

FILED
MAR 1 2000
IN THE OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 384

(By Senator TOMBLIN, MR. PRESIDENT, ET AL)

PASSED FEBRUARY 28, 2000
In Effect FROM Passage

FILED
MAR 11 2000
IN THE OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

ENROLLED

Senate Bill No. 384

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND WOOTON,
CHAFIN, SHARPE, CRAIGO, JACKSON, ANDERSON, PREZIOSO,
SNYDER, UNGER, DITTMAR, BALL, OLIVERIO, REDD, BAILEY,
BOWMAN, DAWSON, DEEM, EDGELL, FANNING, HELMICK,
KESSLER, LOVE, MCCABE, MCKENZIE, MINARD, MINEAR, MITCH-
ELL, PLYMALE, ROSS, SPROUSE, WALKER, BOLEY AND HUNTER)

[Passed February 28, 2000; in effect from passage.]

AN ACT to amend and reenact sections two, three, four, seven, eight, eight-a, nine, ten, eleven, twelve, thirteen, fourteen and sixteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to generally clarifying the relationship between automobile dealers, distributors and manufacturers; modifying definitions; restricting the cancellation of dealer contracts; lengthening certain notification provisions; providing when compensation is due dealer; listing and modifying prohibited practices; addressing the succession of dealers in the case of incapacitation; modifying relocation warranty obligations; modifying acceptance of vehicles and risk of loss provisions; providing for actions for damages and venue; and specifying that West Virginia law applies with regard to franchise agreements,

contracts or other agreements between a new motor vehicle dealer and a manufacturer or distributor or any subsidiary, affiliate or partner of a manufacturer or distributor.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, seven, eight, eight-a, nine, ten, eleven, twelve, thirteen, fourteen and sixteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand ninehundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

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

§17A-6A-2. Governing law.

1 In accord with the settled public policy of this state to
2 protect the rights of its citizens, each franchise or agree-
3 ment between a manufacturer or distributor and a dealer
4 or dealership which is located in West Virginia, or is to be
5 performed in substantial part in West Virginia, shall be
6 construed and governed by the laws of the state of West
7 Virginia, regardless of the state in which it was made or
8 executed and of any provision in the franchise or agree-
9 ment to the contrary.

10 The provisions of this article apply only to any fran-
11 chises and agreements entered into, continued, modified or
12 renewed subsequent to the effective date of this article.

§17A-6A-3. Definitions.

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

5 "Dealer agreement" means the franchise, agreement or
6 contract in writing between a manufacturer, distributor
7 and a new motor vehicle dealer, which purports to estab-
8 lish the legal rights and obligations of the parties to the
9 agreement or contract with regard to the purchase, lease
10 or sale of new motor vehicles, accessories, service and sale
11 of parts for motor vehicles.

12 “Designated family member” means the spouse, child,
13 grandchild, parent, brother or sister of a deceased new
14 motor vehicle dealer who is entitled to inherit the deceased
15 dealer’s ownership interest in the new motor vehicle
16 dealership under the terms of the dealer’s will, or who has
17 otherwise been designated in writing by a deceased dealer
18 to succeed the deceased dealer in the new motor vehicle
19 dealership, or is entitled to inherit under the laws of
20 intestate succession of this state. With respect to an
21 incapacitated new motor vehicle dealer, the term means
22 the person appointed by a court as the legal representative
23 of the new motor vehicle dealer’s property. The term also
24 includes the appointed and qualified personal representa-
25 tive and the testamentary trustee of a deceased new motor
26 vehicle dealer. However, the term means only that desig-
27 nated successor nominated by the new motor vehicle
28 dealer in a written document filed by the dealer with the
29 manufacturer or distributor, if such a document is filed.

30 “Distributor” means any person, resident or nonresident,
31 who, in whole or in part, offers for sale, sells or distributes
32 any new motor vehicle to a new motor vehicle dealer or
33 who maintains a factory representative, resident or
34 nonresident, or who controls any person, resident or
35 nonresident, who, in whole or in part, offers for sale, sells
36 or distributes any new motor vehicle to a new motor
37 vehicle dealer.

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

47 “Factory branch” means an office maintained by a
48 manufacturer or distributor for the purpose of selling or
49 offering for sale vehicles to a distributor, wholesaler or
50 new motor vehicle dealer, or for directing or supervising,
51 in whole or in part, factory or distributor representatives.

52 The term includes any sales promotion organization
53 maintained by a manufacturer or distributor which is
54 engaged in promoting the sale of a particular make of new
55 motor vehicles in this state to new motor vehicle dealers.

56 "Factory representative" means an agent or employee of
57 a manufacturer, distributor or factory branch retained or
58 employed for the purpose of making or promoting the sale
59 of new motor vehicles or for supervising or contracting
60 with new motor vehicle dealers or proposed motor vehicle
61 dealers.

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

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

68 "Motor vehicle" means that term as defined in section
69 one, article one of this chapter, including motorcycle and
70 recreational vehicle as defined in subsections (c) and (nn),
71 respectively, of said section, but not including a tractor or
72 farm equipment.

73 "New motor vehicle" means a motor vehicle which is in
74 the possession of the manufacturer, distributor or whole-
75 saler, or has been sold only to a new motor vehicle dealer
76 and on which the original title has not been issued from
77 the new motor vehicle dealer.

78 "New motor vehicle dealer" means a person who holds
79 a dealer agreement granted by a manufacturer or distribu-
80 tor for the sale of its motor vehicles, who is engaged in the
81 business of purchasing, selling, leasing, exchanging or
82 dealing in new motor vehicles, service of said vehicles,
83 warranty work and sale of parts who has an established
84 place of business in this state and is licensed by the
85 division of motor vehicles.

86 "Person" means a natural person, partnership, corpora-
87 tion, association, trust, estate or other legal entity.

88 “Proposed new motor vehicle dealer” means a person
89 who has an application pending for a new dealer agree-
90 ment with a manufacturer or distributor. Proposed motor
91 vehicle dealer does not include a person whose dealer
92 agreement is being renewed or continued.

93 “Relevant market area” means the area located within
94 a fifteen air-mile radius around an existing same line-
95 make new motor vehicle dealership.

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

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

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

8 (b) Acted in good faith;

9 (c) Engaged in full and open communication with
10 franchised dealer; and

11 (d) Has good cause for the cancellation, termination,
12 nonrenewal or discontinuance.

13 (2) Notwithstanding any agreement, good cause exists
14 for the purposes of a termination, cancellation,
15 nonrenewal or discontinuance under subdivision (d),
16 subsection (1) of this section when both of the following
17 occur:

18 (a) There is a failure by the new motor vehicle dealer to
19 comply with a provision of the dealer agreement and the
20 provision is both reasonable and of material significance
21 to the relationship between the manufacturer or distribu-
22 tor and the new motor vehicle dealer; and

23 (b) The manufacturer or distributor first acquired actual
24 or constructive knowledge of the failure not more than

25 eighteen months prior to the date on which notification
26 was given pursuant to section seven of this article.

27 (3) If the failure by the new motor vehicle dealer to
28 comply with a provision of the dealer agreement relates to
29 the performance of the new motor vehicle dealer in sales
30 or service, good cause exists for the purposes of a termina-
31 tion, cancellation, nonrenewal or discontinuance under
32 subsection (1) of this section when the new motor vehicle
33 dealer failed to effectively carry out the performance
34 provisions of the dealer agreement if all of the following
35 have occurred:

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

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

40 (c) The new motor vehicle dealer was afforded a reason-
41 able opportunity to exert good faith efforts to carry out
42 the dealer agreement; and

43 (d) The failure continued for more than three hundred
44 sixty days after the date notification was given pursuant
45 to subdivision (a) of this subsection.

§17A-6A-7. Notice provisions.

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

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

11 (b) Notice shall be by certified mail with restrictive
12 delivery to the new motor vehicle dealer principal and
13 shall contain the following:

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

16 (ii) A detailed written statement of all reasons for the
17 termination, cancellation, nonrenewal or discontinuance.
18 The statement shall include, at a minimum, a complete
19 explanation of each reason upon which the manufacturer
20 or distributor relies to support its proposed action, along
21 with all supporting documentation which is material to the
22 proposed action and available to the manufacturer or
23 distributor at the time of termination, cancellation,
24 nonrenewal or discontinuance; and

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

27 (c) Notwithstanding subdivision (a) of this subsection,
28 notice shall be made not less than thirty days prior to the
29 effective date of the termination, cancellation, nonrenewal
30 or discontinuance for any of the following reasons:

31 (i) Insolvency of the new motor vehicle dealer or the
32 filing of any petition by or against the new motor vehicle
33 dealer under any bankruptcy or receivership law;

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

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

44 (iv) Revocation of a motor vehicle dealership license in
45 accordance with section eighteen, article six of this
46 chapter; or

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

50 (d) Notwithstanding subdivision (a) of this subsection,
51 notice shall be made not less than twelve months prior to
52 the effective date of a termination, cancellation,
53 nonrenewal or discontinuance if a manufacturer or
54 distributor discontinues production of the new motor
55 vehicle dealer's product line or discontinues distribution
56 of the product line in this state.

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

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

6 (a) Any new motor vehicle inventory, manufactured for
7 sale in the United States, purchased from the manufac-
8 turer, distributor or other dealers, which has not been
9 materially altered, substantially damaged or driven for
10 more than seven hundred fifty miles, except that for any
11 new motorcycle inventory purchased from the manufac-
12 turer or distributor, that inventory must not have been
13 materially altered, substantially damaged or driven for
14 more than fifty miles;

15 (b) Supplies and parts inventory purchased from the
16 manufacturer or distributor and listed in the manufac-
17 turer's or distributor's current parts catalog;

18 (c) Equipment, furnishings and signs purchased from the
19 manufacturer or distributor; and

20 (d) Special computer software, hardware, license fees
21 and other programs mandated by the manufacturer to
22 provide training or communication with the manufacturer.

