

HOUSE BILL No. 6554

November 29, 2018, Introduced by Rep. Marino and referred to the Committee on Commerce and Trade.

A bill to amend 1981 PA 118, entitled

"An act to regulate motor vehicle manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate dealings between manufacturers and distributors or wholesalers and their dealers; to regulate dealings between manufacturers, distributors, wholesalers, dealers, and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal certain acts and parts of acts,"

by amending sections 2, 8, and 15 (MCL 445.1562, 445.1568, and 445.1575), section 2 as amended by 2010 PA 140 and section 15 as amended by 2010 PA 138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) "Closed dealership" means a new motor vehicle
2 dealer whose dealer agreement has been terminated, canceled,
3 discontinued, or not renewed.

4 (2) "Coerce" means to compel or attempt to compel a person to

1 act in a given manner or to refrain from acting in a given manner
2 by pressure, intimidation, or threat of harm, damage, breach of
3 contract, or other adverse consequences, including, but not limited
4 to, the loss of any benefit available to other new motor vehicle
5 dealers of the same line make in this state. The term does not
6 include any of the following actions by a manufacturer:

7 (a) Without conditions, making a good faith recommendation,
8 exposition, or argument or persuading or attempting to persuade a
9 person.

10 (b) Giving notice in good faith to a new motor vehicle dealer
11 of that dealer's violation of the terms or provisions of a dealer
12 agreement.

13 (c) Engaging in any conduct the manufacturer is permitted to
14 engage in under this act.

15 (3) "Dealer agreement" means an agreement or contract in
16 writing between a distributor and a new motor vehicle dealer,
17 between a manufacturer and a distributor or a new motor vehicle
18 dealer, or between an importer and a distributor or a new motor
19 vehicle dealer, that purports to establish the legal rights and
20 obligations of the parties to the agreement or contract and under
21 which the dealer purchases and resells new motor vehicles and
22 conducts service operations. The term includes the sales and
23 service agreement, regardless of the terminology used to describe
24 that agreement, and any addenda to the dealer agreement, including
25 all schedules, attachments, exhibits, and agreements incorporated
26 by reference into the dealer agreement.

27 (4) "Designated family member" means any of the following:

(a) If ~~AN INDIVIDUAL WHO IS~~ a new motor vehicle dealer ~~who~~ OR AN OWNER OF CAPITAL STOCK OR OTHER EQUITY INTERESTS IN A NEW MOTOR VEHICLE DEALER dies or becomes incapacitated, AND HE OR SHE has designated a successor under section 15(6), that designated successor.

(b) If ~~a~~AN INDIVIDUAL WHO IS A new motor vehicle DEALER OR AN owner OF CAPITAL STOCK OR OTHER EQUITY INTERESTS IN A NEW MOTOR VEHICLE DEALER dies and has not designated a successor under section 15(6), ~~the~~ANY OF THE FOLLOWING:

(i) THE spouse or a child, grandchild, STEP-CHILD, STEP-GRANDCHILD, SPOUSE OF A CHILD, parent, brother, or sister of a ~~deceased new motor vehicle dealer,~~THE DECEASED INDIVIDUAL, who is entitled to inherit the deceased ~~dealer's ownership~~INDIVIDUAL'S interest in the new motor vehicle dealership under the terms of the ~~dealer's will,~~DECEASED INDIVIDUAL'S ESTATE OR SUCCESSION PLANNING DOCUMENTS; who has otherwise been designated in writing by ~~a~~THE deceased ~~dealer~~INDIVIDUAL to succeed the deceased ~~dealer~~INDIVIDUAL in the new motor vehicle dealership; ~~or~~ who is entitled to inherit under the laws of intestate succession of this state. ~~or~~

(ii) DURING THE PERIOD OF ADMINISTRATION OF THE DECEASED INDIVIDUAL'S ESTATE OR TRUST AND BEFORE THE ULTIMATE DISTRIBUTION OF THE STOCK OR EQUITY INTEREST IN THE NEW MOTOR VEHICLE DEALER, the appointed and qualified personal representative or testamentary trustee of the deceased ~~new motor vehicle dealer.~~INDIVIDUAL.

(c) If ~~a~~AN INDIVIDUAL WHO IS A new motor vehicle dealer OR AN OWNER OF CAPITAL STOCK OR OTHER EQUITY INTERESTS IN A NEW MOTOR

1 **VEHICLE DEALER** becomes incapacitated and has not designated a
 2 successor under section 15(6), **THE PERSON DESIGNATED IN WRITING AS**
 3 **AN ATTORNEY-IN-FACT OR AGENT OF THE INCAPACITATED INDIVIDUAL UNDER**
 4 **A POWER OF ATTORNEY OR TRUST EXECUTED UNDER OR VALID UNDER THE LAWS**
 5 **OF THIS STATE; OR, IF THERE IS NO WRITTEN POWER OF ATTORNEY OR**
 6 **TRUST DESIGNATING AN ATTORNEY-IN-FACT OR AGENT**, the person
 7 appointed by the court as the legal representative of the
 8 ~~dealer~~**INCAPACITATED INDIVIDUAL.**

9 Sec. 8. Notwithstanding any agreement, the following alone
 10 ~~shall~~**DOES** not constitute good cause for the termination,
 11 cancellation, nonrenewal, or discontinuance of a dealer agreement
 12 under section 7(1) (c):

13 (a) A change in ownership of the new motor vehicle dealer's
 14 dealership **OR OWNERSHIP OF CAPITAL STOCK OR OTHER EQUITY INTERESTS**
 15 **IN THE NEW MOTOR VEHICLE DEALER.** This subdivision does not
 16 authorize any change in ownership ~~which~~**THAT** would have the effect
 17 of a sale or an assignment of the dealer agreement or a change in
 18 the principal management of the dealership without the
 19 manufacturer's or distributor's prior written consent, **UNLESS THE**
 20 **CHANGE IN OWNERSHIP IS TO AN INDIVIDUAL DESIGNATED AS A SUCCESSOR**
 21 **UNDER SECTION 15(6) .**

22 (b) The refusal of the new motor vehicle dealer to purchase or
 23 accept delivery of any new motor vehicle parts, accessories, or any
 24 other commodity or services not ordered by the new motor vehicle
 25 dealer.

26 (c) The fact that the new motor vehicle dealer **OR AN OWNER OF**
 27 **CAPITAL STOCK OR OTHER EQUITY INTERESTS IN A NEW MOTOR VEHICLE**

1 **DEALER** owns, has an investment in, participates in the management
2 of, or holds a dealer agreement for the sale of another make or
3 line of new motor vehicles, or that the new motor vehicle dealer **OR**
4 **STOCK OR EQUITY INTEREST HOLDER** has established another make or
5 line of new motor vehicles in the same dealership facilities as
6 those of the manufacturer or distributor, provided that the new
7 motor vehicle dealer maintains a reasonable line of credit for each
8 make or line of new motor vehicles, and that the new motor vehicle
9 dealer remains in substantial compliance with the terms and
10 conditions of the dealer agreement and with the reasonable
11 facilities' requirements of the manufacturer or distributor.

12 ~~—— (d) The fact that the new motor vehicle dealer sells or~~
13 ~~transfers ownership of the dealership or sells or transfers capital~~
14 ~~stock in the dealership to the new motor vehicle dealer's spouse,~~
15 ~~son, or daughter, provided that the sale or transfer shall not have~~
16 ~~the effect of a sale or an assignment of the dealer agreement or a~~
17 ~~change in the principal management of the dealership without the~~
18 ~~manufacturer's or distributor's prior written consent.~~

19 Sec. 15. (1) ~~Any designated family member of a deceased or~~
20 ~~incapacitated new motor vehicle dealer~~ **IF AN INDIVIDUAL WHO IS A**
21 **NEW MOTOR VEHICLE DEALER OR AN OWNER OF CAPITAL STOCK OR OTHER**
22 **EQUITY INTERESTS IN A NEW MOTOR VEHICLE DEALER DIES OR BECOMES**
23 **INCAPACITATED, ANY DESIGNATED FAMILY MEMBER OF THAT INDIVIDUAL, or**
24 **an INDIVIDUAL WHO IS AN** executive manager of the dealership may
25 succeed ~~the dealer~~ **THAT INDIVIDUAL** in the ownership or operation of
26 the dealership under the existing dealer agreement if the
27 designated family member or executive manager gives the

1 manufacturer written notice of his or her intention to succeed ~~to~~
2 ~~the dealership~~ **THAT INDIVIDUAL** within 120 days after ~~the dealer's~~
3 **HIS OR HER** death or incapacity, agrees to be bound by all of the
4 terms and conditions of the dealer agreement, and meets the current
5 criteria generally applied by the manufacturer in qualifying new
6 motor vehicle dealers. A manufacturer may refuse to continue the
7 existing dealer agreement with the designated family member only
8 for good cause.

9 (2) A manufacturer may request from a designated family member
10 or executive manager described in subsection (1) a completed
11 application form and any personal and financial information that is
12 reasonably necessary to determine whether the existing dealer
13 agreement should continue. The designated family member or
14 executive manager shall supply the completed application form and
15 personal and financial information promptly on request. As used in
16 this subsection and subsection (3), "application form" means the
17 application form generally used by the manufacturer in connection
18 with a proposal to continue a dealer agreement under this section.

19 (3) If a manufacturer believes that good cause exists for
20 refusing to continue a dealer agreement under this section with a
21 designated family member or executive manager described in
22 subsection (1), the manufacturer may, within 60 days after
23 receiving notice of the designated family member's or executive
24 manager's intent to succeed the dealer in the ownership and
25 operation of the dealership, or within 60 days after receiving the
26 requested personal and financial information and completed
27 application form, serve on the designated family member or

1 executive manager notice of its refusal to approve the succession.

2 (4) A notice of refusal served by a manufacturer under
3 subsection (3) shall state the specific grounds for the refusal to
4 approve the succession and that discontinuance of the agreement
5 shall take effect ~~not fewer than~~ **ON A DATE SPECIFIED IN THE NOTICE**
6 **THAT IS AT LEAST** 90 days after the date the notice is served.

7 (5) If a notice of refusal described in subsection (3) is not
8 served within the 60-day period described in subsection (3), the
9 dealer agreement shall continue in effect and is subject to
10 termination only as otherwise permitted under this act.

11 (6) This section does not preclude a new motor vehicle dealer
12 from designating any ~~person as his or her successor~~ **INDIVIDUAL TO**
13 **SUCCEED THE DEALER IN THE OPERATION OF THE DEALERSHIP**, by written
14 instrument filed with the manufacturer. If the dealer files an
15 instrument described in this subsection, it alone shall determine
16 the succession rights to the management and operation of the
17 dealership.

18 Enacting section 1. This amendatory act takes effect 90 days
19 after the date it is enacted into law.