WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

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ENROLLED

HOUSE BILL No. 1927

(By Mr. Blackwell and Mr. Hatcher)

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Passed March 11, 1982

In Effect Ninety Days From Passage
ENROLLED

H. B. 1927

(By Mr. Blackwell and Mr. Hatcher)

[Passed March 11, 1982; in effect ninety days from passage.]

AN ACT to repeal article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend chapter seventeen-a of said code by adding thereto a new article, designated article six-a, all relating to antitrust act; restraint of trade; motor vehicle administration; motor vehicle dealers, distributors, wholesalers and manufacturers; definitions; cancellation of dealer contract; notification; circumstances not constituting good cause; burden of proof; notice provisions; reasonable compensation to dealer; payment of compensation; prohibited penalties; where motor vehicle dealer is deceased or incapacitated; relocation; obligations regarding warranties; acceptance of vehicles; risk of loss or damage; indemnity; actions at law; damages; injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter seventeen-a of said code be further amended by adding thereto a new article, designated article six-a, to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALE?

§17A-6A-1. Legislative finding.

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 independent new motor vehicle dealer by the
vehicle manufacturer or distributor and to insure that dealers
fulfill their obligations under their franchises and provide ade-
quate and sufficient service to consumers generally.


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

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


For the purposes of this article, the words and phrases de-
dined in this section have the meanings ascribed to them, except
where the context clearly indicates a different meaning.

“Dealer agreement” means the agreement or contract in
writing between a manufacturer, distributor, and a new motor
vehicle dealer, which purports to establish the legal rights and
obligations of the parties to the agreement or contract with
regard to the purchase and sale of new motor vehicles and
accessories for motor vehicles.

“Designated family member” means the spouse, child, grand-
child, parent, brother or sister of a deceased new motor vehicle
dealer who is entitled to inherit the deceased dealer's ownership
interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this State. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term shall mean only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such document is filed.

“Distributor” means any person, resident or nonresident, who in whole or in part offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factory representative, resident or nonresident, or who controls any person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.

“Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable buildings codes, zoning, and other land-use regulatory ordinances.

“Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

“Factory representative” means an agent or employee of a
manufacturer, distributor or factory branch retained or employed for the purpose of making or promoting the sale of new motor vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

"Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

"Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch or factory representative.

"Motor vehicle" means that term as defined in section one, article one, chapter seventeen-a of this code, but does not include a tractor or farm equipment.

"New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

"New motor vehicle dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, exchanging or dealing in new motor vehicles and who has an established place of business in this state.

"Person" means a natural person, partnership, corporation, association, trust, estate or other legal entity.

"Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.

"Relevant market area" means:

(a) For a proposed new motor vehicle dealer or a new motor vehicle dealer who plans to relocate his or her place of business in a county having a population which is greater than thirty thousand, the area within a radius of eight miles of the intended site of the proposed or relocated dealer.

(1) Notwithstanding any agreement, a manufacturer or distributor shall not cancel, terminate, fail to renew or refuse to continue any dealer agreement with a new motor vehicle dealer unless the manufacturer or distributor has complied with all of the following:

(a) Satisfied the notice requirement of section seven of this article.

(b) Acted in good faith.

(c) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

(2) Notwithstanding any agreement, good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subdivision (c), subsection (1) of this section when both of the following occur:

(a) There is a failure by the new motor vehicle dealer to comply with a provision of the dealer agreement and the provision is both reasonable and of material significance to the relationship between the manufacturer or distributor and the new motor vehicle dealer and (b) the manufacturer or distributor first acquired actual or constructive knowledge of the failure not more than two years prior to the date on which notification was given pursuant to section seven of this article.

(3) If the failure by the new motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance of the new motor vehicle dealer in sales or service, good cause shall exist for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed...
to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure.

(b) The notification stated that the notice of failure of performance was provided pursuant to this article.

(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement.

(d) The failure continued for more than one hundred eighty days after the date notification was given pursuant to subdivision (a) of this section.

§17A-6A-5. Circumstances not constituting good cause.

Notwithstanding any agreement, the following alone shall not constitute good cause for the termination, cancellation, nonrenewal or discontinuance of a dealer agreement under subdivision (c), subsection (1), section four of this article;

(a) A change in ownership of the new motor vehicle dealer's dealership. The subdivision does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.

(b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

(c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor, provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in
substantial compliance with the terms and conditions of the dealer agreement and with the reasonable facilities' requirements of the manufacturer or distributor.

(d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or daughter, provided that the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent.