23 (2) Upon the termination, cancellation, nonrenewal or
24 discontinuance of a dealer agreement by the manufacturer
25 or distributor, the manufacturer or distributor shall also
26 pay to the new motor vehicle dealer a sum equal to the
27 current, fair rental value of his or her established place of
28 business for a period of three years from the effective date
29 of termination, cancellation, nonrenewal or discontinu-

30 ance, or the remainder of the lease, whichever is less. If
31 the dealer, directly or indirectly, owns the dealership
32 facility, the manufacturer shall pay the dealer a sum equal
33 to the reasonable rental value of the dealership premises
34 for three years. However, the dealer shall have the obliga-
35 tion to mitigate his or her damages, including, but not
36 limited to, listing the facility with a commercial real estate
37 agent and other reasonable steps to sell or lease the
38 property. During this three-year period the manufacturer
39 shall have the right to occupy and use the facilities until
40 such time as the dealer is able to otherwise sell or lease the
41 property to another party. The payment required by this
42 subsection does not apply to any termination, cancellation,
43 nonrenewal or discontinuance made pursuant to subsec-
44 tion (c), section five of this article.

§17A-6A-8a. Compensation to dealers for service rendered.

1 (1) Every motor vehicle manufacturer, distributor or
2 wholesaler, factory branch or distributor branch, or
3 officer, agent or representative thereof, shall:

4 (a) Specify in writing to each of its motor vehicle
5 dealers, the dealer's obligation for delivery, preparation,
6 warranty and factory recall services on its products;

7 (b) Compensate the motor vehicle dealer for warranty
8 and factory recall service required of the dealer by the
9 manufacturer, distributor or wholesaler, factory branch or
10 distributor branch, or officer, agent or representative
11 thereof; and

12 (c) Provide the dealer the schedule of compensation to be
13 paid the dealer for parts, work and service in connection
14 with warranty and recall services and the time allowance
15 for the performance of the work and service.

16 (2) In no event may:

17 (a) The schedule of compensation fail to compensate the
18 dealers for the work and services they are required to
19 perform in connection with the dealer's delivery and
20 preparation obligations, or fail to adequately and fairly
21 compensate the dealers for labor, parts and other expenses

22 incurred by the dealer to perform under and comply with
23 manufacturer's warranty agreements and factory recalls;

24 (b) Any manufacturer, distributor or wholesaler, or
25 representative thereof, pay its dealers an amount of money
26 for warranty or recall work that is less than that charged
27 by the dealer to the retail customers of the dealer for
28 nonwarranty and nonrecall work of the like kind; and

29 (c) Any manufacturer, distributor or wholesaler, or
30 representative thereof, compensate for warranty and recall
31 work based on a flat-rate figure that is less than what the
32 dealer charges for retail work.

33 (3) It is a violation of this section for any manufacturer,
34 distributor, wholesaler or representative to coerce or
35 attempt to coerce any dealer in any manner, either written
36 or verbal, with threats of surcharges, limited allocation,
37 audits, charge backs or other retaliation, if the dealer
38 seeks to recover its nonwarranty retail rate for warranty
39 and recall work.

40 (4) All claims made by motor vehicle dealers pursuant to
41 this section for compensation for delivery, preparation,
42 warranty and recall work, including labor, parts and other
43 expenses, shall be paid by the manufacturer within thirty
44 days after approval and shall be approved or disapproved
45 by the manufacturer within thirty days after receipt.
46 When any claim is disapproved, the dealer shall be notified
47 in writing of the grounds for disapproval. No claim which
48 has been approved and paid may be charged back to the
49 dealer unless it can be shown that the claim was false or
50 fraudulent, that the repairs were not properly made or
51 were unnecessary to correct the defective condition or the
52 dealer failed to reasonably substantiate the claim in
53 accordance with the written requirements of the manufac-
54 turer or distributor in effect at the time the claim arose.
55 No charge back may be made until the dealer has had
56 notice and an opportunity to support the claim in question.
57 No otherwise valid reimbursement claims may be denied
58 once properly submitted within manufacturers' submission
59 guidelines due to a clerical error or omission or based on
60 a different level of technician technical certification or the

61 dealer's failure to subscribe to any manufacturer's com-
62 puterized training programs.

63 (5) Notwithstanding the terms of a franchise agreement
64 or provision of law in conflict with this section, the
65 dealer's delivery, preparation, warranty and recall obliga-
66 tions constitutes the dealer's sole responsibility for prod-
67 uct liability as between the dealer and manufacturer, and,
68 except for a loss caused by the dealer's failure to adhere to
69 these obligations, a loss caused by the dealer's negligence
70 or intentional misconduct, or a loss caused by the dealer's
71 modification of a product without manufacturer authori-
72 zation, the manufacturer shall reimburse the dealer for all
73 loss incurred by the dealer, including legal fees, court costs
74 and damages, as a result of the dealer having been named
75 a party in a product liability action.

§17A-6A-9. Payment of compensation.

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

13 (2) Reasonable compensation pursuant to subdivision (a),
14 subsection (1), section eight of this article may not be less
15 than the new motor vehicle dealer's net acquisition cost,
16 including any special promotions ordered by the manufac-
17 turer, such as advertising charges, and special tools
18 purchased from the manufacturer or distributor within
19 three years of the date of termination, cancellation,
20 nonrenewal or discontinuance. Reasonable compensation
21 pursuant to subdivision (b) of said subsection shall be the
22 amount stated in the manufacturer's or distributor's

23 current parts price list. Reasonable compensation pursu-
24 ant to subdivisions (c) and (d) of said subsection shall be
25 the fair market value of the personal property.

26 (3) In the event payment is not made within ninety days
27 as provided in subsection (1) of this section, interest
28 accrues on all amounts due the new motor vehicle dealer
29 at a rate of twelve percent per annum.

§17A-6A-10. Prohibited practices.

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

4 (a) Order or accept delivery of any new motor vehicle,
5 part or accessory of the vehicle, equipment or any other
6 commodity not required by law which was not voluntarily
7 ordered by the new motor vehicle dealer. This section does
8 not prevent the manufacturer or distributor from requiring
9 that new motor vehicle dealers carry a reasonable inven-
10 tory of models offered for sale by the manufacturer or
11 distributor;

12 (b) Order or accept delivery of any new motor vehicle
13 with special features, accessories or equipment not in-
14 cluded in the list price of the new motor vehicle as publicly
15 advertised by the manufacturer or distributor;

16 (c) Unreasonably participate monetarily in any advertis-
17 ing campaign or contest, or purchase any promotional
18 materials, display devices, display decorations, brand signs
19 and dealer identification, nondiagnostic computer equip-
20 ment and displays, or other materials at the expense of the
21 new motor vehicle dealer;

22 (d) Enter into any agreement with the manufacturer or
23 distributor or do any other act prejudicial to the new
24 motor vehicle dealer by threatening to terminate a dealer
25 agreement or any contractual agreement or understanding
26 existing between the dealer and the manufacturer or
27 distributor. Notice in good faith to any dealer of the
28 dealer's violation of any terms or provisions of the dealer
29 agreement is not a violation of this article;

30 (e) Change the capital structure of the new motor vehicle
31 dealership or the means by or through which the dealer
32 finances the operation of the dealership if the dealership
33 at all times meets any reasonable capital standards
34 determined by the manufacturer in accordance with
35 uniformly applied criteria;

36 (f) Refrain from participation in the management of,
37 investment in or the acquisition of any other line of new
38 motor vehicle or related products, provided that the dealer
39 maintains a reasonable line of credit for each make or line
40 of vehicle, remains in compliance with reasonable facilities
41 requirements and makes no change in the principal
42 management of the dealer. Notwithstanding the terms of
43 any franchise agreement, a manufacturer or distributor
44 may not enforce any requirements, including facility
45 requirements, that a new motor vehicle dealer establish or
46 maintain exclusive facilities, personnel or display space,
47 when the requirements are unreasonable considering
48 current economic conditions and are not otherwise justi-
49 fied by reasonable business considerations. The burden of
50 proving that current economic conditions or reasonable
51 business considerations justify exclusive facilities is on the
52 manufacturer or distributor and must be proven by a
53 preponderance of the evidence;

54 (g) Change the location of the new motor vehicle dealer-
55 ship or make any substantial alterations to the dealership
56 premises, where to do so would be unreasonable; and

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

65 (2) A manufacturer or distributor may not do any of the
66 following:

67 (a) Fail to deliver new motor vehicles or new motor
68 vehicle parts or accessories within a reasonable time and

69 in reasonable quantities relative to the new motor vehicle
70 dealer's market area and facilities, unless the failure is
71 caused by acts or occurrences beyond the control of the
72 manufacturer or distributor, or unless the failure results
73 from an order by the new motor vehicle dealer in excess of
74 quantities reasonably and fairly allocated by the manufac-
75 turer or distributor. No manufacturer or distributor may
76 penalize a new motor vehicle dealer for an alleged failure
77 to meet sales quotas where the alleged failure is due to
78 actions of the manufacturer or distributor;

79 (b) Refuse to disclose to a new motor vehicle dealer the
80 method and manner of distribution of new motor vehicles
81 by the manufacturer or distributor, including any numeri-
82 cal calculation or formula used, nationally or within the
83 dealers market, to make the allocations;

84 (c) Refuse to disclose to a new motor vehicle dealer the
85 total number of new motor vehicles of a given model,
86 which the manufacturer or distributor has sold during the
87 current model year within the dealer's marketing district,
88 zone or region, whichever geographical area is the small-
89 est;

90 (d) Increase prices of new motor vehicles which the new
91 motor vehicle dealer had ordered and then eventually
92 delivered to the same retail consumer for whom the vehicle
93 was ordered, if the order was made prior to the dealer's
94 receipt of the written official price increase notification.
95 A sales contract signed by a private retail consumer and
96 binding on the dealer is evidence of each order. In the
97 event of manufacturer or distributor price reductions or
98 cash rebates, the amount of any reduction or rebate
99 received by a dealer shall be passed on to the private retail
100 consumer by the dealer. Any price reduction in excess of
101 five dollars shall apply to all vehicles in the dealer's
102 inventory which were subject to the price reduction. A
103 price difference applicable to new model or series motor
104 vehicles at the time of the introduction of the new models
105 or the series is not a price increase or price decrease. This
106 subdivision does not apply to price changes caused by the
107 following:

