WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

ENROLLED
SENATE BILL NO. 516
(By Senator Wooton, et al)

PASSED March 9, 1994
In Effect 90 days from Passage
ENROLLED

Senate Bill No. 516

(BY SENATORS WOOTON, MINARD, ROSS, YODER, DITTMAR, WAGNER, HUMPHREYS, WIEDEBUSCH AND DALTON)

(Passed March 9, 1994; in effect ninety days from passage.)

AN ACT to amend and reenact section ten, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited practices of automobile manufacturers and distributors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALE FAMILY, AND MANUFACTURERS.


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

2 (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 reduction. 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.

(l) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service incentives, rebates or other forms of sales incentive compensation more than two years after the claim for payment or reimbursement has been made by the automobile dealer; Provided, That the provisions of this subsection shall not apply where a claim is fraudulent.

(3) 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 established place of business except for a material breach of the lease.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 23rd day of ____________ day of _________________________, 1994.

Governor