ACTION AGAINST A NEW MOTOR VEHICLE DEALER, INCLUDING, BUT NOT
19 LIMITED TO, REDUCING VEHICLE ALLOCATIONS OR TERMINATING OR
20 THREATENING TO TERMINATE A DEALER AGREEMENT, UNLESS THE
21 MANUFACTURER PROVES THAT THE NEW MOTOR VEHICLE DEALER HAD ACTUAL
22 KNOWLEDGE THAT THE CUSTOMER INTENDED TO EXPORT OR RESELL THE MOTOR
23 VEHICLE. IN AN ACTION BY A NEW MOTOR VEHICLE DEALER FOR A VIOLATION
24 OF THIS SUBDIVISION, THERE IS A REBUTTABLE PRESUMPTION THAT A NEW
25 MOTOR VEHICLE DEALER DOES NOT HAVE ACTUAL KNOWLEDGE OF ITS
26 CUSTOMER'S INTENT TO EXPORT OR RESELL A MOTOR VEHICLE, AND THE
27 MANUFACTURER BEARS THE BURDEN OF REBUTTING THAT PRESUMPTION.

1 (X) IF A NEW MOTOR VEHICLE DEALER HAS A DEALER AGREEMENT FOR A
2 COMPETING LINE MAKE OF NEW MOTOR VEHICLES, REQUIRE OR OTHERWISE
3 COERCE THE NEW MOTOR VEHICLE DEALER TO EXCLUDE OR REMOVE THE SALE
4 OR SERVICING OF NEW MOTOR VEHICLES OF THAT COMPETING LINE MAKE FROM
5 THE NEW MOTOR VEHICLE DEALER'S PLACE OF BUSINESS.

6 (Y) PROHIBIT A NEW MOTOR VEHICLE DEALER FROM LOCATING SALES OR
7 SERVICE ACTIVITIES FOR A COMPETING LINE MAKE ON, OR RELOCATING
8 SALES OR SERVICE ACTIVITIES FOR A COMPETING LINE MAKE TO, AN
9 EXISTING PLACE OF BUSINESS OF THE DEALER OR ANY OTHER PLACE OF
10 BUSINESS FROM WHICH THE DEALER SELLS OR SERVICES A LINE MAKE OF THE
11 MANUFACTURER, IF THE NEW MOTOR VEHICLE DEALER HAS PROVIDED WRITTEN
12 NOTICE TO THE MANUFACTURER OF THE LOCATION OF THOSE SALES OR
13 SERVICE ACTIVITIES FOR THE COMPETING LINE MAKE.

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

19 SEC. 14A. FOR A PERIOD OF 5 YEARS AFTER THE DATE THAT A
20 SUCCESSOR MANUFACTURER ACQUIRES, SUCCEEDS TO, OR ASSUMES ANY PART
21 OF THE BUSINESS OF A PREDECESSOR MANUFACTURER, THE SUCCESSOR
22 MANUFACTURER SHALL NOT ENTER INTO A DEALER AGREEMENT IN THE
23 RELEVANT MARKET AREA OF AN ESTABLISHED PLACE OF BUSINESS OF A
24 FORMER DEALER, OR PERMIT THE RELOCATION OF ANY EXISTING DEALER INTO
25 THAT RELEVANT MARKET AREA, FOR THE SAME LINE MAKE AS A LINE MAKE OF
26 THE PREDECESSOR MANUFACTURER THAT WAS INCLUDED IN THE DEALER
27 AGREEMENT OF THE FORMER DEALER, UNLESS 1 OF THE FOLLOWING IS MET:

1 (A) THE SUCCESSOR MANUFACTURER FIRST OFFERS A DEALER AGREEMENT
2 FOR THAT LINE MAKE IN THE RELEVANT MARKET AREA TO THE FORMER
3 DEALER, OR THE DESIGNATED FAMILY MEMBER DESCRIBED IN SECTION 15 IF
4 THE FORMER DEALER IS DECEASED OR INCAPACITATED, WITHOUT COST TO THE
5 FORMER DEALER.

6 (B) THE SUCCESSOR MANUFACTURER PAYS THE FORMER DEALER, OR THE
7 DESIGNATED FAMILY MEMBER DESCRIBED IN SECTION 15 IF THE FORMER
8 DEALER IS DECEASED OR INCAPACITATED, FAIR AND REASONABLE
9 COMPENSATION VALUE OF THE DEALERSHIP OF THE FORMER DEALER FOR THAT
10 LINE MAKE, CALCULATED IN THE SAME MANNER PRESCRIBED IN SECTION 11
11 FOR A TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF A
12 DEALER AGREEMENT.

