

Act No. 668
Public Acts of 2018
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STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Reps. Iden, Webber and Leutheuser

ENROLLED HOUSE BILL No. 6498

AN ACT to amend 1981 PA 118, entitled “An act to regulate motor vehicle manufacturers, distributors, wholesalers, dealers, and their representatives; to regulate dealings between manufacturers and distributors or wholesalers and their dealers; to regulate dealings between manufacturers, distributors, wholesalers, dealers, and consumers; to prohibit unfair practices; to provide remedies and penalties; and to repeal certain acts and parts of acts,” by amending sections 1, 2, 3, 4, 6, 7, 8, 13, 14, 15, 16, 17, 19, and 22a (MCL 445.1561, 445.1562, 445.1563, 445.1564, 445.1566, 445.1567, 445.1568, 445.1573, 445.1574, 445.1575, 445.1576, 445.1577, 445.1579, and 445.1582a), sections 2, 3, and 4 as amended by 2010 PA 140, section 6 as amended by 2010 PA 139, section 13 as amended by 2010 PA 141, section 14 as amended by 2014 PA 354, sections 15 and 17 as amended by 2010 PA 138, sections 16 and 19 as amended by 1983 PA 188, and section 22a as added by 1998 PA 456, and by adding sections 14b, 17a, and 17b.

The People of the State of Michigan enact:

Sec. 1. (1) This act shall be known and may be cited as the “motor vehicle franchise act”.

(2) For the purposes of this act, the words and phrases defined in sections 2 to 6 have the meanings ascribed to them in those sections, except where the context clearly indicates a different meaning.

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

(2) “Coerce” means to compel or attempt to compel a person to act in a given manner or to refrain from acting in a given manner by pressure, intimidation, or threat of harm, damage, breach of contract, or other adverse consequences, including, but not limited to, the loss of any benefit available to other new motor vehicle dealers of the same line-make in this state. The term does not include any of the following actions by a manufacturer:

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

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

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

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

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

(a) If a new motor vehicle dealer who dies or becomes incapacitated has designated a successor under section 15(6), that designated successor.

(b) If a new motor vehicle owner dies and has not designated a successor under section 15(6), the spouse or a child, grandchild, parent, brother, or sister of a deceased new motor vehicle dealer, who is entitled to inherit the deceased dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or who is entitled to inherit under the laws of intestate succession of this state or the appointed and qualified personal representative or testamentary trustee of the deceased new motor vehicle dealer.

(c) If a new motor vehicle dealer becomes incapacitated and has not designated a successor under section 15(6), the person appointed by the court as the legal representative of the dealer.

Sec. 3. (1) "Distributor" means any person, including importer, that is located in or outside of this state and is engaged in the business of offering for sale, selling, or distributing new and unaltered motor vehicles to a new motor vehicle dealer under a dealer agreement, that maintains a factory representative that is located in or outside of this state for purposes of conducting that business, or that controls a person that is located in or outside of this state and offers for sale, sells, or distributes new and unaltered motor vehicles to a new motor vehicle dealer. Distributor does not include a person that alters or converts motor vehicles for sale to a new motor vehicle dealer.

(2) "Established place of business" means a permanent, enclosed commercial building located in this state that is easily accessible and open to the public at all reasonable times and at which a new motor vehicle dealer may legally conduct business, including the display and repair of motor vehicles, in compliance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

(3) "Executive manager" means any of the following:

(a) An individual who is employed by a new motor vehicle dealer in an executive capacity and who has a written employment agreement with the dealer that includes a right for the executive manager to purchase a controlling interest in the dealership at a future time or on the death or incapacity of the dealer.

(b) An individual who is designated by the new motor vehicle dealer, in an addendum to the dealer agreement, as having authority and responsibility to operate the dealership on a day-to-day basis.

(4) "Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering to sell vehicles to a distributor, wholesaler, or new motor vehicle dealer or for directing or supervising any factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor that is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(5) "Factory representative" means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

Sec. 4. (1) "Good faith" means that term as defined in section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

(2) "Good moral character" means good moral character as defined in and determined under 1974 PA 381, MCL 338.41 to 338.47.

(3) "Line-make" means a collection of models, a series, or a group of motor vehicles manufactured by or for a particular manufacturer, distributor, or importer that are offered for sale, lease, or distribution under a common brand name or mark. All of the following apply to the term "line-make":

(a) Multiple brand names or marks may constitute a single line-make, but only if they are included in a common dealer agreement and the manufacturer, distributor, or importer offers all of the vehicles that bear the multiple names or marks to its authorized dealers together, and not separately.

