WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
HOUSE BILL No. 1394

(By Mr. 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, DISTRIBUTORS AND DEALERS.

§47-17-5. Certain acts prohibited.

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

3 (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, cancelling 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 dealer 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 successor dealer.

(c) Refuse without just cause to accept as a successor dealer a purchaser to whom the dealer has agreed to sell the dealership business. However, no successor dealer may succeed to a franchise unless the manufacturer or distributor has been given written notice of the identity, financial ability and qualifications of such successor dealer. In the event the manufacturer or distributor refuses to accept as a successor dealer a purchaser to whom the dealer has agreed to sell the dealership business, the manufacturer or distributor is required to inform the purchaser in writing within two months of the date of the written notice of the identity, financial ability and qualifications of such purchaser, valid reasons for nonacceptance.

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

(e) 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.

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

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

(i) 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.

(j) 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 manufacturer, (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.

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

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

James L. Davis  
Chairman Senate Committee

Clarence L. Chastain Jr.  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Lamar Stedman Jr.  
Clerk of the Senate

E.W. Blankenship  
Clerk of the House of Delegates

Algernon B. Berends Jr.  
President of the Senate

Clyde M. Beck Jr.  
Speaker House of Delegates

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

John D. Bellamy  
Governor