WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

ENROLLED
SENATE BILL NO. 135

(By Mr. Riddell, Sen. Aultman & Mr. Jackson)

PASSED March 8, 1976

In Effect seven days after Passage

Filed in the Office of Secretary of State of West Virginia
This Date 3/8/76
AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seventeen, relating to the regulation of business practices between motor vehicle manufacturers, distributors and dealers; jurisdiction of nonresident manufacturers and distributors; definitions; certain acts prohibited; remedies; liabilities for damages; dealer's duties; writing required; checklists and repairs; warranty work; and claims procedure.

Be it enacted by the Legislature of West Virginia:
That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article seventeen, to read as follows:

ARTICLE 17. REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS.

§47-17-1. Legislative finding.
1 The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers, manufacturers, distributors, and representatives of vehicle manufacturers and distributors doing business in this state in order to avoid undue control of the inde-
pendent new motor vehicle dealer by the vehicle manu-
facturer or distributor and to insure that dealers fulfill
their obligations under their franchises and provide ade-
quate and sufficient service to consumers generally.

§47-17-2. Governing law.

In accord with the settled public policy of this state
to protect the rights of its citizens, it is hereby enacted
as the law of West Virginia that each franchise or agree-
ment between a manufacturer or distributor and a dealer
who is a resident of West Virginia, to be performed in
substantial part in West Virginia, shall be construed and
governed by the laws of the state of West Virginia, re-
gardless of the state in which it was made or executed
and of any provision in such franchise or agreement to
the contrary.

The provisions of this article shall apply only to any
such franchise or agreement which is entered into or
renewed subsequent to the effective date of this article.

§47-17-3. Actions against nonresident manufacturers and dis-
tributors.

Any franchise between a nonresident manufacturer or
distributor and a dealer who is a resident of West Vir-
ginia to be performed in substantial part in West Vir-
ginia shall subject such nonresident manufacturer or
distributor to the jurisdiction of the circuit courts of this
state as hereinafter provided. The secretary of state
shall be the true and lawful attorney of such nonresident
manufacturer or distributor upon whom all lawful
process or service may be made in any action or pro-
cedure.

§47-17-4. Definitions.

As used in this article:

(a) “Person” means individual, firm, partnership,
association, joint stock company, corporation, trust or any
combination of individuals.

(b) “Dealer” means a person engaged in the business
of selling, displaying, offering for sale, or dealing in new
motor vehicles at the retail level.
(c) "Manufacturer" means a person who manufactures, assembles, or imports new motor vehicles.

(d) "Distributor" means a person who sells or distributes new motor vehicles to franchise dealers or who maintains subdistributors or representatives who sell or distribute new motor vehicles to franchise dealers.

(e) "Franchise" means a contract, agreement or any other legal device or means used to describe and establish the contractual relationship between manufacturers, distributors and dealers of new motor vehicles.

(f) "Coerce" means to induce action or inaction by threats.

(g) "Just cause" means reasonable cause based on reasonable grounds, and requires a fair and honest cause or reason based on good faith.

(h) "Area of influence or responsibility" means the geographical area which a franchise dealer can document he significantly services in respect to sales and servicing of new motor vehicles.

§47-17-5. Certain acts prohibited.

Notwithstanding the terms, provisions, or conditions of any franchise, no manufacturer or distributor shall:

(a) Terminate, cancel or fail to renew a franchise without just cause, except with the prior consent of the dealer. Notwithstanding the provisions of any franchise setting forth prima facie grounds or just cause for terminating, canceling or failing to renew a franchise, such determination of just cause shall be made by a court of law after due consideration of, but without being bound by the prima facie grounds or definition of just cause contained in such franchise. The burden of proof of just cause shall be on the manufacturer or distributor.

(b) Refuse without just cause to accept as successor the widow, son or other member of the family of a deceased dealer, who succeeds to the deceased person's place in the dealership business. However, no member of the family may succeed to a franchise unless the manufacturer has been given written notice of the identity, financial ability and qualifications of such member of the
family and in no event shall the successor be refused
acceptance until after two months' notice in writing is
first given by the manufacturer or distributor to the suc-
cessor dealer.

(c) Sell, lease, or rent goods, motor vehicles, or
render any service normally performed and required of
dealers under the franchise agreement with the manu-
facturer in unfair competition with such dealer, except
that this division does not apply to a sale, lease or rental
to, or service performed for, an agency of federal, state
or local government.

(d) Require any dealer to participate in or contribute
to any local or national advertising fund, or participate in
any contests, "giveaways" or other sales devices, without
the dealer's consent.

(e) Withhold or delay delivery of motor vehicles out of
the ordinary course of business.

(f) Discriminate against any dealer in the allocation
of, or through withholding from delivery, of certain
models of motor vehicles ordered by the dealer, out of
the ordinary course of business.

(g) Amend unilaterally a dealer's allotment of motor
vehicles or quota in sales contests without reasonable
cause.

(h) Coerce, attempt to coerce a dealer, or act other
than honestly in accordance with reasonable standards
for fair dealing, with respect to the dealer's right to sell,
assign, transfer, or otherwise dispose of his business, in
all or in part: Provided, That the dealer shall have no
right to sell, assign, or transfer the franchise without the
manufacturer's consent.

(i) Coerce or attempt to coerce any dealer by any of
the following methods: (1) Threaten to refuse or fail to
renew or extend a lease of premises controlled by a manu-
facturer, (2) threaten to award an additional franchise
or agreement to another person for the sale of the same
product as a dealer in that dealer's area of influence or
responsibility, (3) threaten to withhold or delay the
delivery of motor vehicles, parts or other saleable goods,
(4) threaten to terminate, cancel or fail to renew a
dealer's franchise or agreement, or (5) any other method of coercion as follows: (i) expand a dealer's facilities, increase a dealer's sales personnel, purchase more parts or accept programs for sales and the operation of a dealer's business, (ii) accept delivery of any motor vehicle, parts, accessories or other similar commodities not ordered by a dealer, (iii) consent to participate and participate in or contribute to any local or national advertising fund, or participate in any contests, "giveaways" or other sales devices, (iv) compel a dealer to yield to demands of a manufacturer or distributor for increased sales, expansion of facilities or improvement of operations inconsistent with good business practices.

Nothing in this section shall prohibit or prevent a manufacturer or distributor from performing, or requiring the performance by a dealer of any of the provisions of the franchise where such performance or requirement is fair, reasonable and equitable under all the surrounding circumstances, and consistent with good business practices on the part of both dealer and manufacturer or distributor.

§47-17-6. Remedies.

Any circuit court of this state shall have jurisdiction to hear and determine all issues or disputes arising under a franchise, or under the provisions of this article. In addition to general relief, the court shall have specific authority to: (a) Grant injunctions against violations or threatened violations of any provision of the franchise or of this article; (b) by declaratory judgment or otherwise determine the rights and remedies of each party; (c) as a condition to ordering or authorizing the termination, cancellation or failure to renew a franchise for just cause, but without the consent of the dealer, to require the manufacturer or distributor to purchase from the dealer (1) at full and fair market value all or any portion of the machinery, materials, and equipment of the dealer reasonably utilized in the marketing of the manufacturer's goods or services which were acquired by the dealer at the written request of manufacturer or distributor; and (2) to purchase from the dealer all or
any portion of the dealer's inventory of goods, specialized tools, sales aids, current parts and accessories purchased by the dealer in accordance with the requirements of the manufacturer, at net cost less freight and cartage; (d) to assess and fix the value of any item required to be purchased as provided in this section; (e) to order that a dealer shall remain in business until a final disposition by the courts of such case pending under this section; and (f) to assess and award damages in favor of the party entitled thereto under this article.

In any action arising over the question of the termination, cancellation or failure to renew a franchise or agreement, the burden of proof to show the manufacturer's or distributor's just cause shall be on the manufacturer or distributor. Any such action hereunder shall be brought in the circuit court of the county wherein the dealer has his principal place of business.

§47-17-7. Liability for damages.

Any manufacturer or distributor who directly or through an officer, employee or agent violates any of the provisions of this article shall be liable to the dealer injured by such violation for all reasonable damages sustained by the dealer that are the proximate result of a violation by the manufacturer or its officer, employee or agent.

§47-17-8. Dealer's duties.

A dealer having an agreement or franchise shall maintain adequate physical facilities and personnel so that the manufacturer's product is at all times properly represented in the dealer's sales area so that the reputation and trademark of the manufacturer shall be protected and so that the general public will receive adequate servicing of manufacturer's products, and the dealer shall act at all times in good faith.

§47-17-9. Writing required.

The following actions shall be in writing and signed by the manufacturer, distributor or its authorized representative: (a) The creation, modification, interpretation, or termination of the franchise; (b) failure to renew or
extend such franchise; (c) the original investment or the increasing or supplementing of the investment by the dealer; (d) the franchise and its stipulations as to facilities, purchases of goods, vehicles, accessories, parts or commodities by the dealer from the manufacturer; (e) the sufficiency of the dealer's performance as a dealer; (f) advertising and promotional activity by the dealer; and (g) the dealer's right to sell, assign, or transfer, or otherwise dispose of his business.

§47-17-10. Repair checklist; repairs; warranty work; claims procedure.

1 Each manufacturer shall furnish to each of its dealers and franchisees a checklist of authorized work which the manufacturer obligates the dealer to perform in preparing a motor vehicle for retail sale and which the dealer is required to perform.

2 Each manufacturer shall reasonably compensate its dealers for work and services the dealers are required to perform in connection with the dealer's delivery and preparation obligations according to the manufacturer's checklist.

3 Each manufacturer shall compensate its dealers for all warranty work performed. The rate of pay for such warranty work shall be mutually agreed upon by the dealer and manufacturer. In the event the dealer and manufacturer shall not mutually agree as to the rate of pay, the rate shall be determined by any circuit court as authorized by this article.

4 Each manufacturer shall pay or credit each dealer for preparation work for retail sales and warranty work performed by the dealer within thirty days after claim for compensation has been approved by the manufacturer.

5 All claims shall be approved or disapproved by the manufacturer within thirty days after the request thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

**James L. Davis**
Chairman Senate Committee

**Florence E. Shodel**
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

**J. Dillion Jr.**
Clerk of the Senate

**O.A. Blankenship**
Clerk of the House of Delegates

**W. F. Brenton Jr.**
President of the Senate

**Lewis F. W. Mann**
Speaker House of Delegates

The within approved this the 16th day of March, 1976

**Aubrey R. Hazard**
Governor
PRESENTED TO THE GOVERNOR

Date  3/11/76
Time  4:25 p.m.