

**SUBSTITUTE FOR
HOUSE BILL NO. 6233**

A bill to amend 1981 PA 118, entitled
"Motor vehicle franchise act,"
by amending sections 6, 14, and 17a (MCL 445.1566, 445.1574, and
445.1577a), sections 6 and 14 as amended and section 17a as added
by 2018 PA 668, and by adding sections 17c and 17d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) "Relevant market area" means 1 of the following:

2 (a) In a county that has a population of more than 150,000,
3 the area within a radius of 9 miles of the site of the intended
4 place of business of a proposed new vehicle dealer or the intended
5 place of business of a new vehicle dealer that plans to relocate
6 its place of business. For purposes of this section, the 9-mile
7 distance is determined by measuring the distance between the



1 nearest surveyed boundary of an existing new motor vehicle dealer's
2 principal place of business and the nearest surveyed boundary line
3 of the proposed or relocated new motor vehicle dealer's principal
4 place of business.

5 (b) In a county that has a population of 150,000 or fewer, the
6 area within a radius of 15 miles of the site of the intended place
7 of business of a proposed new vehicle dealer or the intended place
8 of business of a new vehicle dealer that plans to relocate its
9 place of business. For purposes of this section, the 15-mile
10 distance is determined by measuring the distance between the
11 nearest surveyed boundary line of an existing new motor vehicle
12 dealer's principal place of business and the nearest surveyed
13 boundary line of the proposed or relocated new motor vehicle
14 dealer's principal place of business.

15 (2) **"Sell" or "selling" as it applies to a new motor vehicle**
16 **means to engage in the business of selling, trading, leasing, or**
17 **offering for sale or lease, negotiating, or otherwise attempting to**
18 **sell, trade, or lease a new motor vehicle, or any interest in, or**
19 **written instrument pertaining to, a new motor vehicle to a customer**
20 **at retail.**

21 (3) ~~(2)~~—"Stop-sale order" means a notification issued by a
22 manufacturer to its franchised new motor vehicle dealers stating
23 that certain used vehicles in inventory shall not be driven, sold,
24 or leased, at either retail or wholesale, due to a federal safety
25 recall or manufacturer issued recall for a defect or a
26 noncompliance, or a federal emissions recall.

27 (4) ~~(3)~~—"Successor manufacturer" means a manufacturer that
28 acquires, succeeds to, or assumes any part of the business of
29 another manufacturer as the result of any of the following:



1 (a) A change in ownership, operation, or control of a
 2 predecessor manufacturer by sale or transfer of assets, corporate
 3 stock, or other equity interest, assignment, merger, consolidation,
 4 combination, joint venture, redemption, court-approved sale,
 5 operation of law, or any other means.

6 (b) Termination, suspension, or cessation of a part or all of
 7 the business operations of a predecessor manufacturer.

8 (c) Discontinuance of the sale of a product line.

9 (d) A change in distribution system by a predecessor
 10 manufacturer, whether through a change in distributor or the
 11 predecessor manufacturer's decision to cease conducting any
 12 business through a particular distributor.

13 (5) ~~(4)~~—"Used motor vehicle" means a motor vehicle that is not
 14 a new motor vehicle.

15 (6) ~~(5)~~—"Used motor vehicle dealer" means a person that is
 16 engaged in the business of purchasing, selling, exchanging, or
 17 dealing in used motor vehicles and that has an established place of
 18 business in this state at which it conducts that business. The term
 19 does not include a new motor vehicle dealer purchasing, selling,
 20 exchanging, or dealing in used motor vehicles as part of its
 21 business of purchasing, selling, exchanging, or dealing in new
 22 motor vehicles.

23 Sec. 14. (1) ~~A~~ **Except as otherwise provided under section 17d,**
 24 **a** manufacturer shall not do any of the following:

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



1 capricious or based on unreasonable sales and service standards.

