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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

ENROLLED

SENATE BILL NO. 135

(By Mr. Brotter, Mr. President & Mr. Nelson)

PASSED March 8, 1976

In Effect immediately from Passage

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/18/76

ENROLLED

Senate Bill No. 135

(By MR. BROTHERTON, MR. PRESIDENT, and MR. NELSON)

[Passed March 8, 1976; in effect ninety days from passage.]

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
2 and sale of motor vehicles in this state vitally affects the
3 general economy and the public welfare and that in order
4 to promote the public welfare and in exercise of its
5 police power, it is necessary to regulate motor vehicle
6 dealers, manufacturers, distributors, and representatives
7 of vehicle manufacturers and distributors doing business
8 in this state in order to avoid undue control of the inde-

9 pendent new motor vehicle dealer by the vehicle manu-
10 facturer or distributor and to insure that dealers fulfill
11 their obligations under their franchises and provide ade-
12 quate and sufficient service to consumers generally.

§47-17-2. Governing law.

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

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

§47-17-3. Actions against nonresident manufacturers and distributors.

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

§47-17-4. Definitions.

1 As used in this article:

2 (a) "Person" means individual, firm, partnership,
3 association, joint stock company, corporation, trust or any
4 combination of individuals.

5 (b) "Dealer" means a person engaged in the business
6 of selling, displaying, offering for sale, or dealing in new
7 motor vehicles at the retail level.

8 (c) "Manufacturer" means a person who manufac-
9 tures, assembles, or imports new motor vehicles.

10 (d) "Distributor" means a person who sells or dis-
11 tributes new motor vehicles to franchise dealers or who
12 maintains subdistributors or representatives who sell
13 or distribute new motor vehicles to franchise dealers.

14 (e) "Franchise" means a contract, agreement or any
15 other legal device or means used to describe and establish
16 the contractual relationship between manufacturers, dis-
17 tributors and dealers of new motor vehicles.

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

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

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

§47-17-5. Certain acts prohibited.

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

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

13 (b) Refuse without just cause to accept as successor
14 dealer the widow, son or other member of the family of a
15 deceased dealer, who succeeds to the deceased person's
16 place in the dealership business. However, no member of
17 the family may succeed to a franchise unless the manufac-
18 turer has been given written notice of the identity,
19 financial ability and qualifications of such member of the

20 family and in no event shall the successor be refused
21 acceptance until after two months' notice in writing is
22 first given by the manufacturer or distributor to the suc-
23 cessor dealer.

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

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

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

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

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

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

51 (i) Coerce or attempt to coerce any dealer by any of
52 the following methods: (1) Threaten to refuse or fail to
53 renew or extend a lease of premises controlled by a manu-
54 facturer, (2) threaten to award an additional franchise
55 or agreement to another person for the sale of the same
56 product as a dealer in that dealer's area of influence or
57 responsibility, (3) threaten to withhold or delay the
58 delivery of motor vehicles, parts or other saleable goods,
59 (4) threaten to terminate, cancel or fail to renew a

60 dealer's franchise or agreement, or (5) any other method
61 of coercion as follows: (i) expand a dealer's facilities,
62 increase a dealer's sales personnel, purchase more parts or
63 accept programs for sales and the operation of a dealer's
64 business, (ii) accept delivery of any motor vehicle, parts,
65 accessories or other similar commodities not ordered by a
66 dealer, (iii) consent to participate and participate in or
67 contribute to any local or national advertising fund, or
68 participate in any contests, "giveaways" or other sales
69 devices, (iv) compel a dealer to yield to demands of a
70 manufacturer or distributor for increased sales, expansion
71 of facilities or improvement of operations inconsistent
72 with good business practices.

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

§47-17-6. Remedies.

1 Any circuit court of this state shall have jurisdiction
2 to hear and determine all issues or disputes arising under
3 a franchise, or under the provisions of this article. In
4 addition to general relief, the court shall have specific
5 authority to: (a) Grant injunctions against violations or
6 threatened violations of any provision of the franchise
7 or of this article; (b) by declaratory judgment or other-
8 wise determine the rights and remedies of each party;
9 (c) as a condition to ordering or authorizing the termina-
10 tion, cancellation or failure to renew a franchise for just
11 cause, but without the consent of the dealer, to require
12 the manufacturer or distributor to purchase from the
13 dealer (1) at full and fair market value all or any portion
14 of the machinery, materials, and equipment of the dealer
15 reasonably utilized in the marketing of the manufac-
16 turer's goods or services which were acquired by the
17 dealer at the written request of manufacturer or dis-
18 tributor; and (2) to purchase from the dealer all or

19 any portion of the dealer's inventory of goods, specialized
20 tools, sales aids, current parts and accessories purchased
21 by the dealer in accordance with the requirements of
22 the manufacturer, at net cost less freight and cartage;
23 (d) to assess and fix the value of any item required to
24 be purchased as provided in this section; (e) to order
25 that a dealer shall remain in business until a final disposi-
26 tion by the courts of such case pending under this section;
27 and (f) to assess and award damages in favor of the
28 party entitled thereto under this article.

29 In any action arising over the question of the termina-
30 tion, cancellation or failure to renew a franchise or agree-
31 ment, the burden of proof to show the manufacturer's or
32 distributor's just cause shall be on the manufacturer or
33 distributor. Any such action hereunder shall be brought
34 in the circuit court of the county wherein the dealer has
35 his principal place of business.

§47-17-7. Liability for damages.

1 Any manufacturer or distributor who directly or
2 through an officer, employee or agent violates any of the
3 provisions of this article shall be liable to the dealer
4 injured by such violation for all reasonable damages sus-
5 tained by the dealer that are the proximate result of a
6 violation by the manufacturer or its officer, employee or
7 agent.

§47-17-8. Dealer's duties.

1 A dealer having an agreement or franchise shall main-
2 tain adequate physical facilities and personnel so that
3 the manufacturer's product is at all times properly repre-
4 sented in the dealer's sales area so that the reputation
5 and trademark of the manufacturer shall be protected
6 and so that the general public will receive adequate
7 servicing of manufacturer's products, and the dealer shall
8 act at all times in good faith.

§47-17-9. Writing required.

1 The following actions shall be in writing and signed
2 by the manufacturer, distributor or its authorized repre-
3 sentative: (a) The creation, modification, interpretation,
4 or termination of the franchise; (b) failure to renew or

5 extend such franchise; (c) the original investment or the
6 increasing or supplementing of the investment by the
7 dealer; (d) the franchise and its stipulations as to facili-
8 ties, purchases of goods, vehicles, accessories, parts or
9 commodities by the dealer from the manufacturer; (e)
10 the sufficiency of the dealer's performance as a dealer;
11 (f) advertising and promotional activity by the dealer;
12 and (g) the dealer's right to sell, assign, or transfer, or
13 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
2 and franchisees a checklist of authorized work which the
3 manufacturer obligates the dealer to perform in preparing
4 a motor vehicle for retail sale and which the dealer is
5 required to perform.

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

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

18 Each manufacturer shall pay or credit each dealer for
19 preparation work for retail sales and warranty work
20 performed by the dealer within thirty days after claim for
21 compensation has been approved by the manufacturer.
22 All claims shall be approved or disapproved by the manu-
23 facturer 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

Lawrence C. Cheslund
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

J. O'Neil Jr
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. T. Brattain Jr
President of the Senate

Louis F. McMane
Speaker House of Delegates

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

Andrew Prosser Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/11/76

Time 4:25 p.m.