(b) Motor vehicles that share a common brand name or mark may constitute separate line-makes if those vehicles are of different vehicle types or are intended for different types of use, and either of the following applies:

(i) The manufacturer has expressly defined or covered the subject line-makes of vehicles as separate and distinct line-makes in the applicable dealer agreements.

(ii) The manufacturer has consistently characterized the subject vehicles as constituting separate and distinct line-makes to its dealer network.

(4) "Local market conditions" means certain relevant and material conditions, criteria, data, and facts, beyond the control or influence of a new motor vehicle dealer, that have a material impact on the new motor vehicle dealer's sales performance in the assigned market area in which the new motor vehicle dealer offers vehicles for sale or lease. The term may include, but is not limited to, any of the following:

(a) Demographics in a new motor vehicle dealer's market area.

(b) Geographical and market characteristics in a new motor vehicle dealer's market area.

(c) Local economic circumstances.

(d) The preferences of motor vehicle purchasers or lessees.

(e) Customer drive distance from a new motor vehicle dealer.

(5) "Manufacturer" means a person that manufactures or assembles new motor vehicles or a distributor, factory branch, or factory representative.

(6) "Motor vehicle" means that term as defined in section 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, but does not include a bus, a tractor, or farm equipment.

(7) "Motor vehicle service and repair facility" means a motor vehicle repair facility, as defined in section 2 of the motor vehicle service and repair act, 1974 PA 300, MCL 257.1302. The term does not include a motor vehicle dealer performing maintenance, diagnosis, vehicle body work, repairs, or other service or repair work on motor vehicles under the terms of a dealer agreement.

Sec. 6. (1) "Relevant market area" means 1 of the following:

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

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

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

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

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

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

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

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

(4) "Used motor vehicle" means a motor vehicle that is not a new motor vehicle.

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

Sec. 7. (1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew, or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor meets all of the following:

- (a) Has satisfied the notice requirement of section 10.
- (b) Has acted in good faith.
- (c) Has good cause for the cancellation, termination, nonrenewal, or discontinuance.

(2) Notwithstanding any agreement, good cause exists for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (1)(c) when both of the following occur:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer.

(b) Unless otherwise agreed or if the dealer is participating in a performance improvement plan or program, the manufacturer or distributor provided the required notification under section 10 not more than 2 years after the date on which the manufacturer first acquired actual or constructive knowledge of the failure.

(3) If the failure of a new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause exists for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (1) when the new motor vehicle dealer fails to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure.

(b) The notification stated that the notice of failure of performance was provided under this act and, if requested in writing by the dealer, the manufacturer provided written information indicating the methodology and data the manufacturer or distributor used to measure the new motor vehicle dealer's performance. However, this subdivision does not require the manufacturer to disclose any proprietary or confidential information or other information if disclosure is prohibited by law.

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement.

(d) The failure continued for more than 180 days after the date notification was given under subdivision (a).

(e) The new motor vehicle dealer was afforded 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.

(f) If the manufacturer used a survey or index to measure the performance of a new motor vehicle dealer, the survey or index was based on a reasonable sampling of the measured performance criteria.

(4) Before a final determination by a manufacturer or distributor that a new motor vehicle dealer has failed to achieve any performance criteria that are the basis to cancel, terminate, fail to renew, or refuse to continue any dealer agreement under this section, the manufacturer or distributor must provide the new motor vehicle dealer an opportunity to present, in writing, evidence that demonstrates the effect of local market conditions that materially and adversely affected the dealer's performance.

(5) If a manufacturer makes a final decision to terminate, cancel, nonrenew, or discontinue a dealer agreement without complying with subsection (3)(b) or (e), or does not in good faith evaluate the effect of the local market conditions presented by the dealer in writing, good cause does not exist for purposes of terminating, canceling, nonrenewing, or discontinuing a dealer agreement.

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

(a) A change in ownership of the new motor vehicle dealer's dealership. This subdivision does not authorize any change in ownership that would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

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

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with the reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter. However, a sale or transfer described in this subdivision does not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

(e) For purposes of this section, the failure of the new motor vehicle dealer to achieve any performance standard or criteria that are unreasonable, inequitable, or discriminatory.

