

# REGULATION OF MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, WHOLESALEERS, AND DEALERS

## Act 118 of 1981

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.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

*The People of the State of Michigan enact:*

### **445.1561 Meanings of words and phrases.**

Sec. 1. For the purposes of this act, the words and phrases defined in sections 2 to 6 have the meanings ascribed to them in those sections, except where the context clearly indicates a different meaning.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1562 Definitions; C, D.**

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

(2) "Dealer agreement" means the agreement or contract in writing between a distributor and a new motor vehicle dealer, between a manufacturer and a distributor or a new motor vehicle dealer, or between an importer and a distributor or a new motor vehicle dealer, which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase and sale or resale of new and unaltered motor vehicles and accessories for motor vehicles.

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

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

### **445.1563 Definitions; D to F.**

Sec. 3. (1) "Distributor" means any person, including an importer, resident or nonresident, who is engaged in the business pursuant to a dealer agreement, in whole or in part, of offering for sale, selling, or distributing new and unaltered motor vehicles to a new motor vehicle dealer, who maintains a factory representative for such purposes, resident or nonresident, or who controls any person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes new and unaltered motor vehicles to a new motor vehicle dealer. Distributor does not include a person who alters or converts motor vehicles for sale to a new motor vehicle dealer.

(2) "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

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

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

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

### **445.1564 Definitions; G to M.**

Sec. 4. (1) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade, as defined and interpreted under section 2103 of the uniform commercial code, 1962 PA 174, MCL 440.2103.

(2) "Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative.

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

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 2000, Act 240, Imd. Eff. June 28, 2000.

### **445.1565 Definitions; N to P.**

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

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

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

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

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

### **445.1566 Definitions; R.**

Sec. 6. "Relevant market area" means:

(a) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than 25,000, the area within a radius of 6 miles of the intended site of the proposed or relocated dealer. The 6-mile distance shall be determined by measuring the distance between the nearest surveyed boundary of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

(b) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is not greater than 25,000, the area within a radius of 10 miles of the intended site of the proposed or relocated dealer, or the county line, whichever is closer to the intended site. The 10-mile distance shall be determined by measuring the distance between the nearest surveyed boundary line of the existing new motor vehicle dealer's principal place of business and the nearest surveyed boundary line of the proposed or relocated new motor vehicle dealer's principal place of business.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

### **445.1567 Cancellation, termination, nonrenewal, or discontinuance of dealer agreement; conditions; existence of good cause.**

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

(a) Satisfied the notice requirement of section 10.

(b) Acted in good faith.

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

(2) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (1)(c) when both of the following occur: (a) there is a failure by the

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new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer and (b) the manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than 2 years prior to the date on which notification was given pursuant to section 10.

(3) If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause shall exist for the purposes of a termination, cancellation, nonrenewal, or discontinuance under subsection (1) when the new motor vehicle dealer fails to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

- (a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure.
- (b) The notification stated that the notice of failure of performance was provided pursuant to this act.
- (c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement.
- (d) The failure continued for more than 180 days after the date notification was given pursuant to subdivision (a).

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1568 Acts not constituting good cause for termination, cancellation, nonrenewal, or discontinuance of dealer agreement.**

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

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

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

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with the reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter, provided that the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1569 Burden of proof.**

Sec. 9. For each termination, cancellation, nonrenewal, or discontinuance, the manufacturer or distributor shall have the burden of proof for showing that it has acted in good faith, that the notice requirement has been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1570 Notice of termination, cancellation, nonrenewal, or discontinuance of dealer agreement.**

Sec. 10. Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal, or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal, or discontinuance to the new motor vehicle dealer as follows:

(a) Except as provided in subdivision (c) or (d), notice shall be made not less than 90 days prior to the effective date of the termination, cancellation, nonrenewal, or discontinuance.

(b) Notice shall be by certified mail to the new motor vehicle dealer and shall contain the following:

(i) A statement of intention to terminate, cancel, not renew, or discontinue the dealer agreement.

(ii) A statement of the reasons for the termination, cancellation, nonrenewal, or discontinuance.

(iii) The date on which the termination, cancellation, nonrenewal, or discontinuance takes effect.

(c) Notwithstanding subdivision (a), notice shall be made not less than 15 days prior to the effective date of the

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termination, cancellation, nonrenewal, or discontinuance for any of the following reasons:

(i) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law.

(ii) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for 7 consecutive business days.

(iii) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of 1 year under the law under which the dealer was convicted, or the crime involved theft, dishonesty, or false statement regardless of the punishment.

(iv) Revocation of any license under which the new motor vehicle dealer is required to have to operate a dealership.

(v) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.

