

Act No. 138
Public Acts of 2010
Approved by the Governor
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Senators Gilbert, Thomas, Sanborn, Whitmer, Kuipers, Nofs, Jansen, Hunter, Allen, McManus, Olshove, Brown, Pappageorge, Cropsey, Barcia, Cherry, Clarke, Patterson, Scott, Richardville, Stamas, Bishop, Gleason, Anderson, Birkholz, Kahn and Van Woerkom

ENROLLED SENATE BILL No. 1308

AN ACT to amend 1981 PA 118, entitled "An act to regulate motor vehicle manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate dealings between manufacturers and distributors or wholesalers and their dealers; to regulate dealings between manufacturers, distributors, wholesalers, dealers, and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal certain acts and parts of acts," by amending sections 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:

Sec. 14a. (1) A manufacturer shall not require that a new motor vehicle dealer, a proposed new motor vehicle dealer, or any owner of an interest in a dealership facility enter into or agree to a property use agreement as a condition to any of the following:

- (a) Awarding a dealer agreement to a prospective new motor vehicle dealer.
- (b) Adding a line make or dealer agreement to an existing new motor vehicle dealer.
- (c) Renewing a dealer agreement with an existing new motor vehicle dealer.
- (d) Approving a relocation of a new motor vehicle dealer's place of business.

(e) Approving a sale or transfer of the ownership of a dealership or a transfer of a dealer agreement to another person.

(2) Subsection (1) does not apply to a property use agreement if any of the following are offered and accepted for that agreement:

- (a) Monetary consideration.
- (b) Separate and valuable consideration that can be calculated to a sum certain.

(3) If a manufacturer and a new motor vehicle dealer are parties to a property use agreement, the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a manufacturer, by a successor manufacturer, or by operation of law, and the reason for the termination is not a reason described in section 10(c), the property use agreement terminates and ceases to be effective at the time the dealer agreement is terminated.

(4) If any provision contained in a property use agreement entered into on or after the effective date of the amendatory act that added this subsection is inconsistent with this section, the provision is voidable at the election of the affected new motor vehicle dealer, proposed new motor vehicle dealer, or owner of an interest in the dealership facility.

(5) As used in this section, "property use agreement" means any of the following:

(a) An agreement that requires that a new motor vehicle dealer establish or maintain exclusive dealership facilities.

(b) An agreement that restricts the ability of a new motor vehicle dealer, or the ability of the dealer's lessor if the dealer is leasing the dealership facility, to transfer, sell, lease, or change the use of the place of business of the dealership, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement, regardless of who the parties to that agreement are.

(c) Any similar agreement between a manufacturer and a new motor vehicle dealer and commonly known as a site control agreement or exclusive use agreement.

Sec. 15. (1) Any designated family member of a deceased or incapacitated new motor vehicle dealer or an executive manager of the dealership may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member or executive manager gives the manufacturer written notice of his or her intention to succeed to the dealership within 120 days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and meets the current criteria generally applied by the manufacturer in qualifying new motor vehicle dealers. A manufacturer may refuse to continue the existing dealer agreement with the designated family member only for good cause.

(2) A manufacturer may request from a designated family member or executive manager described in subsection (1) a completed application form and any personal and financial information that is reasonably necessary to determine whether the existing dealer agreement should continue. The designated family member or executive manager shall supply the completed application form and personal and financial information promptly 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 believes that good cause exists for refusing to continue a dealer agreement under this section with a designated family member or executive manager described in subsection (1), the manufacturer may, within 60 days after receiving notice of the designated family member's or executive manager's intent to succeed the dealer in the ownership and operation of the dealership, or within 60 days after receiving the requested personal and financial information and completed application form, serve on the designated family member or executive manager notice of its refusal to approve the succession.

(4) A notice of refusal served by a manufacturer 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 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-day period described in subsection (3), the dealer agreement shall continue in effect and is subject to termination only as otherwise permitted 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. If the dealer files an instrument 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 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. A manufacturer shall compensate a new motor vehicle dealer for warranty service required of the dealer by the manufacturer. A manufacturer shall provide 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) A schedule of compensation described in subsection (1) shall include reasonable compensation for diagnostic work and repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In determining what constitutes reasonable compensation under this section, the principal factor to be given consideration is the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and the compensation of a dealer for warranty labor shall not be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, if those rates are reasonable.

(3) A manufacturer shall not do any of the following:

(a) Fail to perform any warranty obligation.

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

(c) Fail to compensate a new motor vehicle dealer licensed in this state for repairs made in connection with the recall.

(4) A manufacturer shall pay a claim made by a new motor vehicle dealer under this section for labor and parts within 30 days after its approval. A manufacturer shall either approve or disapprove a claim within 30 days after receiving the claim, submitted on the form generally used by the manufacturer and containing the information usually required in the form. Any claim not specifically disapproved in writing within 30 days after the manufacturer receives the claim form is considered approved, and the manufacturer shall pay the claim within 30 days.

(5) Subject to subsection (10), if a manufacturer has approved and paid a new motor vehicle dealer for a claim, the manufacturer may only charge the claim back to the dealer if 1 of the following is met:

(a) The manufacturer shows that the claim is fraudulent or false. However, the manufacturer may not charge back the amount paid if the claim is found to be false or fraudulent more than 2 years after payment.

(b) The manufacturer shows that the claim is unsubstantiated, lacks proper documentation, or shows an improper diagnosis process or improper repair procedures. However, the manufacturer may not charge back the amount paid if the claim is found to be unsubstantiated, to lack proper documentation, or show an improper diagnosis process or repair procedures more than 12 months after payment.

(6) A manufacturer may not deny a claim made under this section because of a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error, that does not call into question the legitimacy of the claim.

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

(8) A manufacturer shall compensate a new motor vehicle dealer for any sales or service promotion events, programs, or activities sponsored by the manufacturer, in accordance with established guidelines for those events, programs, or activities.

(9) A manufacturer shall pay a claim for compensation owed to a new motor vehicle dealer under subsection (8) for a promotion event, program, or activity within 10 days after its approval. A manufacturer shall either approve or disapprove a claim for compensation described in this subsection within 30 days after receiving the claim, submitted on the form generally used by the manufacturer and containing the information usually required in the form. Any claim for compensation the manufacturer does not specifically disapprove in writing within 30 days after receiving the claim form is considered approved, and the manufacturer shall pay the amount of the claim within 30 days. A manufacturer may only charge back a claim for 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 proposed chargeback of a claim to the dealer and a written statement containing the basis on which the claim or claims of the dealer were selected for audit or review by the manufacturer.

(b) After the meeting, the manufacturer shall provide the motor vehicle dealer's representative a reasonable period of time of at least 45 days to respond to the proposed chargebacks. The manufacturer shall provide a longer period of time for the dealer to respond if warranted by the volume of proposed chargebacks.

(c) An unexcused failure or refusal of the dealer or designated officer or employee of the dealer to schedule, attend, or participate in the meeting with the manufacturer relieves the manufacturer from any further obligation under this subsection.

(11) A manufacturer may conduct an audit of the records of a new motor vehicle dealer relating to a warranty or promotion claim submitted by a new motor vehicle dealer under this section, but the manufacturer may only conduct that audit in the time periods allowed for warranty or promotional claim chargebacks under this section.

Sec. 20. (1) If a manufacturer terminates, cancels, fails to renew, or discontinues a dealer agreement, without good cause as described in this act, the new motor vehicle dealer may bring an action against the manufacturer to recover actual damages reasonably incurred by the dealer as a result of the termination, cancellation, failure, or discontinuance.

(2) A manufacturer that violates this act is liable for all damages sustained by a new motor vehicle dealer as a result of the violation.

(3) A manufacturer or new motor vehicle dealer may bring an action for declaratory judgment for determination of any controversy arising under this act.

(4) A manufacturer that violates this act shall be liable for all court costs and reasonable attorney fees incurred by a dealer in an action under this section.

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

- (a) Senate Bill No. 1309.
- (b) House Bill No. 6099.
- (c) House Bill No. 6100.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor