WEST VIRGINIA CODE: §17a-6A-10

§17A-6A-10. Prohibited practices.

(a) A manufacturer or distributor may not require any dealer in this state to do any of the following:

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

(2) 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;

(3) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the dealer;

(4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty, or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor, or any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(5) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance, and compliance with prior capital structure or financial requirements and business necessity, 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. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

(6) 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. Notwithstanding the terms of any dealer agreement, a manufacturer or distributor

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may not enforce any requirements, including facility or image requirements, that a dealer establish or maintain exclusive facilities, personnel, or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify such actions is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(7) 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. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

(8) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this article or require any controversy between a dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this article prevents a dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment, or waiver of a trial by jury;

(9) Coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs, or other franchisor image elements that replace or substantially alter those improvements, signs, or franchisor image elements completed within the preceding 15 years that were required and approved by the manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other payments to a retail buyer, lessee, or dealer paid on individual new motor vehicle sales or leases under a program offered after the effective date of this subdivision that are available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer, factory branch, distributor, or distributor branch, and completed within 15 years preceding the program, the dealer is determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that 15-year period: *Provided*, That the provisions of this subdivision apply to any dealer who obtains ownership, either through a stock purchase, asset purchase or other means, of a new motor vehicle dealership which has met the requirements of this subdivision within the 15-year period set forth in this subdivision, unless the dealer selling the new motor vehicle dealership has signed an agreement with the manufacturer agreeing to dealer facility improvements or the installation of franchiser image elements prior to an agreement to transfer ownership to a subsequent dealer. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of the program, nor to a modification that is not a modification of a material term or condition of the program;

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(10) Condition the award, sale, transfer, relocation, or renewal of a dealer agreement, or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation;

(11) Enter into a contractual requirement imposed by the manufacturer, distributor, or a captive finance source as follows:

(A) In this section, "captive finance source" means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated, or controlled by the manufacturer, factory branch, distributor or distributor branch.

(B) It is unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any dealer agreement, to require any of its dealers located in this state to agree to any terms, conditions, or requirements in subdivisions (1) through (10), inclusive, of this subsection in order for the dealer to sell to any captive finance source any retail installment contract, loan, or lease of any new motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the retail buyer or lessee transaction incentive program payable to the retail buyer, lessee, or the dealer and offered by or through any captive finance source as to that incentive program.

(C) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

(D) It is unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor; or

(12) Agree to any term or provision in the dealer agreement which gives a manufacturer or distributor the right to unilaterally amend the dealer agreement governing the operation and business of a dealer, including, but not limited to, the purchase, sale, lease, or service of new motor vehicles except as provided for in this article. That term or provision is considered null and void. Any amendment to a dealer agreement governing the purchase, sale, lease, or service of new motor vehicles must be agreed upon by both the manufacturer, factory branch, distributor, or distributor branch and the dealer at the time the dealer agreement is amended.

(b) A manufacturer or distributor may not do any of the following:

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(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. A manufacturer or distributor may not penalize a dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(2) Refuse to offer to its same line-make dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate label or badge indicating an upgraded version of the same model regardless of the new motor vehicle's means of propulsion: *Provided*, That the dealer meets any reasonable sales, warranty service repair, and recall standards established by the manufacturer or distributor. This prohibition includes a new line make established by a manufacturer with a dealer agreement in this state, or a subsidiary thereof, or a company affiliated through ownership of the manufacturer, factory branch, distributor, or distributor branch of at least 25 percent of the equity of the company. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

(3) Require as a prerequisite to receiving a model or series of new motor vehicles, that a dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable facility or image remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

(4) Use new motor vehicles in transit but not yet in the dealer's physical possession in any sales effective or efficiency formula to the detriment of the dealer;

(5) Refuse to disclose to a dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within 30 days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

(6) Refuse to disclose to a dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a request;

(7) Increase prices of new motor vehicles which the dealer had ordered and then eventually delivered to the same retail buyer or lessee 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 which has been submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or

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rebate received by a dealer shall be passed on to the private retail buyer or lessee by the dealer. Any price reduction in excess of $5 shall apply to all new motor 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 is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

(A) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(B) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(C) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(8) 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;

(9) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the 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 dealer gives his or her written consent;

(10) Deny a dealer the right to associate with another dealer for any lawful purpose;

(11) Establish, operate, or engage in the business of a new motor vehicle dealership. A manufacturer or distributor is not considered to have established, operated, or engaged in the business of a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period;

(B) Operating a preexisting dealership which is for sale at a reasonable price; or

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(12) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a new or used motor vehicle dealership, including, but not limited to, displaying

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a motor vehicle intended to facilitate the sale of new motor vehicles other than through dealers, unless the display is part of an automobile trade show that more than two motor vehicle manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

(13) A manufacturer or distributor may own an interest in a dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(A) The person from whom the manufacturer or distributor acquired the dealership was a dealer; and

(B) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(14) The 12-month period may be extended for an additional 12 months. Notice of any extension of the original 12-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within 20 air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original 12-month period. Any dealer receiving the notice may protest the proposed extension within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the dealer is located to determine whether good cause exists for the extension;

(15) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer’s or distributor’s participation in the dealership is in a bona fide relationship with a dealer who:

(A) Has made a significant investment in the dealership, subject to loss;

(B) Has an ownership interest in the dealership; and

(C) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

(16) 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;

(17) 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 dealer on the forms generally used by the manufacturer or distributor for that purpose and containing the information required in the application. Failure to respond to the request within the 60 days

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is consent;

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

(19) Audit any dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates, or other forms of sales incentive compensation more than 12 months after the claim for payment or reimbursement has been made by the dealer. A charge back may not be made until the dealer has had notice and an opportunity to support the claim in question within 30 days of receiving notice of the charge back. An otherwise valid reimbursement claim may not be denied once properly submitted in accordance with material and reasonable manufacturer guidelines unless the factory can show that the claim was false or fraudulent, or that the dealer failed to reasonably substantiate the claim consistent with the manufacturer's written, reasonable, and material guidelines. This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all documented copying, postage, and administrative and personnel costs reasonably incurred by the dealer during the audit. Any charges to a dealer as a result of the audit shall be separately billed to the dealer;

(20) Restrict or attempt to restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, or option to purchase;

(21) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a dealer;

(22) Make any material or unreasonable change to the dealer's area of responsibility without giving the dealer written notice, by certified mail of the change at least 60 days prior to the effective date of the change which shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a dealer's area of responsibility, and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the dealer may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a dealer's area of responsibility unless the manufacturer shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, an alteration to a dealer's area of responsibility shall not become effective until a final determination by the court. If a dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the dealer to become sales effective prior to taking any action claiming a breach or

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nonperformance of the dealer’s sales performance responsibilities;

(23) Fail to reimburse a dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any retail buyer or lessee who is having a motor vehicle serviced at the dealership if the provision of the loaner motor vehicle is required by the manufacturer;

(24) Compel a dealer, through its finance subsidiaries, to agree to unreasonable operating requirements, or to directly or indirectly terminate a dealer agreement through the actions of a finance subsidiary of the manufacturer. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

(25) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model, or quantity where the effect of the discrimination would substantially lessen competition;

(26) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer; or

(27) Require or coerce any dealer to sell, offer to sell, or sell exclusively an extended service contract, maintenance plan, or similar product, including gap or other products offered, endorsed, or sponsored by the manufacturer or distributor by the following means:

(A) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

(B) By a contract made to the dealer on the condition that the dealer sells, offers to sell, or sells exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(C) By measuring the dealer's performance under the dealer agreement based on the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

(D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor: *Provided*, That nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a dealer who makes the voluntary decision to offer to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

(E) By requiring a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available

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to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch: *Provided*, That the approval may not be unreasonably withheld: *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the dealer's selected vendor: *Provided further*, That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

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

(d) Except as may otherwise be provided in this article, a manufacturer may not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail, buyer or lessee offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle to a retail buyer or lessee in this state, except through a dealer holding a franchise for the line-make covering the new motor vehicle. This subsection does not apply to manufacturer sales of new motor vehicles to charitable organizations, qualified vendors, or employees of the manufacturer.

(e) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer, or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a dealer agreement for the retail sale of any new motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles that are covered by the dealer agreement if the vehicles, parts, and accessories are publicly advertised as being available for delivery or are actually being delivered.

(f) It is unlawful for any manufacturer, factory branch, distributor, or distributor branch, when providing a new motor vehicle to a dealer for offer, sale, or lease in this state to the public, to fail to provide to the dealer a written disclosure that may be provided to a potential retail buyer or lessee of the new motor vehicle of each accessory or function of the motor vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the retail buyer or lessee for the initiation, update change, or maintenance that is known at the time of sale. A manufacturer or distributor may comply with this subdivision by notifying the dealer that the information is available on a website or by other digital means.

(g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act prejudicial against a new motor vehicle dealer arising from the retail price at which a dealer sells a new motor vehicle.

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(h) Notwithstanding the terms of any dealer agreement, or the terms of any program or policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement with any dealer in this state and if the manufacturer or distributor permits retail customers the option of reserving the purchase or lease of a vehicle through a manufacturer or distributor reservation system:

(1) Fail to assign any retail vehicle reservation, or request to purchase, or lease received by the manufacturer or distributor from a resident of this state to the dealer authorized to sell that make and model which is designated by the retail buyer or lessee, or if none is designated, to its dealer authorized to sell that make and model located in closest proximity to the retail buyer or lessee's location: *Provided*, That if the retail buyer or lessee does not purchase or lease the vehicle from that dealer within 10 days of the new motor vehicle being received by the dealer, or if the retail buyer or lessee requests that the transaction be assigned to another dealer, then the manufacturer or distributor may assign the transaction to another dealer authorized to sell that make and model;

(2) Prohibit or interfere with a dealer negotiating the final purchase price of the new motor vehicle with a retail buyer or lessee that has reserved the purchase or lease through a manufacturer or distributor reservation system;

(3) Prohibit or interfere with a dealer offering and negotiating directly with the customer retail buyer or lessee the terms of vehicle financing or leasing through all sources available to the dealer for the retail buyer or lessee that has reserved the purchase or lease of a new motor vehicle through a manufacturer or distributor reservation system;

(4) Prohibit or interfere with a dealer's ability to offer to sell or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection agreement, or any other vehicle-related products and services offered by the dealer with a retail buyer or lessee that has reserved to purchase or lease through a manufacturer or distributor reservation system: *Provided*, That a manufacturer, distributor, or captive finance source shall not be required to finance the product or service;

(5) Prohibit or interfere with a dealer directly negotiating the trade-in value the retail buyer or lessee will receive, or prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value negotiated with a retail buyer or lessee that has reserved to purchase or lease a new motor vehicle through the manufacturer or distributor reservation system;

(6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

(7) Nothing contained in this subdivision shall:

(A) Require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a dealer located in this state in order to satisfy a retail buyer or lessee's vehicle reservation or request submitted directly to the manufacturer or distributor as provided in

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this section;

(B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision, the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle submitted directly by a retail buyer or lessee or a potential retail buyer or lessee to a manufacturer or distributor reservation system; or

(C) Apply to a reservation or request to purchase or lease a new motor vehicle through the manufacturer or distributor received from the retail buyer or lessee that is a resident of this state if the retail buyer or lessee designates a dealer outside of this state to be assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the retail buyer or lessee's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.

(i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any dealer in this state, offer new motor vehicles through a subscription directly to a retail buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering new motor vehicles through a subscription program through a dealer for sale or lease to a retail buyer or lessee.

(j) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a new motor vehicle to a retail buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering a financing program through a dealer which is available for retail buyers or lessees.

(k) A manufacturer may not coerce or require any dealer, whether by agreement, program, incentive provision, or provision for loss of incentive payments or other benefits, to amend its dealer agreement or to establish a dealer agreement under which the manufacturer:

(1) Maintains a website or other electronic or digital means of communication for negotiating prices or other binding terms of sale or lease of new motor vehicles directly with retail buyers or lessees, including, but not limited to, agreements between the manufacturer, factory branch, distributor, or distributor branch on prices or other substantive terms for the sale or leasing of new motor vehicles directly with retail buyers or lessees;

(2) Retains ownership of new motor vehicles until they are sold or leased to retail buyers or lessees; except that, a manufacturer or distributor may maintain a common supply of new motor vehicles to which it retains ownership until the new motor vehicles are sold to dealers pursuant to the manufacturer or distributor's allocation policies and procedures, and may maintain a common supply of new motor vehicles from which a dealer may buy vehicles for the dealer's inventory without having reached agreement for sale or lease of any new motor vehicle with a retail buyer or lessee if the manufacturer, factory branch, or distributor, or

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distributor branch does not otherwise allow its dealers to obtain stock inventory through the new motor vehicle allocation process and pursuant to the manufacturer or distributor's allocation policies and procedures;

(3) Consigns new motor vehicles to dealers for dealer inventory or for sale to a retail buyer or lessee;

(4) Reserves the right to negotiate binding terms of sale or lease directly with retail buyers or lessees of new motor vehicles; or

(5) Designates dealers to be only delivery agents for new motor vehicles, for which the binding terms of sale or lease are negotiated directly between the manufacturer and the retail buyer or lessee of the new motor vehicle.

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