Sec. 13. (1) A manufacturer shall not require any new motor vehicle dealer in this state to do any of the following:

(a) Order or accept delivery of any new motor vehicle, a part or accessory of a new motor vehicle, equipment, or any other commodity not required by law that is not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer.

(b) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer.

(c) Participate monetarily in any advertising campaign or contest, purchase any promotional materials, display devices, or display decorations or materials, or pay or assume directly in connection with the sale of a new motor vehicle any part of the cost of a refund, rebate, or discount made by or lawfully imposed by the manufacturer to or in favor of a consumer, unless voluntarily agreed to by the dealer.

(d) Enter into any agreement with the manufacturer or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement existing between the dealer and the manufacturer. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement does not constitute a violation of this act.

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership, if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria.

(f) Refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicles or related products at or in any of the following:

(i) At a location different from the location used by the dealer for the sale or service of new motor vehicles or related products of the manufacturer; if the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, remains in substantial compliance with capital requirements, and makes no change in the principal management of the dealer.

(ii) In facilities at the same location as, but separated from, the facilities used by the dealer for the sale or service of new motor vehicles or related products of the manufacturer; if the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with minimum space requirements and reasonable facilities requirements, remains in substantial compliance with capital requirements, and does not make a change in the principal management of the dealer.

(iii) Unless the manufacturer otherwise objects based on other reasonable business considerations, in the same facilities used by the dealer for the sale or service of new motor vehicles or related products of the manufacturer; if the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, remains in substantial compliance with capital requirements, and does not make a change in the principal management of the dealer. The manufacturer has the burden of proving reasonable business considerations for purposes of this subparagraph.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if changing the location or making the alterations is unreasonable.

(h) Prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this act; require that any dealer agreement be governed by the laws of a state other than this state; or require referral of any controversy between a new motor vehicle dealer and a manufacturer to a person other than the duly constituted courts of this state, or of the United States located in this state, if the referral would be binding on the new motor vehicle dealer. This subdivision does not apply to an agreement between the parties, made at the time of a controversy, to refer the controversy to a court of the United States located outside this state or agree at the time of an arbitration to conduct the arbitration either in or outside of this state. A provision in a dealer agreement that violates this subdivision is void and unenforceable.

(i) Construct or substantially alter a facility or premises if the same item or design component, consisting of interior or exterior elements of the sales, service, administrative, or parts components, was constructed or substantially altered within the previous 10 years and that construction or alteration was required and approved by the manufacturer or distributor.

(j) Subject to subsection (3), require a new motor vehicle dealer to purchase goods or services to make improvements to the dealer's facilities from a vendor that is selected, identified, or designated by the manufacturer or an affiliate of

the manufacturer, unless the dealer is allowed to obtain the goods or services from a vendor chosen by the dealer if all of the following are met:

(i) The goods or services offered by the vendor chosen by the dealer are of the same material, quality, and overall design.

(ii) The vendor chosen by the dealer is approved by the manufacturer. A manufacturer shall not unreasonably withhold its consent for purposes of this subparagraph.

(iii) The manufacturer is not providing substantial reimbursement or compensation to the dealer for the goods or services.

(k) Subject to subsection (3), require a new motor vehicle dealer to lease signs, except for signs that contain the manufacturer's intellectual property or free-standing signs that are not directly attached to a building, or other manufacturer image or design elements or trade dress, from a vendor selected, identified, or designated by the manufacturer, unless the dealer is allowed to purchase the signs or other image or design elements or trade dress from a vendor chosen by the dealer if all of the following are met:

(i) The signs offered by the vendor chosen by the dealer are of the same material, quality, and overall design.

(ii) The signs are approved by the manufacturer. A manufacturer shall not unreasonably withhold its consent for purposes of this subparagraph.

(l) Except as required by the manufacturer for warranty repairs, recall repairs, or other services or programs paid for by the manufacturer, or unless otherwise agreed, require a new motor vehicle dealer to purchase fluids or lubricants from a particular vendor, if fluids or lubricants of the same material and quality are available from another vendor.

(2) If, during the 10-year period described in subsection (1)(i), a manufacturer establishes a new program, standard, policy, bonus, incentive, rebate, or other benefit, a new motor vehicle dealer is eligible for the new program, standard, policy, bonus, incentive, rebate, or other benefit if the dealer fully complies with the new standards set by the manufacturer in the new program, standard, policy, bonus, incentive, or other benefit.

