

Act No. 141
Public Acts of 2010
Approved by the Governor
August 3, 2010
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**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2010**

Introduced by Reps. Roy Schmidt, Gregory, Byrum, Kandrevas, Caul, Wayne Schmidt, Young, Mayes, Melton, Hildenbrand, Walsh, Leland, Durhal, Lemmons, Slezak, McDowell, Terry Brown, Spade, LeBlanc, Johnson, Huckleberry, Haase, Corriveau, Scripps, Robert Jones, Segal, Dean, Switalski, Haugh, Gonzales, Womack, Meadows, Griffin, Miller, Rocca, Byrnes, Neumann, Daley, Kennedy, Donigan, Stanley, Bledsoe, Liss, Ebli, Nerat, Sheltroun, Espinoza, Lahti, Constan, Slavens, Roberts, Warren, Polidori, Lindberg, Bauer, Stamas, Moore, Crawford, Horn, Pavlov, Green, Opsommer, Denby, Tyler, Bolger, Agema, Meekhof, Haines, Pearce, Haveman, Paul Scott, Lund, Booher, Rogers, Kowall, Ball, Hansen, Schuitmaker, Knollenberg, Proos, Valentine, Smith, Barnett, Lisa Brown, Calley, Clemente, Cushingberry, DeShazor, Geiss, Hammel, Jackson, Rick Jones, Kurtz, Lipton, Lori, Marleau, Meltzer, Moss, Nathan and Tlaib

ENROLLED HOUSE BILL No. 6100

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 11, 12, 13, and 14 (MCL 445.1571, 445.1572, 445.1573, and 445.1574), sections 11 and 12 as amended by 1983 PA 188, section 13 as amended by 1998 PA 456, and section 14 as amended by 2000 PA 239.

The People of the State of Michigan enact:

Sec. 11. (1) Subject to section 12, if a manufacturer terminates, cancels, does not renew, or discontinues a dealer agreement for any reason other than a reason described in section 10(c), or if a dealer agreement is terminated, canceled, nonrenewed, or discontinued as a result of coercion by the manufacturer, the manufacturer shall pay the new motor vehicle dealer fair and reasonable compensation for all of the following:

(a) Each vehicle in the new motor vehicle dealer's inventory that meets all of the following:

(i) The vehicle is new, undamaged, not materially altered, and unsold.

(ii) The vehicle is a current model year vehicle or a vehicle from the model year preceding the current model year.

(iii) The vehicle was purchased from the manufacturer or another dealer of the same line make in the ordinary course of business before the dealer received notice of the termination, discontinuance, cancellation, or nonrenewal of the dealer agreement under section 10.

(iv) The vehicle has less than 750 miles registered on the odometer.

(b) Supplies and parts inventory purchased from the manufacturer and listed in the manufacturer's current parts catalog.

(c) Equipment and signs purchased from the manufacturer.

(d) Special tools purchased from the manufacturer in the 3-year period preceding the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement.

(e) Data processing programs, software, and equipment that a manufacturer required that a terminated new motor vehicle dealer obtain or purchase for communication of sales, service, warranty, or other information between the dealer and the manufacturer; that the terminated dealer used exclusively for the make or line of vehicle and location covered by the terminated dealer agreement to manage or report data to the manufacturer; and that meets 1 of the following:

(i) It was purchased by the dealer in the 2-year period preceding the date of the termination, discontinuance, cancellation, or nonrenewal of the dealer agreement.

(ii) It was leased by the dealer before the effective date of the termination. However, a manufacturer is only responsible under this subparagraph for the amounts remaining to be paid or paid in advance on the dealer's lease for a period that does not exceed 2 years.

(f) The net cost of any upgrades or alterations made by a terminated new motor vehicle dealer to the dealership facilities if the manufacturer required the upgrades or alterations and the upgrades or alterations were made in the 2-year period preceding the effective date of the termination of the dealer agreement. In determining fair and reasonable compensation under this subdivision, the manufacturer may offset any amounts paid by the manufacturer to subsidize or otherwise assist the dealer in making the upgrades or alterations.

(g) The net cost of any furnishings the manufacturer required that a terminated new motor vehicle dealer purchase in the 2-year period preceding the effective date of the termination of the dealer agreement. In determining fair and reasonable compensation under this subdivision, the manufacturer may offset any amounts paid by the manufacturer to subsidize or otherwise assist the dealer in purchasing those furnishings.

(2) In addition to the payment of compensation under subsection (1), subject to section 12, if a manufacturer terminates, cancels, does not renew, or discontinues a dealer agreement for any reason other than a reason described in section 10(c), the manufacturer shall also pay to the new motor vehicle dealer in equal monthly installments an amount equal to the fair rental value of its established place of business for a period of 1 year from the effective date of termination, cancellation, nonrenewal, or discontinuance, or the remainder of any lease, whichever is less. This obligation is subject to both of the following:

(a) The obligation to pay a new motor vehicle dealer fair rental value under this subsection applies only to the extent that the new motor vehicle dealer's established place of business is used for performance of sales and service obligations under the manufacturer's dealer agreement.

(b) If the new motor vehicle dealer terminates a dealer agreement, the manufacturer is only required to make the payment required under this subsection if the new motor vehicle dealer makes available to the manufacturer and the manufacturer accepts use and possession of the premises free of any claims of others for the 1-year period, except for use by the dealer for closing his or her business.

(3) In addition to the payment of compensation under subsection (1), subject to section 12, if a manufacturer terminates, cancels, does not renew, or discontinues a dealer agreement for any of the following reasons, the manufacturer shall pay the new motor vehicle dealer fair and reasonable compensation for the goodwill of the dealer:

(a) The ownership, operation, or control of all or part of the business of the manufacturer changes, whether by sale or transfer of assets, corporate stock, or other equity interest, assignment, merger, consolidation, combination, joint venture, redemption, or operation of law.

(b) All or part of the business operations of the manufacturer are terminated or suspended or cease.

(c) The manufacturer discontinues a line make.

(4) This section does not relieve a new motor vehicle dealer, lessor, or other owner of an established place of business from the obligation of mitigating damages.

Sec. 12. (1) A manufacturer shall pay the compensation for new motor vehicle inventory and items of personal property required under section 11(1) within 60 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance, provided that the new motor vehicle dealer has met all reasonable requirements of the dealer agreement with respect to the return of the new motor vehicle inventory and repurchased personal property, including providing clear title to the repurchased personal property.

(2) All of the following apply in determining the amount of fair and reasonable compensation under section 11(1):

(a) Fair and reasonable compensation under section 11(1)(a) shall be not less than the new motor vehicle dealer's net acquisition cost.

(b) Fair and reasonable compensation for supplies and parts inventory for purposes of section 11(1)(b) is the amount stated in the manufacturer's current parts price list.

(c) Fair and reasonable compensation for purposes of section 11(1)(c), (d), and (e) is the fair market value of the personal property described in those subdivisions.

(3) All of the following apply to the determination of fair rental value of a new motor vehicle dealer's established place of business under section 11(2):

(a) The manufacturer and dealer shall make a good faith effort to agree to the fair rental value of the premises, taking into consideration the adequacy and desirability of the premises for dealership operations and the fair market value of the premises.

(b) If the manufacturer and the new motor vehicle dealer agree on the fair rental value within 30 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, that valuation is conclusive and binding on the manufacturer and the new motor vehicle dealer.

(c) If the manufacturer and dealer cannot agree to the fair rental value of the premises under subdivision (a) within 30 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, the fair rental value of the premises shall be determined by 3 qualified real estate appraisers. All of the following apply to the determination of fair rental value under this subdivision:

(i) The dealer and manufacturer shall each select a qualified real estate appraiser within 60 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, and those appraisers shall select a third qualified real estate appraiser.

(ii) Within 150 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, each of the 3 appraisers selected under subparagraph (i) shall complete an appraisal of the fair rental value of the premises, and the median appraisal shall be the fair rental value of the premises for purposes of this subsection.

(iii) The manufacturer and the dealer are each responsible for 50% of the costs of the appraisals under this subdivision.

(4) All of the following apply in determining the fair and reasonable compensation for a new motor vehicle dealer's goodwill under section 11(3):

(a) If a successor manufacturer offers a dealer agreement to a dealer whose dealer agreement with the manufacturer is terminated, canceled, not renewed, or discontinued and the terms of the proposed dealer agreement are substantially similar to the terms offered by the successor manufacturer to other new motor vehicle dealers of the same line make, the manufacturer that terminated, canceled, did not renew, or discontinued the dealer agreement is not required to pay any compensation under section 11(3) for the dealer's goodwill.

(b) If subdivision (a) does not apply, the manufacturer and dealer shall make a good faith effort to agree to fair and reasonable compensation for the dealer's goodwill, based on the fair market value of that goodwill on the day before the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement.

(c) If the manufacturer and the new motor vehicle dealer agree on fair and reasonable compensation within 30 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, that agreement is conclusive and binding on the manufacturer and the new motor vehicle dealer.

(d) If the manufacturer and dealer cannot agree to fair and reasonable compensation for the dealer's goodwill under subdivision (b) within 30 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, the amount of fair and reasonable compensation for the dealer's goodwill shall be determined by 3 qualified appraisers. All of the following apply to the determination of fair and reasonable compensation under this subdivision:

(i) The dealer and manufacturer shall each select a qualified appraiser within 60 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, and those appraisers shall select a third qualified appraiser.

(ii) Within 150 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, each of the 3 appraisers selected under subparagraph (i) shall complete an appraisal of the fair market value of the dealer's goodwill on the day before the termination, cancellation, nonrenewal, or discontinuance of the dealer agreement, and the median appraisal of that fair market value shall be the fair and reasonable compensation for the goodwill for purposes of this subsection.

(iii) The manufacturer and the dealer are each responsible for 50% of the costs of the appraisals under this subdivision.

(5) If a payment required under subsection (1) is not made within the 60-day period described in that subsection, then beginning on the day after the expiration of that 60-day period, interest shall accrue on all amounts due the new motor vehicle dealer at a rate of 6% per annum.

(6) As used in this section:

(a) "Qualified appraiser" means an independent individual who is qualified by experience and ability to value the goodwill of a business.

(b) "Qualified real estate appraiser" means a certified general real estate appraiser or a state licensed real estate appraiser, as those terms are defined in section 2601 of the occupational code, 1980 PA 299, MCL 339.2601.

Sec. 13. A manufacturer shall not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, a part or accessory of a new motor vehicle, equipment, or any other commodity not required by law that is not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer.

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

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

(d) Enter into any agreement with the manufacturer or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement does not constitute a violation of this act.

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

(f) Refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicles or related products at or in any of the following:

(i) At a location different from the location used by the dealer for the sale or service of new motor vehicles or related products of the manufacturer, if the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, remains in substantial compliance with capital requirements, and makes no change in the principal management of the dealer.

(ii) In facilities at the same location as, but separated from, the facilities used by the dealer for the sale or service of new motor vehicles or related products of the manufacturer, if the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with minimum space requirements and reasonable facilities requirements, remains in substantial compliance with capital requirements, and does not make a change in the principal management of the dealer.

(iii) Unless the manufacturer otherwise objects based on other reasonable business considerations, in the same facilities used by the dealer for the sale or service of new motor vehicles or related products of the manufacturer, if the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, remains in substantial compliance with capital requirements, and does not make a change in the principal management of the dealer. The manufacturer has the burden of proving reasonable business considerations for purposes of this subparagraph.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if changing the location or making the alterations is unreasonable.

(h) Prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this act; require that any dealer agreement be governed by the laws of a state other than this state; or require referral of any controversy between a new motor vehicle dealer and a manufacturer to a person other than the duly constituted courts of this state, or of the United States located in this state, if the referral would be binding on the new motor vehicle dealer. This subdivision does not apply to an agreement between the parties, made at the time of a controversy, to refer the controversy to a court of the United States located outside this state or agree at the time of an arbitration to conduct the arbitration either in or outside of this state. A provision in a dealer agreement that violates this subdivision is void and unenforceable.

Sec. 14. (1) A manufacturer shall not do any of the following:

(a) Adopt, change, establish, or implement a plan or system for the allocation and distribution of new motor vehicles to new motor vehicle dealers that is arbitrary or capricious or based on unreasonable sales and service standards, or modify an existing plan or system that causes the plan or system to be arbitrary or capricious or based on unreasonable sales and service standards.

(b) If requested in writing by a new motor vehicle dealer, fail or refuse to advise or disclose to the dealer the basis on which new motor vehicles of the same line make are allocated or distributed to new motor vehicle dealers in the state and the basis on which the current allocation or distribution is being made or will be made to that new motor vehicle dealer.

(c) Refuse to deliver to a new motor vehicle dealer in reasonable quantities and within a reasonable time after receipt of the dealer's order, any new motor vehicles that are covered by the dealer agreement and specifically publicly advertised in the state by the manufacturer as available for immediate delivery. However, the failure to deliver any motor vehicle is not considered a violation of this act if the failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo, or other cause

over which the manufacturer has no control. If a manufacturer 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 shall 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 in the model year in which the dealer is required to purchase the tool.

(d) Increase the price of a new motor 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 before the dealer's receipt of a written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer constitutes evidence of a vehicle order. In the event of manufacturer price reductions or cash rebates, the dealer shall pass on the amount of any reduction or rebate received by the dealer to the private retail consumer. Any price reduction in excess of \$5.00 shall apply to all vehicles in the dealer's inventory 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 is not considered a price increase or price decrease. This subdivision does not apply to price changes caused by any of the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.

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

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier or transporter.

(e) Offer any of the following to any new motor vehicle dealer of a specific line make without making the same offer available to all other new motor vehicle dealers of the same line make:

(i) Any specific model or series of new motor vehicles manufactured for that line make.

(ii) Any incentives, rebates, bonuses, promotional items, or other similar benefits payable to the new motor vehicle dealer for selling new motor vehicles or purchasing new motor vehicles from the manufacturer.

(iii) Any consumer rebates, vehicle price reductions, or interest rate reductions or other changes to finance terms that benefit the consumer.

(iv) Any program that provides marketing and sales assistance to new motor vehicle dealers, including, but not limited to, internet listings, sales leads, marketing programs, and dealer recognition programs.

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer are parties, any business, financial, or personal information that has been provided by the dealer to the manufacturer, unless the new motor vehicle dealer gives written consent.

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

(h) Directly or indirectly own, operate, or control a new motor vehicle dealer, including, but not limited to, a new motor vehicle dealer engaged primarily in performing warranty repair services on motor vehicles pursuant to the manufacturer's warranty, or a used motor vehicle dealer. This subdivision does not apply to any of the following:

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

(ii) The ownership, operation, or control of a new motor vehicle dealer or a used motor vehicle dealer by a manufacturer while it is being sold under a bona fide contract or purchase option to the operator of the new motor vehicle dealer or the used motor vehicle dealer.

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

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

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

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

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

(iv) The acquisition by a manufacturer of a used motor vehicle dealer's license for the purpose of selling motor vehicles to nonretail buyers.

(i) Sell any new motor vehicle directly to a retail customer other than through its franchised dealers, unless the retail customer is a nonprofit organization or a federal, state, or local government or agency. This subdivision does not

prohibit a manufacturer from providing information to a consumer for the purpose of marketing or facilitating the sale of new motor vehicles or from establishing a program to sell or offer to sell new motor 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, 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. If a manufacturer rejects a proposed change in the executive management, the manufacturer 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 the change in executive management is considered approved.

(k) Unreasonably withhold consent to the sale, transfer, or exchange of 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 receiving a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer for that purpose and containing the information required in that application. Failure to respond to a request for consent within the 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 a 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 the manufacturer.

(u) Require that a new motor vehicle dealer provide its customer lists or service files to the manufacturer, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, or in connection with the submission of a claim to the manufacturer for services supplied by the new motor

vehicle dealer for any claim for warranty repairs. This section does not limit a manufacturer's authority to require or use customer information to satisfy any safety or recall obligation.

(v) Establish a performance standard or program for measuring new motor vehicle dealer performance that may have a material impact on a new motor vehicle dealer that is not fair, reasonable, and equitable. For purposes of this subdivision, all of the following apply if a manufacturer does not provide a complete program description explaining the performance standard or program details to a new motor vehicle dealer on or before the beginning of the program:

(i) Within 10 days after receiving a request from the new motor vehicle dealer, the manufacturer shall provide the new motor vehicle dealer with a written description of how a performance standard or program is designed.

(ii) Within 30 days after receiving a request from the new motor vehicle dealer, the manufacturer shall provide information relating to how the performance standard or program applies to the new motor vehicle dealer.

(w) If a new motor vehicle dealer sold or leased a new motor vehicle to a customer that exported the motor vehicle to a foreign country or resold the motor vehicle, refuse to allocate, sell, or deliver new motor vehicles to the dealer; charge back or withhold payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevent a new motor vehicle dealer from participating in any sales promotion, program, or contest; or take or threaten to take any other adverse action against a new motor vehicle dealer, including, but not limited to, reducing vehicle allocations or terminating or threatening to terminate a dealer agreement, unless the manufacturer proves that the new motor vehicle dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. In an action by a new motor vehicle dealer for a violation of this subdivision, there is a rebuttable presumption that a new motor vehicle dealer did not know or should not reasonably have known of its customer's intent to export or resell a motor vehicle if the vehicle was titled in the United States, and the manufacturer bears the burden of rebutting that presumption.

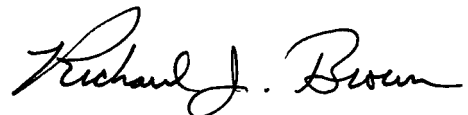
(x) If a new motor vehicle dealer is a party to a dealer agreement on the effective date of the amendatory act that added this subdivision, and the dealer agreement provides for sale of a competing line make of new motor vehicles at the same place of business where the manufacturer's line make is sold, require or otherwise coerce the new motor vehicle dealer to remove the sale or servicing of new motor vehicles of that competing line make from that place of business.

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

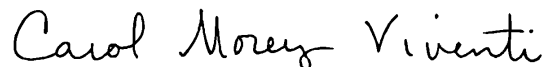
Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

- (a) Senate Bill No. 1308.
- (b) Senate Bill No. 1309.
- (c) House Bill No. 6099.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

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Governor