

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seventeen, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter seventeen-a of said code be further amended by adding thereto a new article, designated article six-a, to read as follows: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

§17A-6A-1. Legislative finding.

1 The Legislature finds and declares that the distribution and

2 sale of motor vehicles in this state vitally affects the general
3 economy and the public welfare and that in order to promote
4 the public welfare and in exercise of its police power, it is
5 necessary to regulate motor vehicle dealers, manufacturers,
6 distributors, and representatives of vehicle manufacturers and
7 distributors doing business in this state in order to avoid undue
8 control of the independent new motor vehicle dealer by the
9 vehicle manufacturer or distributor and to insure that dealers
10 fulfill their obligations under their franchises and provide ade-
11 quate and sufficient service to consumers generally.

§17A-6A-2. Governing law.

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

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

§17A-6A-3. Definitions.

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

4 "Dealer agreement" means the agreement or contract in
5 writing between a manufacturer, distributor, and a new motor
6 vehicle dealer, which purports to establish the legal rights and
7 obligations of the parties to the agreement or contract with
8 regard to the purchase and sale of new motor vehicles and
9 accessories for motor vehicles.

10 "Designated family member" means the spouse, child, grand-
11 child, parent, brother or sister of a deceased new motor vehicle
12 dealer who is entitled to inherit the deceased dealer's ownership

13 interest in the new motor vehicle dealership under the terms
14 of the dealer's will, or who has otherwise been designated in
15 writing by a deceased dealer to succeed the deceased dealer in
16 the new motor vehicle dealership, or is entitled to inherit
17 under the laws of intestate succession of this State. With re-
18 spect to an incapacitated new motor vehicle dealer, the term
19 means the person appointed by a court as the legal representa-
20 tive of the new motor vehicle dealer's property. The term also
21 includes the appointed and qualified personal representative
22 and the testamentary trustee of a deceased new motor vehicle
23 dealer. However, the term shall mean only that designated
24 successor nominated by the new motor vehicle dealer in a
25 written document filed by the dealer with the manufacturer
26 or distributor, if such document is filed.

27 "Distributor" means any person, resident or nonresident,
28 who in whole or in part offers for sale, sells or distributes any
29 new motor vehicle to a new motor vehicle dealer or who main-
30 tains a factory representative, resident or nonresident, or who
31 controls any person, resident or nonresident, who in whole or
32 in part offers for sale, sells, or distributes any new motor
33 vehicle to a new motor vehicle dealer.

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

41 "Factory branch" means an office maintained by a manu-
42 facturer or distributor for the purpose of selling or offering
43 for sale, vehicles to a distributor, wholesaler or new motor
44 vehicle dealer, or for directing or supervising in whole or in
45 part factory or distributor representatives. The term includes
46 any sales promotion organization maintained by a manufac-
47 turer or distributor which is engaged in promoting the sale of
48 a particular make of new motor vehicles in this state to new
49 motor vehicle dealers.

50 "Factory representative" means an agent or employee of a

51 manufacturer, distributor or factory branch retained or em-
52 ployed for the purpose of making or promoting the sale of new
53 motor vehicles or for supervising or contracting with new
54 motor vehicle dealers or proposed motor vehicle dealers.

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

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

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

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

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

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

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

81 "Relevant market area" means:

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

87 (b) For a proposed new motor vehicle dealer or a new
88 motor vehicle dealer who plans to relocate his or her place
89 of business in a county having a population which is not
90 greater than thirty thousand, the area within a radius of
91 fifteen miles of the intended site of the proposed or relocated
92 dealer.

§17A-6A-4. Cancellation of dealer contract; notification.

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

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

8 (b) Acted in good faith.

9 (c) Has good cause for the cancellation, termination, non-
10 renewal or discontinuance.

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

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

23 (3) If the failure by the new motor vehicle dealer to com-
24 ply with a provision of the dealer agreement relates to the
25 performance of the new motor vehicle dealer in sales or ser-
26 vice, good cause shall exist for the purposes of a termination,
27 cancellation, nonrenewal or discontinuance under subsection
28 (1) of this section when the new motor vehicle dealer failed

29 to effectively carry out the performance provisions of the
30 dealer agreement if all of the following have occurred:

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

33 (b) The notification stated that the notice of failure of per-
34 formance was provided pursuant to this article.

