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BILL ANALYSIS

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House Bill 6498 (Substitute H-1 as passed by the House)
Sponsor: Representative Brandt Iden
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 12-19-18

CONTENT

The bill would amend Public Act 118 of 1981, which governs automobile dealer manufacturers and franchises, to do the following:

- **Rename the Act as the "Motor Vehicle Franchise Act".**
- **Modify the conditions under which good cause would exist for the cancellation, termination, nonrenewal, or discontinuance of a dealer agreement.**
- **Prohibit a manufacturer from requiring a dealer to construct or substantially alter a facility or premises if the same item or design component was constructed or substantially altered within the previous 10 years, and the manufacturer or distributor required and approved the construction or alteration.**
- **Prohibit a manufacturer from requiring a dealer to purchase goods or services to make improvements to the dealer's facilities from a vendor that was selected, identified, or designed by the manufacturer or its affiliate, unless the dealer was allowed to obtain the goods or services from a vendor it chose if certain conditions were met.**
- **Prohibit a manufacturer from requiring a new motor vehicle dealer to lease signs from a vendor, selected, identified, or designated by the manufacturer, unless certain conditions were met.**
- **Specify that a manufacturer could not unreasonably withhold consent to the sale, transfer, or exchange of a dealership to a qualified buyer that met the manufacturer's uniformly applied requirements and criteria to be a dealer, and that was capable of being licensed as a motor vehicle dealer in the State.**
- **Specify that a manufacturer could not fail to respond to a request from a dealer that had submitted an agreement for the sale, transfer, or exchange of a dealership.**
- **Prohibit a manufacturer from establishing a performance standard or program for measuring dealer performance that could have a material and adverse impact on a dealer that is not fair, reasonable, and equitable.**
- **Specify that a manufacturer could not exercise a right of first refusal to acquire a dealership from a dealer unless certain requirements were met.**
- **Require a designated individual to be a designated successor in a written instrument in order to succeed a dealer in the ownership or operation of the dealership.**
- **Revise, from 60 to 75, the number of days a manufacturer would have to serve notice of its refusal to approve a succession if it believed that good cause existed for refusing to continue an existing dealer agreement.**

-- Require a manufacturer to specify in writing a dealer's obligations for recall service on its product, and require a manufacturer to compensate a dealer for recall services required of the dealer.
-- Delete a provision specifying that the prevailing wage rates paid by dealers in the community in which the dealer is doing business is the principal factor in determine what constitute reasonable compensation.
-- Modify provisions pertaining to when a manufacturer could charge a claim back to a dealer.
-- Require a manufacturer to compensate a dealer for any sales or service promotion incentives.
-- Require a manufacturer to pay a claim for compensation owed to dealer for a promotion, incentive, program, or activity within 15 days of its approval, instead of 10 days.
-- Specify the principal factors in determining what would constitute reasonable compensation for parts reimbursement and labor rates.
-- Require a manufacturer to compensate its dealers a reasonable amount for all labor and parts required by the manufacturer to perform recall repairs.
-- Requires a manufacturer or distributor to indemnify and hold harmless its dealers against any judgement for damages or settlement agreed to in writing by the manufacturer.

The bill would take effect 90 days after its enactment. The bill would apply to dealer agreements entered into or renewed, or existing dealer agreements that were materially and substantially amended, after the bill's effective date.

Good Cause

Under the Act, notwithstanding an agreement, a manufacturer or distributor may not cancel, terminate, fail to renew, or refuse to cancel any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor meets all of the following: a) has satisfied the notice requirement of Section 10; b) has acted in good faith; and c) has good cause for the cancellation, termination, nonrenewal, or discontinuance.

(Under Section 10, notwithstanding any agreement, before the termination, cancellation, nonrenewal, or discontinuance of any dealer agreement, a manufacturer or distributor must give notice of the termination, cancellation, nonrenewal, or discontinuance to a dealer in a manner specified in the Act.)

Notwithstanding an agreement, good cause exists when both of the following occur:

-- The dealer fails to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer and the dealer.
-- The manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than two years before the date on which notification was given pursuant to Section 10.

The bill, instead, specifies that good cause would exist when both of the following occurred:

-- The dealer failed to comply with a provision of the dealer agreement and the provision was both reasonable and of material significance to the relationship between the manufacturer and the dealer.
-- Unless otherwise agreed or if the dealer were participating in a performance improvement plan or program, the manufacturer or distributor provided the required notification under

Section 10 not more than two years after the date on which the manufacturer first acquired actual or constructive knowledge of the failure.

The Act specifies that if a new motor vehicle dealer's failure to comply with the dealer agreement relates to its performance in sales or service, good cause exists for the purposes of a termination, cancellation, renewal, or discontinuance when the dealer fails to effectively carry out the performance provisions of the agreement if certain conditions have occurred, including that the notification stated that the notice of failure of performance was provided under the Act.

In addition to those conditions currently specified in the Act, under the bill, the following would have to occur in order for good cause to exist:

-- If requested in writing by the dealer, the manufacturer provided written information indicating the methodology and data the manufacturer or distributor used to measure the dealer's performance; however, this provision would not require the manufacturer to disclose any proprietary or confidential information or other information if disclosure were prohibited by law.
-- The dealer was afforded a reasonable opportunity to present evidence to the manufacturer or distributor demonstrating the effect of local market conditions that materially and adversely affected its performance.
-- If the manufacturer used a survey or index to measure a dealer's performance, the survey or index was based on a reasonable sampling of the measured performance criteria.

"Local market conditions" would mean certain relevant and material conditions, criteria, data, and facts, beyond the control or influence of a new motor vehicle dealer, that have a material impact on the new motor vehicle dealer's sales performance in the assigned market area in which the dealer offers vehicles for sale or lease. The term could include any of the following:

-- Demographics in a new motor vehicle dealer's market area.
-- Geographic and market characteristics in a dealer's market area.
-- Local economic circumstances.
-- The preferences of motor vehicle purchasers or lessees.
-- Customer drive distance from a dealer.

Before a manufacturer's or distributor's final determination that a new motor vehicle dealer had failed to achieve any performance criteria that were the basis to cancel, terminate, fail to renew, or refuse to continue an agreement, it would have to provide the dealer an opportunity to present, in writing, evidence that demonstrated the effect of local market conditions that materially and adversely affected the dealer's performance.

If a manufacturer made a final decision to terminate, cancel, nonrenew, or discontinue an agreement without providing written information indicating the methodology or data it used to measure a dealer's performance, did not afford a dealer reasonable time to present evidence demonstrating the effect of local market conditions that materially affected the dealer's performance, or did not in good faith evaluate the effect of the local market conditions presented by the dealer in writing, good cause would not exist for terminating, canceling, nonrenewing, or discontinuing a dealer agreement.

The Act specifies that, notwithstanding any agreement, certain conditions alone do not constitute good cause for the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement. Under the bill, in addition to those conditions currently specified in the Act, a new motor vehicle dealer's failure to achieve any performance standard or criteria that were

unreasonable, inequitable, or discriminatory alone would not constitute good cause for the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement.

Manufacturer: Prohibited Activities

New Motor Vehicle Dealers. The Act prohibits a manufacturer from requiring any new motor vehicle dealer in Michigan to do certain things specified in the Act. Under the bill, in addition to those activities currently prohibited under the Act, a manufacturer could not require a dealer in Michigan to do any of the following:

-- Construct or substantially alter a facility or premises if the same item or design component, consisting of inferior or exterior elements of the sales, service, administrative, or parts components, was constructed or substantially altered within the previous 10 years, and the manufacturer or distributor required and approved the construction or alteration.
-- Purchase goods or services to make improvements to its facilities from a vendor selected, identified, or designated by the manufacturer or its affiliate, unless the dealer was allowed to obtain the goods or services from a vendor it chose if all of the following were met: a) the goods or services offered by the vendor were of the same material, quality, and overall design; b) the vendor was approved by the manufacturer; and c) the manufacturer was not providing substantial reimbursement or compensation to the dealer for the goods or services.
-- Lease signs, except for signs that contained the manufacturer's intellectual property or free-standing signs that were not directly attached to a building, or other manufacturer image or design elements or trade dress, from a vendor selected or designated by the manufacturer, unless the dealer was allowed to purchase it from a vendor chosen by the dealer if both of the following were met: a) the vendor's signs were of the same material, quality, and overall design; and b) the manufacturer approved the signs.
-- Except as required by the manufacturer for warranty repairs, recall repairs, or other services or programs paid for by the manufacturer, or unless otherwise agreed, require a new motor vehicle dealer to purchase fluids or other lubricants from a particular vendor, if fluids or lubricants of the same material and quality were available from another vendor.

If, during the 10-year period in which a facility or premises were constructed or substantially altered, a manufacturer established a new program, standard, policy, bonus, incentive, rebate, or other benefit, a dealer would be eligible for the new program, standard, policy, bonus, incentive, rebate, or other benefit if it fully complied with the new standards set by the manufacturer in the new standard, policy, bonus, incentive, rebate, or other benefit.

The provisions pertaining to the purchase of goods or services to make improvements to the dealer's facilities and the leasing of signs would not allow a dealer or its chosen vendor to impair, infringe upon, or eliminate, directly or indirectly, the intellectual property rights of the manufacturer, or to permit a new motor vehicle dealer to erect or maintain signs that did not conform to the manufacturer's intellectual property rights or trademark or trade dress usage guidelines.

"Construction" would mean the construction of new sales or service facilities by new motor vehicle dealer, or the substantial remodeling, improvement, renovation, expansion, replacement, or alteration of a dealer's existing sales or services facilities. The term would not include installation of signs or other image elements that were subject to the intellectual property rights of the manufacturer, including logos, trademarks, trade dress, patents, or other intellectual property.

"Goods" would not include movable displays, brochures, and promotional materials containing material that was subject to the intellectual property rights of a manufacturer.

"Substantial reimbursement" would mean an amount equal to or greater than the cost savings that would result if a new motor vehicle dealer utilized a vendor of the dealer's own selection instead of using the vendor selected, identified, or designated by the manufacturer or its affiliate.

"Substantial alteration" would mean an alteration that has a major impact on the architectural features, characteristics, appearance, or integrity of a structure or lot. The term would not include routine maintenance that was reasonably necessary to maintain a dealership facility in attractive condition and did not include any changes to items protected by Federal intellectual property rights.

Withhold Consent. Under the Act, a manufacturer may not 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 motor vehicle dealer in the State. The bill specifies that a manufacturer could not unreasonably withhold consent to the sale, transfer, or exchange of a new motor vehicle dealership to a qualified buyer that met the manufacturer's uniformly applied requirements and criteria to be a dealer, and that was capable of being licensed as a motor vehicle dealer in the State.

Written Request Response. The Act also prohibits a manufacturer from failing 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 an application from the dealer on the forms generally used by the manufacturer for that purpose and containing the required information. Failure to respond to a request for consent within the 60-day period is considered consent to the sale, transfer, or exchange.

Instead, under the bill, a manufacturer could not fail to respond to a written request from a new motor vehicle dealer that had submitted an agreement for the sale, transfer, or exchange of a new motor vehicle dealership. The manufacturer would have to provide the dealer with all forms generally used and requested by the manufacturer for the approval of a sale, transfer, or exchange of a dealership within 30 days after receiving a dealer's request for the forms. A manufacturer would have 75 days after the date the manufacturer received the properly completed forms and information generally used and requested by the manufacturer to approve or disapprove the sale, transfer, or exchange of the dealership. The manufacturer's failure to approve or disapprove the sale, transfer, or exchange within the 75-day time period would be considered approval.

Material Damage. Under the Act, a manufacturer also may not engage in conduct that meets all of the following: a) materially affects a new motor vehicle dealer; b) is capricious, is not in good faith, or is unconscionable; and c) causes damage to a new motor vehicle dealer. Instead, the bill would prohibit a manufacturer from engaging in conduct that met all of the following: a) materially affected a new motor vehicle dealer; b) was capricious, was not in good faith, or was unconscionable; and c) caused *material* damage to a new motor vehicle dealer.

Performance Standard or Program. The Act also prohibits a manufacturer from establishing a performance standard or program for measuring new motor vehicle dealer performance that may have a material impact on a dealer that is not fair, reasonable, and equitable. The bill would refer to a material *and adverse* impact.

Under the Act, all of the following apply if a manufacturer does not provide a complete description explaining the performance standard or program details to a new motor vehicle dealer on or before the beginning of the program:

-- Within 10 days after receiving a request from the dealer, the manufacturer must provide it with a written description of how a performance standard or program is designed.
-- Within 30 days after receiving a request from the dealer, the manufacturer must provide information relating to how the performance standard or program applies to the dealer.

Instead of providing information relating to how the performance standard or program applies to the dealer, under the bill, within 30 days after receiving a *written* request from the new motor vehicle dealer, a manufacturer would have to provide to the dealer all of the following:

-- An explanation as to how the manufacturer applied a performance standard program to a dealer's performance.
-- The specific information relied on by the manufacturer relating to how the performance standard or program was applied to the dealer.

