

MAJOR PROVISIONS OF MICHIGAN'S AUTO FRANCHISE LAW

Current through the 2007 session and Public Act No. 41 of 2007 (March 21, 2008)

Created By: Public Act No. 118 of 1981, effective July 19, 1981.

Amended By: Public Act No. 188 of 1983, effective November 1, 1983; Public Act No. 456 of 1998, effective December 30, 1998; and Public Acts No. 239 and 240 of 2000, both effective June 28, 2000.

Cite As: §§445.1561-445-1583, *Michigan Compiled Laws Annotated*; §§19.856(21)-19.856(43), *Michigan Statutes Annotated*.

ADDING OR RELOCATING DEALERSHIPS

If a manufacturer wishes to add a new dealership or move one to a different location, an existing dealer selling the same brand and located in the "relevant market area" of the proposed location may sue to block the manufacturer.

Definition of "Relevant Market Area"

If the proposed location is in a county with more than 25,000 people, the relevant market area is the area within a six-mile radius of that location. If the proposed location is in a county with 25,000 or fewer people, the relevant market area is the area within a 10-mile radius of that location; however, the relevant market area may not extend beyond the county line.

Distance is measured between the nearest surveyed boundary lines of the existing and proposed dealer's respective places of business.

Exempted Additions or Relocations

The law does not apply to the relocation of a dealer within two miles of its established place of business. Nor does it apply to the reopening or replacement of a dealership that had closed within the preceding year, provided the reopened or replacement dealership will be within two miles of the one that closed.

Notice to Existing Dealers

A manufacturer wishing to add or relocate a dealership must give written notice of its intention to every dealer selling the same brand in the relevant market area.

Existing Dealer's Right to Protest

A dealer receiving notice of a proposed addition or relocation may file suit asking the court to determine whether the manufacturer has good cause for doing so. The dealer must file suit within 30 days after receiving the manufacturer's notice, or within 30 days after the end of an appeal procedure provided by the manufacturer. If a dealer files suit, the manufacturer may not go ahead with the addition or relocation until the court has decided in its favor.

Good-Cause Criteria

In determining whether good cause exists for adding or relocating a dealership, the court must consider the existing circumstances. They include, but are not limited to, the following:

- ▶ Permanency of the dealers' investment;
- ▶ The effect on the retail new motor vehicle business and on consumers in the relevant market area;
- ▶ Whether the proposed action would benefit or injure the public welfare;
- ▶ Whether dealers selling the same brand in the relevant market area are providing adequate competition and convenient consumer care;
- ▶ Whether adding or relocating a dealer would promote competition;

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- ▶ Changes in the population and the number of new motor vehicles in the relevant market area; and
- ▶ The effect of forcing a dealer wishing to relocate to stay at its present location.

ALLOCATION OF VEHICLES TO DEALERS

A manufacturer may not adopt an arbitrary or capricious system of allocating vehicles to dealers, nor may it change an allocation system in a way that makes it arbitrary or capricious.

A manufacturer must disclose, to a dealer that asks for it, the basis on which vehicles of the same brand the dealer handles are allocated to dealers in Michigan, and the basis for that dealer's current allocation.

If a manufacturer has required a dealer to buy \$7,500 or more worth of "essential service tools" as a condition of receiving a specific model vehicle, the manufacturer must provide the dealer with a written good-faith estimate of how many vehicles of that model will be allocated to it during the model year in which the tools must be bought.

The manufacturer must deliver vehicles in reasonable quantities and within a reasonable time after receiving a dealer's order for them. Failure to make timely delivery will be excused if it was caused by an act of God, a work stoppage or delay due to labor problems, a shortage of materials, lack of manufacturing capacity, a freight embargo, or some other circumstance beyond its control.

BUYBACK OF FORMER DEALER'S ASSETS

A manufacturer must buy back certain assets from a former dealer and provide financial assistance with respect to the dealer's facilities. The manufacturer's obligations depend in part on who ended the franchise relationship and why.

Repurchase of Former Dealer's Tangible Property

The manufacturer must buy back all current model year vehicles, as well as all noncurrent model year vehicles the former dealer bought within 120 days of the end of the franchise relationship. The manufacturer need not buy back vehicles that have been materially altered, substantially damaged, or driven for more than 300 miles. The manufacturer must pay the dealer at least the dealer's net cost of acquiring the vehicles. The deadline for payment is 30 days after the end of the franchise relationship, provided the dealer has complied with reasonable requirements governing the return of vehicles.

The manufacturer also must buy back the following:

- ▶ Supplies and parts listed in its current catalog, at the amount stated in its current price list;
- ▶ Equipment, furnishings, and signs, at their fair market value; and
- ▶ Special tools that the dealer bought within three years of the end of the franchise relationship, at their fair market value.

The deadline for payment is 90 days after the end of the franchise relationship, provided the dealer has complied with reasonable requirements governing the return of those items.

Obligations Relating to Dealership Facilities

If the manufacturer ended the franchise relationship, it must pay the dealer the current, fair rental value of its established place of business for one year after the end of the relationship, or for the remainder of the lease, whichever period is shorter. This requirement applies only to the extent that the facilities were used to carry out the dealer's obligations under the franchise agreement.

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However, the manufacturer has no obligation toward a dealer whose franchise was terminated or not renewed because it did one of the following:

- ▶ Became bankrupt or insolvent;
- ▶ Stopped doing business for seven consecutive business days;
- ▶ Was convicted of a crime punishable by more a year in prison, or a crime involving theft, dishonesty, or false statement;
- ▶ Had its dealer's license revoked; or
- ▶ Made a fraudulent misrepresentation that was material to the franchise agreement.

If the dealer ended the franchise relationship, the manufacturer must pay the fair rental value of the dealer's established place of business, provided the dealer offers it possession and use of the premises for one year (the dealer may, however, continue to use them to close the business). Unless the franchise agreement provides otherwise, the manufacturer's maximum financial obligation is \$20,000.

CHANGE OF DEALERSHIP'S EXECUTIVE MANAGEMENT

A manufacturer may not prevent a dealer from changing the executive management of the dealership unless it can prove that the change would result in management by persons who are not of good moral character or who do not meet its reasonable, preexisting, and equitably applied standards.

If the manufacturer objects to a proposed change of executive management, it must give the dealer written notice of its reasons within 60 days after receiving the dealer's notice of the proposed change and all related information it had reasonably asked for. If the manufacturer fails to respond by the 60-day deadline, the management change is considered approved.

DEALER'S RIGHT TO SUE

A manufacturer may not require a dealer to:

- ▶ Agree in advance to relieve a person from liability under Michigan's motor vehicle franchise laws; or
- ▶ Refer a dispute between the manufacturer and the dealer to a forum other than a federal or state court located in Michigan.

However, the parties may agree, *after* a dispute has arisen, to refer it to a court outside Michigan or to an arbitration panel.

MANUFACTURER-OWNED DEALERSHIPS

A manufacturer may not own, operate, or control a dealership, including one primarily engaged in performing warranty work. However, a manufacturer-owned dealership is permissible:

- ▶ While it is being sold under a bona fide contract or purchase option to the operator of the dealership; or
- ▶ For up to two years during the transition from one owner or operator to another. A court may extend the two-year period for an additional year if the manufacturer proves good cause for the extension.

A manufacturer may not sell a new vehicle directly to a retail customer other than a nonprofit organization or a government agency. However, a manufacturer may provide information to consumers for marketing purposes, and may establish a program to sell or offer new vehicles through its dealers.

PRESALE DAMAGE TO VEHICLES

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The manufacturer is liable for damage to a new motor vehicle before it is delivered to a carrier or transporter. The dealer is liable for damage to the vehicle after accepting it from the carrier and before delivering it to an ultimate purchaser. Acceptance occurs when the dealer signs a delivery receipt for the vehicle. If the dealer selected the method of transportation, the mode of transportation, and the carrier, it is liable for damage after the vehicle is delivered to the carrier.

If the manufacturer designated the carrier, it must indemnify the dealer for a judgment or a settlement involving in-transit damage to a vehicle. The dealer must give the manufacturer reasonable notice, in writing, of the claim requiring indemnification.

If a dealer rejects a vehicle on account of in-transit damage, the manufacturer must credit its account within 10 business days after receiving notice of the rejection.

SALE OR TRANSFER OF DEALERSHIP

The law governing sale or transfer is not clearly written. It appears, however, that different legal standards apply to the sale of a dealership's assets and the sale of a franchise agreement.

A dealer must obtain the manufacturer's consent to sell the dealership's assets. However, the manufacturer may not unreasonably deny consent if the prospective buyer is qualified and is capable of obtaining a dealer's license in Michigan.

If a proposed transaction would have the effect of a sale of the dealer's franchise, the dealer must apply in writing for consent and supply all the information required by the manufacturer's application form. The manufacturer must respond in writing within 60 days after receiving the application. Failure to respond by the 60-day deadline is considered consent to the sale. It appears that the manufacturer may deny consent for any reason.

SUCCESSION RIGHTS IN DEALERSHIP

Under certain circumstances, the legal heir of or a person named by the owner is entitled to take over a dealership.

Persons Entitled to Succeed

If a dealer dies or becomes incapacitated, a "designated family member" has the right to succeed to ownership unless the manufacturer can prove good cause not to honor the succession.

A designated family member is one of the following:

- ▶ The spouse, child, grandchild, parent, or sibling of a deceased dealer, who is entitled to inherit the ownership interest under the dealer's will or under Michigan's laws pertaining to those who die without a will;
- ▶ The person appointed by a court as the legal representative of an incapacitated dealer's property.

A dealer may designate any person as a successor in a written instrument filed with the manufacturer. The person named in that instrument is considered the designated family member.

Designated Family Member's Obligations

The designated family member must give the manufacturer written notice of his or her intention to succeed within 120 days after the dealer's death or incapacity. He or she also must agree to comply with all terms of the franchise

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agreement.

Manufacturer's Response

The manufacturer may ask the designated family member for personal and financial data reasonably necessary to determine whether it should continue to honor the franchise agreement. The designated family member must promptly supply the data asked for.

If the manufacturer believes it has good cause not to honor the succession, it must serve notice of refusal on the designated family member within 60 days after receiving his or her notice of intention to succeed, or within 60 days after receiving the personal and financial data it had asked for. The notice must specify the reasons for refusing to honor the succession. If the manufacturer fails to serve notice by the 60-day deadline, the franchise agreement stays in effect.

TERMINATION OR NONRENEWAL OF FRANCHISE

The law limits a manufacturer's right to terminate or refuse to renew a dealer's franchise, even when the terms of the franchise agreement entitle it to do so.

General Requirements

A manufacturer wishing to terminate or not to renew a dealer's franchise must prove that it gave the dealer the notice required by law; acted in good faith, as that term is defined in the Uniform Commercial Code; and had good cause for ending the franchise relationship.

Manufacturer's Notice to Dealer

In general, the manufacturer must give the dealer notice at least 90 days before the effective date of the termination or nonrenewal. However, the manufacturer is only required to give 15 days' notice if the dealer is alleged to have done one of the following:

- ▶ Become bankrupt or insolvent;
- ▶ Stopped doing business for seven consecutive business days;
- ▶ Has been convicted of a crime punishable by more than a year in prison, or a crime involving theft, dishonesty, or false statement;
- ▶ Had its dealer's license revoked; or
- ▶ Made a fraudulent misrepresentation that was material to the franchise agreement.

The notice must be sent by certified mail. It must state the manufacturer's intention to terminate or not to renew the dealer's franchise, its reasons for doing so, and the effective date of the termination or nonrenewal.

Determining Good Cause

If the termination or refusal to renew is based on breach of contract, the manufacturer must have first acquired notice of the breach within two years of giving the dealer notice of termination or nonrenewal.

If the alleged breach involves deficient sales and service performance, the manufacturer must give the dealer written notice of the failure, and must afford it a reasonable opportunity, at least 180 days in duration, to make a good-faith effort to comply with its sales and service requirements.

The following circumstances, by themselves, are not good cause for terminating or refusing to renew a franchise:

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- ▶ A change of ownership that would neither amount to a sale of the dealership nor cause a change of its principal management;
- ▶ A sale of the dealership, or shares in it, to the dealer's spouse or child, provided the transaction neither amounts to a sale of the franchise agreement nor causes a change of the dealership's principal management;
- ▶ The dealer's refusal to buy or accept delivery of goods or services it had not ordered; or
- ▶ The dealer's involvement in a dealership selling a different brand, or its locating another brand of vehicles in the same dealership facilities as those of the manufacturer, so long as the dealer maintains a reasonable line of credit for each brand and substantially complies with the franchise agreement and the manufacturer's reasonable facilities requirements.

WARRANTY WORK

General Requirements

A manufacturer must specify its dealers' warranty obligations in writing; compensate its dealers for warranty work; and provide its dealers with a compensation schedule, which includes time allowances for warranty work.

Compensation for Labor and Parts

The compensation schedule must include reasonable compensation for diagnostic work as well as repair service and labor. Time allowances for warranty work must be reasonable and adequate. In determining whether compensation is reasonable, the principal factor is the prevailing wage rate paid by dealers in the community. However, a dealer's minimum compensation is the rate that it charges its retail nonwarranty customers for similar work, provided that rate is reasonable.

Recall Work

A manufacturer must compensate its dealers for recall work. It also must include, in factory recall notices to dealers and vehicle owners, the date by which it expects necessary parts to be available to dealers.

Handling of Dealer's Claims

A dealer must maintain all records of warranty repairs, including the related time records of its employees, for two years after being paid on a claim.

The manufacturer must either approve or disapprove a dealer's claim within 30 days after receiving it on a form containing the required information. A claim not disapproved in writing by the 30-day deadline is considered approved. The manufacturer must pay the dealer within 30 days after approving a claim.

The manufacturer may not charge back a dealer more than two years after paying a false or fraudulent claim, or more than 15 months after paying an unsubstantiated claim.