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

38 (d) The failure continued for more than one hundred eighty
39 days after the date notification was given pursuant to sub-
40 division (a) of this section.

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

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

5 (a) A change in ownership of the new motor vehicle dealer's
6 dealership. The subdivision does not authorize any change in
7 ownership which would have the effect of a sale or an assign-
8 ment of the dealer agreement or a change in the principal man-
9 agement of the dealership without the manufacturer's or dis-
10 tributor's prior written consent.

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

15 (c) The fact that the new motor vehicle dealer owns, has
16 an investment in, participates in the management of, or holds
17 a dealer agreement for the sale of another make or line of new
18 motor vehicles, or that the new motor vehicle dealer has estab-
19 lished another make or line of new motor vehicles in the same
20 dealership facilities as those of the manufacturer or distribu-
21 tor, provided that the new motor vehicle dealer maintains a
22 reasonable line of credit for each make or line of new motor
23 vehicles, and that the new motor vehicle dealer remains in

24 substantial compliance with the terms and conditions of the
25 dealer agreement and with the reasonable facilities' require-
26 ments of the manufacturer or distributor.

27 (d) The fact that the new motor vehicle dealer sells or trans-
28 fers ownership of the dealership or sells or transfers capital
29 stock in the dealership to the new motor vehicle dealer's spouse,
30 son or daughter, provided that the sale or transfer shall not
31 have the effect of a sale or an assignment of the dealer agree-
32 ment or a change in the principal management of the dealer-
33 ship without the manufacturer's or distributor's prior written
34 consent.

§17A-6A-6. Burden of proof.

1 For each termination, cancellation, nonrenewal or discon-
2 tinuance, the manufacturer or distributor shall have the burden
3 of proof for showing that he has acted in good faith, that the
4 notice requirement has been complied with, and that there
5 was good cause for the termination, cancellation, nonrenewal
6 or discontinuance.

§17A-6A-7. Notice provisions.

1 Notwithstanding any agreement, prior to the termination,
2 cancellation, nonrenewal or discontinuance of any dealer agree-
3 ment, the manufacturer or distributor shall furnish notice of
4 the termination, cancellation, nonrenewal or discontinuance to
5 the new motor vehicle dealer as follows:

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

10 (b) Notice shall be by certified mail to the new motor ve-
11 hicle dealer and shall contain the following:

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

14 (ii) A statement of the reasons for the termination, can-
15 cellation, nonrenewal or discontinuance.

16 (iii) The date on which the termination, cancellation, non-
17 renewal or discontinuance takes effect.

18 (c) Notwithstanding subdivision (a), notice shall be made
19 not less than fifteen days prior to the effective date
20 of the termination, cancellation, nonrenewal or discontinu-
21 ance for any of the following reasons:

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

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

29 (iii) Conviction of the new motor vehicle dealer or its prin-
30 cipal owners of a crime, but only if the crime is punishable by
31 imprisonment in excess of one year under the law under which
32 the dealer was convicted, or the crime involved theft, dis-
33 honesty, or false statement regardless of the punishment.

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

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

39 (d) Notwithstanding subdivision (a) notice shall be made
40 not less than twelve months prior to the effective date
41 of a termination, cancellation, nonrenewal or discontinu-
42 uance if a manufacturer or distributor discontinues produc-
43 tion of the new motor vehicle dealer's product line or dis-
44 continues distribution of the product line in this state.

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

1 (1) Upon the termination, cancellation, nonrenewal or dis-
2 continuance of any dealer agreement, the new motor vehicle
3 dealer shall be allowed fair and reasonable compensation by
4 the manufacturer or distributor for the following:

5 (a) New current model year motor vehicle inventory pur-

6 chased from the manufacturer or distributor, which has not
7 been materially altered substantially damaged, or driven for
8 more than three hundred miles.

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

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

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

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

§17A-6A-9. Payment of compensation.

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

13 (2) Reasonable compensation pursuant to subdivision (a),

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

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

§17A-6A-10. Prohibited practices.

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

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

10 (b) Order or accept delivery of any new motor vehicle with
11 special features, accessories, or equipment not included in the
12 list price of the new motor vehicle as publicly advertised by
13 the manufacturer or distributor.

14 (c) Participate monetarily in any advertising campaign or
15 contest, or purchase any promotional materials, display de-
16 vices, or display decorations or materials at the expense of the
17 new motor vehicle dealer.

18 (d) Enter into any agreement with the manufacturer or dis-
19 tributor or do any other act prejudicial to the new motor ve-
20 hicle dealer by threatening to terminate a dealer agreement or
21 any contractual agreement or understanding existing between
22 the dealer and the manufacturer or distributor. Notice in good
23 faith to any dealer of the dealer's violation of any terms or

24 provisions of the dealer agreement shall not constitute a vio-
25 lation of this article.

26 (e) Change the capital structure of the new motor vehicle
27 dealership or the means by or through which the dealer fi-
28 nances the operation of the dealership, if the dealership at all
29 times meets any reasonable capital standards determined by
30 the manufacturer in accordance with uniformly applied criteria.

31 (f) Refrain from participation in the management of, invest-
32 ment in, or the acquisition of, any other line of new motor
33 vehicle or related products, provided that the dealer main-
34 tains a reasonable line of credit for each make or line of ve-
35 hicle, remains in compliance with reasonable facilities require-
36 ments, and makes no change in the principal management of
37 the dealer.

38 (g) Change the location of the new motor vehicle dealership
39 or make any substantial alterations to the dealership premises,
40 where to do so would be unreasonable.

41 (h) Prospectively assent to a release, assignment, novation,
42 waiver or estoppel which would relieve any person from lia-
43 bility imposed by this article, or require any controversy be-
44 tween a new motor vehicle dealer and a manufacturer or dis-
45 tributor to be referred to a person other than the duly con-
46 stituted courts of the state or the United States, if the referral
47 would be binding upon the new motor vehicle dealer.

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

50 (a) Fail to deliver new motor vehicles or new motor vehicle
51 parts or accessories within a reasonable time and in reasonable
52 quantities relative to the new motor vehicle dealer's market area
53 and facilities, unless the failure is caused by acts or occur-
54 rences beyond the control of the manufacturer or distributor,
55 or unless the failure results from an order by the new motor
56 vehicle dealer in excess of quantities reasonably and fairly
57 allocated by the manufacturer or distributor.

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

61 (c) Refuse to disclose to a new motor vehicle dealer the
62 total number of new motor vehicles of a given model, which
63 the manufacturer or distributor has sold during the current
64 model year within the dealer's marketing district, zone or
65 region, whichever geographical area is the smallest.

66 (d) Increase prices of new motor vehicles which the new
67 motor vehicle dealer had ordered and then eventually delivered
68 to, the same retail consumer for whom the vehicle was ordered,
69 if the order was made prior to the dealer's receipt of the writ-
70 ten official price increase notification. A sales contract signed
71 by a private retail consumer and binding on the dealer shall
72 constitute evidence of each order. In the event of manufacturer
73 or distributor price reductions or cash rebates, the amount of
74 any reduction or rebate received by a dealer shall be passed
75 on to the private retail consumer by the dealer. Any price
76 reduction in excess of five dollars shall apply to all vehicles in
77 the dealer's inventory which were subject to the price reduc-
78 tions. A price difference applicable to new model or series
79 motor vehicles at the time of the introduction of the new
80 models or the series shall not be considered a price increase or
81 price decrease. This subdivision shall not apply to price chang-
82 es caused by the following:

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

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

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

89 (e) Offer any refunds or other types of inducements to any
90 dealer for the purchase of new motor vehicles of a certain line
91 make to be sold to this state or any political subdivision of this
92 state without making the same offer available upon request to
93 all other new motor vehicle dealers of the same line make.

94 (f) Release to an outside party, except under subpoena or
95 in an administrative or judicial proceeding to which the new
96 motor vehicle dealer or the manufacturer or distributor are
97 parties, any business, financial, or personal information which

98 has been provided by the dealer to the manufacturer or dis-
99 tributor, unless the new motor vehicle dealer gives his or her
100 written consent.

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

103 (h) Establish a dealership which would unfairly compete
104 with a new motor vehicle dealer of the same line make operat-
105 ing under a dealer agreement with the manufacturer or distri-
106 butor in the relevant market area. A manufacturer or distribu-
107 tor shall not be considered to be unfairly competing if the
108 manufacturer or distributor is:

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

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

113 (iii) Operating a dealership with another person who has
114 made a significant investment in the dealership and who will
115 acquire full ownership of the dealership under reasonable
116 terms and conditions.

117 (i) Unreasonably withhold consent to the sale, transfer or
118 exchange of the dealership to a qualified buyer capable of
119 being licensed as a new motor vehicle dealer in this state.

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

127 (k) Unfairly prevent a new motor vehicle dealer from re-
128 ceiving reasonable compensation for the value of the new
129 motor vehicle dealership.

130 (2) A manufacturer or distributor, either directly or through
131 any subsidiary, shall not terminate, cancel, fail to renew, or
132 discontinue any lease of the new motor vehicle dealer's estab-

133 lished place of business except for a material breach of the
134 lease.

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

1 (1) Any designated family member of a deceased or
2 incapacitated new motor vehicle dealer may succeed the
3 dealer in the ownership or operation of the dealership under
4 the existing dealer agreement if the designated family mem-
5 ber gives the manufacturer or distributor written notice of
6 his or her intention to succeed to the dealership within one
7 hundred twenty days after the dealer's death or incapa-
8 city, agrees to be bound by all of the terms and conditions
9 of the dealer agreement, and the designated family mem-
10 ber meets the current criteria generally applied by the
11 manufacturer or distributor in qualifying new motor vehicle
12 dealers. A manufacturer or distributor may refuse to honor
13 the existing dealer agreement with the designated family
14 member only for good cause.

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

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

30 (4) The notice of the manufacturer or distributor provided
31 in subsection (3) shall state the specific grounds for the
32 refusal to approve the succession and that discontinuance of
33 the agreement shall take effect not less than ninety days after
34 the date the notice is served.

35 (5) If notice of refusal is not served within the sixty days
36 provided for in subsection (3), the dealer agreement shall
37 continue in effect and shall be subject to termination only as
38 otherwise permitted by this article.

39 (6) This section does not preclude a new motor vehicle
40 dealer from designating any person as his or her successor
41 by written instrument filed with the manufacturer or dis-
42 tributor, and if such an instrument is filed, it alone shall
43 determine the succession rights to the management and opera-
44 tion of the dealership.

§17A-6A-12. Relocation.

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

8 (2) Before a manufacturer or distributor enters into a
9 dealer agreement establishing or relocating a new motor vehicle
10 dealer within a relevant market area where the same line
11 make is represented, the manufacturer or distributor shall give
12 written notice to each new motor vehicle dealer of the same
13 line make in the relevant market area of its intention to es-
14 tablish an additional dealer or to relocate an existing dealer
15 within that relevant market area.

16 (3) Within thirty days after receiving the notice provided
17 for in subsection (2), or within thirty days after the end of
18 any appeal procedure provided by the manufacturer or dis-
19 tributor, a new motor vehicle dealer of the same line make
20 within the affected relevant market area may bring a declara-
21 tory judgment action in the circuit court for the county in
22 which the new motor vehicle dealer is located to determine
23 whether good cause exists for the establishing or relocating
24 of a proposed new motor vehicle dealer. Once an action has
25 been filed, the manufacturer or distributor shall not establish
26 or relocate the proposed new motor vehicle dealer until the
27 circuit court has rendered a decision on the matter. An action

28 brought pursuant to this section shall be given precedence
29 over all other civil matters on the court's docket.

30 (4) This section shall not apply to the reopening in a rele-
31 vant market area of a new motor vehicle dealer that has been
32 closed within the preceding two years if the established place
33 of business of the new motor vehicle dealer is within two
34 miles of the established place of business of the closed new
35 motor vehicle dealer.

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

41 (a) Permanency of the investment.

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

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

46 (d) Whether the new motor vehicle dealers of the same line
47 make in the relevant market area are providing adequate
48 competition and convenient consumer care for the motor ve-
49 hicles of that line make in the market area, including the
50 adequacy of motor vehicle sales and qualified service per-
51 sonnel.

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

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

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

§17A-6A-13. Obligations regarding warranties.

1 (1) Each new motor vehicle manufacturer or distributor
2 shall specify in writing to each of its new motor vehicle
3 dealers licensed in this state the dealer's obligations for
4 preparation, delivery, and warranty service on its products.

5 The manufacturer or distributor shall compensate the new
6 motor vehicle dealer for warranty service required of the
7 dealer by the manufacturer or distributor. The manufacturer
8 or distributor shall provide the new motor vehicle dealer
9 with the schedule of compensation to be paid to the dealer
10 for parts, work, and service, and the time allowance for the
11 performance of the work and service.

12 (2) The schedule of compensation shall include reason-
13 able compensation for diagnostic work, as well as repair
14 service and labor. Time allowances for the diagnosis
15 and performance of warranty work and service shall be rea-
16 sonable and adequate for the work to be performed. In the
17 determination of what constitutes reasonable compensation
18 under this section, the principal factor to be given considera-
19 ation shall be the prevailing wage rates being paid by dealers
20 in the community in which the dealer is doing business, and
21 in no event shall the compensation of the dealer for warranty
22 labor be less than the rates charged by the dealer for like
23 service to retail customers for nonwarranty service and repairs,
24 provided that such rates are reasonable.

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

27 (a) Fail to perform any warranty obligation.

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

32 (c) Fail to compensate any of the new motor vehicle
33 dealers licensed in this state for repairs effected by the re-
34 call.

35 (4) All claims made by a new motor vehicle dealer
36 pursuant to this section for labor and parts shall be paid
37 within thirty days after their approval. All claims shall
38 be either approved or disapproved by the manufacturer or
39 distributor within thirty days after their receipt on a proper
40 form generally used by the manufacturer or distributor and
41 containing the usually required information therein. Any claim

42 not specifically disapproved in writing within thirty days after
43 the receipt of the form shall be considered to be approved
44 and payment shall be made within thirty days. The manu-
45 facturer has the right to audit the claims for two years
46 after payment and to charge back to the new motor vehicle
47 dealer the amount of any false, fraudulent, or unsubstantiated
48 claim.

§17A-6A-14. Acceptance of vehicles; risk of loss or damage.

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

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

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

18 (4) If the new motor vehicle dealer rejects a new motor
19 vehicle pursuant to this section, the manufacturer or dis-
20 tributor shall credit the dealer's account within ten business
21 days after receipt of the notice of rejection.

§17A-6A-15. Indemnity.

1 Notwithstanding the terms of any dealer agreement, a
2 manufacturer or distributor shall indemnify and hold
3 harmless its dealers against any judgment for damages,
4 including court costs and attorney's fees, arising solely
5 out of complaints, claims, or actions which relate to the
6 manufacture, assembly, or design of a new motor vehicle, or
7 other functions by the manufacturer or distributor beyond

8 the control of the dealer, including, without limitation,
9 the selection by the manufacturer or distributor of parts or
10 components for the vehicle, or any damages to merchandise
11 occurring in transit to the dealer if the carrier is designated
12 by the manufacturer or distributor, if the new motor vehicle
13 dealer gives timely notice to the manufacturer or distribu-
14 tor of the complaint, claim or action.

§17A-6A-16. Actions at law; damages.

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

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

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

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

§17A-6A-17. Injunctive relief.

1 Upon proper application to the circuit court, a manu-
2 facturer or distributor or new motor vehicle dealer may
3 obtain appropriate injunctive relief against termination, can-
4 cellation, nonrenewal or discontinuance of a dealer agree-
5 ment or any other violation of this article. The court may
6 grant injunctive relief or a temporary restraining order with-
7 out bond.

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

R. P. Bayler

Chairman Senate Committee

Joseph E. Whitlow

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Isid C. White

Clerk of the Senate

Carla Blankenship

Clerk of the House of Delegates
Waver R. McNew

President of the Senate

W. H. M. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 1982.

Richard R. Rye

Governor

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SECY. OF STATE