

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1308

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 14A. (1) A MANUFACTURER SHALL NOT REQUIRE THAT A NEW
2 MOTOR VEHICLE DEALER, A PROPOSED NEW MOTOR VEHICLE DEALER, OR ANY
3 OWNER OF AN INTEREST IN A DEALERSHIP FACILITY ENTER INTO OR AGREE
4 TO A PROPERTY USE AGREEMENT AS A CONDITION TO ANY OF THE FOLLOWING:
5 (A) AWARDED A DEALER AGREEMENT TO A PROSPECTIVE NEW MOTOR

1 VEHICLE DEALER.

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

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

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

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

10 (2) SUBSECTION (1) DOES NOT APPLY TO A PROPERTY USE AGREEMENT
11 IF ANY OF THE FOLLOWING ARE OFFERED AND ACCEPTED FOR THAT
12 AGREEMENT:

13 (A) MONETARY CONSIDERATION.

14 (B) SEPARATE AND VALUABLE CONSIDERATION THAT CAN BE CALCULATED
15 TO A SUM CERTAIN.

16 (3) IF A MANUFACTURER AND A NEW MOTOR VEHICLE DEALER ARE
17 PARTIES TO A PROPERTY USE AGREEMENT, THE DEALER AGREEMENT BETWEEN
18 THE MANUFACTURER AND NEW MOTOR VEHICLE DEALER IS TERMINATED BY A
19 MANUFACTURER, BY A SUCCESSOR MANUFACTURER, OR BY OPERATION OF LAW,
20 AND THE REASON FOR THE TERMINATION IS NOT A REASON DESCRIBED IN
21 SECTION 10(C), THE PROPERTY USE AGREEMENT TERMINATES AND CEASES TO
22 BE EFFECTIVE AT THE TIME THE DEALER AGREEMENT IS TERMINATED.

23 (4) IF ANY PROVISION CONTAINED IN A PROPERTY USE AGREEMENT
24 ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
25 THAT ADDED THIS SUBSECTION IS INCONSISTENT WITH THIS SECTION, THE
26 PROVISION IS VOIDABLE AT THE ELECTION OF THE AFFECTED NEW MOTOR
27 VEHICLE DEALER, PROPOSED NEW MOTOR VEHICLE DEALER, OR OWNER OF AN

1 INTEREST IN THE DEALERSHIP FACILITY.

2 (5) AS USED IN THIS SECTION, "PROPERTY USE AGREEMENT" MEANS
3 ANY OF THE FOLLOWING:

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

6 (B) AN AGREEMENT THAT RESTRICTS THE ABILITY OF A NEW MOTOR
7 VEHICLE DEALER, OR THE ABILITY OF THE DEALER'S LESSOR IF THE DEALER
8 IS LEASING THE DEALERSHIP FACILITY, TO TRANSFER, SELL, LEASE, OR
9 CHANGE THE USE OF THE PLACE OF BUSINESS OF THE DEALERSHIP, WHETHER
10 BY SUBLEASE, LEASE, COLLATERAL PLEDGE OF LEASE, RIGHT OF FIRST
11 REFUSAL TO PURCHASE OR LEASE, OPTION TO PURCHASE, OPTION TO LEASE,
12 OR OTHER SIMILAR AGREEMENT, REGARDLESS OF WHO THE PARTIES TO THAT
13 AGREEMENT ARE.

14 (C) ANY SIMILAR AGREEMENT BETWEEN A MANUFACTURER AND A NEW
15 MOTOR VEHICLE DEALER AND COMMONLY KNOWN AS A SITE CONTROL AGREEMENT
16 OR EXCLUSIVE USE AGREEMENT.

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

dealers. A manufacturer ~~or distributor~~ may refuse to ~~honor~~ **CONTINUE** the existing dealer agreement with the designated family member only for good cause.

