

MOTOR VEHICLE FRANCHISE ACT

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<http://www.house.mi.gov/hfa>

House Bill 6233 as introduced
Sponsor: Rep. Jason M. Sheppard
Committee: Government Operations
Complete to 9-22-20

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

SUMMARY:

House Bill 6233 would amend the Motor Vehicle Franchise Act, in part to put into law the terms of an agreement made between the state and the vehicle manufacturer Tesla, Inc, to settle a lawsuit that had challenged the application of Michigan law prohibiting direct vehicle sales by manufacturers. Under the bill, as long as the vehicle sale and title transfer did not take place in Michigan, Tesla could deliver new motor vehicles to Michigan residents, perform service and repair work through a facility its owns indirectly through a subsidiary, and operate a customer showroom that, among other things, facilitates the ordering and purchasing of its vehicles. The bill would also make other amendments related to the act's prohibition against direct vehicle sales by manufacturers.

Current law

Michigan law requires an indirect sales model for new car sales, where a manufacturer contracts with outside parties to establish franchises that then sell the cars to consumers. The Motor Vehicle Franchise Act governs the terms of these agreements and, among other things, specifically prohibits a manufacturer from doing any of the following:

- Selling a new motor vehicle directly to a retail customer other than through franchised dealers, unless the customer is a nonprofit organization or government agency. (However, a manufacturer may provide information to a consumer to market or facilitate the sale of new motor vehicles and may establish 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.)
- With listed exceptions, directly or indirectly owning, operating, or controlling a new motor vehicle dealer, including one engaged primarily in performing warranty repair services on motor vehicles under the manufacturer's warranty, or a used motor vehicle dealer.
- Owning a motor vehicle service and repair facility, except one for the repair of vehicles owned by the manufacturer.
- Authorizing a motor vehicle service and repair facility to perform motor vehicle warranty repairs and recall work, unless the work is any of the following:
 - Required for emergency service of a vehicle.
 - Performed at a service center owned or operated by a manufacturer on a vehicle owned by the manufacture.
 - Performed by employees of a fleet operator on its own vehicles.

Lawsuit and settlement

Tesla, Inc., a manufacturer of electric vehicles, eschews the franchise model mandated by Michigan law, opting instead for a direct sales model. In 2016, upon denial of its applications to operate a new vehicle dealership, operate a used vehicle dealership, and register a repair facility in Michigan, Tesla sued the state to challenge its ban on direct sales and service by a vehicle manufacturer.

In January 2020, after reaching a settlement, Tesla and the state of Michigan filed a joint stipulation to dismiss the lawsuit.¹ As described by the attorney general, “The stipulation acknowledges that Tesla may: operate under existing Michigan law; sell cars to Michigan customers as long as the sales contract indicates the sale took place in a state other than Michigan; and, indirectly own service and repair facilities in Michigan through a subsidiary, Tesla Michigan.”

The bill would add similar provisions to the act as a new section 17d, described below.

Section 17d

House Bill 6233 would add section 17d to the act, which would allow Tesla, Inc.² to do any of the following:

- Own a subsidiary that owns or operates one or more motor vehicle service and repair facilities in Michigan, as long as Tesla, Inc. does not directly own any of those facilities.
- Perform warranty, recall, service, or repair work at a subsidiary-owned facility described above, as long as the work is not performed at a facility that Tesla, Inc. directly owns.
- Deliver new motor vehicles to Michigan residents, either directly or through a subsidiary, using an independent carrier, or otherwise, and assist with the trade-in of a used motor vehicle, as long as the sale and passing of the title for any new motor vehicle sold by the manufacturer are transferred to the buyer outside of Michigan.
- Own or operate one or more facilities in Michigan that educate customers and facilitate transactions outside of Michigan, as long as the sale and passing of title for any transaction are transferred to the buyer outside of Michigan. Permissible activities at any of these facilities would include the following:
 - Conducting demonstration drives.
 - Discussing prices, service, financing, leasing, and trade-ins with potential customers.
 - Helping potential customers configure vehicles.
 - Facilitating the ordering and purchase of a motor vehicle.
 - Facilitating customer transaction paperwork for a sale of a motor vehicle.

The time and place of the sale and passing of the title would have to be determined in accordance with section 2401 of the Uniform Commercial Code.³

Section 17d would take effect October 1, 2020.

¹ https://www.michigan.gov/documents/ag/Joint_Stipulation_and_Motion_for_Entry_of_Dismissal_1-22-20_679161_7.pdf

² Identified in the bill as “a manufacturer that entered into a joint stipulation and motion for entry of dismissal on January 22, 2020, in *Tesla, Inc. v Jocelyn Benson, et al.*, United States District Court for the Western District of Michigan, case no. 1:2016-cv-01158, and has not sold a single new motor vehicle through any franchised new motor vehicle dealer in this state.”

³ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-440-2401.pdf>

Other provisions

House Bill 6233 would add a new definition for the terms “sell” and “selling” when used in the act. Under the bill, “sell” or “selling” as applied to a new motor vehicle would mean to engage in the business of buying, selling, trading, leasing, or exchanging, or offering, negotiating, or otherwise attempting to buy, sell, trade, lease, or exchange a new motor vehicle, or any interest in, or written instrument pertaining to, a new motor vehicle. “Sell” or “selling” would include, without being limited to, ordering, discussing financing, or offering test or demonstration drives for a new motor vehicle. The terms are used regarding new motor vehicles in sections 3, 5, 14, and 17b.

The bill would add language to specify that the provisions of section 17d are an exception to the applicability of section 14, which contains the provisions that prohibit manufacturers from engaging in certain activities.

The bill would also amend the provision that prohibits a manufacturer from owning a motor vehicle service and repair facility (except one servicing its own cars) to prohibit a manufacturer from directly or indirectly owning a motor vehicle service and repair facility (except one servicing its own cars).

Finally, the bill would provide that a manufacturer cannot charge a fee or surcharge for warranty parts reimbursement.

Applicability

House Bill 6233 stipulates that sections 17, 17a, and 17b of the act would apply to all manufacturers, dealer agreements entered into or renewed after the effective date of the bill, and existing dealer agreements that are in effect on the effective date of the bill.

Those sections respectively concern warranty service and repairs, compensation for parts reimbursement and labor rates, and compensation to perform recall repairs.

Sections 17 and 17a, but not section 17b, would be amended by the bill.

MCL 445.1566 et seq.

FISCAL IMPACT:

A fiscal analysis is in progress.

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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.