

SENATE BILL No. 1309

April 29, 2010, Introduced by Senators THOMAS, GILBERT, SANBORN, WHITMER, KUIPERS, NOFS, JANSEN, HUNTER, ALLEN, McMANUS, OLSHOVE, BROWN, PAPPAGEORGE, CROUSEY, BARCIA, CLARKE, CHERRY, PATTERSON, SCOTT, RICHARDVILLE, STAMAS, BISHOP, GLEASON, BIRKHOLZ, ANDERSON, KAHN and VAN WOERKOM and referred to the Committee on Economic Development and 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 2, 3, 4, 5, 6, 11, 12, and 13 (MCL 445.1562, 445.1563, 445.1564, 445.1565, 445.1566, 445.1571, 445.1572, and 445.1573), sections 2, 3, 5, and 13 as amended by 1998 PA 456, section 4 as amended by 2000 PA 240, and sections 6, 11, and 12 as amended by 1983 PA 188.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) "Closed dealership" means a new motor vehicle

1 dealer whose dealer agreement has been terminated, canceled,
2 discontinued, or not renewed.

3 (2) "COERCE" MEANS TO COMPEL OR ATTEMPT TO COMPEL A PERSON TO
4 ACT IN A GIVEN MANNER OR TO REFRAIN FROM ACTING IN A GIVEN MANNER
5 BY PRESSURE, INTIMIDATION, OR THREAT OF HARM, DAMAGE, BREACH OF
6 CONTRACT, OR OTHER ADVERSE CONSEQUENCES, INCLUDING, BUT NOT LIMITED
7 TO, THE LOSS OF ANY BENEFIT AVAILABLE TO OTHER NEW MOTOR VEHICLE
8 DEALERS OF THE SAME LINE MAKE IN THIS STATE. THE TERM DOES NOT
9 INCLUDE ANY OF THE FOLLOWING ACTIONS BY A MANUFACTURER:

10 (A) WITHOUT CONDITIONS, MAKING A GOOD FAITH RECOMMENDATION,
11 EXPOSITION, OR ARGUMENT OR PERSUADING OR ATTEMPTING TO PERSUADE A
12 PERSON.

13 (B) GIVING NOTICE IN GOOD FAITH TO A NEW MOTOR VEHICLE DEALER
14 OF THAT DEALER'S VIOLATION OF THE TERMS OR PROVISIONS OF A DEALER
15 AGREEMENT.

16 (C) ENGAGING IN ANY CONDUCT THE MANUFACTURER IS PERMITTED TO
17 ENGAGE IN UNDER THIS ACT.

18 (3) "CURRENT MODEL YEAR" MEANS THE CALENDAR YEAR IN WHICH A
19 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF A
20 DEALER AGREEMENT DESCRIBED IN SECTION 11 OCCURS AND THE IMMEDIATELY
21 PRECEDING CALENDAR YEAR.

22 (4) ~~(2)~~ "Dealer agreement" means ~~the~~ ~~AN~~ agreement or contract
23 in writing between a distributor and a new motor vehicle dealer,
24 between a manufacturer and a distributor or a new motor vehicle
25 dealer, or between an importer and a distributor or a new motor
26 vehicle dealer, ~~which~~ ~~THAT~~ purports to establish the legal rights
27 and obligations of the parties to the agreement or contract. ~~with~~

1 ~~regard to the purchase and sale or resale of new and unaltered~~
 2 ~~motor vehicles and accessories for motor vehicles.~~

3 (5) ~~(3)~~—"Designated family member" means **ANY OF THE FOLLOWING:**

4 (A) **IF A NEW MOTOR VEHICLE DEALER WHO DIES OR BECOMES**
 5 **INCAPACITATED HAS DESIGNATED A SUCCESSOR UNDER SECTION 15(6), THAT**
 6 **DESIGNATED SUCCESSOR.**

7 (B) **IF A NEW MOTOR VEHICLE OWNER DIES AND HAS NOT DESIGNATED A**
 8 **SUCCESSOR UNDER SECTION 15(6),** the spouse ~~,~~**OR A** child, grandchild,
 9 parent, brother, or sister of a deceased new motor vehicle dealer,
 10 who is entitled to inherit the deceased dealer's ownership interest
 11 in the new motor vehicle dealership under the terms of the dealer's
 12 will, ~~or~~ who has otherwise been designated in writing by a deceased
 13 dealer to succeed the deceased dealer in the new motor vehicle
 14 dealership, or **WHO** is entitled to inherit under the laws of
 15 intestate succession of this state ~~.~~ ~~With respect to an~~
 16 ~~incapacitated new motor vehicle dealer, the term means the person~~
 17 ~~appointed by a court as the legal representative of the new motor~~
 18 ~~vehicle dealer's property. The term also includes OR the appointed~~
 19 ~~and qualified personal representative and the OR testamentary~~
 20 ~~trustee of a THE deceased new motor vehicle dealer. However, the~~
 21 ~~term shall mean only that designated successor nominated by the new~~
 22 ~~motor vehicle dealer in a written document filed by the dealer with~~
 23 ~~the manufacturer or distributor, if such a document is filed.~~

24 (C) **IF A NEW MOTOR VEHICLE DEALER BECOMES INCAPACITATED AND**
 25 **HAS NOT DESIGNATED A SUCCESSOR UNDER SECTION 15(6), THE PERSON**
 26 **APPOINTED BY THE COURT AS THE LEGAL REPRESENTATIVE OF THE DEALER.**

27 Sec. 3. (1) "Distributor" means any person, including an

1 importer, ~~resident or nonresident, who~~ **THAT IS LOCATED IN OR**
2 **OUTSIDE OF THIS STATE AND** is engaged in the business ~~pursuant to a~~
3 ~~dealer agreement, in whole or in part,~~ of offering for sale,
4 selling, or distributing new and unaltered motor vehicles to a new
5 motor vehicle dealer, ~~who~~ **UNDER A DEALER AGREEMENT, THAT** maintains
6 a factory representative ~~for such purposes, resident or~~
7 ~~nonresident,~~ **THAT IS LOCATED IN OR OUTSIDE OF THIS STATE FOR**
8 **PURPOSES OF CONDUCTING THAT BUSINESS,** or ~~who~~ **THAT** controls any ~~A~~
9 person, ~~resident or nonresident, who in whole or in part~~ **THAT IS**
10 **LOCATED IN OR OUTSIDE OF THIS STATE AND** offers for sale, sells, or
11 distributes new and unaltered motor vehicles to a new motor vehicle
12 dealer. Distributor does not include a person ~~who~~ **THAT** alters or
13 converts motor vehicles for sale to a new motor vehicle dealer.

14 (2) "Established place of business" means a permanent,
15 enclosed commercial building located ~~within~~ **IN** this state **THAT IS**
16 easily accessible and open to the public at all reasonable times
17 and at which ~~the business of a new motor vehicle dealer~~ **MAY LEGALLY**
18 **CONDUCT BUSINESS,** including the display and repair of motor
19 vehicles, ~~may be lawfully carried on in accordance~~ **COMPLIANCE** with
20 the terms of all applicable buildings codes, zoning, and other
21 land-use regulatory ordinances.

22 (3) **"EXECUTIVE MANAGER" MEANS AN INDIVIDUAL EMPLOYED BY A NEW**
23 **MOTOR VEHICLE DEALER IN AN EXECUTIVE CAPACITY AND WHO HAS A WRITTEN**
24 **EMPLOYMENT AGREEMENT WITH THE DEALER THAT INCLUDES A RIGHT FOR THE**
25 **EXECUTIVE MANAGER TO PURCHASE A CONTROLLING INTEREST IN THE**
26 **DEALERSHIP AT A FUTURE TIME OR ON THE DEATH OR INCAPACITY OF THE**
27 **DEALER.**

1 (4) ~~(3)~~—"Factory branch" means an office maintained by a
2 manufacturer or distributor for the purpose of selling or offering
3 ~~for sale~~ **TO SELL** vehicles to a distributor, wholesaler, or new
4 motor vehicle dealer ~~,~~ or for directing or supervising ~~in whole or~~
5 ~~in part~~ **ANY** factory or distributor representatives. The term
6 includes any sales promotion organization maintained by a
7 manufacturer or distributor ~~which~~ **THAT** is engaged in promoting the
8 sale of a particular make of new motor vehicles in this state to
9 new motor vehicle dealers.

10 (5) ~~(4)~~—"Factory representative" means an agent or employee of
11 a manufacturer, distributor, or factory branch retained or employed
12 for the purpose of making or promoting the sale of new motor
13 vehicles or for supervising or contracting with new motor vehicle
14 dealers or proposed motor vehicle dealers.

15 (6) **"FAIR RENTAL VALUE" OF A NEW MOTOR VEHICLE DEALER'S PLACE**
16 **OF BUSINESS MEANS 1 OF THE FOLLOWING, CALCULATED ON AN ANNUAL**
17 **BASIS:**

18 (A) **IF THE NEW MOTOR VEHICLE DEALER LEASES THE PLACE OF**
19 **BUSINESS, THE ACTUAL RENTAL AMOUNT OWED BY THE DEALER UNDER THE**
20 **LEASE AGREEMENT.**

21 (B) **IF THE NEW MOTOR VEHICLE DEALER OWNS THE PLACE OF**
22 **BUSINESS, AN AMOUNT EQUAL TO 20% OF THE STATE EQUALIZED VALUATION**
23 **OF THAT PROPERTY AS DETERMINED UNDER THE GENERAL PROPERTY TAX ACT,**
24 **1893 PA 206, MCL 211.1 TO 211.155.**

25 (7) **"FORMER DEALER" MEANS A NEW MOTOR VEHICLE DEALER THAT**
26 **ENTERED INTO A DEALER AGREEMENT WITH A PREDECESSOR MANUFACTURER AND**
27 **1 OF THE FOLLOWING OCCURRED:**

1 (A) THE DEALER ENTERED INTO A TERMINATION AGREEMENT OR
2 DEFERRED TERMINATION AGREEMENT WITH THE PREDECESSOR MANUFACTURER OR
3 A SUCCESSOR MANUFACTURER RELATED TO THAT DEALER AGREEMENT.