(3) Subsection (1)(j) and subsection (1)(k) do not allow a new motor vehicle dealer or a vendor chosen by the dealer to impair, infringe upon, or eliminate, directly or indirectly, the intellectual property rights of the manufacturer, including, but not limited to, the manufacturer's intellectual property rights in any trademarks or trade dress, or other intellectual property interests owned or controlled by the manufacturer, or to permit a new motor vehicle dealer to erect or maintain signs that do not conform to the manufacturer's intellectual property rights or trademark or trade dress usage guidelines.

(4) As used in this section:

(A) "Construction" means the construction of new sales or service facilities by a new motor vehicle dealer, or the substantial remodeling, improvement, renovation, expansion, replacement, or alteration of a dealer's existing sales or service facilities. The term does not include installation of signs or other image elements that are subject to the intellectual property rights of the manufacturer, including logos, trademarks, trade dress, patents, or other intellectual property.

(B) "Goods" does not include movable displays, brochures, and promotional materials containing material that is subject to the intellectual property rights of a manufacturer.

(C) "Substantial reimbursement" means an amount equal to or greater than the cost savings that would result if a new motor vehicle dealer utilized a vendor of the dealer's own selection instead of using the vendor selected, identified, or designated by the manufacturer or an affiliate of the manufacturer.

(D) "Substantial alteration" means an alteration that has a major impact on the architectural features, characteristics, appearance, or integrity of a structure or lot. The term does not include routine maintenance that is reasonably necessary to maintain a dealership facility in attractive condition and does not include any changes to items protected by federal intellectual property rights.

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

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

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

(c) Refuse to deliver to a new motor vehicle dealer in reasonable quantities and within a reasonable time after receipt of the dealer's order, any new motor vehicles that are covered by the dealer agreement and specifically publicly advertised in this state by the manufacturer as available for immediate delivery. However, the failure to deliver any motor vehicle is not considered a violation of this act if the failure is due to an act of God, a work stoppage or delay due

to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo, or other cause over which the manufacturer has no control. If a manufacturer requires a new motor vehicle dealer to purchase essential service tools with a purchase price in the aggregate of more than \$7,500.00 in order to receive a specific model of vehicle, the manufacturer shall on written request provide the dealer with a good faith estimate in writing of the number of vehicles of that specific model the dealer will be allocated in the model year in which the dealer is required to purchase the tool.

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

- (i) The addition to a motor vehicle of required or optional equipment under state or federal law.
- (ii) In the case of foreign made vehicles or components, revaluation of the United States dollar.
- (iii) Any increase in transportation charges due to an increase in rates charged by a common carrier or transporter.

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

- (i) Any specific model or series of new motor vehicles manufactured for that line-make.
- (ii) Any incentives, rebates, bonuses, promotional items, or other similar benefits payable to the new motor vehicle dealer for selling new motor vehicles or purchasing new motor vehicles from the manufacturer.
- (iii) Any consumer rebates, vehicle price reductions, or interest rate reductions or other changes to finance terms that benefit the consumer.
- (iv) Any program that provides marketing and sales assistance to new motor vehicle dealers, including, but not limited to, internet listings, sales leads, marketing programs, and dealer recognition programs.

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

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

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

- (i) The ownership, operation, or control by a manufacturer of a new motor vehicle dealer for a period of not more than 24 months during the transition from 1 owner or operator to another. The circuit court may extend the 24-month time period for an additional 12 months upon receipt of an application from a manufacturer and a showing of good cause.
- (ii) The ownership, operation, or control of a new motor vehicle dealer or a used motor vehicle dealer by a manufacturer while it is being sold under a bona fide contract or purchase option to the operator of the new motor vehicle dealer or the used motor vehicle dealer.
- (iii) The direct or indirect ownership by a manufacturer of an entity that owns, operates, or controls a new motor vehicle dealer of the same line-make franchised by the manufacturer, if all of the following conditions are met:

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

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

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

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

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

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

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

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

(l) Fail to respond to a written request from a new motor vehicle dealer that has submitted an agreement for the sale, transfer, or exchange of a new motor vehicle dealership. The manufacturer shall provide the dealer with all forms generally utilized and requested by the manufacturer for the approval of a sale, transfer, or exchange of a new motor vehicle dealership not later than 30 days after receiving a written request from the dealer for the forms. A manufacturer shall have 75 days after the date the manufacturer receives all the properly completed forms and information generally utilized and requested by the manufacturer to approve or disapprove the sale, transfer, or exchange of the new motor vehicle dealership. The failure of the manufacturer to approve or disapprove the sale, transfer, or exchange within the 75-day time period is considered approval.

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

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

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

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

(o) Require unreasonable improvements to a facility as a 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 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 purchase from the manufacturer.

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

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

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

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

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

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

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

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

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

(w) If a new motor vehicle dealer sold or leased a new motor vehicle to a customer that exported the motor vehicle to a foreign country or resold the motor vehicle, and at the time of delivery to the customer the vehicle was titled and registered in this state or another state of the United States by the dealer, refuse to allocate, sell, or deliver new motor vehicles to the dealer; charge back or withhold payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevent a new motor vehicle dealer from participating in any sales promotion, program, or contest; or take or threaten to take any other adverse action against a new motor vehicle dealer, including, but not limited to, reducing vehicle allocations or terminating or threatening to terminate a dealer agreement, unless the manufacturer proves that the new motor vehicle dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. In an action by a new motor vehicle dealer for a violation of this subdivision, there is a rebuttable presumption that a new motor vehicle dealer did not know or should not reasonably have known of its customer's intent to export or resell a motor vehicle if the vehicle was titled and registered in the United States, and the manufacturer bears the burden of rebutting that presumption.

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

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

(z) Prohibit, prevent, or attempt to prevent a new motor vehicle dealer from transferring a dealership to or naming a spouse, child, or executive manager as dealership successor to own and operate the dealership unless the manufacturer, having the burden of proof, can show that at the time the successor is named or the dealership is transferred, the successor spouse, child, or executive manager of the dealer 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 license as a new motor vehicle dealer under any applicable statute of this state. All of the following apply for purposes of this subdivision:

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

(ii) Within 75 days after receiving the manufacturer's current uniformly applied written requirements and criteria to be a dealer from the manufacturer, the new motor vehicle dealer may submit a written request to the manufacturer

for a meeting, in person or telephonically, with the manufacturer, under reasonable circumstances as agreed to by both parties, to address the requirements and criteria. The parties shall meet, in person or telephonically, within 45 days after the new motor vehicle dealer's request for a meeting, unless otherwise agreed. During the meeting, the manufacturer shall provide the dealer an opportunity to present, in writing, facts, data, and evidence that establish that there are factors beyond the reasonable control or influence of the new motor vehicle dealer that materially and adversely impact the proposed transferee's ability to meet the manufacturer's current uniformly applied written requirements to be a dealer. If the manufacturer does not provide the new motor vehicle dealer an opportunity to present, in writing, facts, data, and evidence, or does not in good faith evaluate the effect of the facts, data, and evidence presented by the dealer, then the manufacturer may not prohibit or prevent the new motor vehicle dealer from transferring the dealership to a spouse, child, or executive manager, or naming a spouse, child, or executive manager as the dealership successor to own and operate the dealership.

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

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

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

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

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

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

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

Sec. 14b. (1) A manufacturer shall not exercise a right of first refusal or other right to acquire a new motor vehicle dealership from a new motor vehicle dealer, unless the manufacturer does all of the following:

(a) Within 75 days after the manufacturer receives a complete written application, including all required documentation and information requested by the manufacturer or distributor from a new motor vehicle dealer for a proposed sale, transfer, or exchange of a new motor vehicle dealership by the new motor vehicle dealer, submitted on the forms generally utilized by the manufacturer for that purpose and containing all of the information required by the manufacturer, notifies the dealer in writing that it intends to exercise the right to acquire the dealership.

(b) Pays to the dealer the same or greater consideration as the dealer has contracted to receive in connection with the proposed transfer or sale of all or substantially all of the dealership assets, stock, or other ownership interest, including, but not limited to, the purchase of, lease of, or assignment or transfer of any leased interest in, real property or improvements related to the transfer or sale of the dealership.

(c) Assumes all of the duties, obligations, and liabilities concerning the manufacturer's line-makes that the proposed transferee was to assume in the agreements between the proposed transferee and the dealer and with respect to which the manufacturer exercised the right of first refusal or other right to acquire the new motor vehicle dealership.

(d) Reimburses the proposed transferee for all reasonable expenses incurred in evaluating, investigating, and negotiating the transfer of the dealership before the manufacturer's exercise of its right of first refusal to acquire the dealership. All of the following apply for purposes of this subdivision:

(i) The proposed transferee shall submit an itemized list of its expenses to the manufacturer not later than 60 days after the manufacturer exercises its right of first refusal to acquire the motor vehicle franchise. However, if requested

by the manufacturer, the proposed transferee must provide the list before the manufacturer exercises its right of first refusal.

(ii) The manufacturer must reimburse the proposed transferee for its reasonable expenses not later than 60 days after it receives the itemized list described in subparagraph (i).

(2) Except as provided in this section, a manufacturer that exercises its right of first refusal under this section and the new motor vehicle dealer are not liable to any person as a result of a manufacturer exercising its right of first refusal.

(3) A manufacturer that exercises a right of first refusal under this section may assign the lease or convey the real property of the new motor vehicle dealership.

(4) As used in this section:

(a) "Proposed transferee" means the person to which a new motor vehicle dealership would have been transferred, or was proposed to be transferred, if the manufacturer did not exercise a right of first refusal to acquire the dealership from a new motor vehicle dealer.

(b) "Reasonable expenses" includes the usual and customary legal and accounting fees charged for similar work, as well as expenses associated with the evaluation and investigation of any real property on which a new motor vehicle dealership is operated.

Sec. 15. (1) If a new motor vehicle dealer dies or becomes incapacitated, any designated family member of the dealer or executive manager of the dealership may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member or executive manager gives the manufacturer written notice of his or her intention to succeed to the dealership within 120 days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the existing dealer agreement, 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. A manufacturer may refuse to continue the existing dealer agreement with the designated family member or executive manager only for good cause.

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

(3) If a manufacturer believes that good cause exists for refusing to continue a dealer agreement under this section with a designated family member or executive manager described in subsection (1), the manufacturer may, within 75 days after receiving notice of the designated family member's or executive manager's intent to succeed the dealer in the ownership and operation of the dealership, or within 75 days after receiving the requested personal and financial information and completed application form, whichever is later if both occur, serve on the designated family member or executive manager notice of its refusal to approve the succession.

(4) A notice of refusal served by a manufacturer under subsection (3) shall state the specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect on a date specified in the notice that is at least 90 days after the date the notice is served.

(5) If a notice of refusal described in subsection (3) is not served within the 75-day period described in subsection (3), the dealer agreement shall continue in effect and is subject to termination only as otherwise permitted under this act.

(6) Subject to section 14(z), this section does not preclude a new motor vehicle dealer from designating any person as the dealer's successor by filing a written instrument with the manufacturer designating any person as the dealer's successor. A written instrument filed under this subsection shall determine the succession rights to the management, ownership, and operation of the dealership if, at the time of succession, the person designated in the written instrument meets the manufacturer's uniformly applied requirements and criteria to be a dealer.

Sec. 16. (1) As used in this section, "relocate" and "relocation" shall not include the relocation of a new motor vehicle dealer within 2 miles of its established place of business.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer in a relevant market area where the same line-make is represented, the manufacturer or distributor shall provide written notice of its intention to establish an additional dealer or to relocate an existing dealer in that relevant market area to each new motor vehicle dealer that represents that line-make in the relevant market area on the date the notice is provided.

(3) Within 30 days after receiving the notice provided for in subsection (2), or within 30 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine

whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. Once an action is filed, the manufacturer or distributor shall not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. A court shall give precedence to an action brought under this section over all other civil matters on the court's docket.

(4) This section does not apply to the reopening or replacement in a relevant market area of a closed dealership that has been closed within the preceding year, if the established place of business of the reopened or replacement dealer is within 2 miles of the established place of business of the closed dealership.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(a) Permanency of the investment.

(b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.

(c) Whether it is injurious or beneficial to the public welfare.

(d) Whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel.

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

Sec. 17. (1) A manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, recall service, and warranty service on its products. A manufacturer shall compensate a new motor vehicle dealer for recall or warranty service required of the dealer by the manufacturer. A manufacturer shall provide a new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service, and the time allowance for the performance of the work and service. A manufacturer shall also include in the schedule of compensation a reasonable time allowance for labor for diagnostic work and repair work, included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may submit a request for an additional time allowance for either diagnostic or repair time, that includes any information and documentation reasonably required by the manufacturer, and a manufacturer shall not unreasonably deny that request. The schedule of compensation shall include reasonable compensation for parts reimbursement and labor rates as determined under section 17a(1).

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

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

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

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

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

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

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

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

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

(6) A manufacturer may not deny a claim made under this section because of a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error, that does not call into question the legitimacy of the claim.

