

1998 PUBLIC AND LOCAL ACTS

[No. 456]

(HB 4740)

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 2, 3, 5, 13, and 14 (MCL 445.1562, 445.1563, 445.1565, 445.1573, and 445.1574), section 2 as amended by 1983 PA 188, and by adding section 22a.

The People of the State of Michigan enact:

445.1562 Definitions; C, D. [M.S.A. 19.856(22)]

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

(2) "Dealer agreement" means the 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, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale or resale of new and unaltered motor vehicles and accessories for motor vehicles.

(3) "Designated family member" means the spouse, 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, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term shall mean only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

445.1563 Definitions; D to F. [M.S.A. 19.856(23)]

Sec. 3. (1) "Distributor" means any person, including an importer, resident or nonresident, who is engaged in the business pursuant to a dealer agreement, in whole or in part, of offering for sale, selling, or distributing new and unaltered motor vehicles to a new motor vehicle dealer, who maintains a factory representative for such purposes, resident or nonresident, or who controls any person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unaltered motor vehicles to a new motor vehicle dealer. Distributor does not include a person who 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 within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

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

(4) "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.

445.1565 Definitions; N to P. [M.S.A. 19.856(25)]

Sec. 5. (1) "New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(2) "New motor vehicle dealer" means a person, including a distributor, who holds a dealer agreement granted by a manufacturer, distributor, or importer for the sale or distribution of its motor vehicles, who is engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles and who has an established place of business in this state.

(3) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

(4) "Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.

445.1573 Requiring dealer to perform certain acts prohibited. [M.S.A. 19.856(33)]

Sec. 13. A manufacturer, importer, or distributor 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, or part or accessory of a new motor vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor.

(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 or distributor.

(c) Participate monetarily in any advertising campaign or contest, or 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 or distributor to or in favor of a consumer unless voluntarily agreed to by the dealer.

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer

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and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall 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 vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer.

(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable.

(h) Prospectively assent to a release, assignment, novation, waiver, or estoppel which 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 any controversy between a new motor vehicle dealer and a manufacturer, importer, or distributor to be referred 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 upon the new motor vehicle dealer unless the parties agree at the time of a controversy to refer a controversy to a court of the United States located outside this state or agree at the time of the arbitration to conduct arbitration either within or outside this state. Such a provision in a dealer agreement is void and unenforceable.

445.1574 Prohibited conduct by manufacturer, importer, or distributor. [M.S.A. 19.856(34)]

Sec. 14. (1) A manufacturer, importer, or distributor 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 modify an existing plan or system that causes the plan or system to be arbitrary or capricious.

(b) Fail or refuse to advise or disclose to any new motor vehicle dealer having a dealer agreement, upon written request therefore, the basis upon which new motor vehicles of the same line make are allocated or distributed to new motor vehicle dealers in the state and the basis upon which the current allocation or distribution is being made or will be made to that new motor vehicle dealer.

(c) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any new motor vehicle dealer having a dealer agreement for the retail sale of new motor vehicles sold or distributed by a manufacturer or distributor any such motor vehicles as are covered by such dealer agreement specifically publicly advertised in the state by the manufacturer or distributor to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be 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 or distributor has no control. If the manufacturer or distributor 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 vehicle, the manufacturer or distributor shall upon

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 during that model year in which the tool is required to be purchased.

(d) Increase prices of new motor vehicles which 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 prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of \$5.00 shall apply to all vehicles in the dealer's inventory which 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 shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to 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 and transporters.

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line make.

(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 or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent.

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

(h) Establish a dealership which would unfairly compete with a new motor vehicle dealer of the same line make operating under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions.

(i) 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 or distributor, 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 or distributor. If a manufacturer or distributor rejects a proposed change in the executive management, the manufacturer or distributor

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shall give written notice of its reasons to the dealer within 60 days after receiving written notice from the dealer of the proposed change and all related information reasonably requested by the manufacturer or distributor, or the change in executive management shall be considered approved.

(j) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state.

(k) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the 60 days shall be considered consent.

(l) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership.

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

445.1582a Existing agreements and agreements entered into or renewed after effective date. [M.S.A. 19.856(42a)]

Sec. 22a. The 1998 amendments to this act that added this section apply to agreements in existence on the effective date of this section and to agreements entered into or renewed after the effective date of this section.

Conditional effective date.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4738 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved December 30, 1998.

Filed with Secretary of State December 30, 1998.

Compiler's note: House Bill No. 4738, referred to in enacting section 1, was filed with the Secretary of State December 30, 1998, and became P.A. 1998, No. 455, Imd. Eff. Dec. 30, 1998.
