

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 6099**

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, 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:

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

4 (2) "COERCE" MEANS TO COMPEL OR ATTEMPT TO COMPEL A PERSON TO
5 ACT IN A GIVEN MANNER OR TO REFRAIN FROM ACTING IN A GIVEN MANNER

1 BY PRESSURE, INTIMIDATION, OR THREAT OF HARM, DAMAGE, BREACH OF
2 CONTRACT, OR OTHER ADVERSE CONSEQUENCES, INCLUDING, BUT NOT LIMITED
3 TO, THE LOSS OF ANY BENEFIT AVAILABLE TO OTHER NEW MOTOR VEHICLE
4 DEALERS OF THE SAME LINE MAKE IN THIS STATE. THE TERM DOES NOT
5 INCLUDE ANY OF THE FOLLOWING ACTIONS BY A MANUFACTURER:

6 (A) WITHOUT CONDITIONS, MAKING A GOOD FAITH RECOMMENDATION,
7 EXPOSITION, OR ARGUMENT OR PERSUADING OR ATTEMPTING TO PERSUADE A
8 PERSON.

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

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

14 (3) ~~(2)~~-"Dealer agreement" means ~~the~~ **AN** agreement or contract
15 in writing between a distributor and a new motor vehicle dealer,
16 between a manufacturer and a distributor or a new motor vehicle
17 dealer, or between an importer and a distributor or a new motor
18 vehicle dealer, ~~which~~ **THAT** purports to establish the legal rights
19 and obligations of the parties to the agreement or contract ~~with~~
20 ~~regard to the purchase and sale or resale of new and unaltered~~
21 ~~motor vehicles and accessories for motor vehicles~~ **AND UNDER WHICH**
22 **THE DEALER PURCHASES AND RESELLS NEW MOTOR VEHICLES AND CONDUCTS**
23 **SERVICE OPERATIONS. THE TERM INCLUDES THE SALES AND SERVICE**
24 **AGREEMENT, REGARDLESS OF THE TERMINOLOGY USED TO DESCRIBE THAT**
25 **AGREEMENT, AND ANY ADDENDA TO THE DEALER AGREEMENT, INCLUDING ALL**
26 **SCHEDULES, ATTACHMENTS, EXHIBITS, AND AGREEMENTS INCORPORATED BY**
27 **REFERENCE INTO THE DEALER AGREEMENT.**

(4) ~~(3)~~—"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, ~~or~~ 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 ~~. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes OR the appointed and qualified personal representative and the OR~~ testamentary trustee of a ~~THE~~ deceased new motor vehicle dealer. However, the term shall mean only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

(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 an importer, ~~resident or nonresident, who~~ **THAT IS LOCATED IN OR OUTSIDE OF THIS STATE AND** is engaged in the business ~~pursuant to a~~

~~dealer agreement, in whole or in part, of offering for sale,~~
~~selling, or distributing new and unaltered motor vehicles to a new~~
~~motor vehicle dealer , who~~ **UNDER A DEALER AGREEMENT, THAT** maintains
~~a factory representative for such purposes, resident or~~
~~nonresident, THAT IS LOCATED IN OR OUTSIDE OF THIS STATE FOR~~
~~PURPOSES OF CONDUCTING THAT BUSINESS, or who THAT controls any A~~
~~person , resident or nonresident, who in whole or in part 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 ~~who 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 ~~within~~ **IN** this state **THAT IS**
easily accessible and open to the public at all reasonable times
and at which ~~the business of a new motor vehicle dealer~~ **MAY LEGALLY**
CONDUCT BUSINESS, including the display and repair of motor
vehicles, ~~may be lawfully carried on in accordance~~ **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) ~~(3)~~ "Factory branch" means an office maintained by a
manufacturer or distributor for the purpose of selling or offering

1 ~~for sale~~ **TO SELL** vehicles to a distributor, wholesaler, or new
 2 motor vehicle dealer ~~or for directing or supervising in whole or~~
 3 ~~in part~~ **ANY** factory or distributor representatives. The term
 4 includes any sales promotion organization maintained by a
 5 manufacturer or distributor ~~which~~ **THAT** is engaged in promoting the
 6 sale of a particular make of new motor vehicles in this state to
 7 new motor vehicle dealers.

8 (5) ~~(4)~~ "Factory representative" means an agent or employee of
 9 a manufacturer, distributor, or factory branch retained or employed
 10 for the purpose of making or promoting the sale of new motor
 11 vehicles or for supervising or contracting with new motor vehicle
 12 dealers or proposed motor vehicle dealers.

13 Sec. 4. (1) "Good faith" means ~~honesty in fact and the~~
 14 ~~observation of reasonable commercial standards of fair dealing in~~
 15 ~~the trade, as defined and interpreted under~~ **THAT TERM AS DEFINED IN**
 16 section 2103 of the uniform commercial code, 1962 PA 174, MCL
 17 440.2103.

18 (2) "Manufacturer" means ~~any~~ **A** person ~~who~~ **THAT** manufactures or
 19 assembles new motor vehicles ~~or any~~ **A** distributor, factory
 20 branch, or factory representative.

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

24 (4) **"MOTOR VEHICLE SERVICE AND REPAIR FACILITY" MEANS A MOTOR**
 25 **VEHICLE REPAIR FACILITY, AS DEFINED IN SECTION 2 OF THE MOTOR**
 26 **VEHICLE SERVICE AND REPAIR ACT, 1974 PA 300, MCL 257.1302. THE TERM**
 27 **DOES NOT INCLUDE A MOTOR VEHICLE DEALER PERFORMING MAINTENANCE,**

1 **DIAGNOSIS, VEHICLE BODY WORK, REPAIRS, OR OTHER SERVICE OR REPAIR**
2 **WORK ON MOTOR VEHICLES UNDER THE TERMS OF A DEALER AGREEMENT.**

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

6 (a) Senate Bill No. 1308.

7 (b) Senate Bill No. 1309.

8 (c) House Bill No. 6100.