(2) ~~The A~~ manufacturer ~~or distributor~~ may request from a designated family member ~~such~~ **OR EXECUTIVE MANAGER DESCRIBED IN SUBSECTION (1) A COMPLETED APPLICATION FORM AND ANY** personal and financial ~~data as is~~ **INFORMATION THAT IS** reasonably necessary to determine whether the existing dealer agreement should ~~be honored~~ **CONTINUE**. The designated family member **OR EXECUTIVE MANAGER** shall supply the **COMPLETED APPLICATION FORM AND** personal and financial ~~data~~ **INFORMATION** promptly ~~upon the~~ **ON** request. **AS USED IN THIS SUBSECTION AND SUBSECTION (3), "APPLICATION FORM" MEANS THE APPLICATION FORM GENERALLY USED BY THE MANUFACTURER IN CONNECTION WITH A PROPOSAL TO CONTINUE A DEALER AGREEMENT UNDER THIS SECTION.**

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

(4) ~~The A~~ notice of ~~the~~ **REFUSAL SERVED BY A** manufacturer ~~or distributor~~ ~~provided in~~ **UNDER** subsection (3) shall state the

specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect not ~~less~~ **FEWER** than 90 days after the date the notice is served.

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

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer. ~~or distributor, and if such~~ **IF THE DEALER FILES** an instrument ~~is filed~~ **DESCRIBED IN THIS SUBSECTION**, it alone shall determine the succession rights to the management and operation of the dealership.

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

(2) ~~The A~~ schedule of compensation **DESCRIBED IN SUBSECTION (1)** shall include reasonable compensation for diagnostic work ~~, as well as~~ **AND** repair service and labor. Time allowances for the diagnosis

1 and performance of warranty work and service shall be reasonable
 2 and adequate for the work to be performed. In ~~the determination of~~
 3 **DETERMINING** what constitutes reasonable compensation under this
 4 section, the principal factor to be given consideration ~~shall be~~ **IS**
 5 the prevailing wage rates being paid by dealers in the community in
 6 which the dealer is doing business, and ~~in no event shall the~~
 7 compensation of a dealer for warranty labor **SHALL NOT** be less than
 8 the rates charged by the dealer for like service to retail
 9 customers for nonwarranty service and repairs, ~~provided that such~~
 10 **IF THOSE** rates are reasonable.

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

13 (a) Fail to perform any warranty obligation.

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

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

21 (4) ~~All claims~~ **A MANUFACTURER SHALL PAY A CLAIM** made by a new
 22 motor vehicle dealer ~~pursuant to~~ **UNDER** this section for labor and
 23 parts ~~shall be paid~~ within 30 days after ~~their~~ **ITS** approval. ~~All~~
 24 ~~claims shall be either approved or disapproved by the manufacturer~~
 25 ~~or distributor within 30 days after their receipt on a proper~~ **A**
 26 **MANUFACTURER SHALL EITHER APPROVE OR DISAPPROVE A CLAIM WITHIN 30**
 27 **DAYS AFTER RECEIVING THE CLAIM, SUBMITTED ON THE** form generally

1 used by the manufacturer ~~or distributor~~ and containing the usually
2 ~~required information therein~~ **USUALLY REQUIRED IN THE FORM**. Any
3 claim not specifically disapproved in writing within 30 days after
4 ~~the receipt of the form shall be~~ **MANUFACTURER RECEIVES THE CLAIM**
5 **FORM IS** considered ~~to be~~ approved, and ~~payment shall be made~~ **THE**
6 **MANUFACTURER SHALL PAY THE CLAIM** within 30 days. A claim which has
7 been

8 (5) **SUBJECT TO SUBSECTION (10), IF A MANUFACTURER HAS** approved
9 and paid ~~may not be charged back to the dealer unless the~~
10 ~~manufacturer can show that the claim was fraudulent, false, or~~
11 ~~unsubstantiated, except that a charge back for false or fraudulent~~
12 ~~claims shall not be made more than 2 years after payment, and a~~
13 ~~charge back for unsubstantiated claims shall not be made more than~~
14 ~~15 months after payment.~~ **A NEW MOTOR VEHICLE DEALER FOR A CLAIM,**
15 **THE MANUFACTURER MAY ONLY CHARGE THE CLAIM BACK TO THE DEALER IF 1**
16 **OF THE FOLLOWING IS MET:**

17 (A) **THE MANUFACTURER SHOWS THAT THE CLAIM IS FRAUDULENT OR**
18 **FALSE. HOWEVER, THE MANUFACTURER MAY NOT CHARGE BACK THE AMOUNT**
19 **PAID IF THE CLAIM IS FOUND TO BE FALSE OR FRAUDULENT MORE THAN 2**
20 **YEARS AFTER PAYMENT.**

21 (B) **THE MANUFACTURER SHOWS THAT THE CLAIM IS UNSUBSTANTIATED,**
22 **LACKS PROPER DOCUMENTATION, OR SHOWS AN IMPROPER DIAGNOSIS PROCESS**
23 **OR IMPROPER REPAIR PROCEDURES. HOWEVER, THE MANUFACTURER MAY NOT**
24 **CHARGE BACK THE AMOUNT PAID IF THE CLAIM IS FOUND TO BE**
25 **UNSUBSTANTIATED, TO LACK PROPER DOCUMENTATION, OR SHOW AN IMPROPER**
26 **DIAGNOSIS PROCESS OR REPAIR PROCEDURES MORE THAN 12 MONTHS AFTER**
27 **PAYMENT.**

1 (6) A MANUFACTURER MAY NOT DENY A CLAIM MADE UNDER THIS
2 SECTION BECAUSE OF A NEW MOTOR VEHICLE DEALER'S INCIDENTAL FAILURE
3 TO COMPLY WITH A SPECIFIC CLAIM PROCESSING REQUIREMENT, SUCH AS A
4 CLERICAL ERROR, THAT DOES NOT CALL INTO QUESTION THE LEGITIMACY OF
5 THE CLAIM.

6 (7) A new motor vehicle dealer shall maintain all records of
7 warranty repairs, including the related time records of its
8 employees, for at least 2 years following payment of any warranty
9 claim.

10 (8) ~~(5) A manufacturer or distributor shall compensate the A~~
11 ~~new motor vehicle dealer for manufacturer or distributor sponsored~~
12 **ANY** sales or service promotion events, programs, or activities
13 **SPONSORED BY THE MANUFACTURER**, in accordance with established
14 guidelines for ~~such~~ **THOSE** events, programs, or activities.

15 (9) ~~(6) All claims made by A MANUFACTURER SHALL PAY A CLAIM~~
16 **FOR COMPENSATION OWED TO** a new motor vehicle dealer ~~pursuant to~~
17 **UNDER** subsection ~~(5) (8)~~ for **A** promotion events, programs, or
18 activities ~~shall be paid~~ **EVENT, PROGRAM, OR ACTIVITY** within 10 days
19 after their ~~ITS~~ approval. All claims ~~shall be either approved or~~
20 ~~disapproved by the A manufacturer or distributor~~ **SHALL EITHER**
21 **APPROVE OR DISAPPROVE A CLAIM FOR COMPENSATION DESCRIBED IN THIS**
22 **SUBSECTION** within 30 days after ~~their receipt on a proper~~ **RECEIVING**
23 **THE CLAIM, SUBMITTED ON THE** form generally used by the manufacturer
24 ~~or distributor~~ and containing the **INFORMATION** usually required
25 ~~information therein~~ **IN THE FORM**. Any claim ~~not specifically~~
26 ~~disapproved~~ **FOR COMPENSATION THE MANUFACTURER DOES NOT SPECIFICALLY**
27 **DISAPPROVE** in writing within 30 days after ~~the receipt of the~~

1 RECEIVING THE CLAIM form ~~shall be~~ IS considered ~~to be~~ approved, and
2 ~~payment shall be made~~ THE MANUFACTURER SHALL PAY THE AMOUNT OF THE
3 CLAIM within 30 days. ~~The A manufacturer has the right to~~ MAY ONLY
4 charge back any ~~A claim for 6 months after the later of either the~~
5 ~~close of the promotion event, program, or activity, or the date of~~
6 ~~the payment~~ COMPENSATION WITHIN 12 MONTHS AFTER THE DATE OF
7 PAYMENT, OR WITHIN 12 MONTHS AFTER THE END OF A PROGRAM IF THE
8 DURATION OF THE PROGRAM IS 1 YEAR OR LESS.

