

**SUBSTITUTE FOR
HOUSE BILL NO. 6233**

A bill to amend 1981 PA 118, entitled
"Motor vehicle franchise act
by amending sections 6, and 14 (MCL 445.1566, and 445.1574),
sections 6 and 14 as amended by 2018 PA 668.

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
8 nearest surveyed boundary of an existing new motor vehicle dealer's

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

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

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

20 **(3) ~~+(2)~~**—"Stop-sale order" means a notification issued by a
21 manufacturer to its franchised new motor vehicle dealers stating
22 that certain used vehicles in inventory shall not be driven, sold,
23 or leased, at either retail or wholesale, due to a federal safety
24 recall or manufacturer issued recall for a defect or a
25 noncompliance, or a federal emissions recall.

26 **(4) ~~+(3)~~**—"Successor manufacturer" means a manufacturer that
27 acquires, succeeds to, or assumes any part of the business of
28 another manufacturer as the result of any of the following:

29 (a) A change in ownership, operation, or control of a

1 predecessor manufacturer by sale or transfer of assets, corporate
2 stock, or other equity interest, assignment, merger, consolidation,
3 combination, joint venture, redemption, court-approved sale,
4 operation of law, or any other means.

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

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

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

12 (5) ~~(4)~~—"Used motor vehicle" means a motor vehicle that is not
13 a new motor vehicle.

14 (6) ~~(5)~~—"Used motor vehicle dealer" means a person that is
15 engaged in the business of purchasing, selling, exchanging, or
16 dealing in used motor vehicles and that has an established place of
17 business in this state at which it conducts that business. The term
18 does not include a new motor vehicle dealer purchasing, selling,
19 exchanging, or dealing in used motor vehicles as part of its
20 business of purchasing, selling, exchanging, or dealing in new
21 motor vehicles.

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

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

29 (b) If requested in writing by a new motor vehicle dealer,

1 fail or refuse to advise or disclose to the dealer the basis on
2 which new motor vehicles of the same line-make are allocated or
3 distributed to new motor vehicle dealers in this state and the
4 basis on which the current allocation or distribution is being made
5 or will be made to that new motor vehicle dealer.

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

24 (d) Increase the price of a new motor vehicle that the new
25 motor vehicle dealer had ordered, and then eventually delivered to,
26 the same retail consumer for whom the vehicle was ordered, if the
27 order was made before the dealer's receipt of a written official
28 price increase notification. A sales contract signed by a private
29 retail consumer and binding on the dealer constitutes evidence of a

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

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

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

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

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

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

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

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

28 (iv) Any program that provides marketing and sales assistance
29 to new motor vehicle dealers, including, but not limited to,

1 internet listings, sales leads, marketing programs, and dealer
2 recognition programs.

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

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

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

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

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

28 (iii) The direct or indirect ownership by a manufacturer of an
29 entity that owns, operates, or controls a new motor vehicle dealer

1 of the same line-make franchised by the manufacturer, if all of the
2 following conditions are met:

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

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

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

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

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

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

1 service new motor vehicles produced by the manufacturer.

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

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

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

1 approve or disapprove the sale, transfer, or exchange of the new
2 motor vehicle dealership. The failure of the manufacturer to
3 approve or disapprove the sale, transfer, or exchange within the
4 75-day time period is considered approval.

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

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

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

18 (ii) Construct new facilities for the conduct of the business
19 of the dealership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (iv) The availability or amount of any discount, credit,
 29 rebate, or sales incentive that the new motor vehicle dealer is

1 eligible to receive from the manufacturer in connection with any
2 program, certified, or other used motor vehicle offered for sale by
3 the manufacturer.

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

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

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

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

28 (A) The specific information relied on by the manufacturer
29 relating to how the performance standard or program was applied to

1 the new motor vehicle dealer. The manufacturer is not required to
2 disclose any proprietary or confidential information for purposes
3 of this sub-subparagraph. However, the result of the application of
4 a performance standard or program to a particular new motor vehicle
5 dealer is not considered proprietary or confidential as between the
6 manufacturer and that particular new motor vehicle dealer.

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

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

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

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

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

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

22 (z) Prohibit, prevent, or attempt to prevent a new motor
23 vehicle dealer from transferring a dealership to or naming a
24 spouse, child, or executive manager as dealership successor to own
25 and operate the dealership unless the manufacturer, having the
26 burden of proof, can show that at the time the successor is named
27 or the dealership is transferred, the successor spouse, child, or
28 executive manager of the dealer is not of good moral character, has
29 a felony conviction, does not meet the manufacturer's uniformly

1 applied requirements and criteria to be a dealer, or is otherwise
2 disqualified from holding a license as a new motor vehicle dealer
3 under any applicable statute of this state. All of the following
4 apply for purposes of this subdivision:

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

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

1 the dealership to a spouse, child, or executive manager, or naming
2 a spouse, child, or executive manager as the dealership successor
3 to own and operate the dealership.

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

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

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

28 (2) A manufacturer, either directly or through any subsidiary,
29 shall not terminate, cancel, fail to renew, or discontinue any

1 lease of a new motor vehicle dealer's established place of business
2 except for a material breach of the lease.

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

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

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