13 (C) THE SUCCESSOR MANUFACTURER ESTABLISHES, IN THE CIRCUIT
14 COURT FOR THE COUNTY IN WHICH THE RELEVANT MARKET AREA IS LOCATED,
15 THAT THE FORMER DEALER, OR THE DESIGNATED FAMILY MEMBER DESCRIBED
16 IN SECTION 15 IF THE FORMER DEALER IS DECEASED OR INCAPACITATED, IS
17 UNFIT TO OWN OR MANAGE A DEALERSHIP FOR THAT LINE MAKE IN THE
18 RELEVANT MARKET AREA BECAUSE THE FORMER DEALER OR DESIGNATED FAMILY
19 MEMBER LACKS SUFFICIENT TRAINING, EXPERIENCE, OR FINANCIAL CAPITAL;
20 BECAUSE THE FORMER DEALER OR DESIGNATED FAMILY MEMBER IS
21 INCOMPETENT OR OF POOR CHARACTER; OR BECAUSE OF THE FORMER DEALER'S
22 POOR PERFORMANCE UNDER THE DEALER AGREEMENT WITH THE PREDECESSOR
23 MANUFACTURER.

24 SEC. 14B. (1) A MANUFACTURER SHALL NOT REQUIRE THAT A NEW
25 MOTOR VEHICLE DEALER, A PROPOSED NEW MOTOR VEHICLE DEALER, OR ANY
26 OWNER OF AN INTEREST IN A DEALERSHIP FACILITY ENTER INTO OR AGREE
27 TO A PROPERTY USE AGREEMENT AS A CONDITION TO ANY OF THE FOLLOWING:

1 (A) AWARDED A DEALER AGREEMENT TO A PROSPECTIVE NEW MOTOR
2 VEHICLE DEALER.

3 (B) ADDING A LINE MAKE OR DEALER AGREEMENT TO AN EXISTING NEW
4 MOTOR VEHICLE DEALER.

5 (C) RENEWING A DEALER AGREEMENT WITH AN EXISTING NEW MOTOR
6 VEHICLE DEALER.

7 (D) APPROVING A RELOCATION OF A NEW MOTOR VEHICLE DEALER'S
8 PLACE OF BUSINESS.

9 (E) APPROVING A SALE OR TRANSFER OF THE OWNERSHIP OF A
10 DEALERSHIP OR A TRANSFER OF A DEALER AGREEMENT TO ANOTHER PERSON.

11 (2) IF A MANUFACTURER AND A NEW MOTOR VEHICLE DEALER ARE
12 VOLUNTARY PARTIES TO A PROPERTY USE AGREEMENT TO WHICH THE DEALER
13 HAS VOLUNTARILY AGREED, THAT PROPERTY USE AGREEMENT TERMINATES AND
14 CEASES TO BE EFFECTIVE IMMEDIATELY IF THE DEALER AGREEMENT BETWEEN
15 THOSE PARTIES IS TERMINATED, WHETHER VOLUNTARILY, INVOLUNTARILY, OR
16 BY OPERATION OF LAW, BY ANY PARTY TO THE DEALER AGREEMENT, OR A
17 SUCCESSOR OR ASSIGNEE OF A PARTY TO THE DEALER AGREEMENT.

18 (3) ANY PROVISION CONTAINED IN ANY AGREEMENT ENTERED INTO ON
19 OR AFTER THE EFFECTIVE DATE OF THIS ACT THAT IS INCONSISTENT WITH
20 THE PROVISIONS OF THIS SECTION IS VOIDABLE AT THE ELECTION OF THE
21 AFFECTED NEW MOTOR VEHICLE DEALER, PROPOSED NEW MOTOR VEHICLE
22 DEALER, OR OWNER OF AN INTEREST IN THE DEALERSHIP FACILITY.

23 (4) AS USED IN THIS SECTION, "PROPERTY USE AGREEMENT" MEANS
24 ANY OF THE FOLLOWING:

25 (A) AN AGREEMENT THAT REQUIRES THAT A NEW MOTOR VEHICLE DEALER
26 ESTABLISH OR MAINTAIN EXCLUSIVE DEALERSHIP FACILITIES.

