

MOTOR VEHICLE FRANCHISE ACT

Phone: (517) 373-8080
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House Bill 6498 as enacted
Public Act 668 of 2018
Sponsor: Rep. Brandt Iden
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 2-13-19

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

SUMMARY:

House Bill 6498 names Public Act 118 of 1981, which regulates motor vehicle manufacturers, distributors, wholesalers, and dealers, the “Motor Vehicle Franchise Act.” The bill adds and revises provisions that primarily impact the relationships among dealers, manufacturers, distributors, and wholesalers. The changes apply to dealer agreements entered into or renewed, or existing dealer agreements that are materially and substantially amended, after March 28, 2019 (the bill’s effective date). The bill also adds definitions for several new terms, including “line-make,” “local market conditions,” and “stop-sale order,” and revises definitions of other terms already in the act.

Ending a dealer agreement

Under the bill, before a manufacturer or distributor may 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 must include information (if requested by the dealer) indicating the methodology and data used to measure the dealer’s performance and also 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 affect the dealer’s performance. The manufacturer or distributor does 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 does not, taken alone, constitute good cause for ending a dealer agreement.

Manufacturer-imposed dealer requirements

The bill prohibits 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 of 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. “Construction” is defined to mean construction of new sales or service facilities by a new motor vehicle dealer, or the substantial remodeling, improvement, renovation, expansion, replacement, or alteration of the existing sales or service facilities. The term does not include installation of signs or other image elements subject to the intellectual property rights of the manufacturer (e.g., logos, trademarks, trade dress, patents, or other intellectual property).

- 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 may obtain the goods or services from a vendor chosen by the dealer if certain conditions are met as specified in the bill.
- With some exceptions, lease signs from a vendor selected by the manufacturer or distributor unless the dealer may do so from a vendor chosen by the dealer if certain conditions are 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 are available from another vendor.

Prohibited manufacturer activities

Under the bill, a manufacturer may 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 requires 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 is considered approval by the manufacturer.

Manufacturer's right to acquire the dealership or refuse succession

The bill adds a new section 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-make 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 are not liable to any person for the manufacturer's exercising its right of first refusal. The manufacturer may assign the lease or convey the real property of the dealership.

The bill also specifies that if a dealer dies or becomes incapacitated, any designated family member of the dealer or executive manager of the dealership may succeed the dealer under provisions of the Act, if the person is designated a successor in a written instrument filed with the manufacturer and meets 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 is 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 determines the succession rights to the management, ownership, and operation of the dealership if, at the time of succession, the designated person meets the manufacturer's uniformly applied requirements and criteria to be a dealer.

Other provisions

The bill also does all of the following:

- Changes 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.
- Deletes a provision pertaining to a schedule of compensation for warranty service and replaces it with a new section that lists the principal factors in determining what constitutes reasonable compensation for parts reimbursement and labor rates for recall or warranty service required of the dealer by the manufacturer. Factors 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 also specifies in detail criteria for compensation related to each of those two principal factors and the type of work that is not considered when calculating the retail rate customarily charged by a dealer for parts and labor.
- In a provision prohibiting establishment of a performance standard or program for measuring dealer performance that is not fair, reasonable, and equitable, requires 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 must meet with the other party (in person or telephonically) to present, explain, or discuss this information.

The bill takes effect March 28, 2019.

MCL 445.1561 et al.

BRIEF DISCUSSION:

According to House 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 transpires 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.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ 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.