(d) Notwithstanding subdivision (a), notice shall be made not less than 12 months prior to the effective date of a termination, cancellation, nonrenewal, or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1571 Compensation of dealer generally.**

Sec. 11. (1) Upon the termination, cancellation, nonrenewal, or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) All new current model year motor vehicle inventory purchased from the manufacturer or distributor, which has not been materially altered, substantially damaged, or driven for more than 300 miles and all new motor vehicle inventory not of the current model year which has not been materially altered, substantially damaged, or driven for more than 300 miles, provided the noncurrent model vehicles were purchased from the manufacturer or distributor and drafted on the dealer's financing source or paid for within 120 days of the effective date of the termination, cancellation, or nonrenewal.

(b) Supplies and parts inventory purchased from the manufacturer or distributor and listed in the manufacturer's or distributor's current parts catalog.

(c) Equipment, furnishings, and signs purchased from the manufacturer or distributor.

(d) Special tools purchased from the manufacturer or distributor within 3 years of the date of termination, cancellation, nonrenewal, or discontinuance.

(2) Upon the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement, the manufacturer or distributor shall also pay to the new motor vehicle dealer a sum equal to the current, fair rental value of his or her established place of business for a period of 1 year from the effective date of termination, cancellation, nonrenewal, or discontinuance, or the remainder of any lease, whichever is less. However, the payment required by this subsection shall not apply to any termination, cancellation, nonrenewal, or discontinuance made pursuant to section 10(c).

(3) The requirement of paying an annual fair rental value pursuant to subsection (2) shall apply only to the extent the new motor vehicle dealer's established place of business is used for performance of sales and service obligations under the manufacturer's or distributor's dealer agreement.

(4) In the event that termination is by the dealer, the payment required by subsection (2) is required only if the new motor vehicle dealer makes available to the manufacturer or distributor use and possession of the premises free of any claims of others for the 1-year period, except for use by the dealer for closing his or her business.

(5) In the event that termination is by the dealer, the payment required by subsection (2) shall not exceed \$20,000.00 unless provided otherwise by contract entered into between the parties.

(6) This section shall not relieve a new motor vehicle dealer, lessor, or other owner of an established place of business from the obligation of mitigating damages.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

### **445.1572 Payment of compensation; time; interest.**

Sec. 12. (1) Compensation for new motor vehicle inventory under section 11(1)(a) shall be paid, if possible, within 30 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance, provided that the new motor vehicle dealer has met all reasonable requirements of the dealer agreement with respect to the return of the new motor vehicle inventory. Compensation for items of personal property required by section 11(1)(b),

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11(1)(c), and 11(1)(d) shall be paid within 90 days after the effective date of the termination, cancellation, nonrenewal, or discontinuance, provided that the new motor vehicle dealer has met all reasonable requirements of the dealer agreement with respect to the return of the repurchased personal property, including providing clear title.

(2) Fair and reasonable compensation pursuant to section 11(1)(a) shall be not less than the new motor vehicle dealer's net acquisition cost. Fair and reasonable compensation pursuant to section 11(1)(b) shall be the amount stated in the manufacturer's or distributor's current parts price list. Fair and reasonable compensation pursuant to section 11(1)(c) and 11(1)(d) shall be the fair market value of the personal property.

(3) In the event payment is not made within 90 days as provided in subsection (1), interest shall accrue thereafter on all amounts due the new motor vehicle dealer at a rate of 12% per annum.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

### **445.1573 Requiring dealer to perform certain acts prohibited.**

Sec. 13. A manufacturer, importer, or distributor shall not require any new motor vehicle dealer in this state to do any of the following:

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

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

(c) Participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, or display decorations or materials or pay or assume directly in connection with the sale of a new motor vehicle any part of the cost of a refund, rebate, or discount made by or lawfully imposed by the manufacturer or distributor to or in favor of a consumer unless voluntarily agreed to by the dealer.

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of this act.

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

(f) Refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer.

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

(h) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this act; require that any dealer agreement be governed by the laws of a state other than this state; or require any controversy between a new motor vehicle dealer and a manufacturer, importer, or distributor to be referred to a person other than the duly constituted courts of this state or of the United States located in this state, if the referral would be binding upon the new motor vehicle dealer unless the parties agree at the time of a controversy to refer a controversy to a court of the United States located outside this state or agree at the time of the arbitration to conduct arbitration either within or outside this state. Such a provision in a dealer agreement is void and unenforceable.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

### **445.1574 Prohibited conduct by manufacturer, importer, or distributor.**

Sec. 14. (1) A manufacturer, importer, or distributor shall not do any of the following:

(a) Adopt, change, establish, or implement a plan or system for the allocation and distribution of new motor vehicles to new motor vehicle dealers that is arbitrary or capricious, or modify an existing plan or system that causes the plan or system to be arbitrary or capricious.

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

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or will be made to that new motor vehicle dealer.

(c) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any new motor vehicle dealer having a dealer agreement for the retail sale of new motor vehicles sold or distributed by a manufacturer or distributor any such motor vehicles as are covered by such dealer agreement specifically publicly advertised in the state by the manufacturer or distributor to be available for immediate delivery. However, the failure to deliver any motor vehicle shall not be considered a violation of this act if the failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of manufacturing capacity, a freight embargo or other cause over which the manufacturer or distributor has no control. If the manufacturer or distributor requires a new motor vehicle dealer to purchase essential service tools with a purchase price in the aggregate of more than \$7,500.00 in order to receive a specific model vehicle, the manufacturer or distributor shall upon written request provide the dealer with a good faith estimate in writing of the number of vehicles of that specific model the dealer will be allocated during that model year in which the tool is required to be purchased.

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to, the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of \$5.00 shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by any of the following:

- (i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law.
- (ii) In the case of foreign made vehicles or components, revaluation of the United States dollar.
- (iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters.

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

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

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

(h) Directly or indirectly own, operate, or control a new motor vehicle dealer including, but not limited to, a new motor vehicle dealer engaged primarily in performing warranty repair services on motor vehicles pursuant to the manufacturer's warranty. This subdivision does not apply to any of the following:

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

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

(iii) The direct or indirect ownership by a manufacturer of an entity that owns, operates, or controls a new motor vehicle dealer of the same line make franchised by the manufacturer, if all of the following conditions are met:

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

(B) All of the new motor vehicle dealers selling the manufacturer's motor vehicles in this state trade exclusively in the manufacturer's line make.

(C) As of January 1, 2000, not fewer than 1/2 of the new motor vehicle dealers of the line make within this state own and operate 2 or more new motor vehicle dealer facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(D) For a manufacturer or any entity in which the manufacturer has more than a 45% ownership interest, the manufacturer or entity has not acquired, operated, or controlled a new motor vehicle dealer that the manufacturer

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did not directly or indirectly own as of May 1, 2000.

(i) Sell any new motor vehicle directly to a retail customer other than through its franchised dealers, unless the retail customer is a nonprofit organization or a federal, state, or local government or agency. This subdivision does not prohibit a manufacturer from providing information to a consumer for the purpose of marketing or facilitating the sale of new motor vehicles or from establishing a program to sell or offer to sell new motor vehicles through the manufacturer's new motor vehicle dealers.

(j) Prevent or attempt to prevent by contract or otherwise any new motor vehicle dealer from changing the executive management of a new motor vehicle dealer unless the manufacturer or distributor, having the burden of proof, can show that the change of executive management will result in executive management by a person or persons who are not of good moral character or who do not meet reasonable, preexisting, and equitably applied standards of the manufacturer or distributor. If a manufacturer or distributor rejects a proposed change in the executive management, the manufacturer or distributor shall give written notice of its reasons to the dealer within 60 days after receiving written notice from the dealer of the proposed change and all related information reasonably requested by the manufacturer or distributor, or the change in executive management shall be considered approved.

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

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

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

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

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1998, Act 456, Imd. Eff. Dec. 30, 1998;—Am. 2000, Act 239, Imd. Eff. June 28, 2000.

### **445.1575 Succession to dealership by designated family member of deceased or incapacitated dealer; conditions; refusal to honor existing dealer agreement for good cause; personal and financial data; notice of refusal to approve succession; contents; service; designation of successor by written instrument.**

Sec. 15. (1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within 120 days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.

(2) The manufacturer or distributor may request from a designated family member such personal and financial data as is reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession, the manufacturer or distributor may, within 60 days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, or within 60 days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in subsection (3) shall state the specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than 90 days after the date the notice is served.

(5) If notice of refusal is not served within the 60 days provided for in subsection (3), the dealer agreement shall continue in effect and shall be subject to termination only as otherwise permitted by this act.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the dealership.

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**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1576 Establishment or relocation of additional dealer; notice; declaratory judgment action; exception; judicial determination of good cause.**

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

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within 30 days after receiving the notice provided for in subsection (2), or within 30 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. Once an action has been filed, the manufacturer or distributor shall not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket.

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

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

- (a) Permanency of the investment.
- (b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious or beneficial to the public welfare.
- (d) Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in the market area, including the adequacy of motor vehicle sales and qualified service personnel.
- (e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.
- (f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.
- (g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

### **445.1577 Dealer's obligations for preparation, delivery, and warranty service; written specifications; compensating dealer for required warranty service; schedule of compensation; prohibited conduct; claims for labor and parts; payment; approval or disapproval; charge back for false or fraudulent claims; records of warranty repairs; compensation and claims for promotion events, programs, or activities; approval or disapproval of claims.**

Sec. 17. (1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service, and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of a dealer for warranty labor be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided that such rates are reasonable.

(3) A manufacturer or distributor shall not:

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- (a) Fail to perform any warranty obligation.
- (b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects.
- (c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within 30 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form shall be considered to be approved and payment shall be made within 30 days. A claim which has been approved and paid may not be charged back to the dealer unless the manufacturer can show that the claim was fraudulent, false, or unsubstantiated, except that a charge back for false or fraudulent claims shall not be made more than 2 years after payment, and a charge back for unsubstantiated claims shall not be made more than 15 months after payment. A new motor vehicle dealer shall maintain all records of warranty repairs, including the related time records of its employees, for at least 2 years following payment of any warranty claim.

(5) A manufacturer or distributor shall compensate the new motor vehicle dealer for manufacturer or distributor sponsored sales or service promotion events, programs, or activities in accordance with established guidelines for such events, programs, or activities.

(6) All claims made by a new motor vehicle dealer pursuant to subsection (5) for promotion events, programs, or activities shall be paid within 10 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form shall be considered to be approved and payment shall be made within 30 days. The manufacturer has the right to charge back any claim for 6 months after the later of either the close of the promotion event, program, or activity, or the date of the payment.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

### **445.1578 Liability for damage to new motor vehicles; rejection of new motor vehicle by dealer; credit.**

Sec. 18. (1) Notwithstanding the terms, provisions, or conditions of any agreement, a new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser. Acceptance by the new motor vehicle dealer shall occur when the new motor vehicle dealer signs a delivery receipt for any motor vehicle.

(2) Notwithstanding the terms, provisions, or conditions of any agreement, the manufacturer or distributor is liable for all damages to motor vehicles before delivery to a carrier or transporter.

(3) The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.

(4) If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer's account within 10 business days after receipt of the notice of rejection.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1579 Indemnification of dealer against certain judgments; payment of costs, fees, and judgments; notice.**

Sec. 19. (1) Notwithstanding the terms, provisions, or conditions of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers against any judgment for damages or settlement agreed to in writing by the manufacturer, including, but not limited to, court costs and reasonable attorney's fees of the new motor vehicle dealer arising solely out of the complaints, claims, or actions from defects, which relate to the manufacture, assembly, or design of vehicles, parts, or accessories, or other functions by the manufacturer or distributor, beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, or any damages to merchandise occurring in transit to the dealer if the carrier is designated by the manufacturer or distributor. If the complaint, claim, or action contains independent allegations against the dealer, the manufacturer shall pay only that portion of the costs, fees, and judgment or settlement which is directly related to the manufacture, assembly, or design of the vehicle, parts or accessories, or other functions of the manufacturer beyond the control of the dealer.

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(2) A dealer shall have no right to indemnification or attorney's fees as provided in subsection (1) unless the dealer has given reasonable notice in writing of the complaint, claim, or action to the manufacturer or distributor.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981;—Am. 1983, Act 188, Imd. Eff. Nov. 1, 1983.

### **445.1580 Action for damages or declaratory judgment; liability.**

Sec. 20. (1) If a manufacturer or distributor terminates, cancels, fails to renew, or discontinues a dealer agreement for other than good cause as defined in this act, the new motor vehicle dealer may bring an action against the manufacturer or distributor to recover actual damages reasonably incurred as a result of the termination, cancellation, failure or discontinuance.

(2) A manufacturer or distributor who violates this act is liable for all damages sustained by a new motor vehicle dealer as a result of the violation.

(3) A manufacturer or distributor or new motor vehicle dealer may bring an action for declaratory judgment for determination of any controversy arising pursuant to this act.

(4) A manufacturer or distributor who violates this act shall be liable for all court costs and reasonable attorney's fees incurred by the dealer.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1581 Injunctive relief.**

Sec. 21. Upon proper application to the circuit court, a manufacturer or distributor or new motor vehicle dealer may obtain appropriate injunctive relief against termination, cancellation, nonrenewal, or discontinuance of a dealer agreement or any other violation of this act. The court may grant injunctive relief or a temporary restraining order without bond.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1582 Act inapplicable to dealer outside Michigan.**

Sec. 22. Notwithstanding the terms, provisions, or conditions of a dealer agreement, this act shall have no application to dealers located outside the state of Michigan.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

### **445.1582a Existing agreements and agreements entered into or renewed after effective date.**

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

**History:** Add. 1998, Act 456, Imd. Eff. Dec. 30, 1998.

### **445.1583 Repeal of §§ 445.521 to 445.534.**

Sec. 23. Act No. 331 of the Public Acts of 1978, being sections 445.521 to 445.534 of the Compiled Laws of 1970, is repealed.

**History:** 1981, Act 118, Imd. Eff. July 19, 1981.

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