



STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

October 21, 2014

Michigan House of Representatives
Michigan Senate
State Capitol Building
Lansing, Michigan 48913

Ladies and Gentlemen:

Today I have signed Enrolled House Bill 5606 into law. I take this opportunity to explain why I signed this bill, which had overwhelming bipartisan support in both houses of the Legislature. The Senate approved the final version of House Bill 5606 by a margin of 38-0, and the House approved it on a vote of 106-1.

It appears that there has been a fair amount of misunderstanding over one aspect of this legislation. This bill does not, as some have claimed, prevent auto manufacturers from selling automobiles directly to consumers at retail in Michigan. That is because this is already prohibited under Michigan law. The current law states that a manufacturer shall not "[s]ell any new motor vehicle directly to a retail customer other than through its franchised dealers"

The current language states plainly that a manufacturer can only sell new vehicles to consumers through its own network of franchised dealers. House Bill 5606 deletes the word "its" from this sentence. This change would appear merely to allow manufacturers who do not have their own franchised dealers to sell through another manufacturer's network of franchised dealers. But in any event they will be required, just as they are now, to sell through a franchised dealer, and not directly to consumers. House Bill 5606 does nothing to change this fact. At most, it clarifies the existing requirement in Michigan law.

For the avoidance of doubt on this question, I asked Attorney General Schuette to analyze the effect of HB 5606 on the ability of manufacturers to sell automobiles directly to consumers. As you can see from the attached letter from the Attorney General's Chief Legal Counsel, he also has concluded that the bill does not eliminate the ability of manufacturers to conduct direct sales, because they did not have that right before I signed HB 5606 into law. They could only sell through franchised dealers, and this will remain the case under the new law.

A healthy, open discussion can and should be had over whether the current business model in Michigan should be changed. This discussion should consider, first and foremost, what is best for Michigan consumers, for expanding economic activity, and for innovation in our state. We should always be willing to reexamine our business and regulatory practices with an eye toward improving the customer experience for our citizens and doing things in a more efficient and less costly fashion. I urge the Legislature to engage in this discussion and to make it a top priority in its next session.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick Snyder".

Rick Snyder
Governor

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

October 21, 2014

Honorable Richard D. Snyder
Governor of the State of Michigan
The George Romney Building
Lansing, MI 48909

Re: Section 14 of Enrolled House Bill 5606 of 2014

Dear Governor Snyder:

You have asked whether the first sentence of section 14 of Enrolled House Bill 5606 of 2014 fundamentally changes existing law, and Attorney General Bill Schuette has asked me to respond to your question. The first sentence of section 14 clarifies and enhances existing law by making clear that motor vehicle manufacturers may sell new motor vehicles to retail customers only through franchised dealers – which is the same requirement under current law.

Under existing law, motor vehicle manufacturers are prohibited from selling new motor vehicles directly to a retail customer. See MCL 445.1574(1)(i). With limited exceptions, manufacturers must sell new vehicles through franchised dealers. See *Id.* On October 7, 2014, HB 5606 was presented to the Governor. In pertinent part, section 14 of HB 5606 would modify MCL 445.1574(1)(i) as follows:

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

- (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.

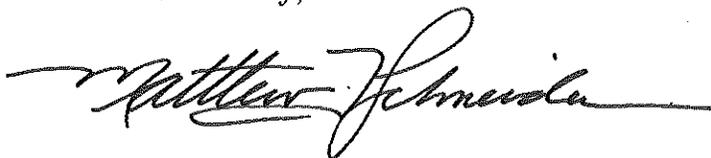
The primary goal of statutory interpretation is to determine the intent of the Legislature. Legislative intent is identified by the plain meaning of the statute. When a statute is clear and not ambiguous, we must presume that the Legislature meant what it said, and the statute must be enforced as written. *People v Hardy*, 494 Mich 430, 439; 834 NW2d 340 (2013); see also *People v Gardner*, 482 Mich 41, 50; 753 NW2d 78 (2008).

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An argument has been advanced that the proposed deletion of the word "its" would prevent manufacturers from selling new motor vehicles directly to customers. This argument is incorrect, because under the plain language of both existing law and under the amended Section 14, manufacturers already "shall not" sell new motor vehicles unless they utilize "franchised dealers." Deletion of the word "its" does not prohibit what is already prohibited under the statute. Whether a manufacturer uses "its own" franchised dealer, or uses some other franchised dealer to sell motor vehicles, does not change the fact that the manufacturer must use a franchised dealer.

For these reasons, the Department of Attorney General concludes that the first sentence of Section 14 of HB 5606 simply enhances the manufacturer-dealership relationship by allowing manufacturers to sell new motor vehicles through dealers other than those controlled by the manufacturer.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Schneider", with a long horizontal flourish extending to the right.

Matthew Schneider
Chief Legal Counsel

MS:hlg

STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

Introduced by Reps. Nesbitt and Foster

ENROLLED HOUSE BILL No. 5606

AN ACT 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 section 14 (MCL 445.1574), as amended by 2010 PA 141.

The People of the State of Michigan enact:

Sec. 14. (1) A manufacturer 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 based on unreasonable sales and service standards, or modify an existing plan or system that causes the plan or system to be arbitrary or capricious or based on unreasonable sales and service standards.

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

(c) Refuse to deliver to a new motor vehicle dealer in reasonable quantities and within a reasonable time after receipt of the dealer's order, any new motor vehicles that are covered by the dealer agreement and specifically publicly advertised in this state by the manufacturer as available for immediate delivery. However, the failure to deliver any motor vehicle is not 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 has no control. If a manufacturer 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 of vehicle, the manufacturer shall on 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 in the model year in which the dealer is required to purchase the tool.

(d) Increase the price of a new motor vehicle that 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 before the dealer's receipt of a written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer constitutes evidence of a vehicle order. In the event of manufacturer price reductions or cash rebates, the dealer shall pass on the amount of any reduction or rebate received by the dealer to the private retail consumer. Any price reduction in excess of \$5.00 shall apply to all vehicles in the dealer's inventory that 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

(w) If a new motor vehicle dealer sold or leased a new motor vehicle to a customer that exported the motor vehicle to a foreign country or resold the motor vehicle, refuse to allocate, sell, or deliver new motor vehicles to the dealer; charge back or withhold payments or other things of value for which the dealer is otherwise eligible under a sales promotion, program, or contest; prevent a new motor vehicle dealer from participating in any sales promotion, program, or contest; or take or threaten to take any other adverse action against a new motor vehicle dealer, including, but not limited to, reducing vehicle allocations or terminating or threatening to terminate a dealer agreement, unless the manufacturer proves that the new motor vehicle dealer knew or reasonably should have known that the customer intended to export or resell the motor vehicle. In an action by a new motor vehicle dealer for a violation of this subdivision, there is a rebuttable presumption that a new motor vehicle dealer did not know or should not reasonably have known of its customer's intent to export or resell a motor vehicle if the vehicle was titled in the United States, and the manufacturer bears the burden of rebutting that presumption.

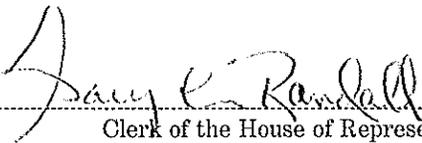
(x) If a new motor vehicle dealer is a party to a dealer agreement on August 4, 2010, and the dealer agreement provides for sale of a competing line make of new motor vehicles at the same place of business where the manufacturer's line make is sold, require or otherwise coerce the new motor vehicle dealer to remove the sale or servicing of new motor vehicles of that competing line make from that place of business.

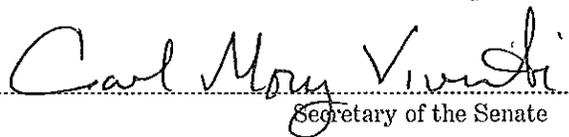
(y) Prevent, attempt to prevent, prohibit, coerce, or attempt to coerce a new motor vehicle dealer from charging a consumer any documentary preparation fee allowed to be charged by the dealer under the laws of this state.

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

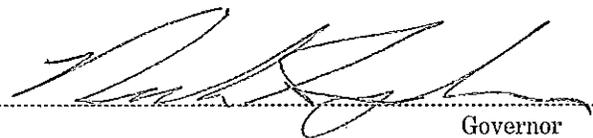
(3) This section applies to a manufacturer that sells, services, displays, or advertises its new motor vehicles in this state.

This act is ordered to take immediate effect.


Clerk of the House of Representatives


Secretary of the Senate

Approved 10/21/14 12:25 PM


Governor