- 108 (i) The addition to a motor vehicle of required or op-
109 tional equipment pursuant to state or federal law;
- 110 (ii) In the case of foreign made vehicles or components,
111 revaluation of the United States dollar; or
- 112 (iii) Any increase in transportation charges due to an
113 increase in rates charged by a common carrier and trans-
114 porters;
- 115 (e) Offer any refunds or other types of inducements to
116 any dealer for the purchase of new motor vehicles of a
117 certain line make to be sold to this state or any political
118 subdivision of this state without making the same offer
119 available upon request to all other new motor vehicle
120 dealers of the same line make;
- 121 (f) Release to an outside party, except under subpoena or
122 in an administrative or judicial proceeding to which the
123 new motor vehicle dealer or the manufacturer or distribu-
124 tor are parties, any business, financial or personal infor-
125 mation which has been provided by the dealer to the
126 manufacturer or distributor, unless the new motor vehicle
127 dealer gives his or her written consent;
- 128 (g) Deny a new motor vehicle dealer the right to associ-
129 ate with another new motor vehicle dealer for any lawful
130 purpose;
- 131 (h) Establish a new motor vehicle dealership which
132 would unfairly compete with a new motor vehicle dealer
133 of the same line make operating under a dealer agreement
134 with the manufacturer or distributor in the relevant
135 market area. A manufacturer or distributor shall not be
136 considered to be unfairly competing if the manufacturer or
137 distributor is:
- 138 (i) Operating a dealership temporarily for a reasonable
139 period.
- 140 (ii) Operating a dealership which is for sale at a reason-
141 able price.
- 142 (iii) Operating a dealership with another person who has
143 made a significant investment in the dealership and who

144 will acquire full ownership of the dealership under
145 reasonable terms and conditions.

146 (i) A manufacturer may not, except as provided by this
147 section, directly or indirectly:

148 (i) Own an interest in a dealer or dealership;

149 (ii) Operate a dealership; or

150 (iii) Act in the capacity of a new motor vehicle dealer:
151 *Provided*, That a manufacturer may own an interest, other
152 than stock in a publicly held company, solely for invest-
153 ment purposes.

154 (j) A manufacturer or distributor may own an interest in
155 a franchised dealer, or otherwise control a dealership, for
156 a period not to exceed twelve months from the date the
157 manufacturer or distributor acquires the dealership if:

158 (i) The person from whom the manufacturer or distribu-
159 tor acquired the dealership was a franchised dealer; and

160 (ii) The dealership is for sale by the manufacturer or
161 distributor at a reasonable price and on reasonable terms
162 and conditions;

163 (k) The twelve-month period may be extended for an
164 additional twelve months. Notice of any such extension of
165 the original twelve-month period must be given to any
166 dealer of the same line-make whose dealership is located
167 in the same county, or within fifteen air miles of, the
168 dealership owned or controlled by the manufacturer or
169 distributor prior to the expiration of the original twelve-
170 month period. Any dealer receiving the notice may protest
171 the proposed extension within thirty days of receiving
172 notice by bringing a declaratory judgment action in the
173 circuit court for the county in which the new motor vehicle
174 dealer is located to determine whether good cause exists
175 for the extension;

176 (l) For the purpose of broadening the diversity of its
177 dealer body and enhancing opportunities for qualified
178 persons who are part of a group who have historically been
179 under represented in its dealer body, or other qualified
180 persons who lack the resources to purchase a dealership

181 outright, but for no other purpose, a manufacturer or
182 distributor may temporarily own an interest in a dealer-
183 ship if the manufacturer's or distributor's participation in
184 the dealership is in a bona fide relationship with a fran-
185 chised dealer who:

186 (i) Has made a significant investment in the dealership,
187 subject to loss;

188 (ii) Has an ownership interest in the dealership; and

189 (iii) Operates the dealership under a plan to acquire full
190 ownership of the dealership within a reasonable time and
191 under reasonable terms and conditions;

192 (m) Unreasonably withhold consent to the sale, transfer
193 or exchange of the dealership to a qualified buyer capable
194 of being licensed as a new motor vehicle dealer in this
195 state;

196 (n) Fail to respond in writing to a request for consent to
197 a sale, transfer or exchange of a dealership within sixty
198 days after receipt of a written application from the new
199 motor vehicle dealer on the forms generally utilized by the
200 manufacturer or distributor for such purpose and contain-
201 ing the information required therein. Failure to respond
202 to the request within the sixty days is consent;

203 (o) Unfairly prevent a new motor vehicle dealer from
204 receiving reasonable compensation for the value of the
205 new motor vehicle dealership;

206 (p) Audit any motor vehicle dealer in this state for
207 warranty parts or warranty service compensation, service
208 compensation, service incentives, rebates or other forms of
209 sales incentive compensation more than twelve months
210 after the claim for payment or reimbursement has been
211 made by the automobile dealer: *Provided*, That the
212 provisions of this subsection does not apply where a claim
213 is fraudulent. In addition, the manufacturer or distributor
214 is responsible for reimbursing the audited dealer for all
215 copying, postage and administrative costs incurred by the
216 dealer during the audit. Any charges to a dealer as a result
217 of the audit must be separately billed to the dealer;

218 (q) Unreasonably restrict a dealer's ownership of a
219 dealership through noncompetition covenants, site control,
220 sublease, collateral pledge of lease, right of first refusal,
221 option to purchase, or otherwise. A right of first refusal is
222 created when:

223 (i) A manufacturer has a contractual right of first refusal
224 to acquire the new motor vehicle dealer's assets where the
225 dealer owner receives consideration, terms, and conditions
226 that are either the same as or better than those they have
227 already contracted to receive under the proposed change
228 of more than fifty percent of the dealers's ownership.

