STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

Introduced by Reps. Nesbitt and Foster

ENROLLED HOUSE BILL No. 5606

AN ACT 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 2010 PA 141.

The People of the State of Michigan enact:

Sec. 14. (1) A manufacturer shall not do any of the following:

(a) Adopt, change, establish, or implement a plan or system for the allocation and distribution of new motor vehicles to new motor vehicle dealers that is arbitrary or capricious or based on unreasonable sales and service standards, or modify an existing plan or system that causes the plan or system to be arbitrary or capricious or based on unreasonable sales and service standards.

(b) If requested in writing by a new motor vehicle dealer, fail or refuse to advise or disclose to the dealer the basis on which new motor vehicles of the same line make are allocated or distributed to new motor vehicle dealers in this state and the basis on which the current allocation or distribution is being made or will be made to that new motor vehicle dealer.

(c) Refuse to deliver to a new motor vehicle dealer in reasonable quantities and within a reasonable time after receipt of the dealer's order, any new motor vehicles that are covered by the dealer agreement and specifically publicly advertised in this state by the manufacturer as available for immediate delivery. However, the failure to deliver any motor vehicle is not considered a violation of this act if the failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo, or other cause over which the manufacturer has no control. If a manufacturer requires a new motor vehicle dealer to purchase essential service tools with a purchase price in the aggregate of more than $7,500.00 in order to receive a specific model of vehicle, the manufacturer shall on written request provide the dealer with a good faith estimate in writing of the number of vehicles of that specific model the dealer will be allocated in the model year in which the dealer is required to purchase the tool.

(d) Increase the price of a new motor vehicle that the new motor vehicle dealer had ordered, and then eventually delivered to, the same retail consumer for whom the vehicle was ordered, if the order was made before the dealer's receipt of a written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer constitutes evidence of a vehicle order. In the event of manufacturer price reductions or cash rebates, the dealer shall pass on the amount of any reduction or rebate received by the dealer to the private retail consumer. Any price reduction in excess of $5.00 shall apply to all vehicles in the dealer's inventory that were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new

models or the series is not considered a price increase or price decrease. This subdivision does not apply to price changes caused by any of the following:

(*i*) The addition to a motor vehicle of required or optional equipment under state or federal law.

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

(*iii*) Any increase in transportation charges due to an increase in rates charged by a common carrier or transporter.

(e) Offer any of the following to any new motor vehicle dealer of a specific line make without making the same offer available to all other new motor vehicle dealers of the same line make:

(*i*) Any specific model or series of new motor vehicles manufactured for that line make.

(*ii*) Any incentives, rebates, bonuses, promotional items, or other similar benefits payable to the new motor vehicle dealer for selling new motor vehicles or purchasing new motor vehicles from the manufacturer.

(*iii*) Any consumer rebates, vehicle price reductions, or interest rate reductions or other changes to finance terms that benefit the consumer.

(*iv*) Any program that provides marketing and sales assistance to new motor vehicle dealers, including, but not limited to, internet listings, sales leads, marketing programs, and dealer recognition programs.

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

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

(h) Directly or indirectly own, operate, or control a new motor vehicle dealer, including, but not limited to, a new motor vehicle dealer engaged primarily in performing warranty repair services on motor vehicles under the manufacturer's warranty, or a used motor vehicle dealer. This subdivision does not apply to any of the following:

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

(*ii*) The ownership, operation, or control of a new motor vehicle dealer or a used motor vehicle dealer by a manufacturer while it is being sold under a bona fide contract or purchase option to the operator of the new motor vehicle dealer or the used motor vehicle dealer.

(*iii*) The direct or indirect ownership by a manufacturer of an entity that owns, operates, or controls a new motor vehicle dealer of the same line make franchised by the manufacturer, if all of the following conditions are met:

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

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

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

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

(*iv*) The acquisition by a manufacturer of a used motor vehicle dealer's license for the purpose of selling motor vehicles to nonretail buyers.

(i) Sell any new motor vehicle directly to a retail customer other than through franchised dealers, unless the retail customer is a nonprofit organization or a federal, state, or local government or agency. This subdivision does not prohibit a manufacturer from providing information to a consumer for the purpose of marketing or facilitating the sale of new motor vehicles or from establishing a program to sell or offer to sell new motor vehicles through franchised new motor vehicle dealers that sell and service new motor vehicles produced by the manufacturer.

(j) Prevent or attempt to prevent by contract or otherwise any new motor vehicle dealer from changing the executive management of a new motor vehicle dealer unless the manufacturer, having the burden of proof, can show that the change of executive management will result in executive management by a person or persons who are not of good moral character or who do not meet reasonable, preexisting, and equitably applied standards of the manufacturer. If a manufacturer rejects a proposed change in the executive management, the manufacturer shall give written notice of its reasons to the dealer within 60 days after receiving written notice from the dealer of the proposed change and all related information reasonably requested by the manufacturer, or the change in executive management is considered approved.

(k) Unreasonably withhold consent to the sale, transfer, or exchange of a new motor vehicle dealership to a qualified buyer that is capable of being licensed as a new motor vehicle dealer in this state.

(*l*) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a new motor vehicle dealership within 60 days after receiving a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer for that purpose and containing the information required in that application. Failure to respond to a request for consent within the 60-day period is considered consent to the sale, transfer, or exchange.

(m) Unfairly prevent a new motor vehicle dealer that sells, transfers, or exchanges a new motor vehicle dealership from receiving reasonable compensation for the value of the new motor vehicle dealership.

(n) Unless the manufacturer enters into a written agreement with the new motor vehicle dealer that clearly states the amount of the incentive payments and the period of time during which the incentive payments are paid, offer incentive payments to a new motor vehicle dealer in consideration for a new motor vehicle dealer's promise to do any of the following:

(*i*) Make material alterations to any facilities at the dealer's place of business.

(*ii*) Construct new facilities for the conduct of the business of the dealership.

(o) Require unreasonable improvements to a facility as a condition to entering into or renewing a dealer agreement.

(p) Authorize a motor vehicle service and repair facility to perform motor vehicle warranty repairs and recall work, unless the work meets any of the following:

(*i*) Is required for emergency service of a vehicle.

(*ii*) Is work performed at a service center owned or operated by a manufacturer on a manufacturer-owned vehicle.

(*iii*) Is work performed by employees of a fleet operator on its own vehicles.

(q) Own a motor vehicle service and repair facility, except that a manufacturer may own a service and repair facility for the repair of manufacturer-owned vehicles.

(r) Engage in conduct that meets all of the following:

(*i*) Materially affects a new motor vehicle dealer.

(*ii*) Is capricious, is not in good faith, or is unconscionable.

(*iii*) Causes damage to a new motor vehicle dealer.

(s) Impose unreasonable standards of performance on a new motor vehicle dealer or require, attempt to require, coerce, or attempt to coerce a new motor vehicle dealer to adhere to performance standards that are not applied uniformly to other similarly situated new motor vehicle dealers.

(t) Use or consider the performance of a new motor vehicle dealer in selling the manufacturer's vehicles or the new motor vehicle dealer's ability to satisfy any minimum sales or market share quota or responsibility relating to the sale of the new motor vehicles in determining any of the following:

(*i*) The new motor vehicle dealer's eligibility to purchase program, certified, or other used motor vehicles from the manufacturer.

(*ii*) The volume, type, or model of program, certified, or other used motor vehicles that a new motor vehicle dealer is eligible to purchase from the manufacturer.

(*iii*) The price of any program, certified, or other used motor vehicle that the new motor vehicle dealer purchases from the manufacturer.

(*iv*) The availability or amount of any discount, credit, rebate, or sales incentive that the new motor vehicle dealer is eligible to receive from the manufacturer in connection with any program, certified, or other used motor vehicle offered for sale by the manufacturer.

(u) Require that a new motor vehicle dealer provide its customer lists or service files to the manufacturer, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, or in connection with the submission of a claim to the manufacturer for services supplied by the new motor vehicle dealer for any claim for warranty repairs. This section does not limit a manufacturer's authority to require or use customer information to satisfy any safety or recall obligation.

(v) Establish a performance standard or program for measuring new motor vehicle dealer performance that may have a material impact on a new motor vehicle dealer that is not fair, reasonable, and equitable. For purposes of this subdivision, all of the following apply if a manufacturer does not provide a complete program description explaining the performance standard or program details to a new motor vehicle dealer on or before the beginning of the program:

(*i*) Within 10 days after receiving a request from the new motor vehicle dealer, the manufacturer shall provide the new motor vehicle dealer with a written description of how a performance standard or program is designed.

(*ii*) Within 30 days after receiving a request from the new motor vehicle dealer, the manufacturer shall provide information relating to how the performance standard or program applies to the new motor vehicle dealer.

(w) If a new motor vehicle dealer sold or leased a new motor vehicle to a customer that exported the motor vehicle to a foreign country or resold the motor vehicle, refuse to allocate, sell, or deliver new motor vehicles to the dealer; charge back or withhold payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevent a new motor vehicle dealer from participating in any sales promotion, program, or contest; or take or threaten to take any other adverse action against a new motor vehicle dealer, including, but not limited to, reducing vehicle allocations or terminating or threatening to terminate a dealer agreement, unless the manufacturer proves that the new motor vehicle dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. In an action by a new motor vehicle dealer for a violation of this subdivision, there is a rebuttable presumption that a new motor vehicle dealer did not know or should not reasonably have known of its customer's intent to export or resell a motor vehicle if the vehicle was titled in the United States, and the manufacturer bears the burden of rebutting that presumption.

(x) If a new motor vehicle dealer is a party to a dealer agreement on August 4, 2010, and the dealer agreement provides for sale of a competing line make of new motor vehicles at the same place of business where the manufacturer's line make is sold, require or otherwise coerce the new motor vehicle dealer to remove the sale or servicing of new motor vehicles of that competing line make from that place of business.

(y) Prevent, attempt to prevent, prohibit, coerce, or attempt to coerce a new motor vehicle dealer from charging a consumer any documentary preparation fee allowed to be charged by the dealer under the laws of this state.

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

(3) This section applies to a manufacturer that sells, services, displays, or advertises its new motor vehicles in this state.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor