

# HOUSE BILL No. 6198

May 20, 2010, Introduced by Rep. Knollenberg and referred to the Committee on Regulatory Reform.

A bill 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 3, 5, and 6 (MCL 445.1563, 445.1565, and 445.1566), sections 3 and 5 as amended by 1998 PA 456 and section 6 as amended by 1983 PA 188, and by adding section 14a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1       Sec. 3. (1) "Distributor" means any person, including an  
2       importer, ~~resident or nonresident, who~~ **THAT IS LOCATED IN OR**  
3       **OUTSIDE OF THIS STATE AND** is engaged in the business ~~pursuant to a~~  
4       ~~dealer agreement, in whole or in part,~~ of offering for sale,

1 selling, or distributing new and unaltered motor vehicles to a new  
 2 motor vehicle dealer ~~, who~~ **UNDER A DEALER AGREEMENT, THAT** maintains  
 3 a factory representative ~~for such purposes, resident or~~  
 4 ~~nonresident,~~ **THAT IS LOCATED IN OR OUTSIDE OF THIS STATE FOR**  
 5 **PURPOSES OF CONDUCTING THAT BUSINESS,** or ~~who~~ **THAT** controls ~~any~~ **A**  
 6 person ~~, resident or nonresident, who in whole or in part~~ **THAT IS**  
 7 **LOCATED IN OR OUTSIDE OF THIS STATE AND** offers for sale, sells, or  
 8 distributes new and unaltered motor vehicles to a new motor vehicle  
 9 dealer. Distributor does not include a person ~~who~~ **THAT** alters or  
 10 converts motor vehicles for sale to a new motor vehicle dealer.

11 (2) "Established place of business" means a permanent,  
 12 enclosed commercial building located ~~within~~ **IN** this state **THAT IS**  
 13 easily accessible and open to the public at all reasonable times  
 14 and at which ~~the business of a new motor vehicle dealer~~ **MAY LEGALLY**  
 15 **CONDUCT BUSINESS,** including the display and repair of motor  
 16 vehicles, ~~may be lawfully carried on in accordance~~ **COMPLIANCE** with  
 17 the terms of all applicable buildings codes, zoning, and other  
 18 land-use regulatory ordinances.

19 (3) "Factory branch" means an office maintained by a  
 20 manufacturer or distributor for the purpose of selling or offering  
 21 ~~for sale~~ **TO SELL** vehicles to a distributor, wholesaler, or new  
 22 motor vehicle dealer ~~, or for directing or supervising in whole or~~  
 23 ~~in part~~ **ANY** factory or distributor representatives. The term  
 24 includes any sales promotion organization maintained by a  
 25 manufacturer or distributor ~~which~~ **THAT** is engaged in promoting the  
 26 sale of a particular make of new motor vehicles in this state to  
 27 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.

(5) **"FORMER DEALER" MEANS A NEW MOTOR VEHICLE DEALER THAT ENTERED INTO A DEALER AGREEMENT WITH A PREDECESSOR MANUFACTURER AND 1 OF THE FOLLOWING OCCURRED:**

(A) THE DEALER ENTERED INTO A TERMINATION AGREEMENT OR DEFERRED TERMINATION AGREEMENT WITH THE PREDECESSOR MANUFACTURER OR A SUCCESSOR MANUFACTURER RELATED TO THAT DEALER AGREEMENT.

(B) THE DEALER AGREEMENT WAS TERMINATED, CANCELED, NOT RENEWED, DISCONTINUED, REJECTED, NOT ASSUMED, OR OTHERWISE ENDED.

Sec. 5. (1) "New motor vehicle" means a motor vehicle ~~which~~ **THAT** is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and ~~on~~ **FOR** which the **NEW MOTOR VEHICLE DEALER HAS NOT ISSUED AN** original title. ~~has not been issued from the new motor vehicle dealer.~~

(2) "New motor vehicle dealer" means a person, including a distributor, ~~who~~ **THAT** 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~~ **AN INDIVIDUAL,** partnership, corporation, **LIMITED LIABILITY COMPANY,** association,

1 trust, estate, or other legal entity.

2 (4) "PREDECESSOR MANUFACTURER" MEANS A MANUFACTURER THAT  
3 SELLS, CONVEYS, OR OTHERWISE TRANSFERS ALL OR PART OF ITS BUSINESS  
4 TO A SUCCESSOR MANUFACTURER.

5 (5) ~~(4)~~—"Proposed new motor vehicle dealer" means a person who  
6 has an application pending for a new dealer agreement with a  
7 manufacturer or distributor. Proposed motor vehicle dealer does not  
8 include a person whose dealer agreement is being renewed or  
9 continued.

10 Sec. 6. (1) "Relevant market area" means 1 OF THE FOLLOWING:

11 ~~(a) For a proposed new motor vehicle dealer or a new motor~~  
12 ~~vehicle dealer who plans to relocate his or her place of business~~  
13 ~~in a county having a population which is greater than 25,000, the~~  
14 ~~area within a radius of 6 miles of the intended site of the~~  
15 ~~proposed or relocated dealer. The 6-mile distance shall be~~ IN A  
16 COUNTY THAT HAS A POPULATION OF MORE THAN 25,000, THE AREA WITHIN A  
17 RADIUS OF 6 MILES OF THE SITE OF THE INTENDED PLACE OF BUSINESS OF  
18 A PROPOSED NEW VEHICLE DEALER OR THE INTENDED PLACE OF BUSINESS OF  
19 A NEW VEHICLE DEALER THAT PLANS TO RELOCATE ITS PLACE OF BUSINESS.  
20 FOR PURPOSES OF THIS SECTION, THE 6-MILE DISTANCE IS determined by  
21 measuring the distance between the nearest surveyed boundary of the  
22 AN existing new motor vehicle dealer's principal place of business  
23 and the nearest surveyed boundary line of the proposed or relocated  
24 new motor vehicle dealer's principal place of business.

25 (b) ~~For a proposed new motor vehicle dealer or a new motor~~  
26 ~~vehicle dealer who plans to relocate his or her place of business~~  
27 ~~in a county having a population which is not greater than 25,000,~~

~~the area within a radius of 10 miles of the intended site of the proposed or relocated dealer, or the county line, whichever is closer to the intended site. The 10-mile distance shall be~~ IN A COUNTY THAT HAS A POPULATION OF 25,000 OR FEWER, THE AREA WITHIN A RADIUS OF 10 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 10-MILE DISTANCE IS determined by measuring the distance between the nearest surveyed boundary line of ~~the~~ 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) "SUCCESSOR MANUFACTURER" MEANS A MANUFACTURER THAT ACQUIRES, SUCCEEDS TO, OR ASSUMES ANY PART OF THE BUSINESS OF ANOTHER MANUFACTURER ON OR AFTER JANUARY 1, 2009, 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

1 BUSINESS THROUGH A PARTICULAR DISTRIBUTOR.

2 SEC. 14A. FOR A PERIOD OF 10 YEARS AFTER THE DATE THAT A  
3 SUCCESSOR MANUFACTURER ACQUIRES, SUCCEEDS TO, OR ASSUMES ANY PART  
4 OF THE BUSINESS OF A PREDECESSOR MANUFACTURER, THE SUCCESSOR  
5 MANUFACTURER SHALL NOT ENTER INTO A DEALER AGREEMENT IN THE  
6 RELEVANT MARKET AREA OF AN ESTABLISHED PLACE OF BUSINESS OF A  
7 FORMER DEALER, OR PERMIT THE RELOCATION OF ANY EXISTING DEALER INTO  
8 THAT RELEVANT MARKET AREA, FOR THE SAME LINE MAKE AS A LINE MAKE OF  
9 THE PREDECESSOR MANUFACTURER THAT WAS INCLUDED IN THE DEALER  
10 AGREEMENT OF THE FORMER DEALER, UNLESS 1 OF THE FOLLOWING IS MET:

11 (A) THE SUCCESSOR MANUFACTURER FIRST OFFERS A DEALER AGREEMENT  
12 FOR THAT LINE MAKE IN THE RELEVANT MARKET AREA TO THE FORMER  
13 DEALER, OR THE DESIGNATED FAMILY MEMBER DESCRIBED IN SECTION 15 IF  
14 THE FORMER DEALER IS DECEASED OR INCAPACITATED, WITHOUT COST TO THE  
15 FORMER DEALER.

16 (B) THE SUCCESSOR MANUFACTURER PAYS THE FORMER DEALER, OR THE  
17 DESIGNATED FAMILY MEMBER DESCRIBED IN SECTION 15 IF THE FORMER  
18 DEALER IS DECEASED OR INCAPACITATED, FAIR AND REASONABLE  
19 COMPENSATION VALUE OF THE DEALERSHIP OF THE FORMER DEALER FOR THAT  
20 LINE MAKE, CALCULATED IN THE SAME MANNER PRESCRIBED IN SECTION 11  
21 FOR A TERMINATION, CANCELLATION, NONRENEWAL, OR DISCONTINUANCE OF A  
22 DEALER AGREEMENT.

23 (C) THE SUCCESSOR MANUFACTURER ESTABLISHES, IN THE CIRCUIT  
24 COURT FOR THE COUNTY IN WHICH THE RELEVANT MARKET AREA IS LOCATED,  
25 THAT THE FORMER DEALER, OR THE DESIGNATED FAMILY MEMBER DESCRIBED  
26 IN SECTION 15 IF THE FORMER DEALER IS DECEASED OR INCAPACITATED, IS  
27 UNFIT TO OWN OR MANAGE A DEALERSHIP FOR THAT LINE MAKE IN THE

1 RELEVANT MARKET AREA BECAUSE THE FORMER DEALER OR DESIGNATED FAMILY  
2 MEMBER LACKS SUFFICIENT TRAINING, EXPERIENCE, OR FINANCIAL CAPITAL;  
3 BECAUSE THE FORMER DEALER OR DESIGNATED FAMILY MEMBER IS  
4 INCOMPETENT OR OF POOR CHARACTER; OR BECAUSE OF THE FORMER DEALER'S  
5 POOR PERFORMANCE UNDER THE DEALER AGREEMENT WITH THE PREDECESSOR  
6 MANUFACTURER.