229 (ii) The proposed change of the dealership's ownership
230 or the transfer of the new vehicle dealer's assets does not
231 involve the transfer of assets or the transfer or issuance of
232 stock by the dealer or one of the dealer's owners to one of
233 the following:

234 (A) A designated family member of one or more of the
235 dealer owners;

236 (B) A manager employed by the dealer in the dealership
237 during the previous five years and who is otherwise
238 qualified as a dealer operator;

239 (C) A partnership or corporation controlled by a desig-
240 nated family member of one of the dealers;

241 (D) A trust established or to be established:

242 (1) For the purpose of allowing the new vehicle dealer to
243 continue to qualify as such under the manufacturer's or
244 distributor's standards; or

245 (2) To provide for the succession of the franchise agree-
246 ment to designated family members or qualified manage-
247 ment in the event of death or incapacity of the dealer or its
248 principle owner or owners.

249 (iii) Upon exercising the right of first refusal by a
250 manufacturer, it eliminates any requirement under its
251 dealer agreement or other applicable provision of this
252 statute, that the manufacturer evaluate, process or respond
253 to the underlying proposed transfer by approving or

254 rejecting the proposal, is not subject to challenge as a
255 rejection or denial of the proposed transfer by any party.

256 (iv) Except as otherwise provided in this subsection, the
257 manufacturer or distributor agrees to pay the reasonable
258 expenses, including reasonable attorney's fees that are
259 incurred by the proposed owner or transferee before the
260 manufacturer's or distributor's exercise of its right of first
261 refusal. Payment of the expenses and attorney's fees are
262 not required if the dealer fails to submit an accounting of
263 those expenses and fees within twenty days of the dealer's
264 receipt of the manufacturer's or distributor's written
265 request for such an accounting. Such a written account of
266 fees and expenses may be requested by a manufacturer or
267 distributor before exercising its right of first refusal;

268 (r) Except for experimental low-volume not-for-retail
269 sale vehicles, cause warranty and recall repair work to be
270 performed by any entity other than a new motor vehicle
271 dealer;

272 (s) Make any material change in any franchise agreement
273 without giving the new motor vehicle dealer written notice
274 by certified mail of the change at least sixty days prior to
275 the effective date of the change;

276 (t) Fail to reimburse a new motor vehicle dealer, at the
277 dealers regular rate, or the full and actual cost of provid-
278 ing a loaner vehicle to any customer who is having a
279 vehicle serviced at the dealership if the provision of the
280 loaner vehicle is required by the manufacturer; and

281 (u) Compel a new motor vehicle dealer through its
282 finance subsidiaries to agree to unreasonable operating
283 requirements or to directly or indirectly terminate a
284 franchise through the actions of a finance subsidiary of the
285 franchisor. This subsection does not limit the right of a
286 finance subsidiary to engage in business practices in
287 accordance with the usage of trade in retail or wholesale
288 vehicle financing.

289 (3) A manufacturer or distributor, either directly or
290 through any subsidiary, may not terminate, cancel, fail to
291 renew or discontinue any lease of the new motor vehicle

292 dealer's established place of business except for a material
293 breach of the lease.

294 (4) Except as may otherwise be provided in this article,
295 no manufacturer or franchisor shall sell, directly or
296 indirectly, any new motor vehicle to a consumer in this
297 state, except through a new motor vehicle dealer holding
298 a franchise for the line-make covering such new motor
299 vehicle. This subsection shall not apply to manufacturer
300 or franchisor sales of new motor vehicles to charitable
301 organizations, qualified vendors or employees of the
302 manufacturer or franchisor.

303 (5) Except when prevented by an act of God, labor
304 strike, transportation disruption outside the control of the
305 manufacturer or time of war, a manufacturer or distribu-
306 tor may not refuse or fail to deliver, in reasonable quanti-
307 ties and within a reasonable time, to a dealer having a
308 franchise agreement for the retail sale of any motor vehicle
309 sold or distributed by the manufacturer, any new motor
310 vehicle or parts or accessories to new motor vehicles as are
311 covered by the franchise if the vehicles, parts and accesso-
312 ries are publicly advertised as being available for delivery
313 or are actually being delivered. All models offered for sale
314 by the manufacturer, without any enrollment, surcharge or
315 acquisition fee, shall be available to the franchised dealer
316 at no additional cost for that particular model of vehicle.

