WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 374

(By Senator Ancilio, et al.)

PASSED April 12, 1997
In Effect Ninety days from Passage
ENROLLED

Senate Bill No. 376

(BY SENATORS OLIVERIO, WOOTON, BALL, BOWMAN, DITTMAR, FANNING, HUNTER, ROSS, SCHOONOVER, SNYDER, WHITE, WIEDEBUSCH, DEEM, KIMBLE AND SCOTT)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, four, five, seven, eight, ten and thirteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motor vehicles, distributors, wholesalers and manufacturers generally; providing definitions; modifying requirements for cancellation of dealer contracts and notification thereof; providing circumstances not constituting good cause; modifying notice provisions; modifying reasonable compensation to dealer upon termination of agreement; and providing prohibited practices; and modifying obligations regarding warranties and limiting the period of time for audits thereon.

Be it enacted by the Legislature of West Virginia:
That sections three, four, five, seven, eight, ten and thirteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.


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

2 "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, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

3 "Designated family member" means the spouse, child, grandchild, 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 a document is filed.

4 "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 building 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 of this chapter, including motorcycle and recreational vehicle as defined in subsections (c) and (nn),
respectively, of that section, but not including a tractor or
farm equipment.

“New motor vehicle” means a motor vehicle which is in
the possession of the manufacturer, distributor or whole-
saler, 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 distribu-
tor for the sale of its motor vehicles, who is engaged in the
business of purchasing, selling, leasing, exchanging or
dealing in new motor vehicles, service of said vehicles,
warranty work and sale of parts who has an established
place of business in this state.

“Person” means a natural person, partnership, corpora-
tion, association, trust, estate or other legal entity.

“Proposed new motor vehicle dealer” means a person
who has an application pending for a new dealer agree-
ment 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 relo-
cated dealer.

(b) 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 not
greater than thirty thousand, the area within a radius of
fifteen miles of the intended site of the proposed or
relocated dealer.


1 (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) Engaged in full and open communication with franchised dealer; and

(d) 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 (d), 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
(c) The new motor vehicle dealer was afforded a reason-
able opportunity to exert good faith efforts to carry out
the dealer agreement; and
(d) The failure continued for more than one hundred
eighty days after the date notification was given pursuant
to subdivision (a) of this subsection.

§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 (d), 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 compli-
ance with the terms and conditions of the dealer agree-
ment and with any 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.


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) of this subsection, 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. Such statement shall include, at a minimum, a complete explanation of each reason upon which the manufacturer or distributor relies to support its proposed action, along with all supporting documentation which is material to the proposed action and available to the manufacturer or distributor at the time of termination, cancellation, nonrenewal or discontinuance.

(iii) The date on which the termination, cancellation, nonrenewal or discontinuance takes effect.

(c) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than fifteen days prior to the effective date of the termination, cancellation, nonrenewal
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 a motor vehicle dealership license in accordance with section eighteen, article six, chapter seventeen-a of this code.

(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) of this subsection notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, nonrenewal 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, nonrenewal 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) Any new motor vehicle inventory purchased from the manufacturer or distributor, which has not been materially altered, substantially damaged or driven for more than five hundred miles, except that for any new motorcy-
9 [Enr. S. B. No. 376]

(1) Cle inventory purchased from the manufacturer or distributor, that inventory must not have been materially altered, substantially damaged or driven for more than fifty miles.

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

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

(d) Special tools purchased from the manufacturer or distributor within three years of the date of termination, cancellation, 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 termination, 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 (c), section five of this article.


(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 facili-
ties requirements, and makes no change in the principal
management of the dealer.

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

(h) Prospectively assent to a release, assignment, nova-
tion, 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. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of 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 new motor vehicle 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 twelve months 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.


(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 re-
quired 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 reason-
able 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 compen-
sation 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
a dealer for warranty labor and parts 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. However, in the case of a
new motor vehicle dealer of motorcycles or recreational
vehicles, in no event may the compensation of a dealer for
warranty parts be less than the dealer's cost of acquiring
the part plus twenty percent.

(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 not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim.
That 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 day of 1997.

Governor