

**SUBSTITUTE FOR
HOUSE BILL NO. 6498**

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 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:

1 Sec. 1. (1) **THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE**
2 **"MOTOR VEHICLE FRANCHISE ACT"**.

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

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

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

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

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

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

25 (3) "Dealer agreement" means an agreement or contract in

1 writing between a distributor and a new motor vehicle dealer,
2 between a manufacturer and a distributor or a new motor vehicle
3 dealer, or between an importer and a distributor or a new motor
4 vehicle dealer, that purports to establish the legal rights and
5 obligations of the parties to the agreement or contract and under
6 which the dealer purchases and resells new motor vehicles and
7 conducts service operations. The term includes the sales and
8 service agreement, regardless of the terminology used to describe
9 that agreement, and any addenda to the dealer agreement, including
10 all schedules, attachments, exhibits, and agreements incorporated
11 by reference into the dealer agreement.

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

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

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

27 (c) If a new motor vehicle dealer becomes incapacitated and

1 has not designated a successor under section 15(6), the person
2 appointed by the court as the legal representative of the dealer.

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

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

22 (3) "Executive manager" means ~~an~~ **ANY OF THE FOLLOWING:**

23 **(A) AN** individual **WHO IS** employed by a new motor vehicle
24 dealer in an executive capacity and who has a written employment
25 agreement with the dealer that includes a right for the executive
26 manager to purchase a controlling interest in the dealership at a
27 future time or on the death or incapacity of the dealer.

1 **(B) AN INDIVIDUAL WHO IS DESIGNATED BY THE NEW MOTOR VEHICLE**
2 **DEALER, IN AN ADDENDUM TO THE DEALER AGREEMENT, AS HAVING AUTHORITY**
3 **AND RESPONSIBILITY TO OPERATE THE DEALERSHIP ON A DAY-TO-DAY BASIS.**

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

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

17 Sec. 4. (1) "Good faith" means that term as defined in section
18 ~~2103-1201~~ of the uniform commercial code, 1962 PA 174, MCL
19 ~~440.2103-440.1201~~.

20 **(2) "GOOD MORAL CHARACTER" MEANS GOOD MORAL CHARACTER AS**
21 **DEFINED IN AND DETERMINED UNDER 1974 PA 381, MCL 338.41 TO 338.47.**

22 **(3) "LINE-MAKE" MEANS A COLLECTION OF MODELS, A SERIES, OR A**
23 **GROUP OF MOTOR VEHICLES MANUFACTURED BY OR FOR A PARTICULAR**
24 **MANUFACTURER, DISTRIBUTOR, OR IMPORTER THAT ARE OFFERED FOR SALE,**
25 **LEASE, OR DISTRIBUTION UNDER A COMMON BRAND NAME OR MARK. ALL OF**
26 **THE FOLLOWING APPLY TO THE TERM "LINE-MAKE":**

27 **(A) MULTIPLE BRAND NAMES OR MARKS MAY CONSTITUTE A SINGLE**

1 LINE-MAKE, BUT ONLY IF THEY ARE INCLUDED IN A COMMON DEALER
2 AGREEMENT AND THE MANUFACTURER, DISTRIBUTOR, OR IMPORTER OFFERS ALL
3 OF THE VEHICLES THAT BEAR THE MULTIPLE NAMES OR MARKS TO ITS
4 AUTHORIZED DEALERS TOGETHER, AND NOT SEPARATELY.

5 (B) MOTOR VEHICLES THAT SHARE A COMMON BRAND NAME OR MARK MAY
6 CONSTITUTE SEPARATE LINE-MAKES IF THOSE VEHICLES ARE OF DIFFERENT
7 VEHICLE TYPES OR ARE INTENDED FOR DIFFERENT TYPES OF USE, AND
8 EITHER OF THE FOLLOWING APPLIES:

9 (i) THE MANUFACTURER HAS EXPRESSLY DEFINED OR COVERED THE
10 SUBJECT LINE-MAKES OF VEHICLES AS SEPARATE AND DISTINCT LINE-MAKES
11 IN THE APPLICABLE DEALER AGREEMENTS.

12 (ii) THE MANUFACTURER HAS CONSISTENTLY CHARACTERIZED THE
13 SUBJECT VEHICLES AS CONSTITUTING SEPARATE AND DISTINCT LINE-MAKES
14 TO ITS DEALER NETWORK.

15 (4) "LOCAL MARKET CONDITIONS" MEANS CERTAIN RELEVANT AND
16 MATERIAL CONDITIONS, CRITERIA, DATA, AND FACTS, BEYOND THE CONTROL
17 OR INFLUENCE OF A NEW MOTOR VEHICLE DEALER, THAT HAVE A MATERIAL
18 IMPACT ON THE NEW MOTOR VEHICLE DEALER'S SALES PERFORMANCE IN THE
19 ASSIGNED MARKET AREA IN WHICH THE NEW MOTOR VEHICLE DEALER OFFERS
20 VEHICLES FOR SALE OR LEASE. THE TERM MAY INCLUDE, BUT IS NOT
21 LIMITED TO, ANY OF THE FOLLOWING:

22 (A) DEMOGRAPHICS IN A NEW MOTOR VEHICLE DEALER'S MARKET AREA.

23 (B) GEOGRAPHICAL AND MARKET CHARACTERISTICS IN A NEW MOTOR
24 VEHICLE DEALER'S MARKET AREA.

25 (C) LOCAL ECONOMIC CIRCUMSTANCES.

26 (D) THE PREFERENCES OF MOTOR VEHICLE PURCHASERS OR LESSEES.

27 (E) CUSTOMER DRIVE DISTANCE FROM A NEW MOTOR VEHICLE DEALER.

1 (5) ~~(2)~~—"Manufacturer" means a person that manufactures or
2 assembles new motor vehicles or a distributor, factory branch, or
3 factory representative.

4 (6) ~~(3)~~—"Motor vehicle" means that term as defined in section
5 33 of the Michigan vehicle code, 1949 PA 300, MCL 257.33, but does
6 not include a bus, a tractor, or farm equipment.

7 (7) ~~(4)~~—"Motor vehicle service and repair facility" means a
8 motor vehicle repair facility, as defined in section 2 of the motor
9 vehicle service and repair act, 1974 PA 300, MCL 257.1302. The term
10 does not include a motor vehicle dealer performing maintenance,
11 diagnosis, vehicle body work, repairs, or other service or repair
12 work on motor vehicles under the terms of a dealer agreement.

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

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

24 (b) In a county that has a population of 150,000 or fewer, the
25 area within a radius of 15 miles of the site of the intended place
26 of business of a proposed new vehicle dealer or the intended place
27 of business of a new vehicle dealer that plans to relocate its

1 place of business. For purposes of this section, the 15-mile
2 distance is determined by measuring the distance between the
3 nearest surveyed boundary line of an existing new motor vehicle
4 dealer's principal place of business and the nearest surveyed
5 boundary line of the proposed or relocated new motor vehicle
6 dealer's principal place of business.

7 **(2) "STOP-SALE ORDER" MEANS A NOTIFICATION ISSUED BY A**
8 **MANUFACTURER TO ITS FRANCHISED NEW MOTOR VEHICLE DEALERS STATING**
9 **THAT CERTAIN USED VEHICLES IN INVENTORY SHALL NOT BE DRIVEN, SOLD,**
10 **OR LEASED, AT EITHER RETAIL OR WHOLESALE, DUE TO A FEDERAL SAFETY**
11 **RECALL OR MANUFACTURER ISSUED RECALL FOR A DEFECT OR A**
12 **NONCOMPLIANCE, OR A FEDERAL EMISSIONS RECALL.**

13 **(3) ~~(2)~~**"Successor manufacturer" means a manufacturer that
14 acquires, succeeds to, or assumes any part of the business of
15 another manufacturer as the result of any of the following:

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

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

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

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

1 (4) ~~(3)~~—"Used motor vehicle" means a motor vehicle that is not
2 a new motor vehicle.

3 (5) ~~(4)~~—"Used motor vehicle dealer" means a person that is
4 engaged in the business of purchasing, selling, exchanging, or
5 dealing in used motor vehicles and that has an established place of
6 business in this state at which it conducts that business. The term
7 does not include a new motor vehicle dealer purchasing, selling,
8 exchanging, or dealing in used motor vehicles as part of its
9 business of purchasing, selling, exchanging, or dealing in new
10 motor vehicles.

11 Sec. 7. (1) Notwithstanding any agreement, a manufacturer or
12 distributor shall not cancel, terminate, fail to renew, or refuse
13 to continue any dealer agreement with a new motor vehicle dealer
14 unless the manufacturer or distributor ~~has complied with~~ **MEETS** all
15 of the following:

16 (a) ~~Satisfied~~ **HAS SATISFIED** the notice requirement of section
17 10.

18 (b) ~~Acted~~ **HAS ACTED** in good faith.

19 (c) Has good cause for the cancellation, termination,
20 nonrenewal, or discontinuance.

21 (2) Notwithstanding any agreement, good cause ~~shall exist~~
22 **EXISTS** for the purposes of a termination, cancellation, nonrenewal,
23 or discontinuance under subsection (1)(c) when both of the
24 following occur:

25 (a) ~~there~~ **THERE** is a failure by the new motor vehicle dealer
26 to comply with a provision of the dealer agreement and the
27 provision is both reasonable and of material significance to the

1 relationship between the manufacturer or distributor and the new
2 motor vehicle dealer. and

3 ~~(b) the manufacturer or distributor first acquired actual or~~
4 ~~constructive knowledge of the failure not more than 2 years prior~~
5 ~~to the date on which notification was given pursuant to section~~
6 **10. UNLESS OTHERWISE AGREED OR IF THE DEALER IS PARTICIPATING IN A**
7 **PERFORMANCE IMPROVEMENT PLAN OR PROGRAM, THE MANUFACTURER OR**
8 **DISTRIBUTOR PROVIDED THE REQUIRED NOTIFICATION UNDER SECTION 10 NOT**
9 **MORE THAN 2 YEARS AFTER THE DATE ON WHICH THE MANUFACTURER FIRST**
10 **ACQUIRED ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE FAILURE.**

11 (3) If the failure ~~by the~~ **OF A** new motor vehicle dealer to
12 comply with a provision of the dealer agreement relates to the
13 performance of the new motor vehicle dealer in sales or service,
14 good cause ~~shall exist~~ **EXISTS** for the purposes of a termination,
15 cancellation, nonrenewal, or discontinuance under subsection (1)
16 when the new motor vehicle dealer fails to effectively carry out
17 the performance provisions of the dealer agreement if all of the
18 following have occurred:

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

21 (b) The notification stated that the notice of failure of
22 performance was provided ~~pursuant to~~ **UNDER** this act **AND, IF**
23 **REQUESTED IN WRITING BY THE DEALER, THE MANUFACTURER PROVIDED**
24 **WRITTEN INFORMATION INDICATING THE METHODOLOGY AND DATA THE**
25 **MANUFACTURER OR DISTRIBUTOR USED TO MEASURE THE NEW MOTOR VEHICLE**
26 **DEALER'S PERFORMANCE. HOWEVER, THIS SUBDIVISION DOES NOT REQUIRE**
27 **THE MANUFACTURER TO DISCLOSE ANY PROPRIETARY OR CONFIDENTIAL**

1 INFORMATION OR OTHER INFORMATION IF DISCLOSURE IS PROHIBITED BY
2 LAW.

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

6 (d) The failure continued for more than 180 days after the
7 date notification was given pursuant to ~~UNDER~~ subdivision (a).

8 (E) THE NEW MOTOR VEHICLE DEALER WAS AFFORDED A REASONABLE
9 OPPORTUNITY TO PRESENT EVIDENCE TO THE MANUFACTURER OR DISTRIBUTOR
10 DEMONSTRATING THE EFFECT OF LOCAL MARKET CONDITIONS THAT MATERIALLY
11 AND ADVERSELY AFFECTED THE DEALER'S PERFORMANCE.

12 (F) IF THE MANUFACTURER USED A SURVEY OR INDEX TO MEASURE THE
13 PERFORMANCE OF A NEW MOTOR VEHICLE DEALER, THE SURVEY OR INDEX WAS
14 BASED ON A REASONABLE SAMPLING OF THE MEASURED PERFORMANCE
15 CRITERIA.

16 (4) BEFORE A FINAL DETERMINATION BY A MANUFACTURER OR
17 DISTRIBUTOR THAT A NEW MOTOR VEHICLE DEALER HAS FAILED TO ACHIEVE
18 ANY PERFORMANCE CRITERIA THAT ARE THE BASIS TO CANCEL, TERMINATE,
19 FAIL TO RENEW, OR REFUSE TO CONTINUE ANY DEALER AGREEMENT UNDER
20 THIS SECTION, THE MANUFACTURER OR DISTRIBUTOR MUST PROVIDE THE NEW
21 MOTOR VEHICLE DEALER AN OPPORTUNITY TO PRESENT, IN WRITING,
22 EVIDENCE THAT DEMONSTRATES THE EFFECT OF LOCAL MARKET CONDITIONS
23 THAT MATERIALLY AND ADVERSELY AFFECTED THE DEALER'S PERFORMANCE.

24 (5) IF A MANUFACTURER MAKES A FINAL DECISION TO TERMINATE,
25 CANCEL, NONRENEW, OR DISCONTINUE A DEALER AGREEMENT WITHOUT
26 COMPLYING WITH SUBSECTION (3) (B) OR (E), OR DOES NOT IN GOOD FAITH
27 EVALUATE THE EFFECT OF THE LOCAL MARKET CONDITIONS PRESENTED BY THE

1 **DEALER IN WRITING, GOOD CAUSE DOES NOT EXIST FOR PURPOSES OF**
2 **TERMINATING, CANCELING, NONRENEWING, OR DISCONTINUING A DEALER**
3 **AGREEMENT.**

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

8 (a) A change in ownership of the new motor vehicle dealer's
9 dealership. This subdivision does not authorize any change in
10 ownership ~~which~~ **THAT** would have the effect of a sale or an
11 assignment of the dealer agreement or a change in the principal
12 management of the dealership without the manufacturer's or
13 distributor's prior written consent.

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

18 (c) The fact that the new motor vehicle dealer owns, has an
19 investment in, participates in the management of, or holds a dealer
20 agreement for the sale of another make or line of new motor
21 vehicles, or that the new motor vehicle dealer has established
22 another make or line of new motor vehicles in the same dealership
23 facilities as those of the manufacturer or distributor, provided
24 that the new motor vehicle dealer maintains a reasonable line of
25 credit for each make or line of new motor vehicles, and that the
26 new motor vehicle dealer remains in substantial compliance with the
27 terms and conditions of the dealer agreement and with the

1 reasonable facilities' requirements of the manufacturer or
2 distributor.

3 (d) The fact that the new motor vehicle dealer sells or
4 transfers ownership of the dealership or sells or transfers capital
5 stock in the dealership to the new motor vehicle dealer's spouse,
6 son, or daughter. ~~, provided that the~~ **HOWEVER, A** sale or transfer
7 ~~shall~~ **DESCRIBED IN THIS SUBDIVISION DOES** not have the effect of a
8 sale or an assignment of the dealer agreement or a change in the
9 principal management of the dealership without the manufacturer's
10 or distributor's prior written consent.

11 **(E) FOR PURPOSES OF THIS SECTION, THE FAILURE OF THE NEW MOTOR**
12 **VEHICLE DEALER TO ACHIEVE ANY PERFORMANCE STANDARD OR CRITERIA THAT**
13 **ARE UNREASONABLE, INEQUITABLE, OR DISCRIMINATORY.**

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

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

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

27 (c) Participate monetarily in any advertising campaign or

1 contest, purchase any promotional materials, display devices, or
2 display decorations or materials, or pay or assume directly in
3 connection with the sale of a new motor vehicle any part of the
4 cost of a refund, rebate, or discount made by or lawfully imposed
5 by the manufacturer to or in favor of a consumer, unless
6 voluntarily agreed to by the dealer.

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

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

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

22 (i) At a location different from the location used by the
23 dealer for the sale or service of new motor vehicles or related
24 products of the manufacturer, if the dealer maintains a reasonable
25 line of credit for each make or line of vehicle, remains in
26 compliance with reasonable facilities requirements, remains in
27 substantial compliance with capital requirements, and makes no

1 change in the principal management of the dealer.

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

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

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

23 (h) Prospectively assent to a release, assignment, novation,
24 waiver, or estoppel that would relieve any person from liability
25 imposed by this act; require that any dealer agreement be governed
26 by the laws of a state other than this state; or require referral
27 of any controversy between a new motor vehicle dealer and a

1 manufacturer to a person other than the duly constituted courts of
2 this state, or of the United States located in this state, if the
3 referral would be binding on the new motor vehicle dealer. This
4 subdivision does not apply to an agreement between the parties,
5 made at the time of a controversy, to refer the controversy to a
6 court of the United States located outside this state or agree at
7 the time of an arbitration to conduct the arbitration either in or
8 outside of this state. A provision in a dealer agreement that
9 violates this subdivision is void and unenforceable.

10 (I) CONSTRUCT OR SUBSTANTIALLY ALTER A FACILITY OR PREMISES IF
11 THE SAME ITEM OR DESIGN COMPONENT, CONSISTING OF INTERIOR OR
12 EXTERIOR ELEMENTS OF THE SALES, SERVICE, ADMINISTRATIVE, OR PARTS
13 COMPONENTS, WAS CONSTRUCTED OR SUBSTANTIALLY ALTERED WITHIN THE
14 PREVIOUS 10 YEARS AND THAT CONSTRUCTION OR ALTERATION WAS REQUIRED
15 AND APPROVED BY THE MANUFACTURER OR DISTRIBUTOR.

16 (J) SUBJECT TO SUBSECTION (3), REQUIRE A NEW MOTOR VEHICLE
17 DEALER TO PURCHASE GOODS OR SERVICES TO MAKE IMPROVEMENTS TO THE
18 DEALER'S FACILITIES FROM A VENDOR THAT IS SELECTED, IDENTIFIED, OR
19 DESIGNATED BY THE MANUFACTURER OR AN AFFILIATE OF THE MANUFACTURER,
20 UNLESS THE DEALER IS ALLOWED TO OBTAIN THE GOODS OR SERVICES FROM A
21 VENDOR CHOSEN BY THE DEALER IF ALL OF THE FOLLOWING ARE MET:

22 (i) THE GOODS OR SERVICES OFFERED BY THE VENDOR CHOSEN BY THE
23 DEALER ARE OF THE SAME MATERIAL, QUALITY, AND OVERALL DESIGN.

24 (ii) THE VENDOR CHOSEN BY THE DEALER IS APPROVED BY THE
25 MANUFACTURER. A MANUFACTURER SHALL NOT UNREASONABLY WITHHOLD ITS
26 CONSENT FOR PURPOSES OF THIS SUBPARAGRAPH.

27 (iii) THE MANUFACTURER IS NOT PROVIDING SUBSTANTIAL

House Bill No. 6498 as amended December 13, 2018

1 REIMBURSEMENT OR COMPENSATION TO THE DEALER FOR THE GOODS OR
2 SERVICES.

3 (K) SUBJECT TO SUBSECTION (3), REQUIRE A NEW MOTOR VEHICLE
4 DEALER TO LEASE SIGNS, EXCEPT FOR SIGNS THAT CONTAIN THE
5 MANUFACTURER'S INTELLECTUAL PROPERTY OR FREE-STANDING SIGNS THAT
6 ARE NOT DIRECTLY ATTACHED TO A BUILDING, OR OTHER MANUFACTURER
7 IMAGE OR DESIGN ELEMENTS OR TRADE DRESS, FROM A VENDOR SELECTED,
8 IDENTIFIED, OR DESIGNATED BY THE MANUFACTURER, UNLESS THE DEALER IS
9 ALLOWED TO PURCHASE THE SIGNS OR OTHER IMAGE OR DESIGN ELEMENTS OR
10 TRADE DRESS FROM A VENDOR CHOSEN BY THE DEALER IF ALL OF THE
11 FOLLOWING ARE MET:

12 (i) THE SIGNS OFFERED BY THE VENDOR CHOSEN BY THE DEALER ARE
13 OF THE SAME MATERIAL, QUALITY, AND OVERALL DESIGN.

14 (ii) THE SIGNS ARE APPROVED BY THE MANUFACTURER. A
15 MANUFACTURER SHALL NOT UNREASONABLY WITHHOLD ITS CONSENT FOR
16 PURPOSES OF THIS SUBPARAGRAPH.

17 (l) EXCEPT AS REQUIRED BY THE MANUFACTURER FOR WARRANTY
18 REPAIRS, RECALL REPAIRS, OR OTHER SERVICES OR PROGRAMS PAID FOR BY
19 THE MANUFACTURER, OR UNLESS OTHERWISE AGREED, REQUIRE A NEW MOTOR
20 VEHICLE DEALER TO PURCHASE FLUIDS OR LUBRICANTS FROM A PARTICULAR
21 VENDOR, IF FLUIDS OR LUBRICANTS OF THE SAME MATERIAL AND QUALITY
22 ARE AVAILABLE FROM ANOTHER VENDOR.