The manufacturer would not have to disclose any proprietary or confidential information; however, the result of the application of a performance standard or program to a particular new motor vehicle dealer would not be considered proprietary or confidential as between the manufacturer and that particular dealer.

Additionally, the bill would require a manufacturer, on written request, to meet with the other party, in person or telephonically, under reasonable circumstances and as agreed to by both parties, to present, explain, or discuss information the manufacturer was required to provide.

Exported Motor Vehicle. The Act specifies that a manufacturer may not refuse, if a new motor vehicle dealer sold or leased a new vehicle to a customer that exported it to a foreign country or resold it, to allocate, sell, or deliver new 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 dealer.

Under the bill, a manufacturer could not refuse to do any of the above, 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, *and at the time of delivery to the customer the vehicle was titled and registered in Michigan or another state of the United States by the dealer*.

Documentary Preparation Fee. Under the Act, a manufacturer may not prevent, attempt to prevent, prohibit, coerce, or attempt to coerce a new motor vehicle dealer from charging a customer any documentary preparation fee allowed to be charged by the dealer under law of State. The bill also would prohibit a manufacturer from requiring the disclosure of the documentary preparation fee in a written format that was not otherwise required by law.

Dealership Transfer. Under the bill, a manufacturer could not prohibit, prevent, or attempt to prevent a new motor vehicle dealer from transferring a dealership to or naming a spouse, child, or executive manager as dealership successor to own and operate the dealership unless the manufacturer, having the burden of proof, could show that at the time the successor was named or the dealership was transferred, the successor spouse, child, or executive manager was not of good moral character, had a felony conviction, did not meet the manufacturer's

uniformly applied requirements and criteria to be a dealer, or was otherwise disqualified from holding a license as a new motor vehicle dealer under any applicable Michigan statute.

The Act defines "executive manager" as an individual employed by a new motor vehicle dealer in an executive capacity and who has a written employment agreement with the dealer that includes a right for the executive manager to purchase a controlling interest in the dealership at a future time or on the death or incapacity of the dealer. Under the bill, the term also would include an individual who was designated by the new motor vehicle dealer, in an addendum to the dealer agreement, as having authority and responsibility to operate the dealership on a day-to-day basis.

"Good moral character" would mean that term as defined under Public Act 381 of 1974 (when used as a requirement to establish or operate an organization or facility regulated by the State in statute or promulgated administrative rules must be construed to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner).

Under the bill, all of the following would apply for purposes of transferring a dealership to or naming a spouse, child, or executive manager as dealership successor:

The manufacturer would have to provide the dealer, in writing, with its current uniformly applied requirements and criteria to be a dealer within 30 days of receiving the dealer's written request for that information.

Within 75 days after receiving the manufacturer's current uniformly applied written requirements and criteria to be a dealer, a dealer could submit a written request to the manufacturer for a meeting, in person or telephonically, under reasonable circumstances as agreed to by both parties, to address the requirements and criteria. The parties would have to meet within 45 days after the dealer's request for a meeting, unless otherwise agreed. During the meeting, the manufacturer would have to provide the dealer an opportunity to present, in writing, facts, data, and evidence that established that there were factors beyond its reasonable control or influence that materially and adversely affected the proposed transferee's ability to meet the manufacturer's requirements. If the manufacturer did not provide the dealer an opportunity to do so, or did not in good faith evaluate the effect of the presented facts, data, and evidence, then the manufacturer could not prohibit or prevent the new motor vehicle dealer from transferring the dealership to a spouse, child, or executive manager, or naming a spouse, child, or executive manager as the dealership successor.

The manufacturer would have to make any decision to decline the dealer's request to transfer a dealership to a spouse, child, or executive manager, or name a spouse, child, or executive manager as dealership successor, in good faith, including the opportunity for a meeting. If requested by the new motor vehicle dealer in writing, the manufacturer would have to provide it with the information that it relied on when concluding that the spouse, child, or executive manager did not satisfy the requirements and criteria to be a dealer; however, the manufacturer would not be required to disclose proprietary or confidential information and would not have to disclose any information if it were prohibited by law.

Material Change to Dealer Agreement. Under the bill, a manufacturer could not make any material change in an agreement without giving the new motor vehicle dealer written notice of the change at least 30 days before its effective date. In any dispute under this provision, the dealer would have the burden of proving the modification was sufficiently significant and material to require notice.

Extended Service Contract. Unless otherwise agreed, the bill would prohibit a manufacturer from requiring a dealer to sell or offer to sell an extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer.

Sale, Transfer & Exchange of Dealership

The bill would require a manufacturer to provide, within 30 days after receiving a written request from a dealer, a new motor vehicle dealer that was seeking to sell, transfer, or exchange a dealership with all forms generally utilized and requested by the manufacturer in connection with the sale, transfer, or exchange of the dealership.

A manufacturer's or distributor's failure to approve or disapprove a dealer's request to sell, transfer, or exchange its dealership within the 75-day period after it received a completed application, including all required documentation and information requested by the manufacturer or distributor, would be considered approval by the manufacturer of the sale, transfer, or exchange of the dealership.

Right of First Refusal

Under the bill, a manufacturer could not exercise a right of first refusal or other right to acquire a new motor vehicle dealership from a new motor vehicle dealer, unless it did all of the following:

-- Within 75 days after the manufacturer received a complete written application, including all required documentation and information requested by the manufacturer or distributor from a dealer for a proposed sale, transfer, or exchange of a dealership, notified the dealer in writing that it intended to exercise the right to acquire the dealership.
-- Paid to the dealer the same or greater consideration as the dealer had contracted to receive in connection with the proposed transfer or sale of the dealership assets, stock, or other ownership interest, including, the purchase of, lease of, or assignment or transfer of any leased interest in, real property or improvements related to the transfer or sale of the dealership.
-- Assumed all of the duties, obligations, and liabilities concerning the manufacturer's line-makes that the proposed transferee were to assume in the agreements between the proposed transferee and the dealer and with respect to which the manufacturer exercised the right of first refusal or other right to acquire the dealership.
-- Reimbursed the proposed transferee for all reasonable expenses incurred in evaluating, investigating, and negotiating the transfer of the dealership before the manufacturer's exercise of its right of first refusal to acquire the dealership.

"Line-make" would mean a collection of models, a series, or a group of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease or distribution under a common brand name or mark. All of the following would apply to that term:

-- Multiple brand names or marks could constitute a single line-make, but only if they were included in a common dealer agreement and the manufacturer, distributor, or importer offered all of the vehicles that bear the multiple names or marks to its authorized dealers together, and not separately.
-- Motor vehicles that shared a common brand name or mark could constitute separate line-makes if those vehicles were of different vehicle types or were intended for different types of use, and either of the following applied: a) the manufacturer had expressly defined or covered the subject line-makes of vehicles as separate and distinct line-makes in the applicable dealer agreements; and b) the manufacturer had consistently characterized the

subject vehicles as constituting separate and distinct line-makes in the applicable dealer agreements.

"Proposed transferee" would mean the person to which a new motor vehicle dealership would have been transferred, or was proposed to be transferred, if the manufacturer did not exercise a right of first refusal to acquire the dealership from a new motor vehicle dealer. "Reasonable expenses" would include the usual and customary legal and accounting fees charged for similar work, as well as expenses associated with the evaluation and investigation of any real property on which a new motor vehicle dealership was operated.

Both of the following would apply for purposes of reimbursing a proposed transferee:

-- The transferee would have to submit an itemized list of its expenses to the manufacturer at least 60 days after it exercised its right of first refusal to acquire the motor vehicle franchise; however, if requested by the manufacturer, the transferee would have to provide the list before the manufacturer exercised its right of first refusal.
-- The manufacturer would have to reimburse the transferee for its reasonable expenses at least 60 days after it received the itemized list of expenses.

Except as provided, a manufacturer that exercised its right of first refusal and the dealer would not be liable to any person as a result of a manufacturer exercising its right of first refusal.

A manufacturer that exercised a right of first refusal could assign the lease or convey the real property of the dealership.

Ownership Succession

Under the Act, if a new motor vehicle dealer dies or becomes incapacitated, any of the dealer's designated family members or executive manager of the dealership may succeed the dealer in the ownership or operation of the dealership under an existing dealer agreement if the designated individual 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 manufacturer's uniformly applied requirements and criteria to be a dealer. The bill also would require the designated family member or executive manager to be a designated successor in a written instrument filed with the manufacturer.

The Act allows a manufacturer to refuse to continue an existing dealer agreement with a designated family member only for good cause. Under the bill, this provision also would apply to an existing dealer agreement with an executive manager.

Under the Act, a manufacturer may request from a designated individual a completed application form and any personal and financial information that is reasonably necessary to determine whether the existing agreement should continue. If a manufacturer believes that good cause exists for refusing to continue a dealer agreement with a designated individual, the manufacturer may, within 60 days after receiving notice of the designated individual's intent to succeed the dealer in ownership and operation of the dealership, or within 60 days after receiving the requested information and completed application form, serve on the designated individual notice of its refusal to approve the succession. Instead of 60 days, the bill would refer to 75 days. Additionally, if the manufacturer received notice of the designated individual's intent to succeed, and received the requested information and completed application form, it could serve the notice of its refusal 75 days after whichever it received later.

The Act specifies that if a notice of refusal is not served within the 60-day time period, a dealer agreement must continue in effect and is subject to termination only as otherwise permitted under the Act. The bill, instead, would refer to a 75-day time period.

The Act does not preclude a new motor vehicle dealer from designating a person as his or her successor by filing a written instrument with the manufacturer designating any person as the dealer's successor, and the written instrument must determine the succession rights to the management, ownership, and operation of the dealership. Under the bill, the written instrument would determine the succession rights *if*, at the time of succession, the person designated in the written instrument met the manufacturer's uniformly applied requirements and criteria to be a dealer.

Recall Service

The Act requires a manufacturer to specify in writing to each of its new motor vehicle dealers licensed in the State the dealer's obligations for preparation, delivery, and warranty service on its products. Under the bill, the manufacturer also would have to specify in writing a dealer's obligations for recall service on its products.

The Act also requires a manufacturer to compensate a dealer for warrant service required of the dealer by the manufacturer. Under the bill, a manufacturer also would have to compensate a dealer for recall service.

A manufacturer must 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. The bill would require a manufacturer also to include in the schedule of compensation a reasonable time allowance for labor for diagnostic work and repair, included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer could submit a request for an additional time allowance for either diagnostic or repair time, that included any information and documentation reasonably required by the manufacturer, and a manufacturer could not unreasonably deny that request. The schedule of compensation would have to include reasonable compensation for parts reimbursement and labor rates.

The bill would delete a provision specifying that the prevailing wage rates being paid by dealers in the community in which the dealer is doing business is the principal factor in determine what constitute reasonable compensation.

Additionally, the bill would prohibit a manufacturer from failing to perform any recall obligation.

Charging Back a Claim

Under the Act, 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 one of the following is met:

-- 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 two years after payment.
-- 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.

Instead, under the bill, a manufacturer could only charge a claim back to a dealer if one of the following were met:

-- The manufacturer shows that the claim was fraudulent; however, the manufacturer could not charge back the amount paid if the claim is found to be fraudulent more than *six* years after payment.
-- The manufacturer showed that the claim was *false*, unsubstantiated, lacked proper documentation, or showed an improper diagnosis process or improper repair procedures; however, the manufacturer could not charge back the amount paid if the claim was found to be *false*, unsubstantiated, lacked proper documentation, or showed an improper diagnosis process or repair procedures more than 12 months after payment.

If a manufacturer sought to charge back a claim on the basis that it was false, unsubstantiated, or lacked proper documentation, or showed an improper diagnosis process or improper repair procedures, a dealer would have 14 days after the date it received notice of the chargeback to supply documentation that met the manufacturer's requirements to support the validity of the claim, and if the claim were valid, the manufacturer could not charge back the claim to the dealer.

Claim for Compensation

The Act requires a manufacturer to compensate 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. The bill also would require a manufacturer to compensate a dealer for any sales or service promotion incentives, in accordance with established guidelines for those incentives.

The Act also requires a manufacturer to pay a claim for compensation owed to a dealer for a promotion, program, or activity within 10 days after its approval. The bill would include in this provision a claim for compensation owed to a dealer for an incentive. Also, the bill would require a manufacturer to pay a claim for compensation within 15 days, instead of 10.

The bill also would delete a provision that allows a manufacturer to charge back a claim for compensation only 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 one year or less. Instead, a manufacturer could charge back a claim for compensation only as provided for false or fraudulent claims (described above).

The Act specifies that a manufacturer may not charge a claim back to a dealer after the claim is paid unless the manufacturer's representative first meets with the dealer's officer or employee, or responds in writing to any dealer written request for information. At a meeting, the manufacturer must provide a detailed explanation of the basis for each proposed chargeback of a claim to the dealer and a written statement containing the basis on which of the dealer's claim or claims were selected for the manufacturer's audit or review. Under the bill, the manufacturer would not be required to disclose proprietary or confidential information about a customer or other dealer, and would not have to disclose any information if it were prohibited by law.

Parts Reimbursement & Labor Rates

Under the bill, the principal factors in determining what would constitute reasonable compensation for parts reimbursement and labor rates would be as follows:

-- The retail price charged for parts by other similarly situated new vehicle dealers in a comparable geographic area in the State that offered the same line-make of vehicles.
-- The retail labor rates of other similarly situated new vehicle dealers in a comparable geographic area in the State that offered the same line-make of vehicles.

All of the following would apply for purposes of determining what constituted reasonable compensation for parts reimbursement and labor rates:

A dealer that demanded warranty compensation from a manufacturer at a rate that exceeded the agreed upon rates would have to establish the retail rate it customarily charged for parts by submitting to the manufacturer 100 consecutive and sequential nonwarranty customer-paid service repair orders that contained repairs for like services or all nonwarranty customer-paid service repair orders covering a period of 90 consecutive days, whichever were less. A dealer could not submit a service repair order that covered repairs made more than 180 days before the date of the submission.

If a manufacturer determined from any set of repair orders submitted for warranty compensation that the calculated retail markup rate for parts or the retail labor rate was substantially higher or lower than the rate currently on record with the manufacturer, it could request additional documentation for a period of either 60 days before or 60 days after the time period for which the repair orders were submitted for purposes of an adjustment.

A dealer's retail rate percentage for parts would be calculated by determining its total parts sales in the submitted repair orders and dividing that amount by its total cost for the purchase of those parts, subtracting one from that amount, and then multiplying by 100. The manufacturer would have to approve or disapprove the declared retail rate within 45 days after the date of submission by the dealer. The declared retail rate would be effective beginning 30 days after its approval, unless it disapproved and timely contested the dealer's declared rate. If a manufacturer failed to disapprove within the 45-day period, the declared retail rate would be considered approved. A dealer's retail rate for labor would be calculated by determining the dealer's total labor sales from the submitted repair orders and dividing that amount by the total number of hours that generated those sales. The manufacturer would have to approve or disapprove the declared retail rate within 45 days after the date the dealer submitted the repair orders. The declared retail labor rate would be effective beginning 30 days after the manufacturer's approval, unless it disapproved and timely contested the dealer's declared rate.

A manufacturer could contest a dealer's declared retail markup rate for parts or retail labor rate not later than 45 days after submission and declaration of the retail markup rate for parts or retail labor rate by the dealer by reasonably substantiating that the rate was inaccurate, incomplete, or unreasonable in light of the factors described above. In contesting a dealer's declared rate, a manufacturer would have to provide a written explanation of the reasons for disagreement with the declared rate. If the declared retail markup rate for parts or retail labor rate were contested, then the manufacturer would have to propose an adjustment of the rate. If the manufacturer contested the dealer's declared parts or labor rate, the parties would have to attempt to resolve the dispute through an internal dispute resolution procedure of the manufacturer, if available, provided that the dispute resolution procedure occurred within a reasonable amount of time that did not exceed 45 days after notification of disagreement with the dealer's declared rate.

If an internal dispute resolution procedure described above was unsuccessful or did not occur in a timely manner, a dealer could file a complaint in the circuit court for the county in which the dealer was located, within 60 days after it received the adjustment proposed by the manufacturer or within 30 days after conclusion of the internal dispute resolution procedure, whichever was later. In a legal action, the manufacturer would have the burden of proof to demonstrate that the retail markup rate for parts or retail labor rate declared by the dealer was inaccurate, incomplete, or unreasonable.

The following work would not be considered in calculating the retail rate customarily charged by a new motor vehicle dealer for parts and labor:

-- Repairs for manufacturer special events, specials, or promotional discounts for retail customer repairs.
-- Parts sold at wholesale.
-- Routine maintenance not covered under any retail customer warranty, such as oil changes, fluids, filters, or belts not provided in the course of repairs.
-- Nuts, bolts, or fasteners or similar items that did not have an individual part number.
-- Tires, tire repair, tire rotation, or other tire services.
-- Vehicle reconditioning.
-- Installation or repair of accessories.
-- Repairs of vehicle body damage caused by a collision, a road hazard, the force of the elements, vandalism, or theft.
-- Vehicle emission or safety inspections required by law.
-- Manufacturer approved and reimbursed goodwill or policy repairs or replacements.
-- Repairs for which volume discounts have been negotiated with government agencies.

If a manufacturer furnished a part or component to a dealer to use in performing repairs under a recall, campaign service action, or warranty repair at no cost to the dealer, the manufacturer would have to compensate the dealer for the authorized repair part or component in the same manner as warranty parts compensation by paying the dealer the retail rate markup on the cost for the part or component as listed in the price schedule of the manufacturer less the cost for the part or component.

A manufacturer could not require a dealer to establish the retail rate customarily charged by the dealer for parts and labor by an unduly burdensome or time consuming method or by requiring information that was unduly burdensome or time consuming to provide, including part-by-part or transaction-by-transaction calculations. A dealer could not declare a retail rate for parts or labor or both more than once in a calendar year.

A manufacturer could not limit access to sales or service promotion events, incentives, programs, or activities sponsored by the manufacturer or limit allocation of vehicles or parts to a new motor vehicle dealer based solely on its exercise of its rights described in the bill. This bill would not prohibit a manufacturer from increasing the price of a motor vehicle or part in the normal course of business.

Recall Repairs

The bill would require a manufacturer to compensate its dealers a reasonable amount for all labor and parts required by the manufacturer to perform recall repairs.

If parts or a remedy were not reasonably available to perform a recall service or repair on a used vehicle held for sale by a new motor vehicle dealer authorized to sell and service new vehicles of the same line-make within 30 days of the manufacturer issuing the initial notice

of recall, and the manufacturer had issued a stop-sale order on the vehicle, the manufacturer would have to compensate the dealer at a prorated rate of at least 1.0% of the value of the vehicle per month beginning on the date that was 30 days after the date on which the stop-sale order was provided to the dealer, until the earlier of either of the following occurred:

-- The date the recall or remedy parts were made available.
-- The date the dealer sold, traded, or otherwise disposed of the affected used motor vehicle.

For purposes compensating a dealer, the value of a used motor vehicle would be the average trade-in value for used vehicles as indicated in an independent third-party guide for the year, make, and model of the recalled vehicle.

"Stop-sale order" would mean a notification issued by a manufacturer to its franchised new motor vehicle dealers stating that certain used vehicles in inventory may not be driven, sold, or leased, at either retail or wholesale, due to a Federal safety recall or manufacturer issued recall for a defect or a noncompliance, or a Federal emissions recall.

This provision would apply only to the following:

-- A used motor vehicle that was subject to safety or emissions recalls under, and recalled in accordance with, Federal law, if a stop-sale order had been issued and repair parts or remedy remained unavailable for 30 days or longer.
-- A new motor vehicle dealer that held an affected used vehicle for sale that met both of the following: a) was in inventory at the time the stop-sale order was issued, or was taken in the used vehicle inventory of the dealer as a consumer trade-in in connection with the purchase of a new motor vehicle from the dealer after the stop-sale order was issued, and b) was of the same line-make as a new motor vehicle that the dealer was authorized by a manufacturer to sell or on which the dealer was authorized to perform recall repairs.

A manufacturer could not reduce the amount of compensation otherwise owed to a dealer, whether through a chargeback, removal of the dealer from an incentive program, or reduction in amount owed under an incentive program, solely because the new motor vehicle dealer had submitted a claim for reimbursement. This provision would not apply to an action by a manufacturer that was applied uniformly among all new motor vehicle dealers of the same line-make in the State.

All reimbursement claims made by new motor vehicle dealers for recall remedies or repairs, or for compensation if a part or repair were not reasonably available and the vehicle was subject to a stop-sale order, would be subject to the same limitations and requirements as a warranty reimbursement claim. In the alternative, a manufacturer could compensate its dealers under a national recall compensation program if the compensation were equal to or greater than that provided under this section, or the manufacturer and dealer otherwise agreed.

A manufacturer could direct the manner and method the dealer would have to use to demonstrate the inventory status of an affected used motor vehicle to determine eligibility, if that manner and method were not unduly burdensome and did not require information that was unduly burdensome to provide.

The bill would not require a manufacturer to provide total compensation to a new motor vehicle dealer that would exceed the total average trade-in value of the affected used motor vehicle as originally determined.

Any remedy provided to a dealer under this section would be exclusive and could not be combined with any other State or Federal recall compensation remedy.

Indemnification

Notwithstanding the terms, provisions, or conditions of any dealer agreement, the Act requires a manufacturer or distributor to indemnify and hold harmless its new motor vehicle dealers against any judgement for damages or settlement agreed to in writing by the manufacturer. Under the bill, a manufacturer would have to respond to a request for indemnification within 30 days after the date the dealer submitted all documents necessary to support its request to the manufacturer.

MCL 445.1561 et al. Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Abbey Frazier