

MOTOR VEHICLE FRANCHISE ACT

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House Bill 6498 (H-1) as reported from committee

Sponsor: Rep. Brandt Iden

Committee: Regulatory Reform

Complete to 12-12-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6498 would name Public Act 118 of 1981, which regulates motor vehicle manufacturers, distributors, wholesalers, and dealers, the "Motor Vehicle Franchise Act." The bill would add and revise provisions that would primarily impact the relationships among dealers, manufacturers, distributors, and wholesalers. The proposed changes would apply to dealer agreements entered into or renewed, or existing dealer agreements that are materially and substantially amended, after the bill's effective date. The bill would also add definitions for several new terms, including "line-make," "local market conditions," and "stop-sale order," and revise definitions of other terms currently in the act.

Ending a dealer agreement

Under the bill, before a manufacturer or distributor could cancel, terminate, fail to renew, or refuse to continue any dealer agreement with a new motor vehicle dealer ("dealer") for good cause, the manufacturer or distributor would have to include information (if requested by the dealer) indicating the methodology and data used to measure the dealer's performance and would also have to afford the dealer a reasonable opportunity to present evidence to the manufacturer or distributor demonstrating the effect of local market conditions that materially and adversely affected the dealer's performance. The manufacturer or distributor would not have to disclose proprietary or confidential information. The failure of the dealer to achieve any performance standard or criterion that is unreasonable, inequitable, or discriminatory could not, taken alone, constitute good cause for ending a dealer agreement.

Manufacturer-imposed dealer requirements

The bill would prohibit a manufacturer from requiring a dealer to do any of the following:

- Construct or substantially alter a facility or premises if the same item or design component (i.e., interior or exterior elements, or the sales, service, administrative, or parts components) had been constructed or substantially altered within the previous 10 years and that work had been required and approved by the manufacturer or distributor.
- Purchase goods or services to make improvements to the facilities from a vendor selected, identified, or designated by the manufacturer or its affiliate unless the dealer could obtain the goods or services from a vendor the dealer chose, provided certain conditions were met as specified in the bill.
- With some exceptions, lease signs from a vendor selected by the manufacturer or distributor unless the dealer could do so from a vendor the dealer chose, if certain conditions were met.
- Except for warranty or recall repairs, purchase fluids or lubricants from a particular vendor if fluids or lubricants of the same material and quality were available from another vendor.

Prohibited manufacturer activities

Under the bill, a manufacturer could not do any of the following:

- Make any material changes in a dealer agreement without giving the dealer, in writing, a 30-day notice.
- Prohibit, prevent, or attempt to prevent a dealer from transferring a dealership to a spouse, child, or executive manager or naming any of those as dealership successor unless the manufacturer can show that the successor is not of good moral character, has a felony conviction, does not meet the manufacturer's uniformly applied requirements and criteria to be a dealer, or is otherwise disqualified from holding a dealer license under any applicable Michigan law.
- Use a dealer's failure to meet a performance standard or criterion as a basis to prevent or deny a dealer the opportunity to engage in succession planning or to name a successor who has been actively involved in the dealership's day-to-day operations and has received applicable business or dealer training.
- Unless otherwise agreed, require a dealer to sell or offer to sell an extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer.

Manufacturer requirements

The bill would require a manufacturer to do all of the following:

- Compensate its dealers a reasonable amount for all labor and parts required to perform recall repairs on used vehicles held for sale by a dealer under certain circumstances.
- Respond within 30 days after receiving a request and supporting documents from a dealer for indemnification under a section pertaining to liability for claims, complaints, and actions arising from defects relating to the manufacture of the vehicle.
- Within 30 days of receiving a written request, provide a dealer seeking to sell, transfer, or exchange a dealership with all forms the manufacturer generally uses in connection such a sale, transfer, or exchange. Failure by a manufacturer or distributor to approve or disapprove a dealer's request to sell, transfer, or exchange its dealership within the 75-day period after receiving a completed application would be considered approval by the manufacturer.

Manufacturer's right to acquire the dealership or refuse succession

The bill would add a new section to the Act to require a manufacturer to do certain things before exercising a right of first refusal or other right to acquire a dealership from a dealer, including:

- Notifying the dealer in writing that it intends to exercise the right to acquire the dealership within 75 days of receiving the complete application for the proposed sale, transfer, or exchange of the dealership.
- Paying the same or greater consideration the dealer has contracted for the proposed sale, transfer, or exchange.
- Assuming all duties, obligations, and liabilities concerning the manufacturer's line-makes the proposed transferee was to assume.
- Reimbursing the proposed transferee for reasonable expenses incurred in evaluating, investigating, and negotiating the transfer of the dealership.

The manufacturer and the dealer would not be liable to any person for the manufacturer's exercising its right of first refusal. The manufacturer could assign the lease or convey the real property of the dealership.

The bill would also specify that if a dealer died or became incapacitated, any designated family member of the dealer or executive manager of the dealership could succeed the dealer under provisions of the Act, if the person had been designated a successor in a written instrument filed with the manufacturer and met the manufacturer's uniformly applied requirements and criteria to be a dealer. The time period allowed a manufacturer to serve on the designated family member or executive manager its refusal to approve the succession would be changed from 60 days to 75 days after receiving notice of the designated person's intent to succeed the dealer or after receiving requested personal and financial information. The written instrument filed under this provision would determine the succession rights to the management, ownership, and operation of the dealership if, at the time of succession, the designated person met the manufacturer's uniformly applied requirements and criteria to be a dealer.

Other provisions

The bill would also do all of the following:

- Change the time in which a manufacturer that rejects a proposed change in the executive management of a dealer must provide to the dealer written notice of its reasons to 75 days, instead of 60 days, after receiving written notification of the change.
- Delete a provision pertaining to a schedule of compensation for warranty service and replace it with a new section that lists the principal factors in determining what would constitute reasonable compensation for parts reimbursement and labor rates for recall or warranty service required of the dealer by the manufacturer. Factors would include the retail price charged for parts and the retail labor rates paid by other similar dealers in a comparable geographic area offering the same line-make of vehicles. The bill would also specify in detail criteria for compensation related to each of those two principal factors and the type of work that would not be considered when calculating the retail rate customarily charged by a dealer for parts and labor under this proposed new section.
- In a provision prohibiting establishment of a performance standard or program for measuring dealer performance that is not fair, reasonable, and equitable, require an explanation as to how the manufacturer applies a performance standard or program to a dealer's performance, including the specific information relied on in applying the performance standard. On written request, a manufacturer or dealer would have to meet with the other party (in person or telephonically) to present, explain, or discuss this information.

The bill would take effect 90 days after its enactment.

MCL 445.1561 et al.

BRIEF DISCUSSION:

According to committee testimony, the bill represents agreement between stakeholders on several important issues facing owners of automobile dealerships, manufacturers, and distributors. Among the top issues addressed by the bill are termination of a dealership contract by a manufacturer; how succession of the dealership to a spouse, child, or executive manager would transpire in the event a dealer dies or becomes incapacitated; facility upgrades; and reimbursements for warranty and recall services performed by the dealer.

FISCAL IMPACT:

House Bill 6498 would not have a fiscal impact on any unit of state or local government.

POSITIONS:

A representative of the Auto Dealers of Michigan testified in support of the bill.
(12-12-18)

A representative of Toyota indicated a neutral position on the bill. (12-12-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.