

Act No. 140
Public Acts of 2010
Approved by the Governor
August 3, 2010
Filed with the Secretary of State
August 4, 2010
EFFECTIVE DATE: August 4, 2010

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Reps. Walsh, Byrum, Caul, Wayne Schmidt, Young, Mayes, Melton, Hildenbrand, Roy Schmidt, Leland, Durhal, Lemmons, Slezak, McDowell, Spade, Terry Brown, Gregory, LeBlanc, Johnson, Huckleberry, Haase, Kandrevas, Corriveau, Scripps, Robert Jones, Segal, Dean, Switalski, Haugh, Gonzales, Womack, Meadows, Griffin, Miller, Rocca, Byrnes, Neumann, Daley, Kennedy, Donigan, Stanley, Bledsoe, Liss, Ebli, Nerat, Sheltrown, Espinoza, Lahti, Constan, Slavens, Roberts, Warren, Polidori, Lindberg, Bauer, Stamas, Moore, Crawford, Horn, Pavlov, Green, Opsommer, Lund, Denby, Tyler, Bolger, Agema, Meekhof, Haines, Pearce, Haveman, Paul Scott, Booher, Rogers, Kowall, Ball, Hansen, Schuitmaker, Knollenberg, Proos, Valentine, Smith, Barnett, Lisa Brown, Calley, Clemente, Cushingberry, DeShazor, Jackson, Rick Jones, Kurtz, Lipton, Lori, Marleau, Meltzer, Nathan, Bettie Scott and Tlaib

ENROLLED HOUSE BILL No. 6099

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 sections 2, 3, and 4 (MCL 445.1562, 445.1563, and 445.1564), sections 2 and 3 as amended by 1998 PA 456 and section 4 as amended by 2000 PA 240.

The People of the State of Michigan enact:

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

(2) "Coerce" means to compel or attempt to compel a person to act in a given manner or to refrain from acting in a given manner by pressure, intimidation, or threat of harm, damage, breach of contract, or other adverse consequences, including, but not limited to, the loss of any benefit available to other new motor vehicle dealers of the same line make in this state. The term does not include any of the following actions by a manufacturer:

(a) Without conditions, making a good faith recommendation, exposition, or argument or persuading or attempting to persuade a person.

(b) Giving notice in good faith to a new motor vehicle dealer of that dealer's violation of the terms or provisions of a dealer agreement.

(c) Engaging in any conduct the manufacturer is permitted to engage in under this act.

(3) “Dealer agreement” means an agreement or contract in writing between a distributor and a new motor vehicle dealer, between a manufacturer and a distributor or a new motor vehicle dealer, or between an importer and a distributor or a new motor vehicle dealer, that purports to establish the legal rights and obligations of the parties to the agreement or contract and under which the dealer purchases and resells new motor vehicles and conducts service operations. The term includes the sales and service agreement, regardless of the terminology used to describe that agreement, and any addenda to the dealer agreement, including all schedules, attachments, exhibits, and agreements incorporated by reference into the dealer agreement.

(4) “Designated family member” means any of the following:

(a) If a new motor vehicle dealer who dies or becomes incapacitated has designated a successor under section 15(6), that designated successor.

(b) If a new motor vehicle owner dies and has not designated a successor under section 15(6), the spouse or a child, grandchild, parent, brother, or sister of a deceased new motor vehicle dealer, who is entitled to inherit the deceased dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or who is entitled to inherit under the laws of intestate succession of this state or the appointed and qualified personal representative or testamentary trustee of the deceased new motor vehicle dealer.

(c) If a new motor vehicle dealer becomes incapacitated and has not designated a successor under section 15(6), the person appointed by the court as the legal representative of the dealer.

Sec. 3. (1) “Distributor” means any person, including importer, that is located in or outside of this state and is engaged in the business of offering for sale, selling, or distributing new and unaltered motor vehicles to a new motor vehicle dealer under a dealer agreement, that maintains a factory representative that is located in or outside of this state for purposes of conducting that business, or that controls a person that is located in or outside of this state and offers for sale, sells, or distributes new and unaltered motor vehicles to a new motor vehicle dealer. Distributor does not include a person that alters or converts motor vehicles for sale to a new motor vehicle dealer.

(2) “Established place of business” means a permanent, enclosed commercial building located in this state that is easily accessible and open to the public at all reasonable times and at which a new motor vehicle dealer may legally conduct business, including the display and repair of motor vehicles, in compliance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

(3) “Executive manager” means an individual employed by a new motor vehicle dealer in an executive capacity and who has a written employment agreement with the dealer that includes a right for the executive manager to purchase a controlling interest in the dealership at a future time or on the death or incapacity of the dealer.

(4) “Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering to sell vehicles to a distributor, wholesaler, or new motor vehicle dealer or for directing or supervising any factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor that is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(5) “Factory representative” means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

Sec. 4. (1) “Good faith” means that term as defined in section 2103 of the uniform commercial code, 1962 PA 174, MCL 440.2103.

(2) “Manufacturer” means a person that manufactures or assembles new motor vehicles or a distributor, factory branch, or factory representative.

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

(4) “Motor vehicle service and repair facility” means a motor vehicle repair facility, as defined in section 2 of the motor vehicle service and repair act, 1974 PA 300, MCL 257.1302. The term does not include a motor vehicle dealer performing maintenance, diagnosis, vehicle body work, repairs, or other service or repair work on motor vehicles under the terms of a dealer agreement.

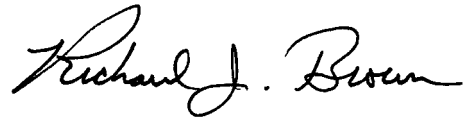
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

(a) Senate Bill No. 1308.


(b) Senate Bill No. 1309.

(c) House Bill No. 6100.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:

Senate Bill No. 1308 was filed with the Secretary of State August 4, 2010, and became 2010 PA 138, Imd. Eff. Aug. 4, 2010.

Senate Bill No. 1309 was filed with the Secretary of State August 4, 2010, and became 2010 PA 139, Imd. Eff. Aug. 4, 2010.

House Bill No. 6100 was filed with the Secretary of State August 4, 2010, and became 2010 PA 141, Imd. Eff. Aug. 4, 2010.