

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4740

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, 5, 13, and 14 (MCL 445.1562, 445.1563, 445.1565, 445.1573, and 445.1574), section 2 as amended by 1983 PA 188, and by adding section 22a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) "Closed dealership" means a new motor vehicle
2 dealer whose dealer agreement has been terminated, canceled, dis-
3 continued, or not renewed.

4 (2) "Dealer agreement" means the agreement or contract in
5 writing between a ~~manufacturer,~~ distributor ~~,~~ and a new motor
6 vehicle dealer, BETWEEN A MANUFACTURER AND A DISTRIBUTOR OR A NEW

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1 MOTOR VEHICLE DEALER, OR BETWEEN AN IMPORTER AND A DISTRIBUTOR OR
2 A NEW MOTOR VEHICLE DEALER, which purports to establish the legal
3 rights and obligations of the parties to the agreement or con-
4 tract with regard to the purchase and sale OR RESALE of new AND
5 UNALTERED motor vehicles and accessories for motor vehicles.

6 (3) "Designated family member" means the spouse, child,
7 grandchild, parent, brother, or sister of a deceased new motor
8 vehicle dealer who is entitled to inherit the deceased dealer's
9 ownership interest in the new motor vehicle dealership under the
10 terms of the dealer's will, or who has otherwise been designated
11 in writing by a deceased dealer to succeed the deceased dealer in
12 the new motor vehicle dealership, or is entitled to inherit under
13 the laws of intestate succession of this state. With respect to
14 an incapacitated new motor vehicle dealer, the term means the
15 person appointed by a court as the legal representative of the
16 new motor vehicle dealer's property. The term also includes the
17 appointed and qualified personal representative and the testamen-
18 tary trustee of a deceased new motor vehicle dealer. However,
19 the term shall mean only that designated successor nominated by
20 the new motor vehicle dealer in a written document filed by the
21 dealer with the manufacturer or distributor, if such a document
22 is filed.

23 Sec. 3. (1) "Distributor" means any person, INCLUDING AN
24 IMPORTER, resident or nonresident, who IS ENGAGED IN THE BUSINESS
25 PURSUANT TO A DEALER AGREEMENT, in whole or in part, ~~offers~~ OF
26 OFFERING for sale, ~~sells~~ SELLING, or ~~distributes any~~
27 DISTRIBUTING new AND UNALTERED motor ~~vehicle~~ VEHICLES to a new

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1 motor vehicle dealer, ~~or~~ who maintains a factory representative
2 FOR SUCH PURPOSES, resident or nonresident, or who controls any
3 person, resident or nonresident, who in whole or in part offers
4 for sale, sells, or distributes ~~any~~ new AND UNALTERED motor
5 ~~vehicle~~ VEHICLES to a new motor vehicle dealer. DISTRIBUTOR
6 DOES NOT INCLUDE A PERSON WHO ALTERS OR CONVERTS MOTOR VEHICLES
7 FOR SALE TO A NEW MOTOR VEHICLE DEALER.

8 (2) "Established place of business" means a permanent,
9 enclosed commercial building located within this state easily
10 accessible and open to the public at all reasonable times and at
11 which the business of a new motor vehicle dealer, including the
12 display and repair of motor vehicles, may be lawfully carried on
13 in accordance with the terms of all applicable buildings codes,
14 zoning, and other land-use regulatory ordinances.

15 (3) "Factory branch" means an office maintained by a manu-
16 facturer or distributor for the purpose of selling or offering
17 for sale ~~—~~ vehicles to a distributor, wholesaler, or new motor
18 vehicle dealer, or for directing or supervising in whole or in
19 part factory or distributor representatives. The term includes
20 any sales promotion organization maintained by a manufacturer or
21 distributor which is engaged in promoting the sale of a particu-
22 lar make of new motor vehicles in this state to new motor vehicle
23 dealers.

24 (4) "Factory representative" means an agent or employee of a
25 manufacturer, distributor, or factory branch retained or employed
26 for the purpose of making or promoting the sale of new motor

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1 vehicles or for supervising or contracting with new motor vehicle
2 dealers or proposed motor vehicle dealers.

3 Sec. 5. (1) "New motor vehicle" means a motor vehicle which
4 is in the possession of the manufacturer, distributor, or whole-
5 saler, or has been sold only to a new motor vehicle dealer and on
6 which the original title has not been issued from the new motor
7 vehicle dealer.

8 (2) "New motor vehicle dealer" means a person, INCLUDING A
9 DISTRIBUTOR, who holds a dealer agreement granted by a
10 manufacturer, ~~or~~ distributor, OR IMPORTER for the sale OR
11 DISTRIBUTION of its motor vehicles, who is engaged in the busi-
12 ness of purchasing, selling, exchanging, or dealing in new motor
13 vehicles and who has an established place of business in this
14 state.

15 (3) "Person" means a natural person, partnership, corpora-
16 tion, association, trust, estate, or other legal entity.

17 (4) "Proposed new motor vehicle dealer" means a person who
18 has an application pending for a new dealer agreement with a man-
19 ufacturer or distributor. Proposed motor vehicle dealer does not
20 include a person whose dealer agreement is being renewed or
21 continued.

22 Sec. 13. A manufacturer, IMPORTER, or distributor shall not
23 require any new motor vehicle dealer in this state to do any of
24 the following:

25 (a) Order, or accept delivery of any new motor vehicle, OR
26 part or accessory ~~thereof~~ OF A NEW MOTOR VEHICLE, equipment, or
27 any other commodity not required by law which was not voluntarily

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1 ordered by the new motor vehicle dealer. This section ~~shall~~
2 DOES not ~~be construed to~~ prevent the manufacturer or distribu-
3 tor from requiring that new motor vehicle dealers carry a reason-
4 able inventory of models offered for sale by the manufacturer or
5 distributor.

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

10 (c) Participate monetarily in any advertising campaign or
11 contest, or purchase any promotional materials, display devices,
12 or display decorations or materials ~~at the expense of the new~~
13 ~~motor vehicle dealer~~ OR PAY OR ASSUME DIRECTLY IN CONNECTION
14 WITH THE SALE OF A NEW MOTOR VEHICLE ANY PART OF THE COST OF A
15 REFUND, REBATE, OR DISCOUNT MADE BY OR LAWFULLY IMPOSED BY THE
16 MANUFACTURER OR DISTRIBUTOR TO OR IN FAVOR OF A CONSUMER UNLESS
17 VOLUNTARILY AGREED TO BY THE DEALER.

18 (d) Enter into any agreement with the manufacturer or dis-
19 tributor or do any other act prejudicial to the new motor vehicle
20 dealer by threatening to terminate a dealer agreement or any con-
21 tractual agreement or understanding existing between the dealer
22 and the manufacturer or distributor. Notice in good faith to any
23 dealer of the dealer's violation of any terms or provisions of
24 the dealer agreement shall not constitute a violation of this
25 act.

26 (e) Change the capital structure of the new motor vehicle
27 dealership or the means by or through which the dealer finances

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1 the operation of the dealership, if the dealership at all times
2 meets any reasonable capital standards determined by the manufac-
3 turer in accordance with uniformly applied criteria.

4 (f) Refrain from participation in the management of, invest-
5 ment in, or the acquisition of, any other line of new motor vehi-
6 cle or related products, provided that the dealer maintains a
7 reasonable line of credit for each make or line of vehicle,
8 remains in compliance with reasonable facilities requirements,
9 and makes no change in the principal management of the dealer.

10 (g) Change the location of the new motor vehicle dealership
11 or make any substantial alterations to the dealership premises,
12 where to do so would be unreasonable.

13 (h) Prospectively assent to a release, assignment, novation,
14 waiver, or estoppel which would relieve any person from liability
15 imposed by this act; REQUIRE THAT ANY DEALER AGREEMENT BE GOV-
16 ERNED BY THE LAWS OF A STATE OTHER THAN THIS STATE; or, ABSENT A
17 CONTRACTUAL AGREEMENT, require any controversy between a new
18 motor vehicle dealer and a manufacturer, IMPORTER, or distributor
19 to be ~~referred to a person other than the duly constituted~~
20 ~~courts of the state or the United States, if the referral would~~
21 ~~be binding upon the new motor vehicle dealer~~ ARBITRATED OR LITI-
22 GATED OUTSIDE THIS STATE. SUCH A PROVISION IN A DEALER AGREEMENT
23 IS VOID AND UNENFORCEABLE. HOWEVER, THIS SUBDIVISION DOES NOT
24 PRECLUDE THE PARTIES TO AN AGREEMENT TO AGREE TO CONDUCT ARBITRA-
25 TION OF A DISPUTE AT A LOCATION OUTSIDE THIS STATE.

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

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1 (a) ~~Fail to deliver new motor vehicles or new motor vehicle~~
2 ~~parts or accessories within a reasonable time and in reasonable~~
3 ~~quantities relative to the new motor vehicle dealer's market area~~
4 ~~and facilities, unless the failure is caused by acts or occur-~~
5 ~~rences beyond the control of the manufacturer or distributor, or~~
6 ~~unless the failure results from an order by the new motor vehicle~~
7 ~~dealer in excess of quantities reasonably and fairly allocated by~~
8 ~~the manufacturer or distributor.~~ ADOPT, CHANGE, ESTABLISH, OR
9 IMPLEMENT A PLAN OR SYSTEM FOR THE ALLOCATION AND DISTRIBUTION OF
10 NEW MOTOR VEHICLES TO NEW MOTOR VEHICLE DEALERS THAT IS ARBITRARY
11 OR CAPRICIOUS, OR MODIFY AN EXISTING PLAN OR SYSTEM THAT CAUSES
12 THE PLAN OR SYSTEM TO BE ARBITRARY OR CAPRICIOUS.

13 (b) ~~Refuse to disclose to a new motor vehicle dealer the~~
14 ~~method and manner of distribution of new motor vehicles by the~~
15 ~~manufacturer or distributor.~~ FAIL OR REFUSE TO ADVISE OR DIS-
16 CLOSE TO ANY NEW MOTOR VEHICLE DEALER HAVING A DEALER AGREEMENT,
17 UPON WRITTEN REQUEST THEREFORE, THE BASIS UPON WHICH NEW MOTOR
18 VEHICLES OF THE SAME LINE MAKE ARE ALLOCATED OR DISTRIBUTED TO
19 NEW MOTOR VEHICLE DEALERS IN THE STATE AND THE BASIS UPON WHICH
20 THE CURRENT ALLOCATION OR DISTRIBUTION IS BEING MADE OR WILL BE
21 MADE TO THAT NEW MOTOR VEHICLE DEALER.

22 (c) ~~Refuse to disclose to a new motor vehicle dealer the~~
23 ~~total number of new motor vehicles of a given model, which the~~
24 ~~manufacturer or distributor has sold during the current model~~
25 ~~year within the dealer's marketing district, zone, or region,~~
26 ~~whichever geographical area is the smallest.~~ REFUSE TO DELIVER
27 IN REASONABLE QUANTITIES AND WITHIN A REASONABLE TIME AFTER

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1 RECEIPT OF A DEALER'S ORDER, TO ANY NEW MOTOR VEHICLE DEALER
2 HAVING A DEALER AGREEMENT FOR THE RETAIL SALE OF NEW MOTOR VEHI-
3 CLES SOLD OR DISTRIBUTED BY A MANUFACTURER OR DISTRIBUTOR ANY
4 SUCH MOTOR VEHICLES AS ARE COVERED BY SUCH DEALER AGREEMENT SPE-
5 CIFICALLY PUBLICLY ADVERTISED IN THE STATE BY THE MANUFACTURER OR
6 DISTRIBUTOR TO BE AVAILABLE FOR IMMEDIATE DELIVERY. HOWEVER, THE
7 FAILURE TO DELIVER ANY MOTOR VEHICLE SHALL NOT BE CONSIDERED A
8 VIOLATION OF THIS ACT IF THE FAILURE IS DUE TO AN ACT OF GOD, A
9 WORK STOPPAGE OR DELAY DUE TO A STRIKE OR LABOR DIFFICULTY, A
10 SHORTAGE OF MATERIALS, A LACK OF MANUFACTURING CAPACITY, A
11 FREIGHT EMBARGO OR OTHER CAUSE OVER WHICH THE MANUFACTURER OR
12 DISTRIBUTOR HAS NO CONTROL. IF THE MANUFACTURER OR DISTRIBUTOR
13 REQUIRES A NEW MOTOR VEHICLE DEALER TO PURCHASE ESSENTIAL SERVICE
14 TOOLS WITH A PURCHASE PRICE IN THE AGGREGATE OF MORE THAN
15 \$7,500.00 IN ORDER TO RECEIVE A SPECIFIC MODEL VEHICLE, THE MANU-
16 FACTURER OR DISTRIBUTOR SHALL UPON WRITTEN REQUEST PROVIDE THE
17 DEALER WITH A GOOD FAITH ESTIMATE IN WRITING OF THE NUMBER OF
18 VEHICLES OF THAT SPECIFIC MODEL THE DEALER WILL BE ALLOCATED
19 DURING THAT MODEL YEAR IN WHICH THE TOOL IS REQUIRED TO BE
20 PURCHASED.

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

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

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

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

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

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

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

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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 with
4 a new motor vehicle dealer of the same line make operating under
5 a dealer agreement with the manufacturer or distributor in the
6 relevant market area. A manufacturer or distributor shall not be
7 considered to be unfairly competing if the manufacturer or dis-
8 tributor 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 (I) PREVENT OR ATTEMPT TO PREVENT BY CONTRACT OR OTHERWISE
18 ANY NEW MOTOR VEHICLE DEALER FROM CHANGING THE EXECUTIVE MANAGE-
19 MENT OF A NEW MOTOR VEHICLE DEALER UNLESS THE MANUFACTURER OR
20 DISTRIBUTOR, HAVING THE BURDEN OF PROOF, CAN SHOW THAT THE CHANGE
21 OF EXECUTIVE MANAGEMENT WILL RESULT IN EXECUTIVE MANAGEMENT BY A
22 PERSON OR PERSONS WHO ARE NOT OF GOOD MORAL CHARACTER OR WHO DO
23 NOT MEET REASONABLE, PREEXISTING, AND EQUITABLY APPLIED STANDARDS
24 OF THE MANUFACTURER OR DISTRIBUTOR. IF A MANUFACTURER OR DIS-
25 TRIBUTOR REJECTS A PROPOSED CHANGE IN THE EXECUTIVE MANAGEMENT,
26 THE MANUFACTURER OR DISTRIBUTOR SHALL GIVE WRITTEN NOTICE OF ITS
27 REASONS TO THE DEALER WITHIN 60 DAYS AFTER RECEIVING WRITTEN

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1 NOTICE FROM THE DEALER OF THE PROPOSED CHANGE AND ALL RELATED
2 INFORMATION REASONABLY REQUESTED BY THE MANUFACTURER OR DISTRIBUTU-
3 TOR, OR THE CHANGE IN EXECUTIVE MANAGEMENT SHALL BE CONSIDERED
4 APPROVED.

5 (J) ~~(i)~~ Unreasonably withhold consent to the sale, trans-
6 fer, or exchange of the dealership to a qualified buyer capable
7 of being licensed as a new motor vehicle dealer in this state.

8 (K) ~~(j)~~ Fail to respond in writing to a request for con-
9 sent to a sale, transfer, or exchange of a dealership within 60
10 days after receipt of a written application from the new motor
11 vehicle dealer on the forms generally utilized by the manufac-
12 turer or distributor for such purpose and containing the informa-
13 tion required therein. Failure to respond to the request within
14 the 60 days shall be ~~deemed to be~~ CONSIDERED consent.

15 (L) ~~(k)~~ Unfairly prevent a new motor vehicle dealer from
16 receiving reasonable compensation for the value of the new motor
17 vehicle dealership.

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

23 SEC. 22A. THE 1998 AMENDMENTS TO THIS ACT THAT ADDED THIS
24 SECTION APPLY TO AGREEMENTS IN EXISTENCE ON THE EFFECTIVE DATE OF
25 THIS SECTION AND TO AGREEMENTS ENTERED INTO OR RENEWED AFTER THE
26 EFFECTIVE DATE OF THIS SECTION.

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1 Enacting section 1. This amendatory act does not take
2 effect unless House Bill No. 4738 of the 89th Legislature is
3 enacted into law.