9 (10) A MANUFACTURER MAY NOT CHARGE A CLAIM BACK TO A NEW MOTOR
10 VEHICLE DEALER AFTER THE CLAIM IS PAID UNLESS A REPRESENTATIVE OF
11 THE MANUFACTURER FIRST MEETS IN PERSON OR BY VIDEO TELECONFERENCE
12 OR TELEPHONE WITH AN OFFICER OR EMPLOYEE OF THE DEALER DESIGNATED
13 BY THE NEW MOTOR VEHICLE DEALER, OR RESPONDS IN WRITING TO ANY
14 DEALER WRITTEN REQUEST FOR INFORMATION. ALL OF THE FOLLOWING APPLY
15 IF A MEETING IS HELD UNDER THIS SUBSECTION:

16 (A) AT THE MEETING, THE MANUFACTURER SHALL PROVIDE A DETAILED
17 EXPLANATION, WITH SUPPORTING DOCUMENTATION, OF THE BASIS FOR EACH
18 PROPOSED CHARGEBACK OF A CLAIM TO THE DEALER AND A WRITTEN
19 STATEMENT CONTAINING THE BASIS ON WHICH THE CLAIM OR CLAIMS OF THE
20 DEALER WERE SELECTED FOR AUDIT OR REVIEW BY THE MANUFACTURER.

21 (B) AFTER THE MEETING, THE MANUFACTURER SHALL PROVIDE THE
22 MOTOR VEHICLE DEALER'S REPRESENTATIVE A REASONABLE PERIOD OF TIME
23 OF AT LEAST 45 DAYS TO RESPOND TO THE PROPOSED CHARGEBACKS. THE
24 MANUFACTURER SHALL PROVIDE A LONGER PERIOD OF TIME FOR THE DEALER
25 TO RESPOND IF WARRANTED BY THE VOLUME OF PROPOSED CHARGEBACKS.

26 (C) AN UNEXCUSED FAILURE OR REFUSAL OF THE DEALER OR
27 DESIGNATED OFFICER OR EMPLOYEE OF THE DEALER TO SCHEDULE, ATTEND,

1 OR PARTICIPATE IN THE MEETING WITH THE MANUFACTURER RELIEVES THE
2 MANUFACTURER FROM ANY FURTHER OBLIGATION UNDER THIS SUBSECTION.

3 (11) A MANUFACTURER MAY CONDUCT AN AUDIT OF THE RECORDS OF A
4 NEW MOTOR VEHICLE DEALER RELATING TO A WARRANTY OR PROMOTION CLAIM
5 SUBMITTED BY A NEW MOTOR VEHICLE DEALER UNDER THIS SECTION, BUT THE
6 MANUFACTURER MAY ONLY CONDUCT THAT AUDIT IN THE TIME PERIODS
7 ALLOWED FOR WARRANTY OR PROMOTIONAL CLAIM CHARGEBACKS UNDER THIS
8 SECTION.

9 Sec. 20. (1) If a manufacturer ~~or distributor~~ terminates,
10 cancels, fails to renew, or discontinues a dealer agreement, ~~for~~
11 ~~other than~~ **WITHOUT** good cause as ~~defined~~ **DESCRIBED** in this act, the
12 new motor vehicle dealer may bring an action against the
13 manufacturer ~~or distributor~~ to recover actual damages reasonably
14 incurred **BY THE DEALER** as a result of the termination,
15 cancellation, failure, or discontinuance.

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

19 (3) A manufacturer ~~or distributor~~ or new motor vehicle dealer
20 may bring an action for declaratory judgment for determination of
21 any controversy arising ~~pursuant to~~ **UNDER** this act.

22 (4) A manufacturer ~~or distributor who~~ **THAT** violates this act
23 shall be liable for all court costs and reasonable ~~attorney's~~
24 **ATTORNEY** fees incurred by ~~the~~ **A** dealer **IN AN ACTION UNDER THIS**
25 **SECTION.**

26 Enacting section 1. This amendatory act does not take effect
27 unless all of the following bills of the 95th Legislature are

1 enacted into law:

2 (a) Senate Bill No. 1309.

3 (b) House Bill No. 6099.

4 (c) House Bill No. 6100.