For each termination, cancellation, nonrenewal or discontinuance, the manufacturer or distributor shall have the burden of proof for showing that he has acted in good faith, that the notice requirement has been complied with, and that there was good cause for the termination, cancellation, nonrenewal or discontinuance.


Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal or discontinuance to the new motor vehicle dealer as follows:

(a) Except as provided in subdivision (c) or (d), notice shall be made not less than ninety days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

(b) Notice shall be by certified mail to the new motor vehicle dealer and shall contain the following:

(i) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement.

(ii) A statement of the reasons for the termination, cancellation, nonrenewal or discontinuance.
(iii) The date on which the termination, cancellation, non-renewal or discontinuance takes effect.

(c) Notwithstanding subdivision (a), notice shall be made not less than fifteen days prior to the effective date of the termination, cancellation, non-renewal or discontinuance for any of the following reasons:

(i) Insolvency of the new motor vehicle dealer, or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law.

(ii) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for seven consecutive business days.

(iii) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of one year under the law under which the dealer was convicted, or the crime involved theft, dishonesty, or false statement regardless of the punishment.

(iv) Revocation of any license under which the new motor vehicle dealer is required to have to operate a dealership.

(v) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.

(d) Notwithstanding subdivision (a) notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, non-renewal or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

(1) Upon the termination, cancellation, non-renewal or discontinuance of any dealer agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer or distributor for the following:

(a) New current model year motor vehicle inventory pur-
chased from the manufacturer or distributor, which has not
been materially altered substantially damaged, or driven for
more than three hundred miles.

(b) Supplies and parts inventory purchased from the manu-
ufacturer or distributor and listed in the manufacturer's or dis-
tributor's current parts catalog.

(c) Equipment, furnishings, and signs purchased from the
manufacturer or distributor.

(d) Special tools purchased from the manufacturer or dis-
tributor within three years of the date of termination, can-
cellation, nonrenewal or discontinuance.

(2) Upon the termination, cancellation, nonrenewal or
 discontinuance of a dealer agreement by the manufacturer or
distributor, the manufacturer or distributor shall also pay
to the new motor vehicle dealer a sum equal to the current,
fair rental value of his or her established place of business
for a period of one year from the effective date of termi-
nation, cancellation, nonrenewal, or discontinuance, or the
remainder of the lease, whichever is less. However, the
payment required by this subsection shall not apply to any
termination, cancellation, nonrenewal or discontinuance made
pursuant to subsection five (c) of this article.


(1) Compensation for new current model year motor ve-
hicle inventory under subdivision (a), subsection (1), section
eight of this article shall be paid, if possible, within thirty
days after the effective date of the termination, cancellation,
nonrenewal or discontinuance. Compensation for items of
personal property required by subdivisions (b), (c) and (d),
subsection (1), section eight of this article, shall be paid within
ninety days after the effective date of the termination, can-
cellation, nonrenewal or discontinuance, provided that the
new motor vehicle dealer has met all reasonable requirements
of the dealer agreement with respect to the return of the re-
purchased personal property, including providing clear title.

(2) Reasonable compensation pursuant to subdivision (a),
subsection (1), section eight of this article shall be not less than the new motor vehicle dealer's net acquisition cost. Reasonable compensation pursuant to subdivision (b), subsection (1), section eight of this article shall be the amount stated in the manufacturer's or distributor's current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d), subsection (1) section eight of this article shall be the fair market value of the personal property.

(3) In the event payment is not made within ninety days as provided in subsection (1), interest shall accrue thereafter on all amounts due the new motor vehicle dealer at a rate of twelve percent per annum.


(1) A manufacturer or distributor shall not require any new motor vehicle dealer in this state to do any of the following:

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

(b) 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.

(c) Participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer.

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or
provisions of the dealer agreement shall not constitute a violation of this article.

(e) Change the capital structure of the new motor vehicle dealership 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.

(f) 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.

(g) 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.

(h) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article, or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor shall not do any of the following:

(a) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle 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 new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor.

(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor.
(c) Refuse to disclose to a new motor vehicle 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.

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to, the same retail consumer 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 shall constitute evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reductions. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

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

(ii) In the case of foreign made vehicles or components, revaluation of the United States dollar.

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

(e) 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.

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle 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 new motor vehicle dealer gives his or her written consent.

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose.

(h) Establish a dealership which would unfairly compete with a new motor vehicle dealer of the same line make operating under a dealer agreement with the manufacturer or distributor in the relevant market area. A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) 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.

(i) 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.

(j) Fail to respond in writing to a request for consent to a sale, transfer or exchange of a dealership within sixty days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the sixty days shall be deemed to be consent.