23 (2) IF, DURING THE 10-YEAR PERIOD DESCRIBED IN SUBSECTION
24 (1) (I), [] A MANUFACTURER ESTABLISHES A NEW PROGRAM, STANDARD,
25 POLICY, BONUS, INCENTIVE, REBATE, OR OTHER BENEFIT, A NEW MOTOR
26 VEHICLE DEALER IS ELIGIBLE FOR THE NEW PROGRAM, STANDARD, POLICY,
27 BONUS, INCENTIVE, REBATE, OR OTHER BENEFIT IF THE DEALER FULLY

House Bill No. 6498 as amended December 13, 2018

1 COMPLIES WITH THE NEW STANDARDS SET BY THE MANUFACTURER IN THE NEW
2 PROGRAM, STANDARD, POLICY, BONUS, INCENTIVE, OR OTHER BENEFIT.

3 (3) SUBSECTION (1) (J) AND SUBSECTION (1) (K) DO NOT ALLOW A NEW
4 MOTOR VEHICLE DEALER OR A VENDOR CHOSEN BY THE DEALER TO IMPAIR,
5 INFRINGE UPON, OR ELIMINATE, DIRECTLY OR INDIRECTLY, THE
6 INTELLECTUAL PROPERTY RIGHTS OF THE MANUFACTURER, INCLUDING, BUT
7 NOT LIMITED TO, THE MANUFACTURER'S INTELLECTUAL PROPERTY RIGHTS IN
8 ANY TRADEMARKS OR TRADE DRESS, OR OTHER INTELLECTUAL PROPERTY
9 INTERESTS OWNED OR CONTROLLED BY THE MANUFACTURER, OR TO PERMIT A
10 NEW MOTOR VEHICLE DEALER TO ERECT OR MAINTAIN SIGNS THAT DO NOT
11 CONFORM TO THE MANUFACTURER'S INTELLECTUAL PROPERTY RIGHTS OR
12 TRADEMARK OR TRADE DRESS USAGE GUIDELINES.

13 (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.]

14 (B) "GOODS" DOES NOT INCLUDE MOVABLE DISPLAYS, BROCHURES, AND
15 PROMOTIONAL MATERIALS CONTAINING MATERIAL THAT IS SUBJECT TO THE
16 INTELLECTUAL PROPERTY RIGHTS OF A MANUFACTURER.

17 (C) "SUBSTANTIAL REIMBURSEMENT" MEANS AN AMOUNT EQUAL TO OR
18 GREATER THAN THE COST SAVINGS THAT WOULD RESULT IF A NEW MOTOR
19 VEHICLE DEALER UTILIZED A VENDOR OF THE DEALER'S OWN SELECTION
20 INSTEAD OF USING THE VENDOR SELECTED, IDENTIFIED, OR DESIGNATED BY
21 THE MANUFACTURER OR AN AFFILIATE OF THE MANUFACTURER.

22 (D) "SUBSTANTIAL ALTERATION" MEANS AN ALTERATION THAT HAS A
23 MAJOR IMPACT ON THE ARCHITECTURAL FEATURES, CHARACTERISTICS,
24 APPEARANCE, OR INTEGRITY OF A STRUCTURE OR LOT. THE TERM DOES NOT
25 INCLUDE ROUTINE MAINTENANCE THAT IS REASONABLY NECESSARY TO
26 MAINTAIN A DEALERSHIP FACILITY IN ATTRACTIVE CONDITION AND DOES NOT
27 INCLUDE ANY CHANGES TO ITEMS PROTECTED BY FEDERAL INTELLECTUAL

1 **PROPERTY RIGHTS.**

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

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

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

15 (c) Refuse to deliver to a new motor vehicle dealer in
16 reasonable quantities and within a reasonable time after receipt of
17 the dealer's order, any new motor vehicles that are covered by the
18 dealer agreement and specifically publicly advertised in this state
19 by the manufacturer as available for immediate delivery. However,
20 the failure to deliver any motor vehicle is not considered a
21 violation of this act if the failure is due to an act of God, a
22 work stoppage or delay due to a strike or labor difficulty, a
23 shortage of materials, a lack of manufacturing capacity, a freight
24 embargo, or other cause over which the manufacturer has no control.
25 If a manufacturer requires a new motor vehicle dealer to purchase
26 essential service tools with a purchase price in the aggregate of
27 more than \$7,500.00 in order to receive a specific model of

1 vehicle, the manufacturer shall on written request provide the
2 dealer with a good faith estimate in writing of the number of
3 vehicles of that specific model the dealer will be allocated in the
4 model year in which the dealer is required to purchase the tool.

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

20 (i) The addition to a motor vehicle of required or optional
21 equipment under state or federal law.

22 (ii) In the case of foreign made vehicles or components,
23 revaluation of the United States dollar.

24 (iii) Any increase in transportation charges due to an
25 increase in rates charged by a common carrier or transporter.

26 (e) Offer any of the following to any new motor vehicle dealer
27 of a specific ~~line-make~~ **LINE-MAKE** without making the same offer

1 available to all other new motor vehicle dealers of the same ~~line~~
2 ~~make~~:**LINE-MAKE**:

3 (i) Any specific model or series of new motor vehicles
4 manufactured for that ~~line make~~:**LINE-MAKE**.

5 (ii) Any incentives, rebates, bonuses, promotional items, or
6 other similar benefits payable to the new motor vehicle dealer for
7 selling new motor vehicles or purchasing new motor vehicles from
8 the manufacturer.

9 (iii) Any consumer rebates, vehicle price reductions, or
10 interest rate reductions or other changes to finance terms that
11 benefit the consumer.

12 (iv) Any program that provides marketing and sales assistance
13 to new motor vehicle dealers, including, but not limited to,
14 internet listings, sales leads, marketing programs, and dealer
15 recognition programs.

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

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

24 (h) Directly or indirectly own, operate, or control a new
25 motor vehicle dealer, including, but not limited to, a new motor
26 vehicle dealer engaged primarily in performing warranty repair
27 services on motor vehicles under the manufacturer's warranty, or a

1 used motor vehicle dealer. This subdivision does not apply to any
2 of the following:

3 (i) The ownership, operation, or control by a manufacturer of
4 a new motor vehicle dealer for a period of not more than 24 months
5 during the transition from 1 owner or operator to another. The
6 circuit court may extend the 24-month time period for an additional
7 12 months upon receipt of an application from a manufacturer and a
8 showing of good cause.

9 (ii) The ownership, operation, or control of a new motor
10 vehicle dealer or a used motor vehicle dealer by a manufacturer
11 while it is being sold under a bona fide contract or purchase
12 option to the operator of the new motor vehicle dealer or the used
13 motor vehicle dealer.

14 (iii) The direct or indirect ownership by a manufacturer of an
15 entity that owns, operates, or controls a new motor vehicle dealer
16 of the same ~~line make~~ **LINE-MAKE** franchised by the manufacturer, if
17 all of the following conditions are met:

18 (A) As of May 1, 2000, the manufacturer for a period of not
19 less than 12 months has continuously owned, directly or indirectly,
20 1 or more new motor vehicle dealers in this state.

21 (B) All of the new motor vehicle dealers selling the
22 manufacturer's motor vehicles in this state trade exclusively in
23 the manufacturer's ~~line make~~ **LINE-MAKE**.

24 (C) As of January 1, 2000, not fewer than 1/2 of the new motor
25 vehicle dealers of the ~~line make~~ **LINE-MAKE** within this state own
26 and operate 2 or more new motor vehicle dealer facilities in the
27 geographic territory or area covered by the franchise agreement

1 with the manufacturer.

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

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

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

19 (j) Prevent or attempt to prevent by contract or otherwise any
20 new motor vehicle dealer from changing the executive management of
21 a new motor vehicle dealer unless the manufacturer, having the
22 burden of proof, can show that the change of executive management
23 will result in executive management by a person or persons who are
24 not of good moral character or who do not meet reasonable,
25 preexisting, and equitably applied standards of the manufacturer.
26 If a manufacturer rejects a proposed change in the executive
27 management, the manufacturer shall give written notice of its

1 reasons to the dealer within ~~60~~75 days after receiving written
2 notice from the dealer of the proposed change and all related
3 information reasonably requested by the manufacturer, or the change
4 in executive management is considered approved.

5 (k) Unreasonably withhold consent to the sale, transfer, or
6 exchange of a new motor vehicle dealership to a qualified buyer
7 that **MEETS THE MANUFACTURER'S UNIFORMLY APPLIED REQUIREMENTS AND**
8 **CRITERIA TO BE A NEW MOTOR VEHICLE DEALER AND THAT** is capable of
9 being licensed as a new motor vehicle dealer in this state.

10 (l) ~~Fail to respond in writing to a request for consent to a~~
11 ~~sale, transfer, or exchange of a new motor vehicle dealership~~
12 ~~within 60 days after receiving a written application from the new~~
13 ~~motor vehicle dealer on the forms generally utilized by the~~
14 ~~manufacturer for that purpose and containing the information~~
15 ~~required in that application. Failure to respond to a request for~~
16 ~~consent within the 60-day period is considered consent to the sale,~~
17 ~~transfer, or exchange.~~**TO A WRITTEN REQUEST FROM A NEW MOTOR VEHICLE**
18 **DEALER THAT HAS SUBMITTED AN AGREEMENT FOR THE SALE, TRANSFER, OR**
19 **EXCHANGE OF A NEW MOTOR VEHICLE DEALERSHIP. THE MANUFACTURER SHALL**
20 **PROVIDE THE DEALER WITH ALL FORMS GENERALLY UTILIZED AND REQUESTED**
21 **BY THE MANUFACTURER FOR THE APPROVAL OF A SALE, TRANSFER, OR**
22 **EXCHANGE OF A NEW MOTOR VEHICLE DEALERSHIP NOT LATER THAN 30 DAYS**
23 **AFTER RECEIVING A WRITTEN REQUEST FROM THE DEALER FOR THE FORMS. A**
24 **MANUFACTURER SHALL HAVE 75 DAYS AFTER THE DATE THE MANUFACTURER**
25 **RECEIVES ALL THE PROPERLY COMPLETED FORMS AND INFORMATION GENERALLY**
26 **UTILIZED AND REQUESTED BY THE MANUFACTURER TO APPROVE OR DISAPPROVE**
27 **THE SALE, TRANSFER, OR EXCHANGE OF THE NEW MOTOR VEHICLE**

1 **DEALERSHIP. THE FAILURE OF THE MANUFACTURER TO APPROVE OR**
2 **DISAPPROVE THE SALE, TRANSFER, OR EXCHANGE WITHIN THE 75-DAY TIME**
3 **PERIOD IS CONSIDERED APPROVAL.**

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

8 (n) ~~Unless~~ **SUBJECT TO SECTION 13(1)(I) AND (2), UNLESS** the
9 manufacturer enters into a written agreement with the new motor
10 vehicle dealer that clearly states the amount of the incentive
11 payments and the period of time during which the incentive payments
12 are paid, offer incentive payments to a new motor vehicle dealer in
13 consideration for a new motor vehicle dealer's promise to do any of
14 the following:

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

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

19 (o) Require unreasonable improvements to a facility as a
20 condition to entering into or renewing a dealer agreement.

21 (p) Authorize a motor vehicle service and repair facility to
22 perform motor vehicle warranty repairs and recall work, unless the
23 work meets any of the following:

24 (i) Is required for emergency service of a vehicle.

25 (ii) Is work performed at a service center owned or operated
26 by a manufacturer on a manufacturer-owned vehicle.

27 (iii) Is work performed by employees of a fleet operator on

1 its own vehicles.

2 (q) Own a motor vehicle service and repair facility, except
3 that a manufacturer may own a service and repair facility for the
4 repair of manufacturer-owned vehicles.

5 (r) Engage in conduct that meets all of the following:

6 (i) Materially affects a new motor vehicle dealer.

7 (ii) Is capricious, is not in good faith, or is
8 unconscionable.

9 (iii) Causes **MATERIAL** damage to a new motor vehicle dealer.

10 (s) ~~Impose unreasonable standards of performance on a new~~
11 ~~motor vehicle dealer or require, **REQUIRE**, attempt to require,~~
12 ~~coerce, or attempt to coerce a new motor vehicle dealer to adhere~~
13 ~~to **UNREASONABLE** performance standards that are not applied~~
14 ~~uniformly to other similarly situated new motor vehicle dealers.~~

15 (t) Use or consider the performance of a new motor vehicle
16 dealer in selling the manufacturer's vehicles or the new motor
17 vehicle dealer's ability to satisfy any minimum sales or market
18 share quota or responsibility relating to the sale of the new motor
19 vehicles in determining any of the following:

20 (i) The new motor vehicle dealer's eligibility to purchase
21 program, certified, or other used motor vehicles from the
22 manufacturer.

23 (ii) The volume, type, or model of program, certified, or
24 other used motor vehicles that a new motor vehicle dealer is
25 eligible to purchase from the manufacturer.

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

1 manufacturer.

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

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

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

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

1 (ii) Within 30 days after receiving a **WRITTEN** request from the
2 new motor vehicle dealer, the manufacturer shall provide
3 ~~information relating to how the performance standard or program~~
4 ~~applies to the new motor vehicle dealer.~~**ALL OF THE FOLLOWING TO THE**
5 **DEALER:**

6 **(A) THE SPECIFIC INFORMATION RELIED ON BY THE MANUFACTURER**
7 **RELATING TO HOW THE PERFORMANCE STANDARD OR PROGRAM WAS APPLIED TO**
8 **THE NEW MOTOR VEHICLE DEALER. THE MANUFACTURER IS NOT REQUIRED TO**
9 **DISCLOSE ANY PROPRIETARY OR CONFIDENTIAL INFORMATION FOR PURPOSES**
10 **OF THIS SUB-SUBPARAGRAPH. HOWEVER, THE RESULT OF THE APPLICATION OF**
11 **A PERFORMANCE STANDARD OR PROGRAM TO A PARTICULAR NEW MOTOR VEHICLE**
12 **DEALER IS NOT CONSIDERED PROPRIETARY OR CONFIDENTIAL AS BETWEEN THE**
13 **MANUFACTURER AND THAT PARTICULAR NEW MOTOR VEHICLE DEALER.**

14 **(B) AN EXPLANATION AS TO HOW THE MANUFACTURER APPLIES A**
15 **PERFORMANCE STANDARD OR PROGRAM TO A NEW MOTOR VEHICLE DEALER'S**
16 **PERFORMANCE.**

17 **(iii) ON WRITTEN REQUEST, A MANUFACTURER OR A NEW MOTOR**
18 **VEHICLE DEALER SHALL MEET WITH THE OTHER PARTY, IN PERSON OR**
19 **TELEPHONICALLY, UNDER REASONABLE CIRCUMSTANCES AND AS AGREED TO BY**
20 **BOTH PARTIES, TO PRESENT, EXPLAIN, OR DISCUSS INFORMATION THE**
21 **MANUFACTURER IS REQUIRED TO PROVIDE UNDER SUBPARAGRAPH (ii) (A) AND**
22 **(B) .**

23 (w) If a new motor vehicle dealer sold or leased a new motor
24 vehicle to a customer that exported the motor vehicle to a foreign
25 country or resold the motor vehicle, **AND AT THE TIME OF DELIVERY TO**
26 **THE CUSTOMER THE VEHICLE WAS TITLED AND REGISTERED IN THIS STATE OR**
27 **ANOTHER STATE OF THE UNITED STATES BY THE DEALER,** refuse to

1 allocate, sell, or deliver new motor vehicles to the dealer; charge
2 back or withhold payments or other things of value for which the
3 dealer is otherwise eligible under a sales promotion, program, or
4 contest; prevent a new motor vehicle dealer from participating in
5 any sales promotion, program, or contest; or take or threaten to
6 take any other adverse action against a new motor vehicle dealer,
7 including, but not limited to, reducing vehicle allocations or
8 terminating or threatening to terminate a dealer agreement, unless
9 the manufacturer proves that the new motor vehicle dealer knew or
10 reasonably should have known that the customer intended to export
11 or resell the motor vehicle. In an action by a new motor vehicle
12 dealer for a violation of this subdivision, there is a rebuttable
13 presumption that a new motor vehicle dealer did not know or should
14 not reasonably have known of its customer's intent to export or
15 resell a motor vehicle if the vehicle was titled **AND REGISTERED** in
16 the United States, and the manufacturer bears the burden of
17 rebutting that presumption.

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

25 (y) Prevent, attempt to prevent, prohibit, coerce, or attempt
26 to coerce a new motor vehicle dealer from charging a consumer any
27 documentary preparation fee allowed to be charged by the dealer

1 under the laws of this state OR REQUIRE THE DISCLOSURE OF THE
2 DOCUMENTARY PREPARATION FEE IN A WRITTEN FORMAT THAT IS NOT
3 OTHERWISE REQUIRED BY LAW.

4 (Z) PROHIBIT, PREVENT, OR ATTEMPT TO PREVENT A NEW MOTOR
5 VEHICLE DEALER FROM TRANSFERRING A DEALERSHIP TO OR NAMING A
6 SPOUSE, CHILD, OR EXECUTIVE MANAGER AS DEALERSHIP SUCCESSOR TO OWN
7 AND OPERATE THE DEALERSHIP UNLESS THE MANUFACTURER, HAVING THE
8 BURDEN OF PROOF, CAN SHOW THAT AT THE TIME THE SUCCESSOR IS NAMED
9 OR THE DEALERSHIP IS TRANSFERRED, THE SUCCESSOR SPOUSE, CHILD, OR
10 EXECUTIVE MANAGER OF THE DEALER IS NOT OF GOOD MORAL CHARACTER, HAS
11 A FELONY CONVICTION, DOES NOT MEET THE MANUFACTURER'S UNIFORMLY
12 APPLIED REQUIREMENTS AND CRITERIA TO BE A DEALER, OR IS OTHERWISE
13 DISQUALIFIED FROM HOLDING A LICENSE AS A NEW MOTOR VEHICLE DEALER
14 UNDER ANY APPLICABLE STATUTE OF THIS STATE. ALL OF THE FOLLOWING
15 APPLY FOR PURPOSES OF THIS SUBDIVISION:

16 (i) THE MANUFACTURER IS REQUIRED TO PROVIDE THE NEW MOTOR
17 VEHICLE DEALER, IN WRITING, WITH ITS CURRENT UNIFORMLY APPLIED
18 REQUIREMENTS AND CRITERIA TO BE A DEALER WITHIN 30 DAYS OF
19 RECEIVING THE NEW MOTOR VEHICLE DEALER'S WRITTEN REQUEST FOR THE
20 UNIFORMLY APPLIED REQUIREMENTS AND CRITERIA TO BE A DEALER.

21 (ii) WITHIN 75 DAYS AFTER RECEIVING THE MANUFACTURER'S CURRENT
22 UNIFORMLY APPLIED WRITTEN REQUIREMENTS AND CRITERIA TO BE A DEALER
23 FROM THE MANUFACTURER, THE NEW MOTOR VEHICLE DEALER MAY SUBMIT A
24 WRITTEN REQUEST TO THE MANUFACTURER FOR A MEETING, IN PERSON OR
25 TELEPHONICALLY, WITH THE MANUFACTURER, UNDER REASONABLE
26 CIRCUMSTANCES AS AGREED TO BY BOTH PARTIES, TO ADDRESS THE
27 REQUIREMENTS AND CRITERIA. THE PARTIES SHALL MEET, IN PERSON OR

1 TELEPHONICALLY, WITHIN 45 DAYS AFTER THE NEW MOTOR VEHICLE DEALER'S
2 REQUEST FOR A MEETING, UNLESS OTHERWISE AGREED. DURING THE MEETING,
3 THE MANUFACTURER SHALL PROVIDE THE DEALER AN OPPORTUNITY TO
4 PRESENT, IN WRITING, FACTS, DATA, AND EVIDENCE THAT ESTABLISH THAT
5 THERE ARE FACTORS BEYOND THE REASONABLE CONTROL OR INFLUENCE OF THE
6 NEW MOTOR VEHICLE DEALER THAT MATERIALLY AND ADVERSELY IMPACT THE
7 PROPOSED TRANSFEREE'S ABILITY TO MEET THE MANUFACTURER'S CURRENT
8 UNIFORMLY APPLIED WRITTEN REQUIREMENTS TO BE A DEALER. IF THE
9 MANUFACTURER DOES NOT PROVIDE THE NEW MOTOR VEHICLE DEALER AN
10 OPPORTUNITY TO PRESENT, IN WRITING, FACTS, DATA, AND EVIDENCE, OR
11 DOES NOT IN GOOD FAITH EVALUATE THE EFFECT OF THE FACTS, DATA, AND
12 EVIDENCE PRESENTED BY THE DEALER, THEN THE MANUFACTURER MAY NOT
13 PROHIBIT OR PREVENT THE NEW MOTOR VEHICLE DEALER FROM TRANSFERRING
14 THE DEALERSHIP TO A SPOUSE, CHILD, OR EXECUTIVE MANAGER, OR NAMING
15 A SPOUSE, CHILD, OR EXECUTIVE MANAGER AS THE DEALERSHIP SUCCESSOR
16 TO OWN AND OPERATE THE DEALERSHIP.

17 (iii) THE MANUFACTURER MUST MAKE ANY DECISION TO DECLINE THE
18 NEW MOTOR VEHICLE DEALER'S REQUEST TO TRANSFER A NEW MOTOR VEHICLE
19 DEALERSHIP TO A SPOUSE, CHILD, OR EXECUTIVE MANAGER, OR NAME A
20 SPOUSE, CHILD, OR EXECUTIVE MANAGER AS DEALERSHIP SUCCESSOR, IN
21 GOOD FAITH, INCLUDING THE OPPORTUNITY FOR A MEETING, IN PERSON OR
22 TELEPHONICALLY AS PROVIDED IN SUBPARAGRAPH (ii). IF REQUESTED BY
23 THE NEW MOTOR VEHICLE DEALER IN WRITING, THE MANUFACTURER MUST
24 PROVIDE THE NEW MOTOR VEHICLE DEALER WITH THE INFORMATION THAT IT
25 RELIED ON WHEN CONCLUDING THAT THE SPOUSE, CHILD, OR EXECUTIVE
26 MANAGER DID NOT SATISFY THE UNIFORMLY REQUIRED REQUIREMENTS AND
27 CRITERIA TO BE A NEW MOTOR VEHICLE DEALER. HOWEVER, THE

1 MANUFACTURER IS NOT REQUIRED TO DISCLOSE PROPRIETARY OR
2 CONFIDENTIAL INFORMATION AND IS NOT REQUIRED TO DISCLOSE ANY
3 INFORMATION IF DISCLOSURE IS PROHIBITED BY LAW.

4 (AA) MAKE ANY MATERIAL CHANGE IN A DEALER AGREEMENT WITHOUT
5 GIVING THE NEW MOTOR VEHICLE DEALER WRITTEN NOTICE OF THE CHANGE AT
6 LEAST 30 DAYS BEFORE THE EFFECTIVE DATE OF THE CHANGE. IN ANY
7 DISPUTE UNDER THIS SUBDIVISION, THE NEW MOTOR VEHICLE DEALER HAS
8 THE BURDEN OF PROVING THE MODIFICATION IS SUFFICIENTLY SIGNIFICANT
9 AND MATERIAL TO REQUIRE NOTICE UNDER THIS SUBDIVISION.

10 (BB) UNLESS OTHERWISE AGREED, REQUIRE A NEW MOTOR VEHICLE
11 DEALER TO SELL OR OFFER TO SELL AN EXTENDED SERVICE CONTRACT OR
12 EXTENDED MAINTENANCE PLAN OFFERED, SOLD, BACKED BY, OR SPONSORED BY
13 THE MANUFACTURER.

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

18 (3) WITHIN 30 DAYS AFTER RECEIVING A WRITTEN REQUEST FROM THE
19 DEALER, A MANUFACTURER SHALL PROVIDE A NEW MOTOR VEHICLE DEALER
20 THAT IS SEEKING TO SELL, TRANSFER, OR EXCHANGE A NEW MOTOR VEHICLE
21 DEALERSHIP WITH ALL FORMS GENERALLY UTILIZED AND REQUESTED BY THE
22 MANUFACTURER IN CONNECTION WITH THE SALE, TRANSFER, OR EXCHANGE OF
23 A NEW MOTOR VEHICLE DEALERSHIP.

24 (4) A FAILURE BY A MANUFACTURER OR DISTRIBUTOR TO APPROVE OR
25 DISAPPROVE A DEALER'S REQUEST TO SELL, TRANSFER, OR EXCHANGE ITS
26 NEW MOTOR VEHICLE DEALERSHIP WITHIN THE 75-DAY PERIOD AFTER IT
27 RECEIVES A COMPLETED APPLICATION, INCLUDING ALL REQUIRED

House Bill No. 6498 as amended December 13, 2018

1 DOCUMENTATION AND INFORMATION REQUESTED BY THE MANUFACTURER OR
2 DISTRIBUTOR, IS CONSIDERED APPROVAL BY THE MANUFACTURER [OF] THE
3 SALE, TRANSFER, OR EXCHANGE OF THE DEALERSHIP.

4 (5) ~~(3)~~—This section applies to a manufacturer that sells,
5 services, displays, or advertises its new motor vehicles in this
6 state.

7 SEC. 14B. (1) A MANUFACTURER SHALL NOT EXERCISE A RIGHT OF
8 FIRST REFUSAL OR OTHER RIGHT TO ACQUIRE A NEW MOTOR VEHICLE
9 DEALERSHIP FROM A NEW MOTOR VEHICLE DEALER, UNLESS THE MANUFACTURER
10 DOES ALL OF THE FOLLOWING:

11 (A) WITHIN 75 DAYS AFTER THE MANUFACTURER RECEIVES A COMPLETE
12 WRITTEN APPLICATION, INCLUDING ALL REQUIRED DOCUMENTATION AND
13 INFORMATION REQUESTED BY THE MANUFACTURER OR DISTRIBUTOR FROM A NEW
14 MOTOR VEHICLE DEALER FOR A PROPOSED SALE, TRANSFER, OR EXCHANGE OF
15 A NEW MOTOR VEHICLE DEALERSHIP BY THE NEW MOTOR VEHICLE DEALER,
16 SUBMITTED ON THE FORMS GENERALLY UTILIZED BY THE MANUFACTURER FOR
17 THAT PURPOSE AND CONTAINING ALL OF THE INFORMATION REQUIRED BY THE
18 MANUFACTURER, NOTIFIES THE DEALER IN WRITING THAT IT INTENDS TO
19 EXERCISE THE RIGHT TO ACQUIRE THE DEALERSHIP.

20 (B) PAYS TO THE DEALER THE SAME OR GREATER CONSIDERATION AS
21 THE DEALER HAS CONTRACTED TO RECEIVE IN CONNECTION WITH THE
22 PROPOSED TRANSFER OR SALE OF ALL OR SUBSTANTIALLY ALL OF THE
23 DEALERSHIP ASSETS, STOCK, OR OTHER OWNERSHIP INTEREST, INCLUDING,
24 BUT NOT LIMITED TO, THE PURCHASE OF, LEASE OF, OR ASSIGNMENT OR
25 TRANSFER OF ANY LEASED INTEREST IN, REAL PROPERTY OR IMPROVEMENTS
26 RELATED TO THE TRANSFER OR SALE OF THE DEALERSHIP.

27 (C) ASSUMES ALL OF THE DUTIES, OBLIGATIONS, AND LIABILITIES

1 CONCERNING THE MANUFACTURER'S LINE-MAKES THAT THE PROPOSED
2 TRANSFEREE WAS TO ASSUME IN THE AGREEMENTS BETWEEN THE PROPOSED
3 TRANSFEREE AND THE DEALER AND WITH RESPECT TO WHICH THE
4 MANUFACTURER EXERCISED THE RIGHT OF FIRST REFUSAL OR OTHER RIGHT TO
5 ACQUIRE THE NEW MOTOR VEHICLE DEALERSHIP.

6 (D) REIMBURSES THE PROPOSED TRANSFEREE FOR ALL REASONABLE
7 EXPENSES INCURRED IN EVALUATING, INVESTIGATING, AND NEGOTIATING THE
8 TRANSFER OF THE DEALERSHIP BEFORE THE MANUFACTURER'S EXERCISE OF
9 ITS RIGHT OF FIRST REFUSAL TO ACQUIRE THE DEALERSHIP. ALL OF THE
10 FOLLOWING APPLY FOR PURPOSES OF THIS SUBDIVISION:

11 (i) THE PROPOSED TRANSFEREE SHALL SUBMIT AN ITEMIZED LIST OF
12 ITS EXPENSES TO THE MANUFACTURER NOT LATER THAN 60 DAYS AFTER THE
13 MANUFACTURER EXERCISES ITS RIGHT OF FIRST REFUSAL TO ACQUIRE THE
14 MOTOR VEHICLE FRANCHISE. HOWEVER, IF REQUESTED BY THE MANUFACTURER,
15 THE PROPOSED TRANSFEREE MUST PROVIDE THE LIST BEFORE THE
16 MANUFACTURER EXERCISES ITS RIGHT OF FIRST REFUSAL.

17 (ii) THE MANUFACTURER MUST REIMBURSE THE PROPOSED TRANSFEREE
18 FOR ITS REASONABLE EXPENSES NOT LATER THAN 60 DAYS AFTER IT
19 RECEIVES THE ITEMIZED LIST DESCRIBED IN SUBPARAGRAPH (i).

20 (2) EXCEPT AS PROVIDED IN THIS SECTION, A MANUFACTURER THAT
21 EXERCISES ITS RIGHT OF FIRST REFUSAL UNDER THIS SECTION AND THE NEW
22 MOTOR VEHICLE DEALER ARE NOT LIABLE TO ANY PERSON AS A RESULT OF A
23 MANUFACTURER EXERCISING ITS RIGHT OF FIRST REFUSAL.

24 (3) A MANUFACTURER THAT EXERCISES A RIGHT OF FIRST REFUSAL
25 UNDER THIS SECTION MAY ASSIGN THE LEASE OR CONVEY THE REAL PROPERTY
26 OF THE NEW MOTOR VEHICLE DEALERSHIP.

27 (4) AS USED IN THIS SECTION:

1 (A) "PROPOSED TRANSFEREE" MEANS THE PERSON TO WHICH A NEW
2 MOTOR VEHICLE DEALERSHIP WOULD HAVE BEEN TRANSFERRED, OR WAS
3 PROPOSED TO BE TRANSFERRED, IF THE MANUFACTURER DID NOT EXERCISE A
4 RIGHT OF FIRST REFUSAL TO ACQUIRE THE DEALERSHIP FROM A NEW MOTOR
5 VEHICLE DEALER.

6 (B) "REASONABLE EXPENSES" INCLUDES THE USUAL AND CUSTOMARY
7 LEGAL AND ACCOUNTING FEES CHARGED FOR SIMILAR WORK, AS WELL AS
8 EXPENSES ASSOCIATED WITH THE EVALUATION AND INVESTIGATION OF ANY
9 REAL PROPERTY ON WHICH A NEW MOTOR VEHICLE DEALERSHIP IS OPERATED.

10 Sec. 15. (1) ~~Any designated family member of a deceased or~~
11 ~~incapacitated new motor vehicle dealer or an~~ **IF A NEW MOTOR VEHICLE**
12 **DEALER DIES OR BECOMES INCAPACITATED, ANY DESIGNATED FAMILY MEMBER**
13 **OF THE DEALER OR** executive manager of the dealership may succeed
14 the dealer in the ownership or operation of the dealership under
15 the existing dealer agreement if the designated family member or
16 executive manager gives the manufacturer written notice of his or
17 her intention to succeed to the dealership within 120 days after
18 the dealer's death or incapacity, agrees to be bound by all of the
19 terms and conditions of the **EXISTING** dealer agreement, ~~and meets~~
20 ~~the current criteria generally applied by the manufacturer in~~
21 ~~qualifying new motor vehicle dealers.~~ **IS DESIGNATED A SUCCESSOR IN**
22 **A WRITTEN INSTRUMENT FILED WITH THE MANUFACTURER, AND MEETS THE**
23 **MANUFACTURER'S UNIFORMLY APPLIED REQUIREMENTS AND CRITERIA TO BE A**
24 **DEALER.** A manufacturer may refuse to continue the existing dealer
25 agreement with the designated family member **OR EXECUTIVE MANAGER**
26 only for good cause.

27 (2) A manufacturer may request from a designated family member

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

10 (3) If a manufacturer believes that good cause exists for
11 refusing to continue a dealer agreement under this section with a
12 designated family member or executive manager described in
13 subsection (1), the manufacturer may, within ~~60~~**75** days after
14 receiving notice of the designated family member's or executive
15 manager's intent to succeed the dealer in the ownership and
16 operation of the dealership, or within ~~60~~**75** days after receiving
17 the requested personal and financial information and completed
18 application form, **WHICHEVER IS LATER IF BOTH OCCUR**, serve on the
19 designated family member or executive manager notice of its refusal
20 to approve the succession.

21 (4) A notice of refusal served by a manufacturer under
22 subsection (3) shall state the specific grounds for the refusal to
23 approve the succession and that discontinuance of the agreement
24 shall take effect ~~not fewer than~~**ON A DATE SPECIFIED IN THE NOTICE**
25 **THAT IS AT LEAST** 90 days after the date the notice is served.

26 (5) If a notice of refusal described in subsection (3) is not
27 served within the ~~60-day~~**75-DAY** period described in subsection (3),

1 the dealer agreement shall continue in effect and is subject to
2 termination only as otherwise permitted under this act.

3 (6) ~~This~~ **SUBJECT TO SECTION 14(Z), THIS** section does not
4 preclude a new motor vehicle dealer from designating any person as
5 ~~his or her~~ **THE DEALER'S** successor by ~~written instrument filed with~~
6 ~~the manufacturer. If the dealer files an instrument described in~~
7 ~~this subsection, it alone shall determine the succession rights to~~
8 ~~the management and operation of the dealership.~~ **FILING A WRITTEN**
9 **INSTRUMENT WITH THE MANUFACTURER DESIGNATING ANY PERSON AS THE**
10 **DEALER'S SUCCESSOR. A WRITTEN INSTRUMENT FILED UNDER THIS**
11 **SUBSECTION SHALL DETERMINE THE SUCCESSION RIGHTS TO THE MANAGEMENT,**
12 **OWNERSHIP, AND OPERATION OF THE DEALERSHIP IF, AT THE TIME OF**
13 **SUCCESSION, THE PERSON DESIGNATED IN THE WRITTEN INSTRUMENT MEETS**
14 **THE MANUFACTURER'S UNIFORMLY APPLIED REQUIREMENTS AND CRITERIA TO**
15 **BE A DEALER.**

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

19 (2) Before a manufacturer or distributor enters into a dealer
20 agreement establishing or relocating a new motor vehicle dealer
21 ~~within~~ **IN** a relevant market area where the same ~~line make~~ **LINE-MAKE**
22 is represented, the manufacturer or distributor shall ~~give~~ **PROVIDE**
23 written notice ~~to each new motor vehicle dealer of the same line~~
24 ~~make in the relevant market area of its intention to establish an~~
25 additional dealer or to relocate an existing dealer ~~within~~ **IN** that
26 relevant market area **TO EACH NEW MOTOR VEHICLE DEALER THAT**
27 **REPRESENTS THAT LINE-MAKE IN THE RELEVANT MARKET AREA ON THE DATE**

1 **THE NOTICE IS PROVIDED.**

2 (3) Within 30 days after receiving the notice provided for in
3 subsection (2), or within 30 days after the end of any appeal
4 procedure provided by the manufacturer or distributor, a new motor
5 vehicle dealer may bring a declaratory judgment action in the
6 circuit court for the county in which the new motor vehicle dealer
7 is located to determine whether good cause exists for the
8 establishing or relocating of a proposed new motor vehicle dealer.
9 Once an action ~~has been~~ **IS** filed, the manufacturer or distributor
10 shall not establish or relocate the proposed new motor vehicle
11 dealer until the circuit court has rendered a decision on the
12 matter. ~~An~~ **A COURT SHALL GIVE PRECEDENCE TO AN** action brought
13 ~~pursuant to~~ **UNDER** this section shall ~~be given precedence over~~ all
14 other civil matters on the court's docket.

15 (4) This section ~~shall~~ **DOES** not apply to the reopening or
16 replacement in a relevant market area of a closed dealership that
17 has been closed within the preceding year, if the established place
18 of business of the reopened or replacement dealer is within 2 miles
19 of the established place of business of the closed dealership.

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

25 (a) Permanency of the investment.

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

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

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

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

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

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

14 Sec. 17. (1) ~~Each new motor vehicle~~**A** manufacturer shall
15 specify in writing to each of its new motor vehicle dealers
16 licensed in this state the dealer's obligations for preparation,
17 delivery, **RECALL SERVICE**, and warranty service on its products. A
18 manufacturer shall compensate a new motor vehicle dealer for **RECALL**
19 **OR** warranty service required of the dealer by the manufacturer. A
20 manufacturer shall provide a new motor vehicle dealer with the
21 schedule of compensation to be paid to the dealer for parts, work,
22 and service, and the time allowance for the performance of the work
23 and service. **A MANUFACTURER SHALL ALSO INCLUDE IN THE SCHEDULE OF**
24 **COMPENSATION A REASONABLE TIME ALLOWANCE FOR LABOR FOR DIAGNOSTIC**
25 **WORK AND REPAIR WORK, INCLUDED IN THE MANUFACTURER'S LABOR TIME**
26 **ALLOWANCE OR LISTED AS A SEPARATE COMPENSABLE ITEM. A DEALER MAY**
27 **SUBMIT A REQUEST FOR AN ADDITIONAL TIME ALLOWANCE FOR EITHER**

1 DIAGNOSTIC OR REPAIR TIME, THAT INCLUDES ANY INFORMATION AND
2 DOCUMENTATION REASONABLY REQUIRED BY THE MANUFACTURER, AND A
3 MANUFACTURER SHALL NOT UNREASONABLY DENY THAT REQUEST. THE SCHEDULE
4 OF COMPENSATION SHALL INCLUDE REASONABLE COMPENSATION FOR PARTS
5 REIMBURSEMENT AND LABOR RATES AS DETERMINED UNDER SECTION 17A(1).

6 ~~—— (2) A schedule of compensation described in subsection (1)~~
7 ~~shall include reasonable compensation for diagnostic work and~~
8 ~~repair service and labor. Time allowances for the diagnosis and~~
9 ~~performance of warranty work and service shall be reasonable and~~
10 ~~adequate for the work to be performed. In determining what~~
11 ~~constitutes reasonable compensation under this section, the~~
12 ~~principal factor to be given consideration is the prevailing wage~~
13 ~~rates being paid by dealers in the community in which the dealer is~~
14 ~~doing business, and the compensation of a dealer for warranty labor~~
15 ~~shall not be less than the rates charged by the dealer for like~~
16 ~~service to retail customers for nonwarranty service and repairs, if~~
17 ~~those rates are reasonable.~~

18 (2) ~~(3)~~—A manufacturer shall not do any of the following:

19 (a) Fail to perform any **RECALL OR** warranty obligation.

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

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

26 (3) ~~(4)~~—A manufacturer shall pay a claim made by a new motor
27 vehicle dealer under this section for labor and parts within 30

1 days after its approval. A manufacturer shall either approve or
2 disapprove a claim within 30 days after receiving the claim,
3 submitted on the form generally used by the manufacturer and
4 containing the information usually required in the form. Any claim
5 not specifically disapproved in writing within 30 days after the
6 manufacturer receives the claim form is considered approved, and
7 the manufacturer shall pay the claim within 30 days.

8 **(4)** ~~(5)~~ Subject to ~~subsection (10)~~, **SUBSECTIONS (5) AND (10)**,
9 if a manufacturer has approved and paid a new motor vehicle dealer
10 for a claim, the manufacturer may only charge the claim back to the
11 dealer if 1 of the following is met:

12 (a) The manufacturer shows that the claim is fraudulent. ~~or~~
13 ~~false.~~ However, the manufacturer may not charge back the amount
14 paid if the claim is found to be ~~false or~~ fraudulent more than ~~2-6~~
15 years after payment.

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

23 **(5) IF A MANUFACTURER SEEKS TO CHARGE BACK A CLAIM UNDER**
24 **SUBSECTION (4) ON THE BASIS THAT THE CLAIM IS FALSE,**
25 **UNSUBSTANTIATED, OR LACKS PROPER DOCUMENTATION, OR SHOWS AN**
26 **IMPROPER DIAGNOSIS PROCESS OR IMPROPER REPAIR PROCEDURES, A NEW**
27 **MOTOR VEHICLE DEALER HAS 14 DAYS AFTER THE DATE THE NEW MOTOR**

1 VEHICLE DEALER RECEIVES NOTICE OF THE CHARGEBACK TO SUPPLY
2 DOCUMENTATION THAT MEETS THE MANUFACTURER'S REQUIREMENTS TO SUPPORT
3 THE VALIDITY OF THE CLAIM, AND IF THE CLAIM IS VALID, THE
4 MANUFACTURER SHALL NOT CHARGE BACK THE CLAIM TO THE NEW MOTOR
5 VEHICLE DEALER.

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

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

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

20 (9) A manufacturer shall pay a claim for compensation owed to
21 a new motor vehicle dealer under subsection (8) for a promotion
22 event, **INCENTIVE**, program, or activity within ~~10~~**15** days after its
23 approval. A manufacturer shall either approve or disapprove a claim
24 for compensation described in this subsection within 30 days after
25 receiving the claim, submitted on the form generally used by the
26 manufacturer and containing the information usually required in the
27 form. Any claim for compensation the manufacturer does not

1 specifically disapprove in writing within 30 days after receiving
2 the claim form is considered approved, and the manufacturer shall
3 pay the amount of the claim within 30 days. A manufacturer may only
4 charge back a claim for compensation ~~within 12 months after the~~
5 ~~date of payment, or within 12 months after the end of a program if~~
6 ~~the duration of the program is 1 year or less.~~**DESCRIBED IN THIS**
7 **SUBSECTION UNDER SUBSECTION (4).**

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

15 (a) At the meeting, the manufacturer shall provide a detailed
16 explanation, with supporting documentation, of the basis for each
17 proposed chargeback of a claim to the dealer and a written
18 statement containing the basis on which the claim or claims of the
19 dealer were selected for audit or review by the manufacturer.

20 **HOWEVER, THE MANUFACTURER IS NOT REQUIRED TO DISCLOSE PROPRIETARY**
21 **OR CONFIDENTIAL INFORMATION ABOUT A CUSTOMER OR OTHER DEALER UNDER**
22 **THIS SUBDIVISION, AND IS NOT REQUIRED TO DISCLOSE ANY INFORMATION**
23 **IF DISCLOSURE IS PROHIBITED BY LAW.**

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

1 to respond if warranted by the volume of proposed chargebacks.

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

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

12 **SEC. 17A. (1) THE PRINCIPAL FACTORS IN DETERMINING WHAT**
13 **CONSTITUTES REASONABLE COMPENSATION FOR PARTS REIMBURSEMENT AND**
14 **LABOR RATES FOR PURPOSES OF SECTION 17(1) ARE AS FOLLOWS:**

15 (A) THE RETAIL PRICE CHARGED FOR PARTS BY OTHER SIMILARLY
16 SITUATED NEW MOTOR VEHICLE DEALERS IN A COMPARABLE GEOGRAPHIC AREA
17 IN THIS STATE THAT OFFER THE SAME LINE-MAKE OF VEHICLES.

18 (B) THE RETAIL LABOR RATES OF OTHER SIMILARLY SITUATED
19 NEW MOTOR VEHICLE DEALERS IN A COMPARABLE GEOGRAPHIC AREA IN THIS
20 STATE THAT OFFER THE SAME LINE-MAKE OF VEHICLES.

21 (2) ALL OF THE FOLLOWING APPLY FOR PURPOSES OF SUBSECTION (1):

22 (A) A NEW MOTOR VEHICLE DEALER THAT IS DEMANDING WARRANTY
23 COMPENSATION FROM A MANUFACTURER AT A RATE THAT EXCEEDS THE AGREED-
24 UPON RATES SHALL ESTABLISH THE RETAIL RATE IT CUSTOMARILY CHARGES
25 FOR PARTS BY SUBMITTING TO THE MANUFACTURER 100 CONSECUTIVE AND
26 SEQUENTIAL NONWARRANTY CUSTOMER-PAID SERVICE REPAIR ORDERS THAT
27 CONTAIN REPAIRS FOR LIKE SERVICES OR ALL NONWARRANTY CUSTOMER-PAID

1 SERVICE REPAIR ORDERS COVERING A PERIOD OF 90 CONSECUTIVE DAYS,
2 WHICHEVER IS LESS. A DEALER SHALL NOT SUBMIT A SERVICE REPAIR ORDER
3 UNDER THIS SUBSECTION THAT COVERS REPAIRS MADE MORE THAN 180 DAYS
4 BEFORE THE DATE OF THE SUBMISSION.

5 (B) IF A MANUFACTURER DETERMINES FROM ANY SET OF REPAIR ORDERS
6 SUBMITTED UNDER SUBDIVISION (A) THAT THE CALCULATED RETAIL MARKUP
7 RATE FOR PARTS OR THE RETAIL LABOR RATE IS SUBSTANTIALLY HIGHER OR
8 LOWER THAN THE RATE CURRENTLY ON RECORD WITH THE MANUFACTURER, THE
9 MANUFACTURER MAY REQUEST ADDITIONAL DOCUMENTATION FOR A PERIOD OF
10 EITHER 60 DAYS BEFORE OR 60 DAYS AFTER THE TIME PERIOD FOR WHICH
11 THE REPAIR ORDERS WERE SUBMITTED FOR PURPOSES OF AN ADJUSTMENT.

12 (C) A NEW MOTOR VEHICLE DEALER'S RETAIL RATE PERCENTAGE FOR
13 PARTS IS CALCULATED BY DETERMINING THE DEALER'S TOTAL PARTS SALES
14 IN THE SUBMITTED REPAIR ORDERS AND DIVIDING THAT AMOUNT BY THE
15 DEALER'S TOTAL COST FOR THE PURCHASE OF THOSE PARTS, SUBTRACTING 1
16 FROM THAT AMOUNT, AND THEN MULTIPLYING BY 100. THE MANUFACTURER
17 MUST APPROVE OR DISAPPROVE THE DECLARED RETAIL RATE WITHIN 45 DAYS
18 AFTER THE DATE OF SUBMISSION BY THE DEALER. THE DECLARED RETAIL
19 RATE IS EFFECTIVE BEGINNING 30 DAYS AFTER APPROVAL BY THE
20 MANUFACTURER, UNLESS THE MANUFACTURER DISAPPROVES AND TIMELY
21 CONTESTS THE DEALER'S DECLARED RATE. IF A MANUFACTURER FAILS TO
22 DISAPPROVE WITHIN 45 DAYS FOLLOWING SUBMISSION BY THE DEALER, THE
23 DECLARED RETAIL RATE IS CONSIDERED APPROVED. A NEW MOTOR VEHICLE
24 DEALER'S RETAIL RATE FOR LABOR IS CALCULATED BY DETERMINING THE
25 DEALER'S TOTAL LABOR SALES FROM THE SUBMITTED REPAIR ORDERS AND
26 DIVIDING THAT AMOUNT BY THE TOTAL NUMBER OF HOURS THAT GENERATED
27 THOSE SALES. THE MANUFACTURER MUST APPROVE OR DISAPPROVE THE

1 DECLARED RETAIL RATE WITHIN 45 DAYS AFTER THE DATE THE DEALER
2 SUBMITS THE REPAIR ORDERS. THE DECLARED RETAIL LABOR RATE IS
3 EFFECTIVE BEGINNING 30 DAYS AFTER APPROVAL BY THE MANUFACTURER,
4 UNLESS THE MANUFACTURER DISAPPROVES AND TIMELY CONTESTS THE
5 DEALER'S DECLARED RATE.

6 (D) A MANUFACTURER MAY CONTEST A NEW MOTOR VEHICLE DEALER'S
7 DECLARED RETAIL MARKUP RATE FOR PARTS OR RETAIL LABOR RATE NOT
8 LATER THAN 45 DAYS AFTER SUBMISSION AND DECLARATION OF THE RETAIL
9 MARKUP RATE FOR PARTS OR RETAIL LABOR RATE BY THE DEALER BY
10 REASONABLY SUBSTANTIATING THAT THE RATE IS INACCURATE, INCOMPLETE,
11 OR UNREASONABLE IN LIGHT OF THE FACTORS DESCRIBED IN SUBSECTION
12 (1). IN CONTESTING A NEW MOTOR VEHICLE DEALER'S DECLARED RATE, A
13 MANUFACTURER SHALL PROVIDE A WRITTEN EXPLANATION OF THE REASONS FOR
14 DISAGREEMENT WITH THE DECLARED RATE. IF THE DECLARED RETAIL MARKUP
15 RATE FOR PARTS OR RETAIL LABOR RATE IS CONTESTED, THEN THE
16 MANUFACTURER SHALL PROPOSE AN ADJUSTMENT OF THE RATE. IF THE
17 MANUFACTURER CONTESTS THE DEALER'S DECLARED PARTS OR LABOR RATE,
18 THE PARTIES SHALL ATTEMPT TO RESOLVE THE DISPUTE THROUGH AN
19 INTERNAL DISPUTE RESOLUTION PROCEDURE OF THE MANUFACTURER, IF
20 AVAILABLE, PROVIDED THAT THE DISPUTE RESOLUTION PROCEDURE OCCURS
21 WITHIN A REASONABLE AMOUNT OF TIME THAT DOES NOT EXCEED 45 DAYS
22 AFTER NOTIFICATION OF DISAGREEMENT WITH THE DEALER'S DECLARED RATE.

23 (E) IF AN INTERNAL DISPUTE RESOLUTION PROCEDURE DESCRIBED IN
24 SUBDIVISION (D) IS UNSUCCESSFUL OR DOES NOT OCCUR IN A TIMELY
25 MANNER, A NEW MOTOR VEHICLE DEALER MAY FILE A COMPLAINT IN THE
26 CIRCUIT COURT FOR THE COUNTY IN WHICH THE NEW MOTOR VEHICLE DEALER
27 IS LOCATED, WITHIN 60 DAYS AFTER IT RECEIVES THE ADJUSTMENT

1 PROPOSED BY THE MANUFACTURER OR WITHIN 30 DAYS AFTER CONCLUSION OF
2 THE INTERNAL DISPUTE RESOLUTION PROCEDURE, WHICHEVER IS LATER. IN
3 AN ACTION UNDER THIS SUBDIVISION, THE MANUFACTURER HAS THE BURDEN
4 OF PROOF TO DEMONSTRATE THAT THE RETAIL MARKUP RATE FOR PARTS OR
5 RETAIL LABOR RATE DECLARED BY THE DEALER IS INACCURATE, INCOMPLETE,
6 OR UNREASONABLE.

7 (3) THE FOLLOWING WORK SHALL NOT BE CONSIDERED IN CALCULATING
8 THE RETAIL RATE CUSTOMARILY CHARGED BY A NEW MOTOR VEHICLE DEALER
9 FOR PARTS AND LABOR UNDER THIS SECTION:

10 (A) REPAIRS FOR MANUFACTURER SPECIAL EVENTS, SPECIALS, OR
11 PROMOTIONAL DISCOUNTS FOR RETAIL CUSTOMER REPAIRS.

12 (B) PARTS SOLD AT WHOLESALE.

13 (C) ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER
14 WARRANTY, SUCH AS OIL CHANGES, FLUIDS, FILTERS, OR BELTS NOT
15 PROVIDED IN THE COURSE OF REPAIRS.

16 (D) NUTS, BOLTS, OR FASTENERS OR SIMILAR ITEMS THAT DO NOT
17 HAVE AN INDIVIDUAL PART NUMBER.

18 (E) TIRES, TIRE REPAIR, TIRE ROTATION, OR OTHER TIRE SERVICES.

19 (F) VEHICLE RECONDITIONING.

20 (G) INSTALLATION OR REPAIR OF ACCESSORIES.

21 (H) REPAIRS OF VEHICLE BODY DAMAGE CAUSED BY A COLLISION, A
22 ROAD HAZARD, THE FORCE OF THE ELEMENTS, VANDALISM, OR THEFT.

23 (I) VEHICLE EMISSION OR SAFETY INSPECTIONS REQUIRED BY LAW.

24 (J) MANUFACTURER APPROVED AND REIMBURSED GOODWILL OR POLICY
25 REPAIRS OR REPLACEMENTS.

26 (K) REPAIRS FOR WHICH VOLUME DISCOUNTS HAVE BEEN NEGOTIATED
27 WITH GOVERNMENT AGENCIES.

1 (4) IF A MANUFACTURER FURNISHES A PART OR COMPONENT TO A NEW
2 MOTOR VEHICLE DEALER TO USE IN PERFORMING REPAIRS UNDER A RECALL,
3 CAMPAIGN SERVICE ACTION, OR WARRANTY REPAIR AT NO COST TO THE
4 DEALER, THE MANUFACTURER SHALL COMPENSATE THE DEALER FOR THE
5 AUTHORIZED REPAIR PART OR COMPONENT IN THE SAME MANNER AS WARRANTY
6 PARTS COMPENSATION UNDER SECTION 17 BY PAYING THE DEALER THE RETAIL
7 RATE MARKUP ON THE COST FOR THE PART OR COMPONENT AS LISTED IN THE
8 PRICE SCHEDULE OF THE MANUFACTURER LESS THE COST FOR THE PART OR
9 COMPONENT.

10 (5) A MANUFACTURER SHALL NOT REQUIRE A NEW MOTOR VEHICLE
11 DEALER TO ESTABLISH THE RETAIL RATE CUSTOMARILY CHARGED BY THE
12 DEALER FOR PARTS AND LABOR BY AN UNDULY BURDENSOME OR TIME-
13 CONSUMING METHOD OR BY REQUIRING INFORMATION THAT IS UNDULY
14 BURDENSOME OR TIME CONSUMING TO PROVIDE, INCLUDING, BUT NOT LIMITED
15 TO, PART-BY-PART OR TRANSACTION-BY-TRANSACTION CALCULATIONS. A
16 DEALER SHALL NOT DECLARE A RETAIL RATE FOR PARTS OR LABOR OR BOTH
17 MORE THAN ONCE IN A CALENDAR YEAR.

18 (6) A MANUFACTURER SHALL NOT LIMIT ACCESS TO SALES OR SERVICE
19 PROMOTION EVENTS, INCENTIVES, PROGRAMS, OR ACTIVITIES SPONSORED BY
20 THE MANUFACTURER OR LIMIT ALLOCATION OF VEHICLES OR PARTS TO A NEW
21 MOTOR VEHICLE DEALER BASED SOLELY ON THE NEW MOTOR VEHICLE DEALER'S
22 EXERCISE OF ITS RIGHTS UNDER THIS SECTION. THIS SUBSECTION DOES NOT
23 PROHIBIT A MANUFACTURER FROM INCREASING THE PRICE OF A MOTOR
24 VEHICLE OR PART IN THE NORMAL COURSE OF BUSINESS.

25 SEC. 17B. (1) A MANUFACTURER SHALL COMPENSATE ITS NEW MOTOR
26 VEHICLE DEALERS A REASONABLE AMOUNT FOR ALL LABOR AND PARTS
27 REQUIRED BY THE MANUFACTURER TO PERFORM RECALL REPAIRS.

1 (2) IF PARTS OR A REMEDY ARE NOT REASONABLY AVAILABLE TO
2 PERFORM A RECALL SERVICE OR REPAIR ON A USED VEHICLE HELD FOR SALE
3 BY A NEW MOTOR VEHICLE DEALER AUTHORIZED TO SELL AND SERVICE NEW
4 VEHICLES OF THE SAME LINE-MAKE WITHIN 30 DAYS OF THE MANUFACTURER
5 ISSUING THE INITIAL NOTICE OF RECALL, AND THE MANUFACTURER HAS
6 ISSUED A STOP-SALE ORDER ON THE VEHICLE, THE MANUFACTURER SHALL
7 COMPENSATE THE DEALER AT A PRORATED RATE OF AT LEAST 1% OF THE
8 VALUE OF THE VEHICLE PER MONTH BEGINNING ON THE DATE THAT IS 30
9 DAYS AFTER THE DATE ON WHICH THE STOP-SALE ORDER WAS PROVIDED TO
10 THE DEALER, UNTIL THE EARLIER OF EITHER OF THE FOLLOWING OCCURS:

11 (A) THE DATE THE RECALL OR REMEDY PARTS ARE MADE AVAILABLE.

12 (B) THE DATE THE DEALER SELLS, TRADES, OR OTHERWISE DISPOSES
13 OF THE AFFECTED USED MOTOR VEHICLE.

14 (3) FOR PURPOSES OF SUBSECTION (2), THE VALUE OF A USED MOTOR
15 VEHICLE IS THE AVERAGE TRADE-IN VALUE FOR USED VEHICLES AS
16 INDICATED IN AN INDEPENDENT THIRD-PARTY GUIDE FOR THE YEAR, MAKE,
17 AND MODEL OF THE RECALLED VEHICLE.

18 (4) THIS SECTION APPLIES ONLY TO THE FOLLOWING:

19 (A) A USED MOTOR VEHICLE THAT IS SUBJECT TO SAFETY OR
20 EMISSIONS RECALLS UNDER, AND RECALLED IN ACCORDANCE WITH, FEDERAL
21 LAW, IF A STOP-SALE ORDER HAS BEEN ISSUED AND REPAIR PARTS OR
22 REMEDY REMAINS UNAVAILABLE FOR 30 DAYS OR LONGER.

23 (B) A NEW MOTOR VEHICLE DEALER THAT HOLDS AN AFFECTED USED
24 VEHICLE FOR SALE THAT MEETS BOTH OF THE FOLLOWING:

25 (i) IS IN INVENTORY AT THE TIME THE STOP-SALE ORDER WAS
26 ISSUED, OR WAS TAKEN IN THE USED VEHICLE INVENTORY OF THE DEALER AS
27 A CONSUMER TRADE-IN IN CONNECTION WITH THE PURCHASE OF A NEW MOTOR

1 VEHICLE FROM THE DEALER AFTER THE STOP-SALE ORDER WAS ISSUED.

2 (ii) IS OF THE SAME LINE-MAKE AS A NEW MOTOR VEHICLE THAT THE
3 DEALER IS AUTHORIZED BY A MANUFACTURER TO SELL OR ON WHICH THE
4 DEALER IS AUTHORIZED TO PERFORM RECALL REPAIRS.

5 (5) A MANUFACTURER SHALL NOT REDUCE THE AMOUNT OF COMPENSATION
6 OTHERWISE OWED TO A NEW MOTOR VEHICLE DEALER, WHETHER THROUGH A
7 CHARGEBACK, REMOVAL OF THE DEALER FROM AN INCENTIVE PROGRAM, OR
8 REDUCTION IN AMOUNT OWED UNDER AN INCENTIVE PROGRAM, SOLELY BECAUSE
9 THE NEW MOTOR VEHICLE DEALER HAS SUBMITTED A CLAIM FOR
10 REIMBURSEMENT UNDER THIS SECTION. THIS SUBSECTION DOES NOT APPLY TO
11 AN ACTION BY A MANUFACTURER THAT IS APPLIED UNIFORMLY AMONG ALL NEW
12 MOTOR VEHICLE DEALERS OF THE SAME LINE-MAKE IN THIS STATE.

13 (6) ALL REIMBURSEMENT CLAIMS MADE BY NEW MOTOR VEHICLE DEALERS
14 UNDER THIS SECTION FOR RECALL REMEDIES OR REPAIRS, OR FOR
15 COMPENSATION IF A PART OR REPAIR IS NOT REASONABLY AVAILABLE AND
16 THE VEHICLE IS SUBJECT TO A STOP-SALE ORDER, ARE SUBJECT TO THE
17 SAME LIMITATIONS AND REQUIREMENTS AS A WARRANTY REIMBURSEMENT CLAIM
18 MADE UNDER SECTION 17. IN THE ALTERNATIVE, A MANUFACTURER MAY
19 COMPENSATE ITS NEW MOTOR VEHICLE DEALERS UNDER A NATIONAL RECALL
20 COMPENSATION PROGRAM IF THE COMPENSATION UNDER THE PROGRAM IS EQUAL
21 TO OR GREATER THAN THAT PROVIDED UNDER THIS SECTION, OR THE
22 MANUFACTURER AND DEALER OTHERWISE AGREE.

23 (7) A MANUFACTURER MAY DIRECT THE MANNER AND METHOD THE DEALER
24 MUST USE TO DEMONSTRATE THE INVENTORY STATUS OF AN AFFECTED USED
25 MOTOR VEHICLE TO DETERMINE ELIGIBILITY UNDER THIS SECTION, IF THAT
26 MANNER AND METHOD IS NOT UNDULY BURDENSOME AND DOES NOT REQUIRE
27 INFORMATION THAT IS UNDULY BURDENSOME TO PROVIDE.

1 (8) THIS SECTION DOES NOT REQUIRE A MANUFACTURER TO PROVIDE
2 TOTAL COMPENSATION TO A NEW MOTOR VEHICLE DEALER THAT WOULD EXCEED
3 THE TOTAL AVERAGE TRADE-IN VALUE OF THE AFFECTED USED MOTOR VEHICLE
4 AS ORIGINALLY DETERMINED UNDER SUBSECTION (3).

5 (9) ANY REMEDY PROVIDED TO A DEALER UNDER THIS SECTION IS
6 EXCLUSIVE AND MAY NOT BE COMBINED WITH ANY OTHER STATE OR FEDERAL
7 RECALL COMPENSATION REMEDY.

8 Sec. 19. (1) Notwithstanding the terms, provisions, or
9 conditions of any dealer agreement, a manufacturer or distributor
10 shall indemnify and hold harmless its **NEW MOTOR VEHICLE** dealers
11 against any judgment for damages or settlement agreed to in writing
12 by the manufacturer, including, but not limited to, court costs and
13 reasonable attorney's fees of the new motor vehicle dealer arising
14 solely out of the complaints, claims, or actions from defects ~~7~~
15 ~~which~~**THAT** relate to the manufacture, assembly, or design of
16 vehicles, parts, or accessories, or other functions by the
17 manufacturer or distributor, **THAT ARE** beyond the control of the
18 dealer, including, without limitation, the selection by the
19 manufacturer or distributor of parts or components for the vehicle,
20 or any damages to merchandise occurring in transit to the dealer if
21 the carrier is designated by the manufacturer or distributor. If
22 ~~the~~**A** complaint, claim, or action contains independent allegations
23 against the **NEW MOTOR VEHICLE** dealer, the manufacturer shall pay
24 only that portion of the costs, fees, and judgment or settlement
25 ~~which~~**THAT** is directly related to the manufacture, assembly, or
26 design of the vehicle, parts, or accessories ~~7~~ or other functions
27 of the manufacturer **THAT ARE** beyond the control of the dealer.

1 (2) A MANUFACTURER MUST RESPOND TO A REQUEST FOR
2 INDEMNIFICATION UNDER THIS SECTION WITHIN 30 DAYS AFTER THE DATE
3 THE NEW MOTOR VEHICLE DEALER SUBMITS ALL DOCUMENTS NECESSARY TO
4 SUPPORT ITS REQUEST TO THE MANUFACTURER.

5 (3) ~~(2)~~ A dealer ~~shall have no~~ **DOES NOT HAVE A** right to
6 indemnification or ~~attorney's~~ **ATTORNEY** fees as ~~provided in~~ **UNDER**
7 subsection (1) unless the dealer has given reasonable notice in
8 writing of the complaint, claim, or action to the manufacturer or
9 distributor.

10 Sec. 22a. **(1)** The 1998 amendments to this act that added this
11 section apply to agreements in existence on ~~the effective date of~~
12 ~~this section~~ **DECEMBER 30, 1998** and to agreements entered into or
13 renewed after ~~the effective date of this section~~ **DECEMBER 30, 1998**.

14 **(2) THE AMENDMENTS TO THIS ACT MADE BY THE AMENDATORY ACT THAT**
15 **ADDED THIS SUBSECTION APPLY TO DEALER AGREEMENTS ENTERED INTO OR**
16 **RENEWED, OR EXISTING DEALER AGREEMENTS THAT ARE MATERIALLY AND**
17 **SUBSTANTIALLY AMENDED, AFTER THE EFFECTIVE DATE OF THIS SUBSECTION.**

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