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

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

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

(10) A manufacturer may not charge a claim back to a new motor vehicle dealer after the claim is paid unless a representative of the manufacturer first meets in person or by video teleconference or telephone with an officer or employee of the dealer designated by the new motor vehicle dealer, or responds in writing to any dealer written request for information. All of the following apply if a meeting is held under this subsection:

(a) At the meeting, the manufacturer shall provide a detailed explanation, with supporting documentation, of the basis for each proposed chargeback of a claim to the dealer and a written statement containing the basis on which the claim or claims of the dealer were selected for audit or review by the manufacturer. However, the manufacturer is not required to disclose proprietary or confidential information about a customer or other dealer under this subdivision, and is not required to disclose any information if disclosure is prohibited by law.

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

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

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

Sec. 17a. (1) The principal factors in determining what constitutes reasonable compensation for parts reimbursement and labor rates for purposes of section 17(1) are as follows:

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

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

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

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

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

(c) A new motor vehicle dealer's retail rate percentage for parts is calculated by determining the dealer's total parts sales in the submitted repair orders and dividing that amount by the dealer's total cost for the purchase of those parts, subtracting 1 from that amount, and then multiplying by 100. The manufacturer must approve or disapprove the declared retail rate within 45 days after the date of submission by the dealer. The declared retail rate is effective beginning 30 days after approval by the manufacturer, unless the manufacturer disapproves and timely contests the dealer's declared rate. If a manufacturer fails to disapprove within 45 days following submission by the dealer, the declared retail rate is considered approved. A new motor vehicle dealer's retail rate for labor is calculated by determining

the dealer's total labor sales from the submitted repair orders and dividing that amount by the total number of hours that generated those sales. The manufacturer must approve or disapprove the declared retail rate within 45 days after the date the dealer submits the repair orders. The declared retail labor rate is effective beginning 30 days after approval by the manufacturer, unless the manufacturer disapproves and timely contests the dealer's declared rate.

(d) A manufacturer may contest a new motor vehicle dealer's declared retail markup rate for parts or retail labor rate not later than 45 days after submission and declaration of the retail markup rate for parts or retail labor rate by the dealer by reasonably substantiating that the rate is inaccurate, incomplete, or unreasonable in light of the factors described in subsection (1). In contesting a new motor vehicle dealer's declared rate, a manufacturer shall provide a written explanation of the reasons for disagreement with the declared rate. If the declared retail markup rate for parts or retail labor rate is contested, then the manufacturer shall propose an adjustment of the rate. If the manufacturer contests the dealer's declared parts or labor rate, the parties shall attempt to resolve the dispute through an internal dispute resolution procedure of the manufacturer, if available, provided that the dispute resolution procedure occurs within a reasonable amount of time that does not exceed 45 days after notification of disagreement with the dealer's declared rate.

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

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

- (a) Repairs for manufacturer special events, specials, or promotional discounts for retail customer repairs.
- (b) Parts sold at wholesale.
- (c) Routine maintenance not covered under any retail customer warranty, such as oil changes, fluids, filters, or belts not provided in the course of repairs.
- (d) Nuts, bolts, or fasteners or similar items that do not have an individual part number.
- (e) Tires, tire repair, tire rotation, or other tire services.
- (f) Vehicle reconditioning.
- (g) Installation or repair of accessories.
- (h) Repairs of vehicle body damage caused by a collision, a road hazard, the force of the elements, vandalism, or theft.
- (i) Vehicle emission or safety inspections required by law.
- (j) Manufacturer approved and reimbursed goodwill or policy repairs or replacements.
- (k) Repairs for which volume discounts have been negotiated with government agencies.

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

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

(6) A manufacturer shall not limit access to sales or service promotion events, incentives, programs, or activities sponsored by the manufacturer or limit allocation of vehicles or parts to a new motor vehicle dealer based solely on the new motor vehicle dealer's exercise of its rights under this section. This subsection does not prohibit a manufacturer from increasing the price of a motor vehicle or part in the normal course of business.

Sec. 17b. (1) A manufacturer shall compensate its new motor vehicle dealers a reasonable amount for all labor and parts required by the manufacturer to perform recall repairs.

(2) If parts or a remedy are not reasonably available to perform a recall service or repair on a used vehicle held for sale by a new motor vehicle dealer authorized to sell and service new vehicles of the same line-make within 30 days of the manufacturer issuing the initial notice of recall, and the manufacturer has issued a stop-sale order on the vehicle, the manufacturer shall compensate the dealer at a prorated rate of at least 1% of the value of the vehicle per month

beginning on the date that is 30 days after the date on which the stop-sale order was provided to the dealer, until the earlier of either of the following occurs:

(a) The date the recall or remedy parts are made available.

(b) The date the dealer sells, trades, or otherwise disposes of the affected used motor vehicle.

(3) For purposes of subsection (2), the value of a used motor vehicle is the average trade-in value for used vehicles as indicated in an independent third-party guide for the year, make, and model of the recalled vehicle.

(4) This section applies only to the following:

(a) A used motor vehicle that is subject to safety or emissions recalls under, and recalled in accordance with, federal law, if a stop-sale order has been issued and repair parts or remedy remains unavailable for 30 days or longer.

(b) A new motor vehicle dealer that holds an affected used vehicle for sale that meets both of the following:

(i) Is in inventory at the time the stop-sale order was issued, or was taken in the used vehicle inventory of the dealer as a consumer trade-in in connection with the purchase of a new motor vehicle from the dealer after the stop-sale order was issued.

(ii) Is of the same line-make as a new motor vehicle that the dealer is authorized by a manufacturer to sell or on which the dealer is authorized to perform recall repairs.

(5) A manufacturer shall not reduce the amount of compensation otherwise owed to a new motor vehicle dealer, whether through a chargeback, removal of the dealer from an incentive program, or reduction in amount owed under an incentive program, solely because the new motor vehicle dealer has submitted a claim for reimbursement under this section. This subsection does not apply to an action by a manufacturer that is applied uniformly among all new motor vehicle dealers of the same line-make in this state.

(6) All reimbursement claims made by new motor vehicle dealers under this section for recall remedies or repairs, or for compensation if a part or repair is not reasonably available and the vehicle is subject to a stop-sale order, are subject to the same limitations and requirements as a warranty reimbursement claim made under section 17. In the alternative, a manufacturer may compensate its new motor vehicle dealers under a national recall compensation program if the compensation under the program is equal to or greater than that provided under this section, or the manufacturer and dealer otherwise agree.

(7) A manufacturer may direct the manner and method the dealer must use to demonstrate the inventory status of an affected used motor vehicle to determine eligibility under this section, if that manner and method is not unduly burdensome and does not require information that is unduly burdensome to provide.

(8) This section does not require a manufacturer to provide total compensation to a new motor vehicle dealer that would exceed the total average trade-in value of the affected used motor vehicle as originally determined under subsection (3).

(9) Any remedy provided to a dealer under this section is exclusive and may not be combined with any other state or federal recall compensation remedy.

Sec. 19. (1) Notwithstanding the terms, provisions, or conditions of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its new motor vehicle dealers against any judgment for damages or settlement agreed to in writing by the manufacturer, including, but not limited to, court costs and reasonable attorney's fees of the new motor vehicle dealer arising solely out of the complaints, claims, or actions from defects that relate to the manufacture, assembly, or design of vehicles, parts, or accessories, or other functions by the manufacturer or distributor, that are beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, or any damages to merchandise occurring in transit to the dealer if the carrier is designated by the manufacturer or distributor. If a complaint, claim, or action contains independent allegations against the new motor vehicle dealer, the manufacturer shall pay only that portion of the costs, fees, and judgment or settlement that is directly related to the manufacture, assembly, or design of the vehicle, parts, or accessories or other functions of the manufacturer that are beyond the control of the dealer.

(2) A manufacturer must respond to a request for indemnification under this section within 30 days after the date the new motor vehicle dealer submits all documents necessary to support its request to the manufacturer.

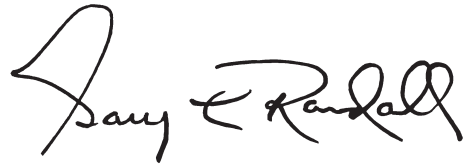
(3) A dealer does not have a right to indemnification or attorney fees under subsection (1) unless the dealer has given reasonable notice in writing of the complaint, claim, or action to the manufacturer or distributor.

Sec. 22a. (1) The 1998 amendments to this act that added this section apply to agreements in existence on December 30, 1998 and to agreements entered into or renewed after December 30, 1998.

(2) The amendments to this act made by the amendatory act that added this subsection apply to dealer agreements entered into or renewed, or existing dealer agreements that are materially and substantially amended, after the effective date of this subsection.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor