

HOUSE BILL NO. 6233

September 16, 2020, Introduced by Rep. Sheppard and referred to the Committee on Government Operations.

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



1 place of business of a proposed new vehicle dealer or the intended
2 place of business of a new vehicle dealer that plans to relocate
3 its place of business. For purposes of this section, the 9-mile
4 distance is determined by measuring the distance between the
5 nearest surveyed boundary of an existing new motor vehicle dealer's
6 principal place of business and the nearest surveyed boundary line
7 of the proposed or relocated new motor vehicle dealer's principal
8 place of business.

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

19 (2) **"Sell" or "selling" as it applies to a new motor vehicle**
20 **means to engage in the business of buying, selling, trading,**
21 **leasing, or exchanging, or offering, negotiating, or otherwise**
22 **attempting to buy, sell, trade, lease, or exchange a new motor**
23 **vehicle, or any interest in, or written instrument pertaining to, a**
24 **new motor vehicle. Sell or selling includes, but is not limited to,**
25 **ordering, discussing financing, or offering test or demonstration**
26 **drives for a new motor vehicle.**

27 (3) ~~-(2)-~~ "Stop-sale order" means a notification issued by a
28 manufacturer to its franchised new motor vehicle dealers stating
29 that certain used vehicles in inventory shall not be driven, sold,



1 or leased, at either retail or wholesale, due to a federal safety
2 recall or manufacturer issued recall for a defect or a
3 noncompliance, or a federal emissions recall.

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

7 (a) A change in ownership, operation, or control of a
8 predecessor manufacturer by sale or transfer of assets, corporate
9 stock, or other equity interest, assignment, merger, consolidation,
10 combination, joint venture, redemption, court-approved sale,
11 operation of law, or any other means.

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

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

15 (d) A change in distribution system by a predecessor
16 manufacturer, whether through a change in distributor or the
17 predecessor manufacturer's decision to cease conducting any
18 business through a particular distributor.

19 (5) ~~(4)~~—"Used motor vehicle" means a motor vehicle that is not
20 a new motor vehicle.

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

29 Sec. 14. (1) ~~A~~ **Except as otherwise provided under section 17d,**



1 a manufacturer shall not do any of the following:

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

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

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



1 allocated in the model year in which the dealer is required to
2 purchase the tool.

3 (d) Increase the price of a new motor vehicle that the new
4 motor vehicle dealer had ordered, and then eventually delivered to,
5 the same retail consumer for whom the vehicle was ordered, if the
6 order was made before the dealer's receipt of a written official
7 price increase notification. A sales contract signed by a private
8 retail consumer and binding on the dealer constitutes evidence of a
9 vehicle order. In the event of manufacturer price reductions or
10 cash rebates, the dealer shall pass on the amount of any reduction
11 or rebate received by the dealer to the private retail consumer.
12 Any price reduction in excess of \$5.00 shall apply to all vehicles
13 in the dealer's inventory that were subject to the price reduction.
14 A price difference applicable to new model or series motor vehicles
15 at the time of the introduction of the new models or the series is
16 not considered a price increase or price decrease. This subdivision
17 does not apply to price changes caused by any of the following:

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

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

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

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

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

29 (ii) Any incentives, rebates, bonuses, promotional items, or



1 other similar benefits payable to the new motor vehicle dealer for
2 selling new motor vehicles or purchasing new motor vehicles from
3 the manufacturer.

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

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

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

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

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

25 (i) The ownership, operation, or control by a manufacturer of a
26 new motor vehicle dealer for a period of not more than 24 months
27 during the transition from 1 owner or operator to another. The
28 circuit court may extend the 24-month time period for an additional
29 12 months upon receipt of an application from a manufacturer and a



1 showing of good cause.

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

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

11 (A) As of May 1, 2000, the manufacturer for a period of not
12 less than 12 months has continuously owned, directly or indirectly,
13 1 or more new motor vehicle dealers in this state.

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

17 (C) As of January 1, 2000, not fewer than 1/2 of the new motor
18 vehicle dealers of the line-make within this state own and operate
19 2 or more new motor vehicle dealer facilities in the geographic
20 territory or area covered by the franchise agreement with the
21 manufacturer.

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

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



1 (i) Sell any new motor vehicle directly to a retail customer
2 other than through franchised dealers, unless the retail customer
3 is a nonprofit organization or a federal, state, or local
4 government or agency. This subdivision does not prohibit a
5 manufacturer from providing information to a consumer for the
6 purpose of marketing or facilitating the sale of new motor vehicles
7 or from establishing a program to sell or offer to sell new motor
8 vehicles through franchised new motor vehicle dealers that sell and
9 service new motor vehicles produced by the manufacturer.

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

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

28 (l) Fail to respond to a written request from a new motor
29 vehicle dealer that has submitted an agreement for the sale,



1 transfer, or exchange of a new motor vehicle dealership. The
2 manufacturer shall provide the dealer with all forms generally
3 utilized and requested by the manufacturer for the approval of a
4 sale, transfer, or exchange of a new motor vehicle dealership not
5 later than 30 days after receiving a written request from the
6 dealer for the forms. A manufacturer shall have 75 days after the
7 date the manufacturer receives all the properly completed forms and
8 information generally utilized and requested by the manufacturer to
9 approve or disapprove the sale, transfer, or exchange of the new
10 motor vehicle dealership. The failure of the manufacturer to
11 approve or disapprove the sale, transfer, or exchange within the
12 75-day time period is considered approval.

13 (m) Unfairly prevent a new motor vehicle dealer that sells,
14 transfers, or exchanges a new motor vehicle dealership from
15 receiving reasonable compensation for the value of the new motor
16 vehicle dealership.

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

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

26 (ii) Construct new facilities for the conduct of the business
27 of the dealership.

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



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

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

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

(iii) Is work performed by employees of a fleet operator on its own vehicles.

(q) ~~Own~~ **Directly or indirectly own** a motor vehicle service and repair facility, except that a manufacturer may own a service and repair facility for the repair of manufacturer-owned vehicles.

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

(i) Materially affects a new motor vehicle dealer.

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

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

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

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

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

(ii) The volume, type, or model of program, certified, or other used motor vehicles that a new motor vehicle dealer is eligible to



1 purchase from the manufacturer.

2 (iii) The price of any program, certified, or other used motor
3 vehicle that the new motor vehicle dealer purchases from the
4 manufacturer.

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

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

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

27 (i) Within 10 days after receiving a request from the new motor
28 vehicle dealer, the manufacturer shall provide the new motor
29 vehicle dealer with a written description of how a performance



1 standard or program is designed.

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

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

13 (B) An explanation as to how the manufacturer applies a
14 performance standard or program to a new motor vehicle dealer's
15 performance.

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

22 (w) If a new motor vehicle dealer sold or leased a new motor
23 vehicle to a customer that exported the motor vehicle to a foreign
24 country or resold the motor vehicle, and at the time of delivery to
25 the customer the vehicle was titled and registered in this state or
26 another state of the United States by the dealer, refuse to
27 allocate, sell, or deliver new motor vehicles to the dealer; charge
28 back or withhold payments or other things of value for which the
29 dealer is otherwise eligible under a sales promotion, program, or



1 contest; prevent a new motor vehicle dealer from participating in
2 any sales promotion, program, or contest; or take or threaten to
3 take any other adverse action against a new motor vehicle dealer,
4 including, but not limited to, reducing vehicle allocations or
5 terminating or threatening to terminate a dealer agreement, unless
6 the manufacturer proves that the new motor vehicle dealer knew or
7 reasonably should have known that the customer intended to export
8 or resell the motor vehicle. In an action by a new motor vehicle
9 dealer for a violation of this subdivision, there is a rebuttable
10 presumption that a new motor vehicle dealer did not know or should
11 not reasonably have known of its customer's intent to export or
12 resell a motor vehicle if the vehicle was titled and registered in
13 the United States, and the manufacturer bears the burden of
14 rebutting that presumption.

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

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

28 (z) Prohibit, prevent, or attempt to prevent a new motor
29 vehicle dealer from transferring a dealership to or naming a



1 spouse, child, or executive manager as dealership successor to own
2 and operate the dealership unless the manufacturer, having the
3 burden of proof, can show that at the time the successor is named
4 or the dealership is transferred, the successor spouse, child, or
5 executive manager of the dealer is not of good moral character, has
6 a felony conviction, does not meet the manufacturer's uniformly
7 applied requirements and criteria to be a dealer, or is otherwise
8 disqualified from holding a license as a new motor vehicle dealer
9 under any applicable statute of this state. All of the following
10 apply for purposes of this subdivision:

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

16 (ii) Within 75 days after receiving the manufacturer's current
17 uniformly applied written requirements and criteria to be a dealer
18 from the manufacturer, the new motor vehicle dealer may submit a
19 written request to the manufacturer for a meeting, in person or
20 telephonically, with the manufacturer, under reasonable
21 circumstances as agreed to by both parties, to address the
22 requirements and criteria. The parties shall meet, in person or
23 telephonically, within 45 days after the new motor vehicle dealer's
24 request for a meeting, unless otherwise agreed. During the meeting,
25 the manufacturer shall provide the dealer an opportunity to
26 present, in writing, facts, data, and evidence that establish that
27 there are factors beyond the reasonable control or influence of the
28 new motor vehicle dealer that materially and adversely impact the
29 proposed transferee's ability to meet the manufacturer's current



1 uniformly applied written requirements to be a dealer. If the
2 manufacturer does not provide the new motor vehicle dealer an
3 opportunity to present, in writing, facts, data, and evidence, or
4 does not in good faith evaluate the effect of the facts, data, and
5 evidence presented by the dealer, then the manufacturer may not
6 prohibit or prevent the new motor vehicle dealer from transferring
7 the dealership to a spouse, child, or executive manager, or naming
8 a spouse, child, or executive manager as the dealership successor
9 to own and operate the dealership.

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

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



1 (bb) Unless otherwise agreed, require a new motor vehicle
2 dealer to sell or offer to sell an extended service contract or
3 extended maintenance plan offered, sold, backed by, or sponsored by
4 the manufacturer.

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

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

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

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

25 Sec. 17. (1) A manufacturer shall specify in writing to each
26 of its new motor vehicle dealers licensed in this state the
27 dealer's obligations for preparation, delivery, recall service, and
28 warranty service on its products. A manufacturer shall compensate a
29 new motor vehicle dealer for recall or warranty service required of



1 the dealer by the manufacturer. A manufacturer shall provide a new
2 motor vehicle dealer with the schedule of compensation to be paid
3 to the dealer for parts, work, and service, and the time allowance
4 for the performance of the work and service. A manufacturer shall
5 also include in the schedule of compensation a reasonable time
6 allowance for labor for diagnostic work and repair work, included
7 in the manufacturer's labor time allowance or listed as a separate
8 compensable item. A dealer may submit a request for an additional
9 time allowance for either diagnostic or repair time, that includes
10 any information and documentation reasonably required by the
11 manufacturer, and a manufacturer shall not unreasonably deny that
12 request. ~~The~~ **Subject to section 17a(7), the** schedule of
13 compensation shall include reasonable compensation for parts
14 reimbursement and labor rates as determined under section 17a(1).

15 (2) A manufacturer shall not do any of the following:

16 (a) Fail to perform any recall or warranty obligation.

17 (b) Fail to include in written notices of factory recalls to
18 new motor vehicle owners and dealers the expected date by which
19 necessary parts and equipment will be available to dealers for the
20 correction of the defects.

21 (c) Fail to compensate a new motor vehicle dealer licensed in
22 this state for repairs made in connection with the recall.

23 (3) A manufacturer shall pay a claim made by a new motor
24 vehicle dealer under this section for labor and parts within 30
25 days after its approval. A manufacturer shall either approve or
26 disapprove a claim within 30 days after receiving the claim,
27 submitted on the form generally used by the manufacturer and
28 containing the information usually required in the form. Any claim
29 not specifically disapproved in writing within 30 days after the



1 manufacturer receives the claim form is considered approved, and
2 the manufacturer shall pay the claim within 30 days.

3 (4) Subject to subsections (5) and (10), if a manufacturer has
4 approved and paid a new motor vehicle dealer for a claim, the
5 manufacturer may only charge the claim back to the dealer if 1 of
6 the following is met:

7 (a) The manufacturer shows that the claim is fraudulent.
8 However, the manufacturer may not charge back the amount paid if
9 the claim is found to be fraudulent more than 6 years after
10 payment.

11 (b) The manufacturer shows that the claim is false,
12 unsubstantiated, lacks proper documentation, or shows an improper
13 diagnosis process or improper repair procedures. However, the
14 manufacturer may not charge back the amount paid if the claim is
15 found to be false, unsubstantiated, to lack proper documentation,
16 or show an improper diagnosis process or repair procedures more
17 than 12 months after payment.

18 (5) If a manufacturer seeks to charge back a claim under
19 subsection (4) on the basis that the claim is false,
20 unsubstantiated, or lacks proper documentation, or shows an
21 improper diagnosis process or improper repair procedures, a new
22 motor vehicle dealer has 14 days after the date the new motor
23 vehicle dealer receives notice of the chargeback to supply
24 documentation that meets the manufacturer's requirements to support
25 the validity of the claim, and if the claim is valid, the
26 manufacturer shall not charge back the claim to the new motor
27 vehicle dealer.

