

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-24-79

Time 1:40 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

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ENROLLED

Committee Substitute for
HOUSE BILL No. 1394

(By Mrs. Lane)

— ● —

Passed March 10, 1979

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1394
(By MRS. LANE)

[Passed March 10, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain acts prohibited by manufacturers and distributors and acceptance of successor dealers.

Be it enacted by the Legislature of West Virginia:

That section five, article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. REGULATION OF BUSINESS PRACTICES BETWEEN
MOTOR VEHICLE MANUFACTURERS, DISTRIBUT-
ORS AND DEALERS.**

§47-17-5. Certain acts prohibited.

- 1 Notwithstanding the terms, provisions or conditions of any
- 2 franchise, no manufacturer or distributor shall:
- 3 (a) Terminate, cancel or fail to renew a franchise without
- 4 just cause, except with the prior consent of the dealer. Not-
- 5 withstanding the provisions of any franchise setting forth prima
- 6 facie grounds or just cause for terminating, cancelling or fail-
- 7 ing to renew a franchise, such determination of just cause shall
- 8 be made by a court of law after due consideration of, but
- 9 without being bound by the prima facie grounds or definition of
- 10 just cause contained in such franchise. The burden of proof
- 11 of just cause shall be on the manufacturer or distributor.

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

22 (c) Refuse without just cause to accept as a successor dealer
23 a purchaser to whom the dealer has agreed to sell the dealer-
24 ship business. However, no successor dealer may succeed to a
25 franchise unless the manufacturer or distributor has been given
26 written notice of the identity, financial ability and qualifica-
27 tions of such successor dealer. In the event the manufacturer or
28 distributor refuses to accept as a successor dealer a purchaser
29 to whom the dealer has agreed to sell the dealership business,
30 the manufacturer or distributor is required to inform the pur-
31 chaser in writing within two months of the date of the written
32 notice of the identity, financial ability and qualifications of
33 such purchaser, valid reasons for nonacceptance.

34 (d) Sell, lease or rent goods, motor vehicles, or render any
35 service normally performed and required of dealers under the
36 franchise agreement with the manufacturer in unfair competi-
37 tion with such dealer, except that this subdivision does not
38 apply to a sale, lease or rental to, or service performed for, an
39 agency of federal, state or local government.

40 (e) Require any dealer to participate in or contribute to
41 any local or national advertising fund, or participate in any
42 contests, "giveaways" or other sales devices, without the deal-
43 er's consent.

44 (f) Withhold or delay delivery of motor vehicles out of the
45 ordinary course of business.

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

50 (h) Amend unilaterally a dealer's allotment of motor ve-
51 hicles or quota in sales contests without reasonable cause.

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

58 (j) Coerce or attempt to coerce any dealer by any of the
59 following methods: (1) Threaten to refuse or fail to renew or
60 extend a lease of premises controlled by a manufacturer, (2)
61 threaten to award an additional franchise or agreement to
62 another person for the sale of the same product as a dealer
63 in that dealer's area of influence or responsibility, (3) threaten
64 to withhold or delay the delivery of motor vehicles, parts or
65 other saleable goods, (4) threaten to terminate, cancel or fail
66 to renew a dealer's franchise or agreement, or, (5) any other
67 method of coercion as follows: (i) Expand a dealer's facilities,
68 increase a dealer's sales personnel, purchase more parts or
69 accept programs for sales and the operation of a dealer's
70 business, (ii) accept delivery of any motor vehicle, parts,
71 accessories or other similar commodities not ordered by a
72 dealer, (iii) consent to participate and participate in or contri-
73 bute to any local or national advertising fund, or participate in
74 any contests, "giveaways" or other sales devices, (iv) compel a
75 dealer to yield to demands of a manufacturer or distributor for
76 increased sales, expansion of facilities or improvement of
77 operations inconsistent with good business practices.

78 (k) Require any dealer to sell or use exclusively any
79 products, other than motor vehicles, that such manufacturer
80 or distributor offers for sale.

81 Nothing in this section shall prohibit or prevent a manufac-
82 turer or distributor from performing, or requiring the perfor-
83 mance by a dealer of any of the provisions of the franchise
84 where such performance or requirement is fair, reasonable and
85 equitable under all the surrounding circumstances, and con-
86 sistent with good business practices on the part of both dealer
87 and manufacturer or distributor.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Tavis
Chairman Senate Committee

Clarence C. Chustion Jr
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

James McLean Jr
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. G. Borthwick Jr
President of the Senate

Clide M. Lee, Jr
Speaker House of Delegates

The within is approved this the 24
day of March, 1979.

John D. Rulph
Governor

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OFFICE OF THE GOVERNOR

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