4 (B) THE DEALER AGREEMENT WAS TERMINATED, CANCELED, NOT
5 RENEWED, DISCONTINUED, REJECTED, NOT ASSUMED, OR OTHERWISE ENDED.

6 Sec. 4. (1) "Good faith" means ~~honesty in fact and the~~
7 ~~observation of reasonable commercial standards of fair dealing in~~
8 ~~the trade, as defined and interpreted under~~ **THAT TERM AS DEFINED IN**
9 section 2103 of the uniform commercial code, 1962 PA 174, MCL
10 440.2103.

11 (2) "Manufacturer" means ~~any~~ **A** person ~~who~~ **THAT** manufactures or
12 assembles new motor vehicles ~~+~~ or ~~any~~ **A** distributor, factory
13 branch, or factory representative.

14 (3) "Motor vehicle" means that term as defined in section 33
15 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, but does not
16 include a bus, **A** tractor, or farm equipment.

17 (4) **"MOTOR VEHICLE SERVICE AND REPAIR FACILITY" MEANS A MOTOR**
18 **VEHICLE REPAIR FACILITY, AS DEFINED IN SECTION 2 OF THE MOTOR**
19 **VEHICLE SERVICE AND REPAIR ACT, 1974 PA 300, MCL 257.1302. THE TERM**
20 **DOES NOT INCLUDE A MOTOR VEHICLE SERVICE AND REPAIR FACILITY OWNED**
21 **OR OPERATED BY A NEW MOTOR VEHICLE DEALER.**

22 Sec. 5. (1) "New motor vehicle" means a motor vehicle ~~which~~
23 **THAT** is in the possession of the manufacturer, distributor, or
24 wholesaler, or has been sold only to a new motor vehicle dealer and
25 ~~en~~ **FOR** which the **NEW MOTOR VEHICLE DEALER HAS NOT ISSUED AN**
26 original title. ~~has not been issued from the new motor vehicle~~
27 ~~dealer.~~

1 (2) "New motor vehicle dealer" means a person, including a
2 distributor, ~~who~~ **THAT** holds a dealer agreement granted by a
3 manufacturer, distributor, or importer for the sale or distribution
4 of its motor vehicles; ~~who~~ is engaged in the business of
5 purchasing, selling, exchanging, or dealing in new motor vehicles;
6 and ~~who~~ has an established place of business in this state.

7 (3) "Person" means a natural person, partnership, corporation,
8 **LIMITED LIABILITY COMPANY**, association, trust, estate, or other
9 legal entity.

10 (4) **"PREDECESSOR MANUFACTURER" MEANS A MANUFACTURER THAT**
11 **SELLS, CONVEYS, OR OTHERWISE TRANSFERS ALL OR PART OF ITS BUSINESS**
12 **TO A SUCCESSOR MANUFACTURER.**

13 (5) ~~(4)~~ "Proposed new motor vehicle dealer" means a person who
14 has an application pending for a new dealer agreement with a
15 manufacturer or distributor. Proposed motor vehicle dealer does not
16 include a person whose dealer agreement is being renewed or
17 continued.

18 Sec. 6. (1) "Relevant market area" means **1 OF THE FOLLOWING:**

19 (a) ~~For a proposed new motor vehicle dealer or a new motor~~
20 ~~vehicle dealer who plans to relocate his or her place of business~~
21 ~~in a county having a population which is greater than 25,000, the~~
22 ~~area within a radius of 6 miles of the intended site of the~~
23 ~~proposed or relocated dealer. The 6 mile distance shall be~~ **IN A**
24 **COUNTY THAT HAS A POPULATION OF MORE THAN 250,000, THE AREA WITHIN**
25 **A RADIUS OF 10 MILES OF THE SITE OF THE INTENDED PLACE OF BUSINESS**
26 **OF A PROPOSED NEW VEHICLE DEALER OR THE INTENDED PLACE OF BUSINESS**
27 **OF A NEW VEHICLE DEALER THAT PLANS TO RELOCATE ITS PLACE OF**

1 BUSINESS. FOR PURPOSES OF THIS SECTION, THE 10-MILE DISTANCE IS
2 determined by measuring the distance between the nearest surveyed
3 boundary of ~~the~~AN existing new motor vehicle dealer's principal
4 place of business and the nearest surveyed boundary line of the
5 proposed or relocated new motor vehicle dealer's principal place of
6 business.

7 (b) ~~For a proposed new motor vehicle dealer or a new motor~~
8 ~~vehicle dealer who plans to relocate his or her place of business~~
9 ~~in a county having a population which is not greater than 25,000,~~
10 ~~the area within a radius of 10 miles of the intended site of the~~
11 ~~proposed or relocated dealer, or the county line, whichever is~~
12 ~~closer to the intended site. The 10 mile distance shall be~~ IN A
13 COUNTY THAT HAS A POPULATION OF 250,000 OR FEWER, THE AREA WITHIN A
14 RADIUS OF 20 MILES OF THE SITE OF THE INTENDED PLACE OF BUSINESS OF
15 A PROPOSED NEW VEHICLE DEALER OR THE INTENDED PLACE OF BUSINESS OF
16 A NEW VEHICLE DEALER THAT PLANS TO RELOCATE ITS PLACE OF BUSINESS.
17 FOR PURPOSES OF THIS SECTION, THE 20-MILE DISTANCE IS determined by
18 measuring the distance between the nearest surveyed boundary line
19 of ~~the~~AN existing new motor vehicle dealer's principal place of
20 business and the nearest surveyed boundary line of the proposed or
21 relocated new motor vehicle dealer's principal place of business.

22 (2) "SUCCESSOR MANUFACTURER" MEANS A MANUFACTURER THAT
23 ACQUIRES, SUCCEEDS TO, OR ASSUMES ANY PART OF THE BUSINESS OF
24 ANOTHER MANUFACTURER ON OR AFTER JANUARY 1, 2009, AS THE RESULT OF
25 ANY OF THE FOLLOWING:

26 (A) A CHANGE IN OWNERSHIP, OPERATION, OR CONTROL OF A
27 PREDECESSOR MANUFACTURER BY SALE OR TRANSFER OF ASSETS, CORPORATE

1 STOCK, OR OTHER EQUITY INTEREST, ASSIGNMENT, MERGER, CONSOLIDATION,
2 COMBINATION, JOINT VENTURE, REDEMPTION, COURT-APPROVED SALE,
3 OPERATION OF LAW, OR ANY OTHER MEANS.

4 (B) TERMINATION, SUSPENSION, OR CESSATION OF A PART OR ALL OF
5 THE BUSINESS OPERATIONS OF A PREDECESSOR MANUFACTURER.

6 (C) DISCONTINUANCE OF THE SALE OF A PRODUCT LINE.

7 (D) A CHANGE IN DISTRIBUTION SYSTEM BY A PREDECESSOR
8 MANUFACTURER, WHETHER THROUGH A CHANGE IN DISTRIBUTOR OR THE
9 PREDECESSOR MANUFACTURER'S DECISION TO CEASE CONDUCTING ANY
10 BUSINESS THROUGH A PARTICULAR DISTRIBUTOR.

11 (3) "USED MOTOR VEHICLE" MEANS A MOTOR VEHICLE THAT IS NOT A
12 NEW MOTOR VEHICLE.

13 (4) "USED MOTOR VEHICLE DEALER" MEANS A PERSON THAT IS ENGAGED
14 IN THE BUSINESS OF PURCHASING, SELLING, EXCHANGING, OR DEALING IN
15 USED MOTOR VEHICLES AND THAT HAS AN ESTABLISHED PLACE OF BUSINESS
16 IN THIS STATE. THE TERM DOES NOT INCLUDE A NEW MOTOR VEHICLE DEALER
17 PURCHASING, SELLING, EXCHANGING, OR DEALING IN USED MOTOR VEHICLES
18 AS PART OF ITS BUSINESS OF PURCHASING, SELLING, EXCHANGING, OR
19 DEALING IN NEW MOTOR VEHICLES.

20 Sec. 11. (1) ~~Upon the termination, cancellation, nonrenewal,~~
21 ~~or discontinuance of any dealer agreement,~~ SUBJECT TO SECTION 12,
22 IF A DEALER AGREEMENT IS TERMINATED, CANCELED, NOT RENEWED, OR
23 DISCONTINUED, THE MANUFACTURER SHALL PAY the new motor vehicle
24 dealer ~~shall be allowed fair and reasonable compensation by the~~
25 ~~manufacturer or distributor for ALL OF~~ the following:

26 (a) All new ~~current model year~~ motor vehicle inventory
27 ~~purchased from the manufacturer or distributor, which~~ THAT has not

1 been materially altered, substantially damaged, or driven for more
 2 than ~~300-1,000~~ miles. ~~and all new motor vehicle inventory not of~~
 3 ~~the current model year which has not been materially altered,~~
 4 ~~substantially damaged, or driven for more than 300 miles, provided~~
 5 ~~the noncurrent model vehicles were purchased from the manufacturer~~
 6 ~~or distributor and drafted on the dealer's financing source or paid~~
 7 ~~for within 120 days of the effective date of the termination,~~
 8 ~~cancellation, or nonrenewal.~~

9 (b) Supplies and parts inventory purchased from the
 10 manufacturer ~~or distributor~~ and listed in the manufacturer's ~~or~~
 11 ~~distributor's~~ current parts catalog.

12 (c) Equipment, furnishings, and signs purchased from the
 13 manufacturer. ~~or distributor.~~

14 (d) Special tools purchased from the manufacturer ~~or~~
 15 ~~distributor~~ within 3 years of the date of termination,
 16 cancellation, nonrenewal, or discontinuance.

17 **(E) COMPUTERS, SOFTWARE, AND SOFTWARE AGREEMENTS THAT THE**
 18 **MANUFACTURER REQUIRED THAT THE DEALER OBTAIN FOR COMMUNICATION OF**
 19 **SALES, SERVICE, WARRANTY, OR OTHER INFORMATION BETWEEN THE DEALER**
 20 **AND THE MANUFACTURER.**

21 **(F) THE GOODWILL OF THE DEALER.**

22 (2) ~~Upon the termination, cancellation, nonrenewal, or~~
 23 ~~discontinuance of a dealer agreement,~~ **IN ADDITION TO THE PAYMENT OF**
 24 **COMPENSATION UNDER SUBSECTION (1), IF A DEALER AGREEMENT IS**
 25 **TERMINATED, CANCELED, NOT RENEWED, OR DISCONTINUED,** the
 26 manufacturer ~~or distributor~~ shall also pay to the new motor vehicle
 27 dealer a ~~sum~~ **IN EQUAL MONTHLY INSTALLMENTS AN AMOUNT** equal to the

1 ~~current,~~ fair rental value of ~~his or her~~ **ITS** established place of
2 business for a period of 1 year from the effective date of
3 termination, cancellation, nonrenewal, or discontinuance, or the
4 remainder of any lease, whichever is less. However, the payment
5 required by this subsection ~~shall~~ **DOES** not apply to any
6 termination, cancellation, nonrenewal, or discontinuance ~~made~~
7 ~~pursuant to~~ **UNDER** section 10(c).

8 (3) The ~~requirement of paying an annual~~ **OBLIGATION TO PAY A**
9 **NEW MOTOR VEHICLE DEALER** fair rental value ~~pursuant to~~ **UNDER**
10 subsection (2) ~~shall apply~~ **APPLIES** only to the extent **THAT** the new
11 motor vehicle dealer's established place of business is used for
12 performance of sales and service obligations under the
13 manufacturer's ~~or distributor's~~ dealer agreement.

14 (4) ~~In the event that termination is by the dealer,~~ **IF A NEW**
15 **MOTOR VEHICLE DEALER TERMINATES A DEALER AGREEMENT, THE**
16 **MANUFACTURER IS ONLY REQUIRED TO MAKE** the payment required ~~by~~ **UNDER**
17 subsection (2) ~~is required only~~ if the new motor vehicle dealer
18 makes available to the manufacturer ~~or distributor~~ use and
19 possession of the premises free of any claims of others for the 1-
20 year period, except for use by the dealer for closing his or her
21 business.

22 (5) ~~In the event that termination is by the dealer~~ **IF A NEW**
23 **MOTOR VEHICLE DEALER TERMINATES A DEALER AGREEMENT,** the payment
24 required ~~by~~ **UNDER** subsection (2) shall not exceed \$20,000.00 unless
25 ~~provided otherwise by contract entered into between the parties~~
26 **AGREE IN WRITING TO A DIFFERENT AMOUNT.**

27 (6) This section ~~shall~~ **DOES** not relieve a new motor vehicle

1 dealer, lessor, or other owner of an established place of business
2 from the obligation of mitigating damages.

3 Sec. 12. (1) ~~Compensation~~ **A MANUFACTURER SHALL PAY THE**
4 **COMPENSATION** for new motor vehicle inventory ~~under section 11(1)(a)~~
5 ~~shall be paid, if possible, within 30 days after the effective date~~
6 ~~of the termination, cancellation, nonrenewal, or discontinuance,~~
7 ~~provided that the new motor vehicle dealer has met all reasonable~~
8 ~~requirements of the dealer agreement with respect to the return of~~
9 ~~the new motor vehicle inventory. Compensation for~~ **AND** items of
10 personal property required by **UNDER** section 11(1)(b), 11(1)(c), and
11 ~~11(1)(d) shall be paid~~ **11(1)** within ~~90~~ **75** days after the effective
12 date of the termination, cancellation, nonrenewal, or
13 discontinuance, provided that the new motor vehicle dealer has met
14 all reasonable requirements of the dealer agreement with respect to
15 the return of the **NEW MOTOR VEHICLE INVENTORY AND** repurchased
16 personal property, including providing clear title **TO THE**
17 **REPURCHASED PERSONAL PROPERTY.**

18 (2) **ALL OF THE FOLLOWING APPLY IN DETERMINING THE AMOUNT OF**
19 **FAIR AND REASONABLE COMPENSATION UNDER SECTION 11(1):**

20 **(A)** Fair and reasonable compensation ~~pursuant to~~ **UNDER** section
21 11(1)(a) shall ~~be not less than~~ **EQUAL OR EXCEED** the new motor
22 vehicle dealer's net acquisition cost.

23 **(B)** Fair and reasonable compensation ~~pursuant to~~ **FOR SUPPLIES**
24 **AND PARTS INVENTORY FOR PURPOSES OF** section 11(1)(b) shall ~~be~~ **IS**
25 the amount stated in the manufacturer's ~~or distributor's~~ current
26 parts price list.

27 **(C)** Fair and reasonable compensation ~~pursuant to~~ **FOR PURPOSES**

1 OF section 11(1)(c), and ~~11(1)(d)~~ shall be (D), AND (E) IS the fair
2 market value of the personal property DESCRIBED IN THOSE
3 SUBDIVISIONS.

4 (D) FAIR AND REASONABLE COMPENSATION FOR A NEW MOTOR VEHICLE
5 DEALER'S GOODWILL FOR PURPOSES OF SECTION 11(1)(F) IS THE FAIR
6 MARKET VALUE OF THAT GOODWILL. ALL OF THE FOLLOWING APPLY TO THE
7 DETERMINATION OF THE FAIR MARKET VALUE OF A NEW MOTOR VEHICLE
8 DEALER'S GOODWILL UNDER THIS SUBDIVISION:

9 (i) THE FAIR MARKET VALUE FOR PURPOSES OF SECTION 11(1)(F) IS
10 THE HIGHEST OF THE FAIR MARKET VALUES ON THE FOLLOWING DATES:

11 (A) THE DATE THE ACTION THAT RESULTED IN THE CANCELLATION,
12 TERMINATION, DISCONTINUANCE, OR NONRENEWAL OF THE DEALER AGREEMENT
13 BECAME FINAL.

14 (B) IF THE MANUFACTURER IS A PREDECESSOR MANUFACTURER, THE
15 DATE THE PREDECESSOR MANUFACTURER ANNOUNCED THE ACTION THAT
16 RESULTED IN THE CANCELLATION, TERMINATION, DISCONTINUANCE, OR
17 NONRENEWAL OF THE DEALER AGREEMENT.

18 (C) IF THE MANUFACTURER IS A PREDECESSOR MANUFACTURER, THE
19 DATE THAT IS 12 MONTHS BEFORE THE DATE THAT THE PREDECESSOR
20 MANUFACTURER ANNOUNCED THE ACTION THAT RESULTED IN THE
21 CANCELLATION, TERMINATION, DISCONTINUANCE, OR NONRENEWAL OF THE
22 DEALER AGREEMENT.

23 (ii) IF THE MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER AGREE
24 ON THE FAIR MARKET VALUE WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF
25 THE TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
26 DEALER AGREEMENT, THAT VALUATION IS CONCLUSIVE AND BINDING ON THE
27 MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER.

1 (iii) IF THE MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER ARE
2 UNABLE TO AGREE ON THE FAIR MARKET VALUE WITHIN 30 DAYS AFTER THE
3 EFFECTIVE DATE OF THE TERMINATION, CANCELLATION, NONRENEWAL, OR
4 DISCONTINUANCE OF THE DEALER AGREEMENT, A VALUATION EXPERT MUTUALLY
5 SELECTED BY THE MANUFACTURER AND NEW MOTOR VEHICLE DEALER SHALL
6 CONDUCT A FULL EVALUATION OF THE DEALERSHIP AND DETERMINE THE FAIR
7 MARKET VALUE OF THE GOODWILL. THE OPINION OF A VALUATION EXPERT
8 SELECTED UNDER THIS SUBPARAGRAPH IS CONCLUSIVE AND BINDING ON THE
9 MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER.

10 (iv) IF THE MANUFACTURER AND NEW MOTOR VEHICLE DEALER CANNOT
11 AGREE ON A VALUATION EXPERT FOR PURPOSES OF SUBPARAGRAPH (iii) WITHIN
12 45 DAYS AFTER THE EFFECTIVE DATE OF THE TERMINATION, CANCELLATION,
13 NONRENEWAL, OR DISCONTINUANCE OF THE DEALER AGREEMENT, THE
14 MANUFACTURER AND NEW MOTOR VEHICLE DEALER SHALL WITHIN 60 DAYS OF
15 THAT EFFECTIVE DATE EACH APPOINT, AT ITS OWN COST, A VALUATION
16 ACCOUNTANT TO DETERMINE THE FAIR MARKET VALUE OF THE GOODWILL. IF
17 THE MANUFACTURER OR THE DEALER, BUT NOT BOTH, APPOINTS A VALUATION
18 ACCOUNTANT WITHIN THAT 60-DAY PERIOD, THAT ACCOUNTANT'S WRITTEN
19 OPINION ON THE FAIR MARKET VALUE OF THE GOODWILL IS CONCLUSIVE AND
20 BINDING ON THE MANUFACTURER AND NEW MOTOR VEHICLE DEALER. IF THE
21 MANUFACTURER AND THE DEALER EACH APPOINT A VALUATION ACCOUNTANT
22 WITHIN THAT 60-DAY PERIOD, AND THOSE ACCOUNTANTS AGREE ON THE FAIR
23 MARKET VALUE OF THE GOODWILL, THE WRITTEN OPINION OF THOSE
24 ACCOUNTANTS IS CONCLUSIVE AND BINDING ON THE MANUFACTURER AND THE
25 NEW MOTOR VEHICLE DEALER.