§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
4 under the existing dealer agreement if the designated
5 family member gives the manufacturer or distributor
6 written notice of his or her intention to succeed to the
7 dealership within one hundred twenty days after the
8 dealer's death or incapacity, agrees to be bound by all of
9 the terms and conditions of the dealer agreement, and the
10 designated family member meets the current criteria
11 generally applied by the manufacturer or distributor in
12 qualifying new motor vehicle dealers. A manufacturer or
13 distributor may refuse to honor the existing dealer agree-

14 ment with the designated family member only for good
15 cause. In determining whether good cause exists for
16 refusing to honor the agreement, the manufacturer or
17 distributor has the burden of proving that the designated
18 successor is a person who is not of good moral character or
19 does not meet the manufacturer's existing written, reason-
20 able and uniformly applied standards for business experi-
21 ence and financial qualifications.

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

28 (3) If a manufacturer or distributor believes that good
29 cause exists for refusing to honor the succession, the
30 manufacturer or distributor may, within forty-five days
31 after receipt of the notice of the designated family mem-
32 ber's intent to succeed the dealer in the ownership and
33 operation of the dealership, or within forty-five days after
34 the receipt of the requested personal and financial data,
35 serve upon the designated family member notice of its
36 refusal to approve the succession.

37 (4) The notice of the manufacturer or distributor pro-
38 vided in subsection (3) above shall state the specific
39 grounds for the refusal to approve the succession and that
40 discontinuance of the agreement shall take effect not less
41 than ninety days after the date the notice is served.

42 (5) If notice of refusal is not served within the sixty days
43 provided for in subsection (3) of this section, the dealer
44 agreement continues in effect and is subject to termination
45 only as otherwise permitted by this article.

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

§17A-6A-12. Relocation.

1 (1) As used in this section, “relocate” and “relocation”
2 do not include the relocation of a new motor vehicle dealer
3 within two miles of its established place of business. The
4 relocation of a new motor vehicle dealer to a site within
5 the area of sales responsibility assigned to that dealer by
6 the manufacturing branch or distributor may not be
7 within six air miles of another dealer of the same line-
8 make.

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

18 (3) Within sixty days after receiving the notice provided
19 for in subsection (2) above, or within sixty days after the
20 end of any appeal procedure provided by the manufacturer
21 or distributor, a new motor vehicle dealer of the same line-
22 make within the affected relative market area may bring
23 a declaratory judgment action in the circuit court for the
24 county in which the new motor vehicle dealer is located to
25 determine whether good cause exists for the establishing
26 or relocating of a proposed new motor vehicle dealer.
27 Once an action has been filed, the manufacturer or distrib-
28 utor may not establish or relocate the proposed new motor
29 vehicle dealer until the circuit court has rendered a
30 decision on the matter. An action brought pursuant to this
31 section shall be given precedence over all other civil
32 matters on the court’s docket. The manufacturer has the
33 burden of proving that good cause exists for establishing
34 or relocating a proposed new motor vehicle dealer.

35 (4) This section does not apply to the reopening in a
36 relevant market area of a new motor vehicle dealer that
37 has been closed within the preceding two years if the
38 established place of business of the new motor vehicle

39 dealer is within two miles of the established place of
40 business of the closed new motor vehicle dealer.

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

46 (a) Permanency and amount of the investment, including
47 any obligations incurred by the dealer in making the
48 investment;

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

51 (c) Whether it is injurious or beneficial to the public
52 welfare;

53 (d) Whether the new motor vehicle dealers of the same
54 line-make in the relevant market area are providing
55 adequate competition and convenient consumer care for
56 the motor vehicles of that line-make in the market area,
57 including the adequacy of motor vehicle sales and quali-
58 fied service personnel;

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

61 (f) Growth or decline of the population and the number
62 of new motor vehicle registrations in the relevant market
63 area; and

64 (g) The effect on the relocating dealer of a denial of its
65 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 manufac-
8 turer or distributor shall provide the new motor vehicle

9 dealer with the schedule of compensation to be paid to the
10 dealer for parts, work and service, and the time allowance
11 for the 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 and
15 performance of warranty work and service shall be
16 reasonable and adequate for the work to be performed. In
17 the determination of what constitutes reasonable compen-
18 sation under this section, the principal factor to be given
19 consideration shall be the prevailing wage rates being paid
20 by dealers in the community in which the dealer is doing
21 business, and in no event may the compensation of a dealer
22 for warranty labor and parts be less than the rates charged
23 by the dealer for like service to retail customers for
24 nonwarranty service and repairs, provided that the rates
25 are reasonable. However, in the case of a new motor
26 vehicle dealer of motorcycles or recreational vehicles, in no
27 event may the compensation of a dealer for warranty parts
28 be less than the dealer's cost of acquiring the part plus
29 twenty percent.

30 (3) A manufacturer or distributor may not do any of the
31 following:

32 (a) Fail to perform any warranty obligation;

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

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

40 (4) All claims made by a new motor vehicle dealer
41 pursuant to this section for labor and parts shall be paid
42 within thirty days after their approval. All claims shall be
43 either approved or disapproved by the manufacturer or
44 distributor within thirty days after their receipt on a
45 proper form generally used by the manufacturer or
46 distributor and containing the usually required informa-

47 tion therein. Any claim not specifically disapproved in
48 writing within thirty days after the receipt of the form is
49 considered to be approved and payment shall be made
50 within thirty days. The manufacturer has the right to
51 initiate an audit of a claim within twelve months after
52 payment and to charge back to the new motor vehicle
53 dealer the amount of any false, fraudulent or unsubstanti-
54 ated claim, subject to the requirements of section eight-a
55 of this article.

56 (5) The manufacturer shall accept the return of any new
57 and unused part, component or accessory that was ordered
58 by the dealer, and shall reimburse the dealer for the full
59 cost charged to the dealer for the part, component or
60 accessory if the dealer returns the part and makes a claim
61 for the return of the part within one year of the dealer's
62 receipt of the part, component or accessory and provides
63 reasonable documentation, to include any changed part
64 numbers to match new part numbers, provided that the
65 part was ordered for a warranty repair.

§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, after a three-day period for proper
5 inspection of the vehicle and before delivery to the ulti-
6 mate purchaser. Acceptance by the new motor vehicle
7 dealer shall occur when the new motor vehicle dealer signs
8 a delivery receipt for any motor vehicle.

9 (2) Notwithstanding the terms, provisions or conditions
10 of any agreement, the manufacturer or distributor is liable
11 for all damages or repairs to motor vehicles before delivery
12 to a carrier or transporter and shall indemnify the new
13 motor vehicle dealer for any such damages or repairs.

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

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

§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, or commits any
4 other violation of this article, the new motor vehicle dealer
5 adversely affected by the actions may bring an action for
6 damages and equitable relief against the manufacturer or
7 distributor. If the new motor vehicle dealer prevails, the
8 dealer may recover, in addition to actual damages, treble
9 damages up to three times the amount of the actual
10 damages awarded, plus reasonable attorney's fees, regard-
11 less of the amount in controversy. For the purposes of the
12 award of attorney's fees and costs, whenever the new
13 motor vehicle dealer is seeking injunctive or other relief,
14 the dealer may be considered to have prevailed when a
15 judgment or other final order providing equitable relief is
16 entered in its favor.

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

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

24 (4) Any corporation or association which is primarily
25 owned by or composed of dealers and which primarily
26 represents the interests of dealers has standing to file a
27 petition or cause of action with the court of competent
28 jurisdiction for itself or by, for or on behalf of any, or a
29 group of, new motor vehicle dealers for any violation of
30 this article or for the determination of any rights created
31 by this article.

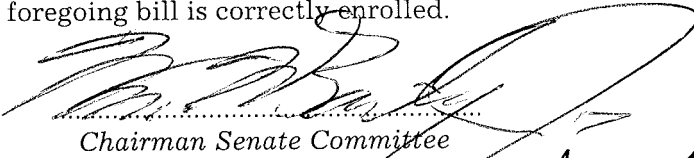
32 (5) In addition to any county in which venue is proper in
33 accordance with the constitution and laws of this state, in

34 any cause of action brought by a new motor vehicle dealer
35 against a manufacturer or distributor for any violation of
36 this article or for the determination of any rights created
37 by the dealer's franchise agreement, venue is proper in the
38 county in which the dealer is engaged in the business of
39 selling the products or services of the manufacturer or
40 distributor.

§17A-6A-18. West Virginia law to apply.

1 Notwithstanding the terms, provisions or requirements
2 of any franchise agreement, contract or other agreement of
3 any kind between a new motor vehicle dealer and a
4 manufacturer or distributor or any subsidiary, affiliate or
5 partner of a manufacturer or distributor, the provisions of
6 the code of West Virginia apply to all such agreements and
7 contracts. Any provisions in the agreements and contracts
8 which violate the terms of this section are null and void.

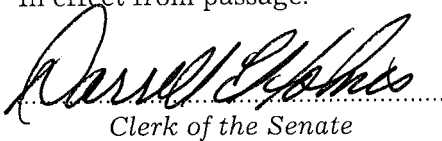
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

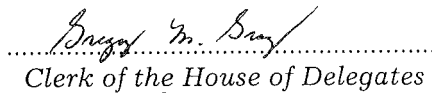

Chairman Senate Committee

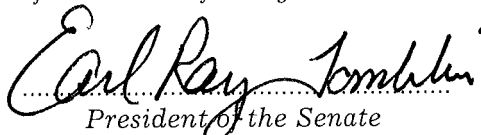

Chairman House Committee

Originated in the Senate.

In effect from passage.

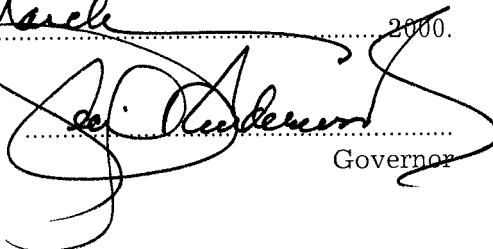

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within.....*approved*.....this the *10th*
Day of.....*March*.....2000.


Governor

PRESENTED TO THE

GOVERNOR/

Date

3/7/00

Time

5:40 pm

FILED

Mar 11 11 43 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE