

**SUBSTITUTE FOR
SENATE BILL NO. 1309**

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, 4, 5, 6, 11, 12, and 13 (MCL 445.1562, 445.1563, 445.1564, 445.1565, 445.1566, 445.1571, 445.1572, and 445.1573), sections 2, 3, 5, and 13 as amended by 1998 PA 456, section 4 as amended by 2000 PA 240, and sections 6, 11, and 12 as amended by 1983 PA 188.

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.

1 (2) "COERCE" MEANS TO COMPEL OR ATTEMPT TO COMPEL A PERSON TO
2 ACT IN A GIVEN MANNER OR TO REFRAIN FROM ACTING IN A GIVEN MANNER
3 BY PRESSURE, INTIMIDATION, OR THREAT OF HARM, DAMAGE, BREACH OF
4 CONTRACT, OR OTHER ADVERSE CONSEQUENCES, INCLUDING, BUT NOT LIMITED
5 TO, THE LOSS OF ANY BENEFIT AVAILABLE TO OTHER NEW MOTOR VEHICLE
6 DEALERS OF THE SAME LINE MAKE IN THIS STATE. THE TERM DOES NOT
7 INCLUDE ANY OF THE FOLLOWING ACTIONS BY A MANUFACTURER:

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

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

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

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

1 SCHEDULES, ATTACHMENTS, EXHIBITS, AND AGREEMENTS INCORPORATED BY
2 REFERENCE INTO THE DEALER AGREEMENT.

3 (4) ~~(3)~~—"Designated family member" means **ANY OF THE FOLLOWING:**

4 (A) IF A NEW MOTOR VEHICLE DEALER WHO DIES OR BECOMES
5 INCAPACITATED HAS DESIGNATED A SUCCESSOR UNDER SECTION 15(6), THAT
6 DESIGNATED SUCCESSOR.

7 (B) IF A NEW MOTOR VEHICLE OWNER DIES AND HAS NOT DESIGNATED A
8 SUCCESSOR UNDER SECTION 15(6), the spouse ~~, OR~~ A child, grandchild,
9 parent, brother, or sister of a deceased new motor vehicle dealer,
10 who is entitled to inherit the deceased dealer's ownership interest
11 in the new motor vehicle dealership under the terms of the dealer's
12 will, ~~or~~ who has otherwise been designated in writing by a deceased
13 dealer to succeed the deceased dealer in the new motor vehicle
14 dealership, or **WHO** is entitled to inherit under the laws of
15 intestate succession of this state ~~. With respect to an~~
16 ~~incapacitated new motor vehicle dealer, the term means the person~~
17 ~~appointed by a court as the legal representative of the new motor~~
18 ~~vehicle dealer's property. The term also includes OR the appointed~~
19 ~~and qualified personal representative and the OR testamentary~~
20 ~~trustee of a THE deceased new motor vehicle dealer. However, the~~
21 ~~term shall mean only that designated successor nominated by the new~~
22 ~~motor vehicle dealer in a written document filed by the dealer with~~
23 ~~the manufacturer or distributor, if such a document is filed.~~

24 (C) IF A NEW MOTOR VEHICLE DEALER BECOMES INCAPACITATED AND
25 HAS NOT DESIGNATED A SUCCESSOR UNDER SECTION 15(6), THE PERSON
26 APPOINTED BY THE COURT AS THE LEGAL REPRESENTATIVE OF THE DEALER.

27 Sec. 3. (1) "Distributor" means any person, including an

1 importer, ~~resident or nonresident, who~~ **THAT IS LOCATED IN OR**
 2 **OUTSIDE OF THIS STATE AND** is engaged in the business ~~pursuant to a~~
 3 ~~dealer agreement, in whole or in part,~~ of offering for sale,
 4 selling, or distributing new and unaltered motor vehicles to a new
 5 motor vehicle dealer, ~~who~~ **UNDER A DEALER AGREEMENT, THAT** maintains
 6 a factory representative ~~for such purposes, resident or~~
 7 ~~nonresident,~~ **THAT IS LOCATED IN OR OUTSIDE OF THIS STATE FOR**
 8 **PURPOSES OF CONDUCTING THAT BUSINESS,** or ~~who~~ **THAT** controls ~~any a~~
 9 person, ~~resident or nonresident, who in whole or in part~~ **THAT IS**
 10 **LOCATED IN OR OUTSIDE OF THIS STATE AND** offers for sale, sells, or
 11 distributes new and unaltered motor vehicles to a new motor vehicle
 12 dealer. Distributor does not include a person ~~who~~ **THAT** alters or
 13 converts motor vehicles for sale to a new motor vehicle dealer.

14 (2) "Established place of business" means a permanent,
 15 enclosed commercial building located ~~within~~ **IN** this state **THAT IS**
 16 easily accessible and open to the public at all reasonable times
 17 and at which ~~the business of a new motor vehicle dealer~~ **MAY LEGALLY**
 18 **CONDUCT BUSINESS,** including the display and repair of motor
 19 vehicles, ~~may be lawfully carried on in accordance~~ **COMPLIANCE** with
 20 the terms of all applicable buildings codes, zoning, and other
 21 land-use regulatory ordinances.

22 (3) "EXECUTIVE MANAGER" MEANS AN INDIVIDUAL EMPLOYED BY A NEW
 23 MOTOR VEHICLE DEALER IN AN EXECUTIVE CAPACITY AND WHO HAS A WRITTEN
 24 EMPLOYMENT AGREEMENT WITH THE DEALER THAT INCLUDES A RIGHT FOR THE
 25 EXECUTIVE MANAGER TO PURCHASE A CONTROLLING INTEREST IN THE
 26 DEALERSHIP AT A FUTURE TIME OR ON THE DEATH OR INCAPACITY OF THE
 27 DEALER.

1 (4) ~~(3)~~—"Factory branch" means an office maintained by a
 2 manufacturer or distributor for the purpose of selling or offering
 3 ~~for sale~~ **TO SELL** vehicles to a distributor, wholesaler, or new
 4 motor vehicle dealer ~~—~~or for directing or supervising ~~in whole or~~
 5 ~~in part~~ **ANY** factory or distributor representatives. The term
 6 includes any sales promotion organization maintained by a
 7 manufacturer or distributor ~~which~~ **THAT** is engaged in promoting the
 8 sale of a particular make of new motor vehicles in this state to
 9 new motor vehicle dealers.

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

15 Sec. 4. (1) "Good faith" means ~~honesty in fact and the~~
 16 ~~observation of reasonable commercial standards of fair dealing in~~
 17 ~~the trade, as defined and interpreted under~~ **THAT TERM AS DEFINED IN**
 18 section 2103 of the uniform commercial code, 1962 PA 174, MCL
 19 440.2103.

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

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

26 (4) **"MOTOR VEHICLE SERVICE AND REPAIR FACILITY" MEANS A MOTOR**
 27 **VEHICLE REPAIR FACILITY, AS DEFINED IN SECTION 2 OF THE MOTOR**

1 VEHICLE SERVICE AND REPAIR ACT, 1974 PA 300, MCL 257.1302. THE TERM
 2 DOES NOT INCLUDE A MOTOR VEHICLE DEALER PERFORMING MAINTENANCE,
 3 DIAGNOSIS, VEHICLE BODY WORK, REPAIRS, OR OTHER SERVICE OR REPAIR
 4 WORK ON MOTOR VEHICLES UNDER THE TERMS OF A DEALER AGREEMENT.

5 Sec. 5. (1) "New motor vehicle" means a motor vehicle ~~which~~
 6 **THAT** is in the possession of the manufacturer, distributor, or
 7 wholesaler, or has been sold only to a new motor vehicle dealer and
 8 ~~on~~ **FOR** which the **NEW MOTOR VEHICLE DEALER HAS NOT ISSUED AN**
 9 original title. ~~has not been issued from the new motor vehicle~~
 10 ~~dealer.~~

11 (2) "New motor vehicle dealer" means a person, including a
 12 distributor, ~~who~~ **THAT** holds a dealer agreement granted by a
 13 manufacturer, distributor, or importer for the sale or distribution
 14 of its motor vehicles; ~~who~~ is engaged in the business of
 15 purchasing, selling, exchanging, or dealing in new motor vehicles;
 16 and ~~who~~ has an established place of business in this state.

17 (3) "Person" means a natural person, partnership, corporation,
 18 **LIMITED LIABILITY COMPANY**, association, trust, estate, or other
 19 legal entity.

20 (4) "Proposed new motor vehicle dealer" means a person who has
 21 an application pending for a new dealer agreement with a
 22 manufacturer or distributor. Proposed motor vehicle dealer does not
 23 include a person whose dealer agreement is being renewed or
 24 continued.

25 Sec. 6. (1) "Relevant market area" means **1 OF THE FOLLOWING:**

26 (a) ~~For a proposed new motor vehicle dealer or a new motor~~
 27 ~~vehicle dealer who plans to relocate his or her place of business~~

~~in a county having a population which is greater than 25,000, the area within a radius of 6 miles of the intended site of the proposed or relocated dealer. The 6-mile distance shall be~~ **IN A COUNTY THAT HAS A POPULATION OF MORE THAN 150,000, THE AREA WITHIN A RADIUS OF 9 MILES OF THE SITE OF THE INTENDED PLACE OF BUSINESS OF A PROPOSED NEW VEHICLE DEALER OR THE INTENDED PLACE OF BUSINESS OF A NEW VEHICLE DEALER THAT PLANS TO RELOCATE ITS PLACE OF BUSINESS. FOR PURPOSES OF THIS SECTION, THE 9-MILE DISTANCE IS** determined by measuring the distance between the nearest surveyed boundary of ~~the~~**AN** existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

(b) ~~For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is not greater than 25,000, the area within a radius of 10 miles of the intended site of the proposed or relocated dealer, or the county line, whichever is closer to the intended site. The 10-mile distance shall be~~ **IN A COUNTY THAT HAS A POPULATION OF 150,000 OR FEWER, THE AREA WITHIN A RADIUS OF 15 MILES OF THE SITE OF THE INTENDED PLACE OF BUSINESS OF A PROPOSED NEW VEHICLE DEALER OR THE INTENDED PLACE OF BUSINESS OF A NEW VEHICLE DEALER THAT PLANS TO RELOCATE ITS PLACE OF BUSINESS. FOR PURPOSES OF THIS SECTION, THE 15-MILE DISTANCE IS** determined by measuring the distance between the nearest surveyed boundary line of ~~the~~**AN** existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or

1 relocated new motor vehicle dealer's principal place of business.

2 (2) "SUCCESSOR MANUFACTURER" MEANS A MANUFACTURER THAT
3 ACQUIRES, SUCCEEDS TO, OR ASSUMES ANY PART OF THE BUSINESS OF
4 ANOTHER MANUFACTURER AS THE RESULT OF ANY OF THE FOLLOWING:

5 (A) A CHANGE IN OWNERSHIP, OPERATION, OR CONTROL OF A
6 PREDECESSOR MANUFACTURER BY SALE OR TRANSFER OF ASSETS, CORPORATE
7 STOCK, OR OTHER EQUITY INTEREST, ASSIGNMENT, MERGER, CONSOLIDATION,
8 COMBINATION, JOINT VENTURE, REDEMPTION, COURT-APPROVED SALE,
9 OPERATION OF LAW, OR ANY OTHER MEANS.

10 (B) TERMINATION, SUSPENSION, OR CESSATION OF A PART OR ALL OF
11 THE BUSINESS OPERATIONS OF A PREDECESSOR MANUFACTURER.

12 (C) DISCONTINUANCE OF THE SALE OF A PRODUCT LINE.

13 (D) A CHANGE IN DISTRIBUTION SYSTEM BY A PREDECESSOR
14 MANUFACTURER, WHETHER THROUGH A CHANGE IN DISTRIBUTOR OR THE
15 PREDECESSOR MANUFACTURER'S DECISION TO CEASE CONDUCTING ANY
16 BUSINESS THROUGH A PARTICULAR DISTRIBUTOR.

17 (3) "USED MOTOR VEHICLE" MEANS A MOTOR VEHICLE THAT IS NOT A
18 NEW MOTOR VEHICLE.

19 (4) "USED MOTOR VEHICLE DEALER" MEANS A PERSON THAT IS ENGAGED
20 IN THE BUSINESS OF PURCHASING, SELLING, EXCHANGING, OR DEALING IN
21 USED MOTOR VEHICLES AND THAT HAS AN ESTABLISHED PLACE OF BUSINESS
22 IN THIS STATE AT WHICH IT CONDUCTS THAT BUSINESS. THE TERM DOES NOT
23 INCLUDE A NEW MOTOR VEHICLE DEALER PURCHASING, SELLING, EXCHANGING,
24 OR DEALING IN USED MOTOR VEHICLES AS PART OF ITS BUSINESS OF
25 PURCHASING, SELLING, EXCHANGING, OR DEALING IN NEW MOTOR VEHICLES.

26 Sec. 11. (1) ~~Upon the termination, cancellation, nonrenewal,~~
27 ~~or discontinuance of any dealer agreement,~~ SUBJECT TO SECTION 12,

1 IF A MANUFACTURER TERMINATES, CANCELS, DOES NOT RENEW, OR
2 DISCONTINUES A DEALER AGREEMENT FOR ANY REASON OTHER THAN A REASON
3 DESCRIBED IN SECTION 10(C), OR IF A DEALER AGREEMENT IS TERMINATED,
4 CANCELED, NONRENEWED, OR DISCONTINUED AS A RESULT OF COERCION BY
5 THE MANUFACTURER, THE MANUFACTURER SHALL PAY the new motor vehicle
6 dealer ~~shall be allowed fair and reasonable compensation by the~~
7 ~~manufacturer or distributor for~~ ALL OF the following:

8 (a) ~~All new current model year motor vehicle inventory~~
9 ~~purchased from the manufacturer or distributor, which has not been~~
10 ~~materially altered, substantially damaged, or driven for more than~~
11 ~~300 miles and all new motor vehicle inventory not of the current~~
12 ~~model year which has not been materially altered, substantially~~
13 ~~damaged, or driven for more than 300 miles, provided the noncurrent~~
14 ~~model vehicles were purchased from the manufacturer or distributor~~
15 ~~and drafted on the dealer's financing source or paid for within 120~~
16 ~~days of the effective date of the termination, cancellation, or~~
17 ~~nonrenewal.~~ EACH VEHICLE IN THE NEW MOTOR VEHICLE DEALER'S

18 INVENTORY THAT MEETS ALL OF THE FOLLOWING:

19 (i) THE VEHICLE IS NEW, UNDAMAGED, NOT MATERIALLY ALTERED, AND
20 UNSOLD.

21 (ii) THE VEHICLE IS A CURRENT MODEL YEAR VEHICLE OR A VEHICLE
22 FROM THE MODEL YEAR PRECEDING THE CURRENT MODEL YEAR.

23 (iii) THE VEHICLE WAS PURCHASED FROM THE MANUFACTURER OR ANOTHER
24 DEALER OF THE SAME LINE MAKE IN THE ORDINARY COURSE OF BUSINESS
25 BEFORE THE DEALER RECEIVED NOTICE OF THE TERMINATION,
26 DISCONTINUANCE, CANCELLATION, OR NONRENEWAL OF THE DEALER AGREEMENT
27 UNDER SECTION 10.

1 (iv) THE VEHICLE HAS LESS THAN 750 MILES REGISTERED ON THE
2 ODOMETER.

3 (b) Supplies and parts inventory purchased from the
4 manufacturer ~~or distributor~~ and listed in the manufacturer's ~~or~~
5 ~~distributor's~~ current parts catalog.

6 (c) Equipment ~~, furnishings,~~ and signs purchased from the
7 manufacturer. ~~or distributor.~~

8 (d) Special tools purchased from the manufacturer ~~or~~
9 ~~distributor within 3 years of the date of~~ **IN THE 3-YEAR PERIOD**
10 **PRECEDING THE EFFECTIVE DATE OF THE** termination, cancellation,
11 nonrenewal, or discontinuance **OF THE DEALER AGREEMENT.**

12 **(E) DATA PROCESSING PROGRAMS, SOFTWARE, AND EQUIPMENT THAT A**
13 **MANUFACTURER REQUIRED THAT A TERMINATED NEW MOTOR VEHICLE DEALER**
14 **OBTAIN OR PURCHASE FOR COMMUNICATION OF SALES, SERVICE, WARRANTY,**
15 **OR OTHER INFORMATION BETWEEN THE DEALER AND THE MANUFACTURER; THAT**
16 **THE TERMINATED DEALER USED EXCLUSIVELY FOR THE MAKE OR LINE OF**
17 **VEHICLE AND LOCATION COVERED BY THE TERMINATED DEALER AGREEMENT TO**
18 **MANAGE OR REPORT DATA TO THE MANUFACTURER; AND THAT MEETS 1 OF THE**
19 **FOLLOWING:**

20 (i) IT WAS PURCHASED BY THE DEALER IN THE 2-YEAR PERIOD
21 PRECEDING THE DATE OF THE TERMINATION, DISCONTINUANCE,
22 CANCELLATION, OR NONRENEWAL OF THE DEALER AGREEMENT.

23 (ii) IT WAS LEASED BY THE DEALER BEFORE THE EFFECTIVE DATE OF
24 THE TERMINATION. HOWEVER, A MANUFACTURER IS ONLY RESPONSIBLE UNDER
25 THIS SUBPARAGRAPH FOR THE AMOUNTS REMAINING TO BE PAID OR PAID IN
26 ADVANCE ON THE DEALER'S LEASE FOR A PERIOD THAT DOES NOT EXCEED 2
27 YEARS.

1 (F) THE NET COST OF ANY UPGRADES OR ALTERATIONS MADE BY A
2 TERMINATED NEW MOTOR VEHICLE DEALER TO THE DEALERSHIP FACILITIES IF
3 THE MANUFACTURER REQUIRED THE UPGRADES OR ALTERATIONS AND THE
4 UPGRADES OR ALTERATIONS WERE MADE IN THE 2-YEAR PERIOD PRECEDING
5 THE EFFECTIVE DATE OF THE TERMINATION OF THE DEALER AGREEMENT. IN
6 DETERMINING FAIR AND REASONABLE COMPENSATION UNDER THIS
7 SUBDIVISION, THE MANUFACTURER MAY OFFSET ANY AMOUNTS PAID BY THE
8 MANUFACTURER TO SUBSIDIZE OR OTHERWISE ASSIST THE DEALER IN MAKING
9 THE UPGRADES OR ALTERATIONS.

10 (G) THE NET COST OF ANY FURNISHINGS THE MANUFACTURER REQUIRED
11 THAT A TERMINATED NEW MOTOR VEHICLE DEALER PURCHASE IN THE 2-YEAR
12 PERIOD PRECEDING THE EFFECTIVE DATE OF THE TERMINATION OF THE
13 DEALER AGREEMENT. IN DETERMINING FAIR AND REASONABLE COMPENSATION
14 UNDER THIS SUBDIVISION, THE MANUFACTURER MAY OFFSET ANY AMOUNTS
15 PAID BY THE MANUFACTURER TO SUBSIDIZE OR OTHERWISE ASSIST THE
16 DEALER IN PURCHASING THOSE FURNISHINGS.

17 ~~(2) Upon the termination, cancellation, nonrenewal, or~~
18 ~~discontinuance of a dealer agreement,~~ IN ADDITION TO THE PAYMENT OF
19 COMPENSATION UNDER SUBSECTION (1), SUBJECT TO SECTION 12, IF A
20 MANUFACTURER TERMINATES, CANCELS, DOES NOT RENEW, OR DISCONTINUES A
21 DEALER AGREEMENT FOR ANY REASON OTHER THAN A REASON DESCRIBED IN
22 SECTION 10 (C), the manufacturer ~~or distributor~~ shall also pay to
23 the new motor vehicle dealer ~~a sum~~ IN EQUAL MONTHLY INSTALLMENTS AN
24 AMOUNT equal to the ~~current,~~ fair rental value of his ~~or her~~ ITS
25 established place of business for a period of 1 year from the
26 effective date of termination, cancellation, nonrenewal, or
27 discontinuance, or the remainder of any lease, whichever is less.

1 ~~However, the payment required by this subsection shall not apply to~~
2 ~~any termination, cancellation, nonrenewal, or discontinuance made~~
3 ~~pursuant to section 10(c).~~ **THIS OBLIGATION IS SUBJECT TO BOTH OF THE**
4 **FOLLOWING:**

5 (A) ~~(3) The requirement of paying an annual~~ **OBLIGATION TO PAY**
6 **A NEW MOTOR VEHICLE DEALER** fair rental value pursuant to ~~UNDER THIS~~
7 subsection ~~(2) shall apply~~ **APPLIES** only to the extent **THAT** the new
8 motor vehicle dealer's established place of business is used for
9 performance of sales and service obligations under the
10 manufacturer's ~~or distributor's~~ dealer agreement.

11 (B) ~~(4) In the event that termination is by the dealer, IF THE~~
12 **NEW MOTOR VEHICLE DEALER TERMINATES A DEALER AGREEMENT, THE**
13 **MANUFACTURER IS ONLY REQUIRED TO MAKE** the payment required by ~~UNDER~~
14 **THIS** subsection ~~(2) is required only~~ if the new motor vehicle
15 dealer makes available to the manufacturer ~~or distributor~~ **AND THE**
16 **MANUFACTURER ACCEPTS** use and possession of the premises free of any
17 claims of others for the 1-year period, except for use by the
18 dealer for closing his or her business.

19 ~~— (5) In the event that termination is by the dealer, the~~
20 ~~payment required by subsection (2) shall not exceed \$20,000.00~~
21 ~~unless provided otherwise by contract entered into between the~~
22 ~~parties.~~

23 (3) **IN ADDITION TO THE PAYMENT OF COMPENSATION UNDER**
24 **SUBSECTION (1), SUBJECT TO SECTION 12, IF A MANUFACTURER**
25 **TERMINATES, CANCELS, DOES NOT RENEW, OR DISCONTINUES A DEALER**
26 **AGREEMENT FOR ANY OF THE FOLLOWING REASONS, THE MANUFACTURER SHALL**
27 **PAY THE NEW MOTOR VEHICLE DEALER FAIR AND REASONABLE COMPENSATION**

1 FOR THE GOODWILL OF THE DEALER:

2 (A) THE OWNERSHIP, OPERATION, OR CONTROL OF ALL OR PART OF THE
3 BUSINESS OF THE MANUFACTURER CHANGES, WHETHER BY SALE OR TRANSFER
4 OF ASSETS, CORPORATE STOCK, OR OTHER EQUITY INTEREST, ASSIGNMENT,
5 MERGER, CONSOLIDATION, COMBINATION, JOINT VENTURE, REDEMPTION, OR
6 OPERATION OF LAW.

7 (B) ALL OR PART OF THE BUSINESS OPERATIONS OF THE MANUFACTURER
8 ARE TERMINATED OR SUSPENDED OR CEASE.

9 (C) THE MANUFACTURER DISCONTINUES A LINE MAKE.

10 (4) ~~(6)~~ This section ~~shall~~ DOES not relieve a new motor
11 vehicle dealer, lessor, or other owner of an established place of
12 business from the obligation of mitigating damages.

13 Sec. 12. (1) ~~Compensation~~ **A MANUFACTURER SHALL PAY THE**
14 **COMPENSATION** for new motor vehicle inventory ~~under section 11(1)(a)~~
15 ~~shall be paid, if possible, within 30 days after the effective date~~
16 ~~of the termination, cancellation, nonrenewal, or discontinuance,~~
17 ~~provided that the new motor vehicle dealer has met all reasonable~~
18 ~~requirements of the dealer agreement with respect to the return of~~
19 ~~the new motor vehicle inventory. Compensation for~~ **AND** items of
20 personal property required ~~by~~ **UNDER** section ~~11(1)(b), 11(1)(c), and~~
21 ~~11(1)(d) shall be paid~~ **11(1)** within ~~90~~ **60** days after the effective
22 date of the termination, cancellation, nonrenewal, or
23 discontinuance, provided that the new motor vehicle dealer has met
24 all reasonable requirements of the dealer agreement with respect to
25 the return of the **NEW MOTOR VEHICLE INVENTORY AND** repurchased
26 personal property, including providing clear title **TO THE**
27 **REPURCHASED PERSONAL PROPERTY.**

1 (2) ALL OF THE FOLLOWING APPLY IN DETERMINING THE AMOUNT OF
2 FAIR AND REASONABLE COMPENSATION UNDER SECTION 11(1):

3 (A) Fair and reasonable compensation ~~pursuant to~~ UNDER section
4 11(1)(a) shall be not less than the new motor vehicle dealer's net
5 acquisition cost.

6 (B) Fair and reasonable compensation ~~pursuant to~~ FOR SUPPLIES
7 AND PARTS INVENTORY FOR PURPOSES OF section 11(1)(b) ~~shall be~~ IS
8 the amount stated in the manufacturer's ~~or distributor's~~ current
9 parts price list.

10 (C) Fair and reasonable compensation ~~pursuant to~~ FOR PURPOSES
11 OF section 11(1)(c), ~~and 11(1)(d) shall be~~ (D), AND (E) IS the fair
12 market value of the personal property DESCRIBED IN THOSE
13 SUBDIVISIONS.

14 (3) ALL OF THE FOLLOWING APPLY TO THE DETERMINATION OF FAIR
15 RENTAL VALUE OF A NEW MOTOR VEHICLE DEALER'S ESTABLISHED PLACE OF
16 BUSINESS UNDER SECTION 11(2):

17 (A) THE MANUFACTURER AND DEALER SHALL MAKE A GOOD FAITH EFFORT
18 TO AGREE TO THE FAIR RENTAL VALUE OF THE PREMISES, TAKING INTO
19 CONSIDERATION THE ADEQUACY AND DESIRABILITY OF THE PREMISES FOR
20 DEALERSHIP OPERATIONS AND THE FAIR MARKET VALUE OF THE PREMISES.

21 (B) IF THE MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER AGREE
22 ON THE FAIR RENTAL VALUE WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF
23 THE TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
24 DEALER AGREEMENT, THAT VALUATION IS CONCLUSIVE AND BINDING ON THE
25 MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER.

26 (C) IF THE MANUFACTURER AND DEALER CANNOT AGREE TO THE FAIR
27 RENTAL VALUE OF THE PREMISES UNDER SUBDIVISION (A) WITHIN 30 DAYS

1 AFTER THE EFFECTIVE DATE OF THE TERMINATION, CANCELLATION,
2 NONRENEWAL, OR DISCONTINUANCE OF THE DEALER AGREEMENT, THE FAIR
3 RENTAL VALUE OF THE PREMISES SHALL BE DETERMINED BY 3 QUALIFIED
4 REAL ESTATE APPRAISERS. ALL OF THE FOLLOWING APPLY TO THE
5 DETERMINATION OF FAIR RENTAL VALUE UNDER THIS SUBDIVISION:

6 (i) THE DEALER AND MANUFACTURER SHALL EACH SELECT A QUALIFIED
7 REAL ESTATE APPRAISER WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF
8 THE TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
9 DEALER AGREEMENT, AND THOSE APPRAISERS SHALL SELECT A THIRD
10 QUALIFIED REAL ESTATE APPRAISER.

11 (ii) WITHIN 150 DAYS AFTER THE EFFECTIVE DATE OF THE
12 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
13 DEALER AGREEMENT, EACH OF THE 3 APPRAISERS SELECTED UNDER
14 SUBPARAGRAPH (i) SHALL COMPLETE AN APPRAISAL OF THE FAIR RENTAL
15 VALUE OF THE PREMISES, AND THE MEDIAN APPRAISAL SHALL BE THE FAIR
16 RENTAL VALUE OF THE PREMISES FOR PURPOSES OF THIS SUBSECTION.

17 (iii) THE MANUFACTURER AND THE DEALER ARE EACH RESPONSIBLE FOR
18 50% OF THE COSTS OF THE APPRAISALS UNDER THIS SUBDIVISION.

19 (4) ALL OF THE FOLLOWING APPLY IN DETERMINING THE FAIR AND
20 REASONABLE COMPENSATION FOR A NEW MOTOR VEHICLE DEALER'S GOODWILL
21 UNDER SECTION 11(3):

22 (A) IF A SUCCESSOR MANUFACTURER OFFERS A DEALER AGREEMENT TO A
23 DEALER WHOSE DEALER AGREEMENT WITH THE MANUFACTURER IS TERMINATED,
24 CANCELED, NOT RENEWED, OR DISCONTINUED AND THE TERMS OF THE
25 PROPOSED DEALER AGREEMENT ARE SUBSTANTIALLY SIMILAR TO THE TERMS
26 OFFERED BY THE SUCCESSOR MANUFACTURER TO OTHER NEW MOTOR VEHICLE
27 DEALERS OF THE SAME LINE MAKE, THE MANUFACTURER THAT TERMINATED,

1 CANCELED, DID NOT RENEW, OR DISCONTINUED THE DEALER AGREEMENT IS
2 NOT REQUIRED TO PAY ANY COMPENSATION UNDER SECTION 11(3) FOR THE
3 DEALER'S GOODWILL.

4 (B) IF SUBDIVISION (A) DOES NOT APPLY, THE MANUFACTURER AND
5 DEALER SHALL MAKE A GOOD FAITH EFFORT TO AGREE TO FAIR AND
6 REASONABLE COMPENSATION FOR THE DEALER'S GOODWILL, BASED ON THE
7 FAIR MARKET VALUE OF THAT GOODWILL ON THE DAY BEFORE THE
8 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
9 DEALER AGREEMENT.

10 (C) IF THE MANUFACTURER AND THE NEW MOTOR VEHICLE DEALER AGREE
11 ON FAIR AND REASONABLE COMPENSATION WITHIN 30 DAYS AFTER THE
12 EFFECTIVE DATE OF THE TERMINATION, CANCELLATION, NONRENEWAL, OR
13 DISCONTINUANCE OF THE DEALER AGREEMENT, THAT AGREEMENT IS
14 CONCLUSIVE AND BINDING ON THE MANUFACTURER AND THE NEW MOTOR
15 VEHICLE DEALER.

16 (D) IF THE MANUFACTURER AND DEALER CANNOT AGREE TO FAIR AND
17 REASONABLE COMPENSATION FOR THE DEALER'S GOODWILL UNDER SUBDIVISION
18 (B) WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE TERMINATION,
19 CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE DEALER
20 AGREEMENT, THE AMOUNT OF FAIR AND REASONABLE COMPENSATION FOR THE
21 DEALER'S GOODWILL SHALL BE DETERMINED BY 3 QUALIFIED APPRAISERS.
22 ALL OF THE FOLLOWING APPLY TO THE DETERMINATION OF FAIR AND
23 REASONABLE COMPENSATION UNDER THIS SUBDIVISION:

24 (i) THE DEALER AND MANUFACTURER SHALL EACH SELECT A QUALIFIED
25 APPRAISER WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THE
26 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
27 DEALER AGREEMENT, AND THOSE APPRAISERS SHALL SELECT A THIRD

1 QUALIFIED APPRAISER.

2 (ii) WITHIN 150 DAYS AFTER THE EFFECTIVE DATE OF THE
3 TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE
4 DEALER AGREEMENT, EACH OF THE 3 APPRAISERS SELECTED UNDER
5 SUBPARAGRAPH (i) SHALL COMPLETE AN APPRAISAL OF THE FAIR MARKET
6 VALUE OF THE DEALER'S GOODWILL ON THE DAY BEFORE THE TERMINATION,
7 CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF THE DEALER
8 AGREEMENT, AND THE MEDIAN APPRAISAL OF THAT FAIR MARKET VALUE SHALL
9 BE THE FAIR AND REASONABLE COMPENSATION FOR THE GOODWILL FOR
10 PURPOSES OF THIS SUBSECTION.

11 (iii) THE MANUFACTURER AND THE DEALER ARE EACH RESPONSIBLE FOR
12 50% OF THE COSTS OF THE APPRAISALS UNDER THIS SUBDIVISION.

13 (5) ~~(3) In the event IF A~~ payment REQUIRED UNDER SUBSECTION
14 (1) is not made within 90 days as provided in subsection (1) THE
15 60-DAY PERIOD DESCRIBED IN THAT SUBSECTION, THEN BEGINNING ON THE
16 DAY AFTER THE EXPIRATION OF THAT 60-DAY PERIOD, interest shall
17 accrue ~~thereafter~~ on all amounts due the new motor vehicle dealer
18 at a rate of ~~12%~~ 6% per annum.

19 (6) AS USED IN THIS SECTION:

20 (A) "QUALIFIED APPRAISER" MEANS AN INDEPENDENT INDIVIDUAL WHO
21 IS QUALIFIED BY EXPERIENCE AND ABILITY TO VALUE THE GOODWILL OF A
22 BUSINESS.

23 (B) "QUALIFIED REAL ESTATE APPRAISER" MEANS A CERTIFIED
24 GENERAL REAL ESTATE APPRAISER OR A STATE LICENSED REAL ESTATE
25 APPRAISER, AS THOSE TERMS ARE DEFINED IN SECTION 2601 OF THE
26 OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2601.

27 Sec. 13. A manufacturer, ~~importer, or distributor~~ shall not

1 require any new motor vehicle dealer in this state to do any of the
2 following:

3 (a) Order ~~,~~ or accept delivery of any new motor vehicle, ~~or A~~
4 part or accessory of a new motor vehicle, equipment, or any other
5 commodity not required by law ~~which was~~ **THAT IS** not voluntarily
6 ordered by the new motor vehicle dealer. This section does not
7 prevent the manufacturer ~~or distributor~~ from requiring that new
8 motor vehicle dealers carry a reasonable inventory of models
9 offered for sale by the manufacturer. ~~or distributor.~~

10 (b) Order or accept delivery of any new motor vehicle with
11 special features, accessories, or equipment not included in the
12 list price of the new motor vehicle as publicly advertised by the
13 manufacturer. ~~or distributor.~~

14 (c) Participate monetarily in any advertising campaign or
15 contest, ~~or~~ purchase any promotional materials, display devices, or
16 display decorations or materials, or pay or assume directly in
17 connection with the sale of a new motor vehicle any part of the
18 cost of a refund, rebate, or discount made by or lawfully imposed
19 by the manufacturer ~~or distributor~~ to or in favor of a consumer,
20 unless voluntarily agreed to by the dealer.

21 (d) Enter into any agreement with the manufacturer ~~or~~
22 ~~distributor~~ or do any other act prejudicial to the new motor
23 vehicle dealer by threatening to terminate a dealer agreement or
24 any contractual agreement or understanding existing between the
25 dealer and the manufacturer. ~~or distributor.~~ Notice in good faith
26 to any dealer of the dealer's violation of any terms or provisions
27 of the dealer agreement ~~shall~~ **DOES** not constitute a violation of

1 this act.

2 (e) Change the capital structure of the new motor vehicle
3 dealership or the means by or through which the dealer finances the
4 operation of the dealership, if the dealership at all times meets
5 any reasonable capital standards determined by the manufacturer in
6 accordance with uniformly applied criteria.

7 (f) Refrain from participation in the management of,
8 investment in, or the acquisition of, any other line of new motor
9 ~~vehicle~~ **VEHICLES** or related products **AT OR IN ANY OF THE FOLLOWING:**

10 (i) **AT A LOCATION DIFFERENT FROM THE LOCATION USED BY THE**
11 **DEALER FOR THE SALE OR SERVICE OF NEW MOTOR VEHICLES OR RELATED**
12 **PRODUCTS OF THE MANUFACTURER, ~~provided that~~ IF** the dealer maintains
13 a reasonable line of credit for each make or line of vehicle,
14 remains in compliance with reasonable facilities requirements,
15 **REMAINS IN SUBSTANTIAL COMPLIANCE WITH CAPITAL REQUIREMENTS,** and
16 makes no change in the principal management of the dealer.

17 (ii) **IN FACILITIES AT THE SAME LOCATION AS, BUT SEPARATED FROM,**
18 **THE FACILITIES USED BY THE DEALER FOR THE SALE OR SERVICE OF NEW**
19 **MOTOR VEHICLES OR RELATED PRODUCTS OF THE MANUFACTURER, IF THE**
20 **DEALER MAINTAINS A REASONABLE LINE OF CREDIT FOR EACH MAKE OR LINE**
21 **OF VEHICLE, REMAINS IN COMPLIANCE WITH MINIMUM SPACE REQUIREMENTS**
22 **AND REASONABLE FACILITIES REQUIREMENTS, REMAINS IN SUBSTANTIAL**
23 **COMPLIANCE WITH CAPITAL REQUIREMENTS, AND DOES NOT MAKE A CHANGE IN**
24 **THE PRINCIPAL MANAGEMENT OF THE DEALER.**

25 (iii) **UNLESS THE MANUFACTURER OTHERWISE OBJECTS BASED ON OTHER**
26 **REASONABLE BUSINESS CONSIDERATIONS, IN THE SAME FACILITIES USED BY**
27 **THE DEALER FOR THE SALE OR SERVICE OF NEW MOTOR VEHICLES OR RELATED**

1 PRODUCTS OF THE MANUFACTURER, IF THE DEALER MAINTAINS A REASONABLE
 2 LINE OF CREDIT FOR EACH MAKE OR LINE OF VEHICLE, REMAINS IN
 3 COMPLIANCE WITH REASONABLE FACILITIES REQUIREMENTS, REMAINS IN
 4 SUBSTANTIAL COMPLIANCE WITH CAPITAL REQUIREMENTS, AND DOES NOT MAKE
 5 A CHANGE IN THE PRINCIPAL MANAGEMENT OF THE DEALER. THE
 6 MANUFACTURER HAS THE BURDEN OF PROVING REASONABLE BUSINESS
 7 CONSIDERATIONS FOR PURPOSES OF THIS SUBPARAGRAPH.

8 (g) Change the location of the new motor vehicle dealership or
 9 make any substantial alterations to the dealership premises, ~~where~~
 10 ~~to do so would be~~ **IF CHANGING THE LOCATION OR MAKING THE**
 11 **ALTERATIONS IS** unreasonable.

12 (h) Prospectively assent to a release, assignment, novation,
 13 waiver, or estoppel ~~which~~ **THAT** would relieve any person from
 14 liability imposed by this act; require that any dealer agreement be
 15 governed by the laws of a state other than this state; or require
 16 **REFERRAL OF** any controversy between a new motor vehicle dealer and
 17 a manufacturer ~~, importer, or distributor to be referred to a~~
 18 person other than the duly constituted courts of this state, or of
 19 the United States located in this state, if the referral would be
 20 binding ~~upon~~ **ON** the new motor vehicle dealer. ~~unless the parties~~
 21 ~~agree~~ **THIS SUBDIVISION DOES NOT APPLY TO AN AGREEMENT BETWEEN THE**
 22 **PARTIES, MADE** at the time of a controversy, to refer ~~a~~ **THE**
 23 controversy to a court of the United States located outside this
 24 state or agree at the time of ~~the~~ **AN** arbitration to conduct **THE**
 25 arbitration either ~~within~~ **IN** or outside **OF** this state. ~~Such a~~ **A**
 26 provision in a dealer agreement **THAT VIOLATES THIS SUBDIVISION** is
 27 void and unenforceable.

1 Enacting section 1. This amendatory act does not take effect
2 unless Senate Bill No. 1308 or House Bill No. 6100 of the 95th
3 Legislature is enacted into law.