

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 14, 15, 17, and 20 (MCL 445.1574, 445.1575, 445.1577, and 445.1580), section 14 as amended by 2000 PA 239 and section 17 as amended by 1983 PA 188, and by adding section 14a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 14. (1) A manufacturer ~~, importer, or distributor~~ shall
2 not do any of the following:
3 (a) Adopt, change, establish, or implement a plan or system

1 for the allocation and distribution of new motor vehicles to new
 2 motor vehicle dealers that is arbitrary or capricious **OR BASED ON**
 3 **UNREASONABLE SALES AND SERVICE STANDARDS**, or modify an existing
 4 plan or system that causes the plan or system to be arbitrary or
 5 capricious **OR BASED ON UNREASONABLE SALES AND SERVICE STANDARDS**.

6 (b) ~~Fail~~ **IF REQUESTED IN WRITING BY A NEW MOTOR VEHICLE**
 7 **DEALER, FAIL** or refuse to advise or disclose to ~~any new motor~~
 8 ~~vehicle dealer having a dealer agreement, upon written request~~
 9 ~~therefore, THE DEALER~~ the basis ~~upon~~ **ON** which new motor vehicles of
 10 the same line make are allocated or distributed to new motor
 11 vehicle dealers in the state and the basis ~~upon~~ **ON** which the
 12 current allocation or distribution is being made or will be made to
 13 that new motor vehicle dealer.

14 (c) Refuse to deliver **TO A NEW MOTOR VEHICLE DEALER** in
 15 reasonable quantities and within a reasonable time after receipt of
 16 ~~a THE dealer's order, to any new motor vehicle dealer having a~~
 17 ~~dealer agreement for the retail sale of new motor vehicles sold or~~
 18 ~~distributed by a manufacturer or distributor any such NEW motor~~
 19 ~~vehicles as THAT~~ are covered by such ~~THE~~ dealer agreement **AND**
 20 specifically publicly advertised in the state by the manufacturer
 21 ~~or distributor to be AS~~ available for immediate delivery. However,
 22 the failure to deliver any motor vehicle ~~shall not be~~ **IS NOT**
 23 considered a violation of this act if the failure is due to an act
 24 of God, a work stoppage or delay due to a strike or labor
 25 difficulty, a shortage of materials, a lack of manufacturing
 26 capacity, a freight embargo, or other cause over which the
 27 manufacturer ~~or distributor~~ has no control. If ~~the~~ **A** manufacturer

~~or distributor~~ 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 ~~or distributor~~ shall ~~upon~~ **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 ~~during that~~ **IN THE** model year in which **THE DEALER IS**
REQUIRED TO PURCHASE the tool. ~~is required to be purchased.~~

(d) Increase ~~prices of~~ **THE PRICE OF A** new motor vehicles which
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 ~~prior to~~ **BEFORE** the
 dealer's receipt of ~~the~~ **A** written official price increase
 notification. A sales contract signed by a private retail consumer
 and binding on the dealer ~~shall constitute~~ **CONSTITUTES** evidence of
~~each~~ **A VEHICLE** order. In the event of manufacturer ~~or distributor~~
 price reductions or cash rebates, the **DEALER SHALL PASS ON THE**
 amount of any reduction or rebate received by ~~a~~ **THE** dealer ~~shall be~~
~~passed on to~~ the private retail consumer. ~~by the dealer.~~ Any price
 reduction in excess of \$5.00 shall apply to all vehicles in the
 dealer's inventory ~~which~~ **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
~~shall not be~~ **IS NOT** considered a price increase or price decrease.
 This subdivision ~~shall~~ **DOES** not apply to price changes caused by
 any of the following:

(i) The addition to a motor vehicle of required or optional

1 equipment pursuant to state or federal law.

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

4 (iii) Any increase in transportation charges due to an increase
5 in rates charged by a common carrier ~~and transporters~~ **OR**
6 **TRANSPORTER.**

7 (e) Offer any ~~refunds or other types of inducements~~ **OF THE**
8 **FOLLOWING** to any ~~dealer for the purchase of new motor vehicles of a~~
9 ~~certain~~ **NEW MOTOR VEHICLE DEALER OF A SPECIFIC** line make ~~to be sold~~
10 ~~to this state or any political subdivision of this state without~~
11 making the same offer available ~~upon request~~ to all other new motor
12 vehicle dealers of the same line make: -

13 (i) **ANY SPECIFIC MODEL OR SERIES OF NEW MOTOR VEHICLES**
14 **MANUFACTURED FOR THAT LINE MAKE.**

15 (ii) **ANY INCENTIVES, REBATES, BONUSES, PROMOTIONAL ITEMS, OR**
16 **OTHER SIMILAR BENEFITS PAYABLE TO THE NEW MOTOR VEHICLE DEALER FOR**
17 **SELLING NEW MOTOR VEHICLES OR PURCHASING NEW MOTOR VEHICLES FROM**
18 **THE MANUFACTURER.**

19 (iii) **ANY CONSUMER REBATES, VEHICLE PRICE REDUCTIONS, OR**
20 **INTEREST RATE REDUCTIONS OR OTHER CHANGES TO FINANCE TERMS THAT**
21 **BENEFIT THE CONSUMER.**

22 (iv) **ANY PROGRAM THAT PROVIDES MARKETING AND SALES ASSISTANCE**
23 **TO NEW MOTOR VEHICLE DEALERS, INCLUDING, BUT NOT LIMITED TO,**
24 **INTERNET LISTINGS, SALES LEADS, MARKETING PROGRAMS, AND DEALER**
25 **RECOGNITION PROGRAMS.**

26 (f) Release to an outside party, except under subpoena or in
27 an administrative or judicial proceeding to which the new motor

1 vehicle dealer or the manufacturer ~~or distributor~~ are parties, any
2 business, financial, or personal information ~~which~~ **THAT** has been
3 provided by the dealer to the manufacturer, ~~or distributor~~, unless
4 the new motor vehicle dealer gives ~~his or her~~ written consent.

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

7 (h) Directly or indirectly own, operate, or control a new
8 motor vehicle dealer, including, but not limited to, a new motor
9 vehicle dealer engaged primarily in performing warranty repair
10 services on motor vehicles pursuant to the manufacturer's warranty,
11 **OR A USED MOTOR VEHICLE DEALER**. This subdivision does not apply to
12 any of the following:

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

19 (ii) The ownership, operation, or control of a new motor
20 vehicle dealer **OR A USED MOTOR VEHICLE DEALER** by a manufacturer ~~or~~
21 ~~distributor~~ while it is being sold under a bona fide contract or
22 purchase option to the operator of the new motor vehicle dealer **OR**
23 **THE USED MOTOR VEHICLE DEALER**.

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

1 (A) As of May 1, 2000, the manufacturer for a period of not
2 less than 12 months has continuously owned, directly or indirectly,
3 1 or more new motor vehicle dealers in this state.

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

7 (C) As of January 1, 2000, not fewer than 1/2 of the new motor
8 vehicle dealers of the line make within this state own and operate
9 2 or more new motor vehicle dealer facilities in the geographic
10 territory or area covered by the franchise agreement with the
11 manufacturer.

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

17 **(iv) THE ACQUISITION BY A MANUFACTURER OF A USED MOTOR VEHICLE**
18 **DEALER'S LICENSE FOR THE PURPOSE OF SELLING MOTOR VEHICLES TO**
19 **NONRETAIL BUYERS.**

20 (i) Sell any new motor vehicle directly to a retail customer
21 other than through its franchised dealers, unless the retail
22 customer is a nonprofit organization or a federal, state, or local
23 government or agency. This subdivision does not prohibit a
24 manufacturer from providing information to a consumer for the
25 purpose of marketing or facilitating the sale of new motor vehicles
26 or from establishing a program to sell or offer to sell new motor
27 vehicles through the manufacturer's new motor vehicle dealers.

(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, ~~or distributor,~~ 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. ~~or distributor.~~ If a manufacturer ~~or distributor~~ rejects a proposed change in the executive management, the manufacturer ~~or distributor~~ 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 distributor,~~ or the change in executive management ~~shall be~~ **IS** considered approved.

(k) Unreasonably withhold consent to the sale, transfer, or exchange of ~~the~~ **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 ~~receipt of~~ **RECEIVING** a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer ~~or distributor~~ for ~~such~~ **THAT** purpose and containing the information required ~~therein~~ **IN THAT APPLICATION**. Failure to respond to ~~the~~ **A** request **FOR CONSENT** within the ~~60 days~~ ~~shall be~~ **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 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

1 THE MANUFACTURER.

2 (U) REQUIRE THAT A NEW MOTOR VEHICLE DEALER PROVIDE ITS
3 CUSTOMER LISTS OR SERVICE FILES TO THE MANUFACTURER, UNLESS
4 NECESSARY FOR THE SALE AND DELIVERY OF A NEW MOTOR VEHICLE TO A
5 CONSUMER, TO VALIDATE AND PAY CONSUMER OR DEALER INCENTIVES, OR IN
6 CONNECTION WITH THE SUBMISSION OF A CLAIM TO THE MANUFACTURER FOR
7 SERVICES SUPPLIED BY THE NEW MOTOR VEHICLE DEALER FOR ANY CLAIM FOR
8 WARRANTY REPAIRS. THIS SECTION DOES NOT LIMIT A MANUFACTURER'S
9 AUTHORITY TO REQUIRE OR USE CUSTOMER INFORMATION TO SATISFY ANY
10 SAFETY OR RECALL OBLIGATION.

11 (V) ESTABLISH A PERFORMANCE STANDARD OR PROGRAM FOR MEASURING
12 NEW MOTOR VEHICLE DEALER PERFORMANCE THAT MAY HAVE A MATERIAL
13 IMPACT ON A NEW MOTOR VEHICLE DEALER THAT IS NOT FAIR, REASONABLE,
14 AND EQUITABLE. FOR PURPOSES OF THIS SUBDIVISION, ALL OF THE
15 FOLLOWING APPLY IF A MANUFACTURER DOES NOT PROVIDE A COMPLETE
16 PROGRAM DESCRIPTION EXPLAINING THE PERFORMANCE STANDARD OR PROGRAM
17 DETAILS TO A NEW MOTOR VEHICLE DEALER ON OR BEFORE THE BEGINNING OF
18 THE PROGRAM:

19 (i) WITHIN 10 DAYS AFTER RECEIVING A REQUEST FROM THE NEW MOTOR
20 VEHICLE DEALER, THE MANUFACTURER SHALL PROVIDE THE NEW MOTOR
21 VEHICLE DEALER WITH A WRITTEN DESCRIPTION OF HOW A PERFORMANCE
22 STANDARD OR PROGRAM IS DESIGNED.

23 (ii) WITHIN 30 DAYS AFTER RECEIVING A REQUEST FROM THE NEW
24 MOTOR VEHICLE DEALER, THE MANUFACTURER SHALL PROVIDE INFORMATION
25 RELATING TO HOW THE PERFORMANCE STANDARD OR PROGRAM APPLIES TO THE
26 NEW MOTOR VEHICLE DEALER.

27 (W) IF A NEW MOTOR VEHICLE DEALER SOLD OR LEASED A NEW MOTOR

1 VEHICLE TO A CUSTOMER THAT EXPORTED THE MOTOR VEHICLE TO A FOREIGN
2 COUNTRY OR RESOLD THE MOTOR VEHICLE, REFUSE TO ALLOCATE, SELL, OR
3 DELIVER NEW MOTOR VEHICLES TO THE DEALER; CHARGE BACK OR WITHHOLD
4 PAYMENTS OR OTHER THINGS OF VALUE FOR WHICH THE DEALER IS OTHERWISE
5 ELIGIBLE UNDER A SALES PROMOTION, PROGRAM, OR CONTEST; PREVENT A
6 NEW MOTOR VEHICLE DEALER FROM PARTICIPATING IN ANY SALES PROMOTION,
7 PROGRAM, OR CONTEST; OR TAKE OR THREATEN TO TAKE ANY OTHER ADVERSE
8 ACTION AGAINST A NEW MOTOR VEHICLE DEALER, INCLUDING, BUT NOT
9 LIMITED TO, REDUCING VEHICLE ALLOCATIONS OR TERMINATING OR
10 THREATENING TO TERMINATE A DEALER AGREEMENT, UNLESS THE
11 MANUFACTURER PROVES THAT THE NEW MOTOR VEHICLE DEALER KNEW OR
12 REASONABLY SHOULD HAVE KNOWN THAT THE CUSTOMER INTENDED TO EXPORT
13 OR RESELL THE MOTOR VEHICLE. IN AN ACTION BY A NEW MOTOR VEHICLE
14 DEALER FOR A VIOLATION OF THIS SUBDIVISION, THERE IS A REBUTTABLE
15 PRESUMPTION THAT A NEW MOTOR VEHICLE DEALER DID NOT KNOW OR SHOULD
16 NOT REASONABLY HAVE KNOWN OF ITS CUSTOMER'S INTENT TO EXPORT OR
17 RESELL A MOTOR VEHICLE IF THE VEHICLE WAS TITLED IN THE UNITED
18 STATES, AND THE MANUFACTURER BEARS THE BURDEN OF REBUTTING THAT
19 PRESUMPTION.

20 (X) IF A NEW MOTOR VEHICLE DEALER IS A PARTY TO A DEALER
21 AGREEMENT ON THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
22 THIS SUBDIVISION, AND THE DEALER AGREEMENT PROVIDES FOR SALE OF A
23 COMPETING LINE MAKE OF NEW MOTOR VEHICLES AT THE SAME PLACE OF
24 BUSINESS WHERE THE MANUFACTURER'S LINE MAKE IS SOLD, REQUIRE OR
25 OTHERWISE COERCE THE NEW MOTOR VEHICLE DEALER TO REMOVE THE SALE OR
26 SERVICING OF NEW MOTOR VEHICLES OF THAT COMPETING LINE MAKE FROM
27 THAT PLACE OF BUSINESS.

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

6 SEC. 14A. (1) A MANUFACTURER SHALL NOT REQUIRE THAT A NEW
7 MOTOR VEHICLE DEALER, A PROPOSED NEW MOTOR VEHICLE DEALER, OR ANY
8 OWNER OF AN INTEREST IN A DEALERSHIP FACILITY ENTER INTO OR AGREE
9 TO A PROPERTY USE AGREEMENT AS A CONDITION TO ANY OF THE FOLLOWING:

10 (A) AWARDING A DEALER AGREEMENT TO A PROSPECTIVE NEW MOTOR
11 VEHICLE DEALER.

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

14 (C) RENEWING A DEALER AGREEMENT WITH AN EXISTING NEW MOTOR
15 VEHICLE DEALER.

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

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

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

23 (A) MONETARY CONSIDERATION.

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

26 (3) IF A MANUFACTURER AND A NEW MOTOR VEHICLE DEALER ARE
27 PARTIES TO A PROPERTY USE AGREEMENT, THE DEALER AGREEMENT BETWEEN

1 THE MANUFACTURER AND NEW MOTOR VEHICLE DEALER IS TERMINATED BY A
2 MANUFACTURER, BY A SUCCESSOR MANUFACTURER, OR BY OPERATION OF LAW,
3 AND THE REASON FOR THE TERMINATION IS NOT A REASON DESCRIBED IN
4 SECTION 10(C), THE PROPERTY USE AGREEMENT TERMINATES AND CEASES TO
5 BE EFFECTIVE AT THE TIME THE DEALER AGREEMENT IS TERMINATED.

6 (4) IF ANY PROVISION CONTAINED IN A PROPERTY USE AGREEMENT
7 ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
8 THAT ADDED THIS SUBSECTION IS INCONSISTENT WITH THIS SECTION, THE
9 PROVISION IS VOIDABLE AT THE ELECTION OF THE AFFECTED NEW MOTOR
10 VEHICLE DEALER, PROPOSED NEW MOTOR VEHICLE DEALER, OR OWNER OF AN
11 INTEREST IN THE DEALERSHIP FACILITY.

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

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

16 (B) AN AGREEMENT THAT RESTRICTS THE ABILITY OF A NEW MOTOR
17 VEHICLE DEALER, OR THE ABILITY OF THE DEALER'S LESSOR IF THE DEALER
18 IS LEASING THE DEALERSHIP FACILITY, TO TRANSFER, SELL, LEASE, OR
19 CHANGE THE USE OF THE PLACE OF BUSINESS OF THE DEALERSHIP, WHETHER
20 BY SUBLEASE, LEASE, COLLATERAL PLEDGE OF LEASE, RIGHT OF FIRST
21 REFUSAL TO PURCHASE OR LEASE, OPTION TO PURCHASE, OPTION TO LEASE,
22 OR OTHER SIMILAR AGREEMENT, REGARDLESS OF WHO THE PARTIES TO THAT
23 AGREEMENT ARE.

24 (C) ANY SIMILAR AGREEMENT BETWEEN A MANUFACTURER AND A NEW
25 MOTOR VEHICLE DEALER AND COMMONLY KNOWN AS A SITE CONTROL AGREEMENT
26 OR EXCLUSIVE USE AGREEMENT.

27 Sec. 15. (1) Any designated family member of a deceased or

1 incapacitated new motor vehicle dealer **OR AN EXECUTIVE MANAGER OF**
 2 **THE DEALERSHIP** may succeed the dealer in the ownership or operation
 3 of the dealership under the existing dealer agreement if the
 4 designated family member **OR EXECUTIVE MANAGER** gives the
 5 manufacturer ~~or distributor~~ written notice of his or her intention
 6 to succeed to the dealership within 120 days after the dealer's
 7 death or incapacity, agrees to be bound by all of the terms and
 8 conditions of the dealer agreement, and ~~the designated family~~
 9 ~~member~~ meets the current criteria generally applied by the
 10 manufacturer ~~or distributor~~ in qualifying new motor vehicle
 11 dealers. A manufacturer ~~or distributor~~ may refuse to ~~honor~~ **CONTINUE**
 12 the existing dealer agreement with the designated family member
 13 only for good cause.

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

25 (3) If a manufacturer ~~or distributor~~ believes that good cause
 26 exists for refusing to ~~honor the succession~~ **CONTINUE A DEALER**
 27 **AGREEMENT UNDER THIS SECTION WITH A DESIGNATED FAMILY MEMBER OR**

1 **EXECUTIVE MANAGER DESCRIBED IN SUBSECTION (1)**, the manufacturer ~~or~~
 2 ~~distributor may~~, within 60 days after ~~receipt of the~~ **RECEIVING**
 3 notice of the designated family member's **OR EXECUTIVE MANAGER'S**
 4 intent to ~~succeed~~ **SUCCEED** the dealer in the ownership and operation
 5 of the dealership, or within 60 days after ~~the receipt of~~ **RECEIVING**
 6 the requested personal and financial ~~data~~ **INFORMATION AND COMPLETED**
 7 **APPLICATION FORM**, serve ~~upon~~ **ON** the designated family member **OR**
 8 **EXECUTIVE MANAGER** notice of its refusal to approve the succession.

9 (4) ~~The~~ **A** notice of ~~the~~ **REFUSAL SERVED BY A** manufacturer ~~or~~
 10 ~~distributor provided in~~ **UNDER** subsection (3) shall state the
 11 specific grounds for the refusal to approve the succession and that
 12 discontinuance of the agreement shall take effect not ~~less~~ **FEWER**
 13 than 90 days after the date the notice is served.

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

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

25 Sec. 17. (1) Each new motor vehicle manufacturer ~~or~~
 26 ~~distributor~~ shall specify in writing to each of its new motor
 27 vehicle dealers licensed in this state the dealer's obligations for

1 preparation, delivery, and warranty service on its products. ~~The A~~
 2 manufacturer ~~or distributor~~ shall compensate ~~the A~~ new motor
 3 vehicle dealer for warranty service required of the dealer by the
 4 manufacturer. ~~or distributor. The A~~ manufacturer ~~or distributor~~
 5 shall provide ~~the A~~ new motor vehicle dealer with the schedule of
 6 compensation to be paid to the dealer for parts, work, and service,
 7 and the time allowance for the performance of the work and service.

8 (2) ~~The A~~ schedule of compensation **DESCRIBED IN SUBSECTION (1)**
 9 shall include reasonable compensation for diagnostic work ~~, as well~~
 10 ~~as AND~~ repair service and labor. Time allowances for the diagnosis
 11 and performance of warranty work and service shall be reasonable
 12 and adequate for the work to be performed. In ~~the determination of~~
 13 **DETERMINING** what constitutes reasonable compensation under this
 14 section, the principal factor to be given consideration ~~shall be IS~~
 15 the prevailing wage rates being paid by dealers in the community in
 16 which the dealer is doing business, and ~~in no event shall the~~
 17 compensation of a dealer for warranty labor **SHALL NOT** be less than
 18 the rates charged by the dealer for like service to retail
 19 customers for nonwarranty service and repairs, ~~provided that such~~
 20 **IF THOSE** rates are reasonable.

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

23 (a) Fail to perform any warranty obligation.

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

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

4 (4) ~~All claims~~ **A MANUFACTURER SHALL PAY A CLAIM** made by a new
5 motor vehicle dealer ~~pursuant to~~ **UNDER** this section for labor and
6 parts ~~shall be paid within 30 days after their~~ **ITS** approval. All
7 ~~claims shall be either approved or disapproved by the manufacturer~~
8 ~~or distributor within 30 days after their receipt on a proper~~ **A**
9 **MANUFACTURER SHALL EITHER APPROVE OR DISAPPROVE A CLAIM WITHIN 30**
10 **DAYS AFTER RECEIVING THE CLAIM, SUBMITTED ON THE** form generally
11 used by the manufacturer ~~or distributor~~ and containing the ~~usually~~
12 ~~required information therein~~ **USUALLY REQUIRED IN THE FORM**. Any
13 claim not specifically disapproved in writing within 30 days after
14 the ~~receipt of the form shall be~~ **MANUFACTURER RECEIVES THE CLAIM**
15 **FORM IS** considered ~~to be approved, and payment shall be made~~ **THE**
16 **MANUFACTURER SHALL PAY THE CLAIM** within 30 days. A ~~claim which has~~
17 ~~been~~

18 (5) **SUBJECT TO SUBSECTION (10), IF A MANUFACTURER HAS** approved
19 and paid ~~may not be charged back to the dealer unless the~~
20 ~~manufacturer can show that the claim was fraudulent, false, or~~
21 ~~unsubstantiated, except that a charge back for false or fraudulent~~
22 ~~claims shall not be made more than 2 years after payment, and a~~
23 ~~charge back for unsubstantiated claims shall not be made more than~~
24 ~~15 months after payment.~~ **A NEW MOTOR VEHICLE DEALER FOR A CLAIM,**
25 **THE MANUFACTURER MAY ONLY CHARGE THE CLAIM BACK TO THE DEALER IF 1**
26 **OF THE FOLLOWING IS MET:**

27 (A) **THE MANUFACTURER SHOWS THAT THE CLAIM IS FRAUDULENT OR**

1 FALSE. HOWEVER, THE MANUFACTURER MAY NOT CHARGE BACK THE AMOUNT
2 PAID IF THE CLAIM IS FOUND TO BE FALSE OR FRAUDULENT MORE THAN 2
3 YEARS AFTER PAYMENT.

4 (B) THE MANUFACTURER SHOWS THAT THE CLAIM IS UNSUBSTANTIATED,
5 LACKS PROPER DOCUMENTATION, OR SHOWS AN IMPROPER DIAGNOSIS PROCESS
6 OR IMPROPER REPAIR PROCEDURES. HOWEVER, THE MANUFACTURER MAY NOT
7 CHARGE BACK THE AMOUNT PAID IF THE CLAIM IS FOUND TO BE
8 UNSUBSTANTIATED, TO LACK PROPER DOCUMENTATION, OR SHOW AN IMPROPER
9 DIAGNOSIS PROCESS OR REPAIR PROCEDURES MORE THAN 12 MONTHS AFTER
10 PAYMENT.

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

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

20 (8) ~~(5) A manufacturer or distributor shall compensate the A~~
21 ~~new motor vehicle dealer for manufacturer or distributor sponsored~~
22 **ANY** sales or service promotion events, programs, or activities
23 **SPONSORED BY THE MANUFACTURER**, in accordance with established
24 guidelines for ~~such~~ **THOSE** events, programs, or activities.

25 (9) ~~(6) All claims made by A MANUFACTURER SHALL PAY A CLAIM~~
26 **FOR COMPENSATION OWED TO** a new motor vehicle dealer ~~pursuant to~~
27 **UNDER** subsection ~~(5) (8)~~ for **A** promotion events, programs, or

~~activities shall be paid~~ **EVENT, PROGRAM, OR ACTIVITY** within 10 days
~~after their ITS approval. All claims shall be either approved or~~
~~disapproved by the A manufacturer or distributor~~ **SHALL EITHER**
APPROVE OR DISAPPROVE A CLAIM FOR COMPENSATION DESCRIBED IN THIS
SUBSECTION within 30 days after ~~their receipt on a proper~~ **RECEIVING**
THE CLAIM, SUBMITTED ON THE form generally used by the manufacturer
~~or distributor and containing the~~ **INFORMATION** usually required
~~information therein~~ **IN THE FORM.** Any claim ~~not specifically~~
~~disapproved~~ **FOR COMPENSATION THE MANUFACTURER DOES NOT SPECIFICALLY**
DISAPPROVE in writing within 30 days after ~~the receipt of the~~
RECEIVING THE CLAIM form ~~shall be~~ **IS** considered ~~to be approved, and~~
~~payment shall be made~~ **THE MANUFACTURER SHALL PAY THE AMOUNT OF THE**
CLAIM within 30 days. ~~The A manufacturer has the right to~~ **MAY ONLY**
~~charge back any A claim for 6 months after the later of either the~~
~~close of the promotion event, program, or activity, or the date of~~
~~the payment~~ **COMPENSATION WITHIN 12 MONTHS AFTER THE DATE OF**
PAYMENT, OR WITHIN 12 MONTHS AFTER THE END OF A PROGRAM IF THE
DURATION OF THE PROGRAM IS 1 YEAR OR LESS.

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

(A) AT THE MEETING, THE MANUFACTURER SHALL PROVIDE A DETAILED
 EXPLANATION, WITH SUPPORTING DOCUMENTATION, OF THE BASIS FOR EACH

1 PROPOSED CHARGEBACK OF A CLAIM TO THE DEALER AND A WRITTEN
2 STATEMENT CONTAINING THE BASIS ON WHICH THE CLAIM OR CLAIMS OF THE
3 DEALER WERE SELECTED FOR AUDIT OR REVIEW BY THE MANUFACTURER.

4 (B) AFTER THE MEETING, THE MANUFACTURER SHALL PROVIDE THE
5 MOTOR VEHICLE DEALER'S REPRESENTATIVE A REASONABLE PERIOD OF TIME
6 OF AT LEAST 45 DAYS TO RESPOND TO THE PROPOSED CHARGEBACKS. THE
7 MANUFACTURER SHALL PROVIDE A LONGER PERIOD OF TIME FOR THE DEALER
8 TO RESPOND IF WARRANTED BY THE VOLUME OF PROPOSED CHARGEBACKS.

9 (C) AN UNEXCUSED FAILURE OR REFUSAL OF THE DEALER OR
10 DESIGNATED OFFICER OR EMPLOYEE OF THE DEALER TO SCHEDULE, ATTEND,
11 OR PARTICIPATE IN THE MEETING WITH THE MANUFACTURER RELIEVES THE
12 MANUFACTURER FROM ANY FURTHER OBLIGATION UNDER THIS SUBSECTION.

13 (11) A MANUFACTURER MAY CONDUCT AN AUDIT OF THE RECORDS OF A
14 NEW MOTOR VEHICLE DEALER RELATING TO A WARRANTY OR PROMOTION CLAIM
15 SUBMITTED BY A NEW MOTOR VEHICLE DEALER UNDER THIS SECTION, BUT THE
16 MANUFACTURER MAY ONLY CONDUCT THAT AUDIT IN THE TIME PERIODS
17 ALLOWED FOR WARRANTY OR PROMOTIONAL CLAIM CHARGEBACKS UNDER THIS
18 SECTION.

19 Sec. 20. (1) If a manufacturer ~~or distributor~~ terminates,
20 cancels, fails to renew, or discontinues a dealer agreement, ~~for~~
21 ~~either than~~ **WITHOUT** good cause as ~~defined~~ **DESCRIBED** in this act, the
22 new motor vehicle dealer may bring an action against the
23 manufacturer ~~or distributor~~ to recover actual damages reasonably
24 incurred **BY THE DEALER** as a result of the termination,
25 cancellation, failure, or discontinuance.

26 (2) A manufacturer ~~or distributor who~~ **THAT** violates this act
27 is liable for all damages sustained by a new motor vehicle dealer

1 as a result of the violation.

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

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

9 Enacting section 1. This amendatory act does not take effect
10 unless Senate Bill No. 1309 or House Bill No. 6099 of the 95th
11 Legislature is enacted into law.