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

(2) A manufacturer or distributor, either directly or through any subsidiary, shall not terminate, cancel, fail to renew, or discontinue any lease of the new motor vehicle dealer's estab-
lished place of business except for a material breach of the lease.

§17A-6A-11. Where motor vehicle dealer decreased or incapacitated.

1 (1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agreement with the designated family member only for good cause.

2 (2) The manufacturer or distributor may request from a designated family member such personal and financial data as is reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

3 (3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession, the manufacturer or distributor may, within sixty days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, or within sixty days after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

4 (4) The notice of the manufacturer or distributor provided in subsection (3) shall state the specific grounds for the refusal to approve the succession and that discontinuance of the agreement shall take effect not less than ninety days after the date the notice is served.
If notice of refusal is not served within the sixty days provided for in subsection (3), the dealer agreement shall continue in effect and shall be subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone shall determine the succession rights to the management and operation of the dealership.

§17A-6A-12. Relocation.

(1) As used in this section, "relocate" and "relocation" shall not include the relocation of a new motor vehicle dealer within two miles of its established place of business or the relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor unless the relocation site is within 6 miles of another dealer of the same line make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within thirty days after receiving the notice provided for in subsection (2), or within thirty days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line make within the affected relevant market area may bring a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of a proposed new motor vehicle dealer. Once an action has been filed, the manufacturer or distributor shall not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action
brought pursuant to this section shall be given precedence over all other civil matters on the court’s docket.

(4) This section shall not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle dealer is within two miles of the established place of business of the closed new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(a) Permanency of the investment.

(b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area.

(c) Whether it is injurious or beneficial to the public welfare.

(d) Whether the new motor vehicle dealers of the same line make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line make in the market area, including the adequacy of motor vehicle sales and qualified service personnel.

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition.

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area.

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.


(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer’s obligations for preparation, delivery, and warranty service on its products.
The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service, and the time allowance for the performance of the work and service.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty labor be less than the rates charged by the dealer for like service to retail customers for nonwarranty service and repairs, provided that such rates are reasonable.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation.

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects.

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim
§ 17A-6A-14. Acceptance of vehicles; risk of loss or damage.

1. Notwithstanding the terms, provisions, or conditions of any agreement, a new motor vehicle dealer is solely liable for damages to new motor vehicles after acceptance from the carrier and before delivery to the ultimate purchaser. Acceptance by the new motor vehicle dealer shall occur when the new motor vehicle dealer signs a delivery receipt for any motor vehicle.

2. Notwithstanding the terms, provisions, or conditions of any agreement, the manufacturer or distributor is liable for all damages to motor vehicles before delivery to a carrier or transporter.

3. The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation, and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.

4. If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer's account within ten business days after receipt of the notice of rejection.


Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers against any judgment for damages, including court costs and attorney's fees, arising solely out of complaints, claims, or actions which relate to the manufacture, assembly, or design of a new motor vehicle, or other functions by the manufacturer or distributor beyond
the control of the dealer, including, without limitation,
the selection by the manufacturer or distributor of parts or
components for the vehicle, or any damages to merchandise
occurring in transit to the dealer if the carrier is designated
by the manufacturer or distributor, if the new motor vehicle
dealer gives timely notice to the manufacturer or distribu-
tor of the complaint, claim or action.

§17A-6A-16. Actions at law; damages.

(1) If a manufacturer or distributor terminates, cancels,
fails to renew, or discontinues a dealer agreement for other
than good cause as defined in this article, the new motor
vehicle dealer may bring an action against the manufacturer or
distributor to recover actual damages reasonably incurred as
a result of the termination, cancellation, failure or discon-

(2) A manufacturer or distributor who violates this article
is liable for all damages sustained by a new motor vehicle
dealer as a result of the violation.

(3) A manufacturer or distributor or new motor vehicle
dealer may bring an action for declaratory judgment for
determination of any controversy arising pursuant to this
article.

(4) A manufacturer or distributor who violates this article
shall be liable for all court costs and reasonable attorney’s
fees incurred by the dealer.

§17A-6A-17. Injunctive relief.

Upon proper application to the circuit court, a manu-
facturer or distributor or new motor vehicle dealer may
obtain appropriate injunctive relief against termination, can-
cellation, nonrenewal or discontinuance of a dealer agree-
ment or any other violation of this article. The court may
grant injunctive relief or a temporary restraining order with-
out bond.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within _________ this the ______ day of ________, 1982.

[Signature]
Governor