

Legislative Analysis



MOTOR VEHICLE FRANCHISE ACT

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House Bill 6498 as introduced
Sponsor: Rep. Brandt Iden
Committee: Regulatory Reform
Complete to 12-4-18

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

SUMMARY:

The bill would name Public Act 118 of 1981, which regulates motor vehicle manufacturers, distributors, wholesalers, and dealers, and the relationships among those entities, the “Motor Vehicle Franchise Act.” The bill would add definitions for several new terms, including “line-make,” “local market conditions,” and “stop-sale order,” and revise definitions of other terms currently in the act.

The bill would add many new provisions, and revise others, that would primarily impact the relationships between dealers, manufacturers, distributors, and wholesalers. The proposed changes would apply to agreements in existence on the bill’s effective date and to agreements entered into or renewed or amended after that date. The bill would take effect 90 days after being enacted.

Proposed changes include the following significant topics:

- Revise notification requirements and other requirements that must be met for a manufacturer or distributor to cancel, terminate, fail to renew, or refuse to continue any dealer agreement with a new motor vehicle dealer (hereinafter, “dealer”) for good cause, to include consideration of the effects of local market conditions beyond the dealer’s reasonable control and to allow the dealer to present evidence regarding those market conditions.
- Include in the list of circumstances that, taken alone, do not constitute good cause for ending a dealer agreement the failure of the new motor vehicle dealer to achieve any performance standard or criteria that do not consider the effect of local market conditions or that are unreasonable, inequitable, or discriminatory.
- Include in the list of things that a manufacturer is prohibited from requiring of a dealer compliance with any new or revised facilities requirements (e.g., changes to the facilities, signs, or image elements) for a period of 10 years after the date of completion of a construction project by the dealer in response to a previous program or policy by the manufacturer if certain conditions were met. The provision would apply also to a successor dealer.
- Include in what a manufacturer must provide a dealer regarding a performance standard or program for measuring dealer performance an explanation as to how the manufacturer applies a performance standard or program to a dealer’s

performance, including relevant documents, data, and other information and require copies of the information to be provided to a dealer upon request. A manufacturer or dealer could request a meeting with the other party to present, explain, or discuss this information.

- Prohibit a manufacturer from prohibiting, preventing, or attempting to prevent a dealer from transferring a dealership to a spouse or child or naming a spouse or child as dealership successor unless the manufacturer can—having the burden of proof—show that the successor is not of good moral character, has a felony conviction, or is otherwise disqualified from holding a dealer license under any applicable Michigan law.
- Prohibit a manufacturer from making a change in a dealer agreement without a written notice sent by certified mail at least 60 days before effective date of the change.
- Prohibit a manufacturer from offering to sell or selling a manufacturer-sponsored extended maintenance plan, or requiring a dealer to sell, assign, or transfer a retail installment sales contract or lease obtained by the dealer in connection with the sale or lease of a new vehicle manufactured by the manufacturer, to a specified finance company, leasing company, or any other specified person.
- Require a manufacturer to provide a person seeking to purchase or accept a transfer or exchange of a dealership with all forms it generally utilizes in connection with the sale, transfer, or exchange of a dealership. Failure to do so within seven days after receiving a bona fide contract for sale, or to respond to a request for consent to a sale, transfer, or exchange within 60 days as required by the Act, would be considered consent to the sale, transfer, or exchange of the dealership on the part of the manufacturer.
- Add a new section to the Act to require a manufacturer to do certain things before exercising a right of first refusal or other right to acquire a dealership from a dealer. This would include notifying the dealer in writing it intends to exercise the right to acquire the dealership within 60 days of receiving notice of the sale, transfer, or exchange of the dealership; paying the same or greater consideration the dealer has contracted for the proposed sale, transfer, or exchange; assuming all duties, obligations, and liabilities concerning the manufacturer's line—makes the proposed transferee was to assume; and reimbursing the proposed transferee for reasonable expenses incurred in evaluating, investigating, and negotiating the transfer of the dealership. The manufacturer and the dealer would not be liable to any person for the manufacturer's exercising its right of first refusal. The manufacturer could assign the lease or convey the real property of the dealership.
- No longer require a designated family member of a deceased or incapacitated dealer or executive manager of the dealership who is authorized under the Act to succeed the dealer in the ownership or operation of the dealership under the existing dealer

agreement to meet the criteria currently generally applied by the manufacturer in qualifying dealers.

- Prohibit a manufacturer from using a dealer's failure to meet a performance standard or criterion as a basis to prevent or deny a dealer the opportunity to engage in succession planning or to name a successor who is or had recently been actively involved in the dealership's day-to-day operations and who has received applicable business or dealer training.
- Delete a provision pertaining to a schedule of compensation for warranty service and replace it with a new section that lists the principal factors in determining what would constitute reasonable compensation for parts reimbursement and labor rates for recall or warranty service required of the dealer by the manufacturer. Factors would include the retail price charged for parts by other similar dealers in a comparable geographic area offering the same line-make of vehicles and the prevailing hourly labor rates paid by the manufacturer and the prevailing wage rates paid to other dealers in the community for similar repairs, work, or service or charged by others in a comparable geographic area. In addition, the bill would specify in great detail criteria for compensation related to each of those two principal factors and specify the type of work that would not be considered when calculating the retail rate customarily charged by a dealer for parts and labor under this new section.
- Add a new section requiring a manufacturer to compensate its dealers a reasonable amount for all labor and parts required to perform recall repairs on used vehicles held for sale by a dealer under certain circumstances.
- Require a manufacturer to respond within 21 days after receiving a request and supporting documents from a dealer for indemnification under a section pertaining to liability for claims, complaints, and actions arising from defects relating to the manufacture of the vehicle.

FISCAL IMPACT:

House Bill 6498 would not have a fiscal impact on any unit of state or local government.

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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.