28 (6) A manufacturer may not deny a claim made under this
29 section because of a new motor vehicle dealer's incidental failure



1 to comply with a specific claim processing requirement, such as a
2 clerical error, that does not call into question the legitimacy of
3 the claim.

4 (7) A new motor vehicle dealer shall maintain all records of
5 warranty repairs, including the related time records of its
6 employees, for at least 2 years following payment of any warranty
7 claim.

8 (8) A manufacturer shall compensate a new motor vehicle dealer
9 for any sales or service promotion events, incentives, programs, or
10 activities sponsored by the manufacturer, in accordance with
11 established guidelines for those events, incentives, programs, or
12 activities.

13 (9) A manufacturer shall pay a claim for compensation owed to
14 a new motor vehicle dealer under subsection (8) for a promotion
15 event, incentive, program, or activity within 15 days after its
16 approval. A manufacturer shall either approve or disapprove a claim
17 for compensation described in this subsection within 30 days after
18 receiving the claim, submitted on the form generally used by the
19 manufacturer and containing the information usually required in the
20 form. Any claim for compensation the manufacturer does not
21 specifically disapprove in writing within 30 days after receiving
22 the claim form is considered approved, and the manufacturer shall
23 pay the amount of the claim within 30 days. A manufacturer may only
24 charge back a claim for compensation described in this subsection
25 under subsection (4).

26 (10) A manufacturer may not charge a claim back to a new motor
27 vehicle dealer after the claim is paid unless a representative of
28 the manufacturer first meets in person or by video teleconference
29 or telephone with an officer or employee of the dealer designated



1 by the new motor vehicle dealer, or responds in writing to any
2 dealer written request for information. All of the following apply
3 if a meeting is held under this subsection:

4 (a) At the meeting, the manufacturer shall provide a detailed
5 explanation, with supporting documentation, of the basis for each
6 proposed chargeback of a claim to the dealer and a written
7 statement containing the basis on which the claim or claims of the
8 dealer were selected for audit or review by the manufacturer.

9 However, the manufacturer is not required to disclose proprietary
10 or confidential information about a customer or other dealer under
11 this subdivision, and is not required to disclose any information
12 if disclosure is prohibited by law.

13 (b) After the meeting, the manufacturer shall provide the
14 motor vehicle dealer's representative a reasonable period of time
15 of at least 45 days to respond to the proposed chargebacks. The
16 manufacturer shall provide a longer period of time for the dealer
17 to respond if warranted by the volume of proposed chargebacks.

18 (c) An unexcused failure or refusal of the dealer or
19 designated officer or employee of the dealer to schedule, attend,
20 or participate in the meeting with the manufacturer relieves the
21 manufacturer from any further obligation under this subsection.

22 (11) A manufacturer may conduct an audit of the records of a
23 new motor vehicle dealer relating to a warranty or promotion claim
24 submitted by a new motor vehicle dealer under this section, but the
25 manufacturer may only conduct that audit in the time periods
26 allowed for warranty or promotional claim chargebacks under this
27 section.

28 Sec. 17a. (1) The principal factors in determining what
29 constitutes reasonable compensation for parts reimbursement and

1 labor rates for purposes of section 17(1) are as follows:

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

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

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

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

19 (b) If a manufacturer determines from any set of repair orders
20 submitted under subdivision (a) that the calculated retail markup
21 rate for parts or the retail labor rate is substantially higher or
22 lower than the rate currently on record with the manufacturer, the
23 manufacturer may request additional documentation for a period of
24 either 60 days before or 60 days after the time period for which
25 the repair orders were submitted for purposes of an adjustment.

26 (c) A new motor vehicle dealer's retail rate percentage for
27 parts is calculated by determining the dealer's total parts sales
28 in the submitted repair orders and dividing that amount by the
29 dealer's total cost for the purchase of those parts, subtracting 1



1 from that amount, and then multiplying by 100. The manufacturer
2 must approve or disapprove the declared retail rate within 45 days
3 after the date of submission by the dealer. The declared retail
4 rate is effective beginning 30 days after approval by the
5 manufacturer, unless the manufacturer disapproves and timely
6 contests the dealer's declared rate. If a manufacturer fails to
7 disapprove within 45 days following submission by the dealer, the
8 declared retail rate is considered approved. A new motor vehicle
9 dealer's retail rate for labor is calculated by determining the
10 dealer's total labor sales from the submitted repair orders and
11 dividing that amount by the total number of hours that generated
12 those sales. The manufacturer must approve or disapprove the
13 declared retail rate within 45 days after the date the dealer
14 submits the repair orders. The declared retail labor rate is
15 effective beginning 30 days after approval by the manufacturer,
16 unless the manufacturer disapproves and timely contests the
17 dealer's declared rate.

18 (d) A manufacturer may contest a new motor vehicle dealer's
19 declared retail markup rate for parts or retail labor rate not
20 later than 45 days after submission and declaration of the retail
21 markup rate for parts or retail labor rate by the dealer by
22 reasonably substantiating that the rate is inaccurate, incomplete,
23 or unreasonable in light of the factors described in subsection
24 (1). In contesting a new motor vehicle dealer's declared rate, a
25 manufacturer shall provide a written explanation of the reasons for
26 disagreement with the declared rate. If the declared retail markup
27 rate for parts or retail labor rate is contested, then the
28 manufacturer shall propose an adjustment of the rate. If the
29 manufacturer contests the dealer's declared parts or labor rate,

1 the parties shall attempt to resolve the dispute through an
2 internal dispute resolution procedure of the manufacturer, if
3 available, provided that the dispute resolution procedure occurs
4 within a reasonable amount of time that does not exceed 45 days
5 after notification of disagreement with the dealer's declared rate.

6 (e) If an internal dispute resolution procedure described in
7 subdivision (d) is unsuccessful or does not occur in a timely
8 manner, a new motor vehicle dealer may file a complaint in the
9 circuit court for the county in which the new motor vehicle dealer
10 is located, within 60 days after it receives the adjustment
11 proposed by the manufacturer or within 30 days after conclusion of
12 the internal dispute resolution procedure, whichever is later. In
13 an action under this subdivision, the manufacturer has the burden
14 of proof to demonstrate that the retail markup rate for parts or
15 retail labor rate declared by the dealer is inaccurate, incomplete,
16 or unreasonable.

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

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

22 (b) Parts sold at wholesale.

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

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

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

29 (f) Vehicle reconditioning.



1 (g) Installation or repair of accessories.

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

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

5 (j) Manufacturer approved and reimbursed goodwill or policy
6 repairs or replacements.

7 (k) Repairs for which volume discounts have been negotiated
8 with government agencies.

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

18 (5) A manufacturer shall not require a new motor vehicle
19 dealer to establish the retail rate customarily charged by the
20 dealer for parts and labor by an unduly burdensome or time-
21 consuming method or by requiring information that is unduly
22 burdensome or time consuming to provide, including, but not limited
23 to, part-by-part or transaction-by-transaction calculations. A
24 dealer shall not declare a retail rate for parts or labor or both
25 more than once in a calendar year.

26 (6) A manufacturer shall not limit access to sales or service
27 promotion events, incentives, programs, or activities sponsored by
28 the manufacturer or limit allocation of vehicles or parts to a new
29 motor vehicle dealer based solely on the new motor vehicle dealer's



1 exercise of its rights under this section. This subsection does not
2 prohibit a manufacturer from increasing the price of a motor
3 vehicle or part in the normal course of business.

4 (7) A manufacturer shall not charge a fee or surcharge for
5 warranty parts reimbursement.

6 Sec. 17c. Sections 17, 17a, and 17b apply to all
7 manufacturers, dealer agreements entered into or renewed after the
8 effective date of the amendatory act that added this section, and
9 existing dealer agreements that are in effect on the effective date
10 of the amendatory act that added this section.

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

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

22 (b) Perform warranty, recall, service, or repair work at a
23 motor vehicle service and repair facility described in subdivision
24 (a), as long as the work is not performed at a motor vehicle
25 service and repair facility that is directly owned by the
26 manufacturer.

27 (c) Deliver new motor vehicles to residents of this state,
28 either directly or through a subsidiary, using an independent
29 carrier, or otherwise, and assist with the trade-in of a used motor



1 vehicle, as long as the sale and passing of the title for any new
2 motor vehicle sold by the manufacturer are transferred to the buyer
3 outside of this state.

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

11 (i) Conducting demonstration drives.

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

14 (iii) Helping potential customers configure vehicles.

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

16 (v) Facilitating customer transaction paperwork for a sale of
17 a motor vehicle.

18 (2) For purposes of this section, the time and place of the
19 sale and passing of the title must be determined in accordance with
20 section 2401 of the uniform commercial code, 1962 PA 174, MCL
21 440.2401.

22 Enacting section 1. Section 17d of the motor vehicle franchise
23 act, 1981 PA 118, MCL 445.1577d, as added by this amendatory act,
24 takes effect October 1, 2020.