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

8 (c) Refuse to deliver to a new motor vehicle dealer in
9 reasonable quantities and within a reasonable time after receipt of
10 the dealer's order, any new motor vehicles that are covered by the
11 dealer agreement and specifically publicly advertised in this state
12 by the manufacturer as available for immediate delivery. However,
13 the failure to deliver any motor vehicle is not considered a
14 violation of this act if the failure is due to an act of God, a
15 work stoppage or delay due to a strike or labor difficulty, a
16 shortage of materials, a lack of manufacturing capacity, a freight
17 embargo, or other cause over which the manufacturer has no control.
18 If a manufacturer requires a new motor vehicle dealer to purchase
19 essential service tools with a purchase price in the aggregate of
20 more than \$7,500.00 in order to receive a specific model of
21 vehicle, the manufacturer shall on written request provide the
22 dealer with a ~~good faith~~ **good-faith** estimate in writing of the
23 number of vehicles of that specific model the dealer will be
24 allocated in the model year in which the dealer is required to
25 purchase the tool.

26 (d) Increase the price of a new motor vehicle that the new
27 motor vehicle dealer had ordered, and then eventually delivered to,
28 the same retail consumer for whom the vehicle was ordered, if the
29 order was made before the dealer's receipt of a written official



1 price increase notification. A sales contract signed by a private
2 retail consumer and binding on the dealer constitutes evidence of a
3 vehicle order. In the event of manufacturer price reductions or
4 cash rebates, the dealer shall pass on the amount of any reduction
5 or rebate received by the dealer to the private retail consumer.
6 Any price reduction in excess of \$5.00 shall apply to all vehicles
7 in the dealer's inventory that were subject to the price reduction.
8 A price difference applicable to new model or series motor vehicles
9 at the time of the introduction of the new models or the series is
10 not considered a price increase or price decrease. This subdivision
11 does not apply to price changes caused by any of the following:

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

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

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

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

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

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

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



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

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

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

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

19 (i) The ownership, operation, or control by a manufacturer of a
20 new motor vehicle dealer for a period of not more than 24 months
21 during the transition from 1 owner or operator to another. The
22 circuit court may extend the 24-month time period for an additional
23 12 months upon receipt of an application from a manufacturer and a
24 showing of good cause.

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



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

5 (A) As of May 1, 2000, the manufacturer for a period of not
6 less than 12 months has continuously owned, directly or indirectly,
7 1 or more new motor vehicle dealers in this state.

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

11 (C) As of January 1, 2000, not fewer than 1/2 of the new motor
12 vehicle dealers of the line-make within this state own and operate
13 2 or more new motor vehicle dealer facilities in the geographic
14 territory or area covered by the franchise agreement with the
15 manufacturer.

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

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

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



1 or from establishing a program to sell or offer to sell new motor
2 vehicles through franchised new motor vehicle dealers that sell and
3 service new motor vehicles produced by the manufacturer.

4 (j) Prevent or attempt to prevent by contract or otherwise any
5 new motor vehicle dealer from changing the executive management of
6 a new motor vehicle dealer unless the manufacturer, having the
7 burden of proof, can show that the change of executive management
8 will result in executive management by a person or persons who are
9 not of good moral character or who do not meet reasonable,
10 preexisting, and equitably applied standards of the manufacturer.
11 If a manufacturer rejects a proposed change in the executive
12 management, the manufacturer shall give written notice of its
13 reasons to the dealer within 75 days after receiving written notice
14 from the dealer of the proposed change and all related information
15 reasonably requested by the manufacturer, or the change in
16 executive management is considered approved.

17 (k) Unreasonably withhold consent to the sale, transfer, or
18 exchange of a new motor vehicle dealership to a qualified buyer
19 that meets the manufacturer's uniformly applied requirements and
20 criteria to be a new motor vehicle dealer and that is capable of
21 being licensed as a new motor vehicle dealer in this state.

22 (l) Fail to respond to a written request from a new motor
23 vehicle dealer that has submitted an agreement for the sale,
24 transfer, or exchange of a new motor vehicle dealership. The
25 manufacturer shall provide the dealer with all forms generally
26 utilized and requested by the manufacturer for the approval of a
27 sale, transfer, or exchange of a new motor vehicle dealership not
28 later than 30 days after receiving a written request from the
29 dealer for the forms. A manufacturer shall have 75 days after the



1 date the manufacturer receives all the properly completed forms and
2 information generally utilized and requested by the manufacturer to
3 approve or disapprove the sale, transfer, or exchange of the new
4 motor vehicle dealership. The failure of the manufacturer to
5 approve or disapprove the sale, transfer, or exchange within the
6 75-day time period is considered approval.

7 (m) Unfairly prevent a new motor vehicle dealer that sells,
8 transfers, or exchanges a new motor vehicle dealership from
9 receiving reasonable compensation for the value of the new motor
10 vehicle dealership.

11 (n) Subject to section 13(1)(i) and (2), unless the
12 manufacturer enters into a written agreement with the new motor
13 vehicle dealer that clearly states the amount of the incentive
14 payments and the period of time during which the incentive payments
15 are paid, offer incentive payments to a new motor vehicle dealer in
16 consideration for a new motor vehicle dealer's promise to do any of
17 the following:

18 (i) Make material alterations to any facilities at the dealer's
19 place of business.

20 (ii) Construct new facilities for the conduct of the business
21 of the dealership.

22 (o) Require unreasonable improvements to a facility as a
23 condition to entering into or renewing a dealer agreement.

24 (p) Authorize a motor vehicle service and repair facility to
25 perform motor vehicle warranty repairs and recall work, unless the
26 work meets any of the following:

27 (i) Is required for emergency service of a vehicle.

28 (ii) Is work performed at a service center owned or operated by
29 a manufacturer on a manufacturer-owned vehicle.



1 (iii) Is work performed by **the vehicle manufacturer or** employees
2 of a fleet operator on ~~its~~**the fleet operator's** own vehicles.

3 (q) ~~Own~~**Directly or indirectly own** a motor vehicle service and
4 repair facility, except that a manufacturer may own a service and
5 repair facility for the repair of manufacturer-owned vehicles **and,**
6 **at the request of a fleet operator, for the repair of a fleet**
7 **operator's vehicles as permitted under subdivision (p) (iii) .**

8 (r) Engage in conduct that meets all of the following:

9 (i) Materially affects a new motor vehicle dealer.

10 (ii) Is capricious, is not in good faith, or is unconscionable.

11 (iii) Causes material damage to a new motor vehicle dealer.

12 (s) Require, attempt to require, coerce, or attempt to coerce
13 a new motor vehicle dealer to adhere to unreasonable performance
14 standards that are not applied uniformly to other similarly
15 situated new motor vehicle dealers.

16 (t) Use or consider the performance of a new motor vehicle
17 dealer in selling the manufacturer's vehicles or the new motor
18 vehicle dealer's ability to satisfy any minimum sales or market
19 share quota or responsibility relating to the sale of the new motor
20 vehicles in determining any of the following:

21 (i) The new motor vehicle dealer's eligibility to purchase
22 program, certified, or other used motor vehicles from the
23 manufacturer.

24 (ii) The volume, type, or model of program, certified, or other
25 used motor vehicles that a new motor vehicle dealer is eligible to
26 purchase from the manufacturer.

27 (iii) The price of any program, certified, or other used motor
28 vehicle that the new motor vehicle dealer purchases from the
29 manufacturer.



1 (iv) The availability or amount of any discount, credit,
2 rebate, or sales incentive that the new motor vehicle dealer is
3 eligible to receive from the manufacturer in connection with any
4 program, certified, or other used motor vehicle offered for sale by
5 the manufacturer.

6 (u) Require that a new motor vehicle dealer provide its
7 customer lists or service files to the manufacturer, unless
8 necessary for the sale and delivery of a new motor vehicle to a
9 consumer, to validate and pay consumer or dealer incentives, or in
10 connection with the submission of a claim to the manufacturer for
11 services supplied by the new motor vehicle dealer for any claim for
12 warranty repairs. This section does not limit a manufacturer's
13 authority to require or use customer information to satisfy any
14 safety or recall obligation.

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

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

27 (ii) Within 30 days after receiving a written request from the
28 new motor vehicle dealer, the manufacturer shall provide all of the
29 following to the dealer:



1 (A) The specific information relied on by the manufacturer
2 relating to how the performance standard or program was applied to
3 the new motor vehicle dealer. The manufacturer is not required to
4 disclose any proprietary or confidential information for purposes
5 of this sub-subparagraph. However, the result of the application of
6 a performance standard or program to a particular new motor vehicle
7 dealer is not considered proprietary or confidential as between the
8 manufacturer and that particular new motor vehicle dealer.

9 (B) An explanation as to how the manufacturer applies a
10 performance standard or program to a new motor vehicle dealer's
11 performance.

12 (iii) On written request, a manufacturer or a new motor vehicle
13 dealer shall meet with the other party, in person or
14 telephonically, under reasonable circumstances and as agreed to by
15 both parties, to present, explain, or discuss information the
16 manufacturer is required to provide under subparagraph (ii) (A) and
17 (B).

18 (w) If a new motor vehicle dealer sold or leased a new motor
19 vehicle to a customer that exported the motor vehicle to a foreign
20 country or resold the motor vehicle, and at the time of delivery to
21 the customer the vehicle was titled and registered in this state or
22 another state of the United States by the dealer, refuse to
23 allocate, sell, or deliver new motor vehicles to the dealer; charge
24 back or withhold payments or other things of value for which the
25 dealer is otherwise eligible under a sales promotion, program, or
26 contest; prevent a new motor vehicle dealer from participating in
27 any sales promotion, program, or contest; or take or threaten to
28 take any other adverse action against a new motor vehicle dealer,
29 including, but not limited to, reducing vehicle allocations or



1 terminating or threatening to terminate a dealer agreement, unless
2 the manufacturer proves that the new motor vehicle dealer knew or
3 reasonably should have known that the customer intended to export
4 or resell the motor vehicle. In an action by a new motor vehicle
5 dealer for a violation of this subdivision, there is a rebuttable
6 presumption that a new motor vehicle dealer did not know or should
7 not reasonably have known of its customer's intent to export or
8 resell a motor vehicle if the vehicle was titled and registered in
9 the United States, and the manufacturer bears the burden of
10 rebutting that presumption.

11 (x) If a new motor vehicle dealer is a party to a dealer
12 agreement on August 4, 2010, and the dealer agreement provides for
13 sale of a competing line-make of new motor vehicles at the same
14 place of business where the manufacturer's line-make is sold,
15 require or otherwise coerce the new motor vehicle dealer to remove
16 the sale or servicing of new motor vehicles of that competing line-
17 make from that place of business.

18 (y) Prevent, attempt to prevent, prohibit, coerce, or attempt
19 to coerce a new motor vehicle dealer from charging a consumer any
20 documentary preparation fee allowed to be charged by the dealer
21 under the laws of this state or require the disclosure of the
22 documentary preparation fee in a written format that is not
23 otherwise required by law.

24 (z) Prohibit, prevent, or attempt to prevent a new motor
25 vehicle dealer from transferring a dealership to or naming a
26 spouse, child, or executive manager as dealership successor to own
27 and operate the dealership unless the manufacturer, having the
28 burden of proof, can show that at the time the successor is named
29 or the dealership is transferred, the successor spouse, child, or



1 executive manager of the dealer is not of good moral character, has
2 a felony conviction, does not meet the manufacturer's uniformly
3 applied requirements and criteria to be a dealer, or is otherwise
4 disqualified from holding a license as a new motor vehicle dealer
5 under any applicable statute of this state. All of the following
6 apply for purposes of this subdivision:

7 (i) The manufacturer is required to provide the new motor
8 vehicle dealer, in writing, with its current uniformly applied
9 requirements and criteria to be a dealer within 30 days of
10 receiving the new motor vehicle dealer's written request for the
11 uniformly applied requirements and criteria to be a dealer.

12 (ii) Within 75 days after receiving the manufacturer's current
13 uniformly applied written requirements and criteria to be a dealer
14 from the manufacturer, the new motor vehicle dealer may submit a
15 written request to the manufacturer for a meeting, in person or
16 telephonically, with the manufacturer, under reasonable
17 circumstances as agreed to by both parties, to address the
18 requirements and criteria. The parties shall meet, in person or
19 telephonically, within 45 days after the new motor vehicle dealer's
20 request for a meeting, unless otherwise agreed. During the meeting,
21 the manufacturer shall provide the dealer an opportunity to
22 present, in writing, facts, data, and evidence that establish that
23 there are factors beyond the reasonable control or influence of the
24 new motor vehicle dealer that materially and adversely impact the
25 proposed transferee's ability to meet the manufacturer's current
26 uniformly applied written requirements to be a dealer. If the
27 manufacturer does not provide the new motor vehicle dealer an
28 opportunity to present, in writing, facts, data, and evidence, or
29 does not in good faith evaluate the effect of the facts, data, and



1 evidence presented by the dealer, then the manufacturer may not
2 prohibit or prevent the new motor vehicle dealer from transferring
3 the dealership to a spouse, child, or executive manager, or naming
4 a spouse, child, or executive manager as the dealership successor
5 to own and operate the dealership.

6 (iii) The manufacturer must make any decision to decline the new
7 motor vehicle dealer's request to transfer a new motor vehicle
8 dealership to a spouse, child, or executive manager, or name a
9 spouse, child, or executive manager as dealership successor, in
10 good faith, including the opportunity for a meeting, in person or
11 telephonically as provided in subparagraph (ii). If requested by the
12 new motor vehicle dealer in writing, the manufacturer must provide
13 the new motor vehicle dealer with the information that it relied on
14 when concluding that the spouse, child, or executive manager did
15 not satisfy the uniformly required requirements and criteria to be
16 a new motor vehicle dealer. However, the manufacturer is not
17 required to disclose proprietary or confidential information and is
18 not required to disclose any information if disclosure is
19 prohibited by law.

20 (aa) Make any material change in a dealer agreement without
21 giving the new motor vehicle dealer written notice of the change at
22 least 30 days before the effective date of the change. In any
23 dispute under this subdivision, the new motor vehicle dealer has
24 the burden of proving the modification is sufficiently significant
25 and material to require notice under this subdivision.

26 (bb) Unless otherwise agreed, require a new motor vehicle
27 dealer to sell or offer to sell an extended service contract or
28 extended maintenance plan offered, sold, backed by, or sponsored by
29 the manufacturer.



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

5 (3) Within 30 days after receiving a written request from the
6 dealer, a manufacturer shall provide a new motor vehicle dealer
7 that is seeking to sell, transfer, or exchange a new motor vehicle
8 dealership with all forms generally utilized and requested by the
9 manufacturer in connection with the sale, transfer, or exchange of
10 a new motor vehicle dealership.

11 (4) A failure by a manufacturer or distributor to approve or
12 disapprove a dealer's request to sell, transfer, or exchange its
13 new motor vehicle dealership within the 75-day period after it
14 receives a completed application, including all required
15 documentation and information requested by the manufacturer or
16 distributor, is considered approval by the manufacturer of the
17 sale, transfer, or exchange of the dealership.

18 (5) This section applies to a manufacturer that sells,
19 services, displays, or advertises its new motor vehicles in this
20 state.

21 Sec. 17a. (1) The principal factors in determining what
22 constitutes reasonable compensation for parts reimbursement and
23 labor rates for purposes of section 17(1) are as follows:

24 (a) The retail price charged for parts by other similarly
25 situated new motor vehicle dealers in a comparable geographic area
26 in this state that offer the same line-make of vehicles.

27 (b) The retail labor rates of other similarly situated new
28 motor vehicle dealers in a comparable geographic area in this state
29 that offer the same line-make of vehicles.



1 (2) All of the following apply for purposes of subsection (1):

2 (a) A new motor vehicle dealer that is demanding warranty
3 compensation from a manufacturer at a rate that exceeds the agreed-
4 upon rates shall establish the retail rate it customarily charges
5 for parts by submitting to the manufacturer 100 consecutive and
6 sequential nonwarranty customer-paid service repair orders that
7 contain repairs for like services or all nonwarranty customer-paid
8 service repair orders covering a period of 90 consecutive days,
9 whichever is less. A dealer shall not submit a service repair order
10 under this subsection that covers repairs made more than 180 days
11 before the date of the submission.

12 (b) If a manufacturer determines from any set of repair orders
13 submitted under subdivision (a) that the calculated retail markup
14 rate for parts or the retail labor rate is substantially higher or
15 lower than the rate currently on record with the manufacturer, the
16 manufacturer may request additional documentation for a period of
17 either 60 days before or 60 days after the time period for which
18 the repair orders were submitted for purposes of an adjustment.

19 (c) A new motor vehicle dealer's retail rate percentage for
20 parts is calculated by determining the dealer's total parts sales
21 in the submitted repair orders and dividing that amount by the
22 dealer's total cost for the purchase of those parts, subtracting 1
23 from that amount, and then multiplying by 100. The manufacturer
24 must approve or disapprove the declared retail rate within 45 days
25 after the date of submission by the dealer. The declared retail
26 rate is effective beginning 30 days after approval by the
27 manufacturer, unless the manufacturer disapproves and timely
28 contests the dealer's declared rate. If a manufacturer fails to
29 disapprove within 45 days following submission by the dealer, the



1 declared retail rate is considered approved. A new motor vehicle
2 dealer's retail rate for labor is calculated by determining the
3 dealer's total labor sales from the submitted repair orders and
4 dividing that amount by the total number of hours that generated
5 those sales. The manufacturer must approve or disapprove the
6 declared retail rate within 45 days after the date the dealer
7 submits the repair orders. The declared retail labor rate is
8 effective beginning 30 days after approval by the manufacturer,
9 unless the manufacturer disapproves and timely contests the
10 dealer's declared rate.

11 (d) A manufacturer may contest a new motor vehicle dealer's
12 declared retail markup rate for parts or retail labor rate not
13 later than 45 days after submission and declaration of the retail
14 markup rate for parts or retail labor rate by the dealer by
15 reasonably substantiating that the rate is inaccurate, incomplete,
16 or unreasonable in light of the factors described in subsection
17 (1). In contesting a new motor vehicle dealer's declared rate, a
18 manufacturer shall provide a written explanation of the reasons for
19 disagreement with the declared rate. If the declared retail markup
20 rate for parts or retail labor rate is contested, then the
21 manufacturer shall propose an adjustment of the rate. If the
22 manufacturer contests the dealer's declared parts or labor rate,
23 the parties shall attempt to resolve the dispute through an
24 internal dispute resolution procedure of the manufacturer, if
25 available, provided that the dispute resolution procedure occurs
26 within a reasonable amount of time that does not exceed 45 days
27 after notification of disagreement with the dealer's declared rate.

28 (e) If an internal dispute resolution procedure described in
29 subdivision (d) is unsuccessful or does not occur in a timely



1 manner, a new motor vehicle dealer may file a complaint in the
2 circuit court for the county in which the new motor vehicle dealer
3 is located, within 60 days after it receives the adjustment
4 proposed by the manufacturer or within 30 days after conclusion of
5 the internal dispute resolution procedure, whichever is later. In
6 an action under this subdivision, the manufacturer has the burden
7 of proof to demonstrate that the retail markup rate for parts or
8 retail labor rate declared by the dealer is inaccurate, incomplete,
9 or unreasonable.

10 (3) The following work shall not be considered in calculating
11 the retail rate customarily charged by a new motor vehicle dealer
12 for parts and labor under this section:

13 (a) Repairs for manufacturer special events, specials, or
14 promotional discounts for retail customer repairs.

15 (b) Parts sold at wholesale.

16 (c) Routine maintenance not covered under any retail customer
17 warranty, such as oil changes, fluids, filters, or belts not
18 provided in the course of repairs.

19 (d) Nuts, bolts, or fasteners or similar items that do not
20 have an individual part number.

21 (e) Tires, tire repair, tire rotation, or other tire services.

22 (f) Vehicle reconditioning.

23 (g) Installation or repair of accessories.

24 (h) Repairs of vehicle body damage caused by a collision, a
25 road hazard, the force of the elements, vandalism, or theft.

26 (i) Vehicle emission or safety inspections required by law.

27 (j) Manufacturer approved and reimbursed goodwill or policy
28 repairs or replacements.

29 (k) Repairs for which volume discounts have been negotiated



1 with government agencies.

2 (4) If a manufacturer furnishes a part or component to a new
 3 motor vehicle dealer to use in performing repairs under a recall,
 4 campaign service action, or warranty repair at no cost to the
 5 dealer, the manufacturer shall compensate the dealer for the
 6 authorized repair part or component in the same manner as warranty
 7 parts compensation under section 17 by paying the dealer the retail
 8 rate markup on the cost for the part or component as listed in the
 9 price schedule of the manufacturer less the cost for the part or
 10 component.

11 (5) A manufacturer shall not require a new motor vehicle
 12 dealer to establish the retail rate customarily charged by the
 13 dealer for parts and labor by an unduly burdensome or time-
 14 consuming method or by requiring information that is unduly
 15 burdensome or time consuming to provide, including, but not limited
 16 to, part-by-part or transaction-by-transaction calculations. A
 17 dealer shall not declare a retail rate for parts or labor or both
 18 more than once in a calendar year.

19 (6) A manufacturer shall not limit access to sales or service
 20 promotion events, incentives, programs, or activities sponsored by
 21 the manufacturer or limit allocation of vehicles or parts to a new
 22 motor vehicle dealer based solely on the new motor vehicle dealer's
 23 exercise of its rights under this section. This subsection does not
 24 prohibit a manufacturer from increasing the price of a motor
 25 vehicle or part in the normal course of business.

26 **(7) A manufacturer that has paid warranty reimbursement under**
 27 **either section 17, 17a, or 17b, to any of its motor vehicle dealers**
 28 **that entered into a new dealer agreement between April 1, 2019 and**
 29 **October 31, 2020, but has not paid warranty reimbursement under**



1 either section 17, 17a, or 17b, to any of its existing dealers
2 under current dealer agreements as of October 31, 2020, shall not
3 charge a fee, surcharge, or impose any disincentive to a dealer for
4 a warranty reimbursement under either section 17, 17a, or 17b.

5 Sec. 17c. Sections 17, 17a, and 17b apply to all
6 manufacturers, dealer agreements entered into or renewed after the
7 effective date of the amendatory act that added this section, and
8 existing dealer agreements that are materially and substantially
9 amended after the effective date of the amendatory act that added
10 this section. For purposes of this section, any change in ownership
11 or voting control of a manufacturer or a merger of a manufacturer
12 with another person, after the effective date of the amendatory act
13 that added this section, is a material and substantial amendment to
14 an existing dealer agreement.

15 Sec. 17d. (1) A manufacturer that entered into a joint
16 stipulation and motion for entry of dismissal on January 22, 2020,
17 in *Tesla, Inc. v Jocelyn Benson, et al.*, United States District
18 Court for the Western District of Michigan, case no. 1:2016-cv-
19 01158, and has not sold a single new motor vehicle through any
20 franchised new motor vehicle dealer in this state may do any of the
21 following:

22 (a) Own a subsidiary that owns or operates 1 or more motor
23 vehicle service and repair facilities in this state, as long as the
24 manufacturer does not directly own any of those motor vehicle
25 service and repair facilities.

26 (b) Perform warranty, recall, service, or repair work at a
27 motor vehicle service and repair facility described in subdivision
28 (a), as long as the work is not performed at a motor vehicle
29 service and repair facility that is directly owned by the



1 manufacturer.

2 (c) Deliver new motor vehicles to residents of this state,
3 either directly or through a subsidiary, using an independent
4 carrier, or otherwise, and assist with the trade-in of a used motor
5 vehicle, as long as the sale and passing of the title for any new
6 motor vehicle sold by the manufacturer are transferred to the buyer
7 outside of this state.

8 (d) Own or operate 1 or more facilities in this state that
9 educate customers and facilitate transactions outside of this state
10 as long as the sale and passing of title for any transaction are
11 transferred to the buyer outside of this state. Permissible
12 activities under this subdivision at any of these facilities owned
13 or operated by a manufacturer include, but are not limited to, any
14 of the following:

15 (i) Conducting demonstration drives.

16 (ii) Discussing prices, service, financing, leasing, and trade-
17 ins with potential customers.

18 (iii) Helping potential customers configure vehicles.

19 (iv) Facilitating the ordering and purchase of a motor vehicle.

20 (v) Facilitating customer transaction paperwork for a sale of
21 a motor vehicle.

22 (2) For purposes of this section, the time and place of the
23 sale and passing of the title must be determined in accordance with
24 section 2401 of the uniform commercial code, 1962 PA 174, MCL
25 440.2401.

26 Enacting section 1. Section 17d of the motor vehicle franchise
27 act, 1981 PA 118, MCL 445.1577d, as added by this amendatory act,
28 applies retroactively beginning October 1, 2020.