26 (v) IF THE MANUFACTURER AND THE DEALER EACH APPOINT A
27 VALUATION ACCOUNTANT UNDER SUBPARAGRAPH (iv) WITHIN THE 60-DAY

1 PERIOD DESCRIBED IN THAT SUBPARAGRAPH, AND THOSE ACCOUNTANTS
2 DISAGREE ON THE FAIR MARKET VALUE OF THE GOODWILL, THOSE
3 ACCOUNTANTS SHALL APPOINT A THIRD VALUATION ACCOUNTANT WHO IS
4 MUTUALLY ACCEPTABLE TO THEM. ALL OF THE FOLLOWING APPLY IF A THIRD
5 VALUATION ACCOUNTANT IS APPOINTED UNDER THIS SUBPARAGRAPH:

6 (A) THE MANUFACTURER AND THE DEALER ARE EACH RESPONSIBLE FOR
7 50% OF THE FEES AND EXPENSES OF THE THIRD VALUATION ACCOUNTANT.

8 (B) THE THIRD VALUATION ACCOUNTANT SHALL PROVIDE A WRITTEN
9 OPINION OF THE FAIR MARKET VALUE OF THE GOODWILL. SUBJECT TO SUB-
10 SUBPARAGRAPHS (C) AND (D), THE THIRD VALUATION ACCOUNTANT'S WRITTEN
11 OPINION OF THE FAIR MARKET VALUE OF THE GOODWILL IS CONCLUSIVE AND
12 BINDING ON THE MANUFACTURER AND NEW MOTOR VEHICLE DEALER.

13 (C) IF THE FAIR MARKET VALUE STATED IN THE WRITTEN OPINION OF
14 THE THIRD VALUATION ACCOUNTANT IS HIGHER THAN THE FAIR MARKET VALUE
15 DETERMINED BY THE VALUATION ACCOUNTANT OF THE MANUFACTURER AND THE
16 FAIR MARKET VALUE DETERMINED BY THE VALUATION ACCOUNTANT OF THE
17 DEALER, THEN THE FAIR MARKET VALUE OF THE MANUFACTURER'S VALUATION
18 ACCOUNTANT, OR THE FAIR MARKET VALUE DETERMINED BY THE DEALER'S
19 VALUATION ACCOUNTANT, WHICHEVER IS HIGHER, AND NOT THE FAIR MARKET
20 VALUE OF THE THIRD VALUATION ACCOUNTANT, CONSTITUTES THE FAIR
21 MARKET VALUE OF THE GOODWILL AND IS CONCLUSIVE AND BINDING ON THE
22 MANUFACTURER AND NEW MOTOR VEHICLE DEALER.

23 (D) IF THE FAIR MARKET VALUE STATED IN THE WRITTEN OPINION OF
24 THE THIRD VALUATION ACCOUNTANT IS LESS THAN THE FAIR MARKET VALUE
25 DETERMINED BY THE VALUATION ACCOUNTANT OF THE MANUFACTURER AND THE
26 FAIR MARKET VALUE DETERMINED BY THE VALUATION ACCOUNTANT OF THE
27 DEALER, THEN THE FAIR MARKET VALUE OF THE MANUFACTURER'S VALUATION

1 ACCOUNTANT, OR THE FAIR MARKET VALUE DETERMINED BY THE DEALER'S
2 VALUATION ACCOUNTANT, WHICHEVER IS LESS, AND NOT THE FAIR MARKET
3 VALUE OF THE THIRD VALUATION ACCOUNTANT, CONSTITUTES THE FAIR
4 MARKET VALUE OF THE GOODWILL AND IS CONCLUSIVE AND BINDING ON THE
5 MANUFACTURER AND NEW MOTOR VEHICLE DEALER.

6 (3) ~~In the event~~ IF payment REQUIRED UNDER SUBSECTION (1) is
7 not made within ~~90 days as provided in~~ THE 90-DAY PERIOD DESCRIBED
8 IN THAT SUBSECTION, THEN BEGINNING ON THE DAY AFTER THE EXPIRATION
9 OF THAT 90-DAY PERIOD UNDER subsection (1), interest shall accrue
10 ~~thereafter~~ on all amounts due the new motor vehicle dealer at a
11 rate of 12% per annum.

12 (4) AS USED IN THIS SECTION:

13 (A) "VALUATION ACCOUNTANT" MEANS A CERTIFIED PUBLIC ACCOUNTANT
14 WHO IS QUALIFIED BY EXPERIENCE AND ABILITY TO VALUE THE GOODWILL OF
15 A NEW MOTOR VEHICLE DEALER.

16 (B) "VALUATION EXPERT" MEANS ANY INDEPENDENT INDIVIDUAL WHO IS
17 QUALIFIED BY EXPERIENCE AND ABILITY TO VALUE THE GOODWILL OF A NEW
18 MOTOR VEHICLE DEALER. THE TERM INCLUDES, BUT IS NOT LIMITED TO, A
19 VALUATION ACCOUNTANT.

20 Sec. 13. A manufacturer ~~, importer, or distributor~~ shall not
21 require any new motor vehicle dealer in this state to do any of the
22 following:

23 (a) Order ~~, or~~ accept delivery of any new motor vehicle, ~~or~~ A
24 part or accessory of a new motor vehicle, equipment, or any other
25 commodity not required by law ~~which was~~ THAT IS not voluntarily
26 ordered by the new motor vehicle dealer. This section does not
27 prevent the manufacturer ~~or distributor~~ from requiring that new

1 motor vehicle dealers carry a reasonable inventory of models
2 offered for sale by the manufacturer. ~~or distributor.~~

3 (b) Order or accept delivery of any new motor vehicle with
4 special features, accessories, or equipment not included in the
5 list price of the new motor vehicle as publicly advertised by the
6 manufacturer. ~~or distributor.~~

7 (c) Participate monetarily in any advertising campaign or
8 contest, ~~or purchase~~ any promotional materials, display devices, or
9 display decorations or materials, or pay or assume directly in
10 connection with the sale of a new motor vehicle any part of the
11 cost of a refund, rebate, or discount made by or lawfully imposed
12 by the manufacturer ~~or distributor~~ to or in favor of a consumer,
13 unless voluntarily agreed to by the dealer.

14 (d) Enter into any agreement with the manufacturer ~~or~~
15 ~~distributor~~ or do any other act prejudicial to the new motor
16 vehicle dealer by threatening to terminate a dealer agreement or
17 any contractual agreement or understanding existing between the
18 dealer and the manufacturer. ~~or distributor.~~ Notice in good faith
19 to any dealer of the dealer's violation of any terms or provisions
20 of the dealer agreement ~~shall~~ **DOES** not constitute a violation of
21 this act.

22 (e) Change the capital structure of the new motor vehicle
23 dealership or the means by or through which the dealer finances the
24 operation of the dealership, if the dealership at all times meets
25 any reasonable capital standards determined by the manufacturer in
26 accordance with uniformly applied criteria.

27 (f) Refrain from ~~participation in the management of,~~

1 ~~investment in, or the acquisition of, any other~~ **ACQUIRING A**
 2 **DEALERSHIP FOR, OR PARTICIPATING IN THE MANAGEMENT OF OR INVESTING**
 3 **IN, A DEALER THAT HAS A DEALER AGREEMENT FOR ANOTHER** line of new
 4 motor ~~vehicle~~ **VEHICLES** or related products, provided that the
 5 dealer maintains a reasonable line of credit for each make or line
 6 of vehicle, remains in compliance with reasonable facilities
 7 requirements, and makes no change in the principal management of
 8 the dealer.

9 (g) Change the location of the new motor vehicle dealership or
 10 make any substantial alterations to the dealership premises, ~~where~~
 11 ~~to do so would be~~ **IF CHANGING THE LOCATION OR MAKING THE**
 12 **ALTERATIONS IS** unreasonable.

13 (h) Prospectively assent to a release, assignment, novation,
 14 waiver, or estoppel ~~which~~ **THAT** would relieve any person from
 15 liability imposed by this act; require that any dealer agreement be
 16 governed by the laws of a state other than this state; or require
 17 **REFERRAL OF** any controversy between a new motor vehicle dealer and
 18 a manufacturer ~~, importer, or distributor to be referred to a~~
 19 person other than the duly constituted courts of this state, or of
 20 the United States located in this state, if the referral would be
 21 binding ~~upon~~ **ON** the new motor vehicle dealer. ~~unless the parties~~
 22 ~~agree~~ **THIS SUBDIVISION DOES NOT APPLY TO AN AGREEMENT BETWEEN THE**
 23 **PARTIES, MADE** at the time of a controversy, to refer ~~a~~ **THE**
 24 controversy to a court of the United States located outside this
 25 state or agree at the time of ~~the~~ **AN** arbitration to conduct **THE**
 26 arbitration either ~~within~~ **IN** or outside **OF** this state. ~~Such a~~ **A**
 27 provision in a dealer agreement **THAT VIOLATES THIS SUBDIVISION** is

1 void and unenforceable.

2 Enacting section 1. This amendatory act does not take effect

3 unless Senate Bill No. 1308

4 of the 95th Legislature is enacted into law.