27 (B) AN AGREEMENT THAT RESTRICTS THE ABILITY OF A NEW MOTOR

1 VEHICLE DEALER, OR THE ABILITY OF THE DEALER'S LESSOR IF THE DEALER
2 IS LEASING THE DEALERSHIP FACILITY, TO TRANSFER, SELL, LEASE, OR
3 CHANGE THE USE OF THE PLACE OF BUSINESS OF THE DEALERSHIP, WHETHER
4 BY SUBLEASE, LEASE, COLLATERAL PLEDGE OF LEASE, RIGHT OF FIRST
5 REFUSAL TO PURCHASE OR LEASE, OPTION TO PURCHASE, OPTION TO LEASE,
6 OR OTHER SIMILAR AGREEMENT, REGARDLESS OF WHO THE PARTIES TO THAT
7 AGREEMENT ARE.

8 (C) ANY SIMILAR AGREEMENT BETWEEN A MANUFACTURER AND A NEW
9 MOTOR VEHICLE DEALER AND COMMONLY KNOWN AS A SITE CONTROL AGREEMENT
10 OR EXCLUSIVE USE AGREEMENT.

11 Sec. 15. (1) Any designated family member of a deceased or
12 incapacitated new motor vehicle dealer **OR AN EXECUTIVE MANAGER OF**
13 **THE DEALERSHIP** may succeed the dealer in the ownership or operation
14 of the dealership under the existing dealer agreement if the
15 designated family member **OR EXECUTIVE MANAGER** gives the
16 manufacturer ~~or distributor~~ written notice of his or her intention
17 to succeed to the dealership within 120 days after the dealer's
18 death or incapacity, agrees to be bound by all of the terms and
19 conditions of the dealer agreement, and ~~the designated family~~
20 ~~member~~ meets the current criteria generally applied by the
21 manufacturer ~~or distributor~~ in qualifying new motor vehicle
22 dealers. A manufacturer ~~or distributor~~ may refuse to ~~honor~~ **CONTINUE**
23 the existing dealer agreement with the designated family member
24 only for good cause.

25 (2) ~~The~~ **A** manufacturer ~~or distributor~~ may request from a
26 designated family member ~~such~~ **OR EXECUTIVE MANAGER DESCRIBED IN**
27 **SUBSECTION (1)** personal and financial data as ~~is~~ **ARE** reasonably

1 necessary to determine whether the existing dealer agreement should
2 ~~be honored~~**CONTINUE**. The designated family member **OR EXECUTIVE**
3 **MANAGER** shall supply the personal and financial data promptly ~~upon~~
4 ~~the~~**ON** request.

5 (3) If a manufacturer ~~or distributor~~ believes that good cause
6 exists for refusing to ~~honor the succession~~**CONTINUE A DEALER**
7 **AGREEMENT UNDER THIS SECTION WITH A DESIGNATED FAMILY MEMBER OR**
8 **EXECUTIVE MANAGER DESCRIBED IN SUBSECTION (1)**, the manufacturer ~~or~~
9 ~~distributor~~ may, within 60 days after ~~receipt of the~~**RECEIVING**
10 notice of the designated family member's **OR EXECUTIVE MANAGER'S**
11 intent to ~~succeed~~**SUCCEED** the dealer in the ownership and operation
12 of the dealership, or within 60 days after ~~the receipt of~~**RECEIVING**
13 the requested personal and financial data, serve ~~upon~~**ON** the
14 designated family member **OR EXECUTIVE MANAGER** notice of its refusal
15 to approve the succession.

16 (4) ~~The~~**A** notice of ~~the~~**REFUSAL SERVED BY A** manufacturer ~~or~~
17 ~~distributor provided in~~**UNDER** subsection (3) shall state the
18 specific grounds for the refusal to approve the succession and that
19 discontinuance of the agreement shall take effect not ~~less~~**FEWER**
20 than 90 days after the date the notice is served.

21 (5) If **A** notice of refusal **DESCRIBED IN SUBSECTION (3)** is not
22 served within the ~~60 days provided for~~**60-DAY PERIOD DESCRIBED** in
23 subsection (3), the dealer agreement shall continue in effect and
24 ~~shall be~~**IS** subject to termination only as otherwise permitted ~~by~~
25 **UNDER** this act.

26 (6) This section does not preclude a new motor vehicle dealer
27 from designating any person as his or her successor by written

1 instrument filed with the manufacturer. ~~or distributor, and if such~~
2 **IF THE DEALER FILES** an instrument ~~is filed~~ **DESCRIBED IN THIS**
3 **SUBSECTION**, it alone shall determine the succession rights to the
4 management and operation of the dealership.

5 Sec. 17. (1) Each new motor vehicle manufacturer ~~or~~
6 ~~distributor~~ shall specify in writing to each of its new motor
7 vehicle dealers licensed in this state the dealer's obligations for
8 preparation, delivery, and warranty service on its products. ~~The A~~
9 manufacturer ~~or distributor~~ shall compensate ~~the A~~ new motor
10 vehicle dealer for warranty service required of the dealer by the
11 manufacturer. ~~or distributor. The A manufacturer or distributor~~
12 shall provide ~~the A~~ new motor vehicle dealer with the schedule of
13 compensation to be paid to the dealer for parts, work, and service,
14 and the time allowance for the performance of the work and service.

15 (2) ~~The A~~ schedule of compensation **DESCRIBED IN SUBSECTION (1)**
16 shall include reasonable compensation for diagnostic work, ~~as well~~
17 ~~as~~ **AND** repair service and labor. Time allowances for the diagnosis
18 and performance of warranty work and service shall be reasonable
19 and adequate for the work to be performed. In ~~the determination of~~
20 **DETERMINING** what constitutes reasonable compensation under this
21 section, the principal factor to be given consideration ~~shall be~~ **IS**
22 the prevailing wage rates being paid by dealers in the community in
23 which the dealer is doing business, and ~~in no event shall the~~
24 compensation of a dealer for warranty labor **SHALL NOT** be less than
25 the rates charged by the dealer for like service to retail
26 customers for nonwarranty service and repairs, ~~provided that such~~
27 **IF THOSE** rates are reasonable.

1 (3) A manufacturer ~~or distributor~~ shall not **DO ANY OF THE**
2 **FOLLOWING:**

3 (a) Fail to perform any warranty obligation.

4 (b) Fail to include in written notices of factory recalls to
5 new motor vehicle owners and dealers the expected date by which
6 necessary parts and equipment will be available to dealers for the
7 correction of the defects.

8 (c) Fail to compensate ~~any of the~~ **A** new motor vehicle dealers
9 **DEALER** licensed in this state for repairs effected by ~~MADE IN~~
10 **CONNECTION WITH** the recall.

11 (4) ~~All claims~~ **A MANUFACTURER SHALL PAY A CLAIM** made by a new
12 motor vehicle dealer ~~pursuant to~~ **UNDER** this section for labor and
13 parts ~~shall be paid within 30 days after their~~ **ITS** approval. ~~All~~
14 ~~claims shall be either approved or disapproved by the manufacturer~~
15 ~~or distributor within 30 days after their receipt on a proper~~ **A**
16 **MANUFACTURER SHALL EITHER APPROVE OR DISAPPROVE A CLAIM WITHIN 30**
17 **DAYS AFTER RECEIVING THE CLAIM, SUBMITTED ON THE** form generally
18 used by the manufacturer ~~or distributor~~ and containing the usually
19 ~~required information therein~~ **USUALLY REQUIRED IN THE FORM.** Any
20 claim not specifically disapproved in writing within 30 days after
21 ~~the receipt of the form shall be~~ **MANUFACTURER RECEIVES THE CLAIM**
22 **FORM IS** considered ~~to be approved, and payment shall be made~~ **THE**
23 **MANUFACTURER SHALL PAY THE CLAIM** within 30 days. A claim ~~which has~~
24 ~~been~~ **MANUFACTURER SHALL NOT CHARGE BACK TO A DEALER A CLAIM THAT IT**
25 **HAS** approved and paid ~~may not be charged back to the dealer unless~~
26 the manufacturer ~~can show~~ **SHOWS** that the claim was fraudulent,
27 false, or unsubstantiated. ~~, except that a charge back for false or~~

1 ~~fraudulent claims shall not be made~~ **HOWEVER, EVEN IF A MANUFACTURER**
 2 **SHOWS THAT A CLAIM IS FRAUDULENT, FALSE, OR UNSUBSTANTIATED, THE**
 3 **MANUFACTURER MAY NOT CHARGE BACK THE AMOUNT PAID FOR A FRAUDULENT**
 4 **OR FALSE CLAIM** more than 2 years after payment ~~and a~~ **OF THE CLAIM**
 5 **OR charge back for** ~~THE AMOUNT PAID FOR AN unsubstantiated claims~~
 6 ~~shall not be made~~ **CLAIM** more than 15 months after payment **OF THE**
 7 **CLAIM**. A new motor vehicle dealer shall maintain all records of
 8 warranty repairs, including the related time records of its
 9 employees, for at least 2 years following payment of any warranty
 10 claim.

11 (5) A manufacturer ~~or distributor~~ shall compensate ~~the~~ **A new**
 12 motor vehicle dealer for ~~manufacturer or distributor sponsored~~ **ANY**
 13 sales or service promotion events, programs, or activities
 14 **SPONSORED BY THE MANUFACTURER**, in accordance with established
 15 guidelines for ~~such~~ **THOSE** events, programs, or activities.

16 (6) ~~All claims made by~~ **A MANUFACTURER SHALL PAY A CLAIM FOR**
 17 **COMPENSATION OWED TO** a new motor vehicle dealer ~~pursuant to~~ **UNDER**
 18 subsection (5) for ~~A promotion events, programs, or activities~~
 19 ~~shall be paid~~ **EVENT, PROGRAM, OR ACTIVITY** within 10 days after
 20 their ~~ITS~~ approval. ~~All claims shall be either approved or~~
 21 ~~disapproved by the~~ **A manufacturer or distributor SHALL EITHER**
 22 **APPROVE OR DISAPPROVE A CLAIM FOR COMPENSATION DESCRIBED IN THIS**
 23 **SUBSECTION** within 30 days after ~~their receipt on a proper~~ **RECEIVING**
 24 **THE CLAIM, SUBMITTED ON THE** form generally used by the manufacturer
 25 ~~or distributor~~ and containing the **INFORMATION** usually required
 26 ~~information therein~~ **IN THE FORM**. Any claim ~~not specifically~~
 27 ~~disapproved~~ **FOR COMPENSATION THE MANUFACTURER DOES NOT SPECIFICALLY**

1 ~~DISAPPROVE~~ in writing within 30 days after the receipt of the
2 ~~RECEIVING THE CLAIM~~ form shall be ~~IS~~ considered to be approved, and
3 ~~payment shall be made~~ **THE MANUFACTURER SHALL PAY THE AMOUNT OF THE**
4 **CLAIM** within 30 days. ~~The A~~ manufacturer has the right to ~~MAY ONLY~~
5 charge back ~~any A~~ claim for **COMPENSATION WITHIN** 6 months after the
6 later of either the close of the promotion event, program, or
7 activity ~~,~~ or the date of the payment.

8 (7) **A MANUFACTURER MAY CONDUCT AN AUDIT OF THE RECORDS OF A**
9 **NEW MOTOR VEHICLE DEALER RELATING TO A WARRANTY OR PROMOTION CLAIM**
10 **SUBMITTED BY A NEW MOTOR VEHICLE DEALER UNDER THIS SECTION AT ANY**
11 **TIME WITHIN 12 MONTHS AFTER THE CLAIM IS RECEIVED BY THE**
12 **MANUFACTURER. A MOTOR VEHICLE DEALER MAY CONDUCT AN AUDIT OF THE**
13 **RECORDS OF A MANUFACTURER RELATING TO A WARRANTY OR PROMOTION CLAIM**
14 **SUBMITTED BY THE NEW MOTOR VEHICLE DEALER THAT THE MANUFACTURER**
15 **FAILED OR REFUSED TO APPROVE AT ANY TIME WITHIN 12 MONTHS AFTER THE**
16 **CLAIM IS RECEIVED BY THE MANUFACTURER.**

17 Sec. 20. (1) If a manufacturer ~~or distributor~~ terminates,
18 cancels, fails to renew, or discontinues a dealer agreement, ~~for~~
19 ~~either than~~ **WITHOUT** good cause as ~~defined~~ **DESCRIBED** in this act, the
20 new motor vehicle dealer may bring an action against the
21 manufacturer ~~or distributor~~ to recover actual damages reasonably
22 incurred **BY THE DEALER** as a result of the termination,
23 cancellation, failure, or discontinuance.

24 (2) A manufacturer ~~or distributor who~~ **THAT** violates this act
25 is liable for all damages sustained by a new motor vehicle dealer
26 as a result of the violation.

27 (3) A manufacturer ~~or distributor~~ or new motor vehicle dealer

1 may bring an action for declaratory judgment for determination of
2 any controversy arising ~~pursuant to~~ **UNDER** this act.

3 (4) A manufacturer ~~or distributor who~~ **THAT** violates this act
4 ~~shall be liable for all court costs and reasonable attorney's fees~~
5 ~~incurred by the dealer~~ **IS RESPONSIBLE FOR THE ACTUAL AMOUNT OF**
6 **COSTS AND EXPENSES INCURRED BY THE DEALER IN CONNECTION WITH THE**
7 **ACTION, INCLUDING, BUT NOT LIMITED TO, COURT COSTS, AMOUNTS PAID**
8 **FOR DEPOSITIONS OR TRANSCRIPTS, EXPERT WITNESS FEES, AND THE**
9 **DEALER'S ACTUAL ATTORNEY FEES, AS DETERMINED BY THE COURT.**

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. ____ or House Bill No. 6099 (request no.
12 04830'09) of the 95th Legislature is enacted into law.