WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2000

ENROLLED

SENATE BILL NO. 384

(By Senator Tomblin, Mr. President, etc.)

PASSED February 28, 2000
In Effect From Passage
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, MITCHELL, 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.


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

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


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.

5 “Dealer agreement” means the franchise, 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.
“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 means 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.

“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 and as licensed by the division of motor vehicles.

“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 said 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 wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

"New motor vehicle dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, 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 and is licensed by the division of motor vehicles.

"Person" means a natural person, partnership, corporation, association, trust, estate or other legal entity.
“Proposed new motor vehicle dealer” means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. Proposed motor vehicle dealer does not include a person whose dealer agreement is being renewed or continued.

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


(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 exists 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
eighteen months 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 exists for the purposes of a termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer agreement if all of the following have occurred:

(a) The new motor vehicle dealer was given written notice by the manufacturer or distributor of the failure;
(b) The notification stated that the notice of failure of performance was provided pursuant to this article;
(c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith efforts to carry out the dealer agreement; and
(d) The failure continued for more than three hundred sixty days after the date notification was given pursuant to subdivision (a) of this subsection.


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 one hundred twenty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

(b) Notice shall be by certified mail with restrictive delivery to the new motor vehicle dealer principal and shall contain the following:
(i) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement;

(ii) A detailed written statement of all reasons for the termination, cancellation, nonrenewal or discontinuance. The 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; and

(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 thirty 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 of this chapter; or

(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, manufactured for sale in the United States, purchased from the manufacturer, distributor or other dealers, which has not been materially altered, substantially damaged or driven for more than seven hundred fifty miles, except that for any new motorcycle 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; and

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

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

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

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

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

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

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

(2) In no event may:

(a) The schedule of compensation fail to compensate the
dealers for the work and services they are required to
perform in connection with the dealer's delivery and
preparation obligations, or fail to adequately and fairly
compensate the dealers for labor, parts and other expenses
incurred by the dealer to perform under and comply with
manufacturer's warranty agreements and factory recalls;
(b) Any manufacturer, distributor or wholesaler, or
representative thereof, pay its dealers an amount of money
for warranty or recall work that is less than that charged
by the dealer to the retail customers of the dealer for
nonwarranty and nonrecall work of the like kind; and
(c) Any manufacturer, distributor or wholesaler, or
representative thereof, compensate for warranty and recall
work based on a flat-rate figure that is less than what the
dealer charges for retail work.

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

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

(5) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty and recall obligations constitutes the dealer's sole responsibility for product liability as between the dealer and manufacturer, and, except for a loss caused by the dealer's failure to adhere to these obligations, a loss caused by the dealer's negligence or intentional misconduct, or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs and damages, as a result of the dealer having been named a party in a product liability action.


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

(2) Reasonable compensation pursuant to subdivision (a), subsection (1), section eight of this article may not be less than the new motor vehicle dealer's net acquisition cost, including any special promotions ordered by the manufacturer, such as advertising charges, and special tools purchased from the manufacturer or distributor within three years of the date of termination, cancellation, nonrenewal or discontinuance. Reasonable compensation pursuant to subdivision (b) of said subsection shall be the amount stated in the manufacturer's or distributor's
current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d) of said subsection shall be the fair market value of the personal property.

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


(1) A manufacturer or distributor may 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 of the vehicle, equipment or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not 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) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other 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 is not 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. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify exclusive facilities is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

(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; and

(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 may 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 manufac-
turer 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, including any numeri-
cal calculation or formula used, nationally or within the
dealers market, to make the allocations;

(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 small-
est;

(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 is 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 is not a price increase or price decrease. This
subdivision does 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; or

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

(ii) Own an interest in a dealer or dealership;

(iii) Operate a dealership; or

Provided, That a manufacturer may own an interest, other than stock in a publicly held company, solely for investment purposes.

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

(i) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

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

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

(l) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership
181 outright, but for no other purpose, a manufacturer or
distributor may temporarily own an interest in a dealer-
ship if the manufacturer's or distributor's participation in
the dealership is in a bona fide relationship with a fran-
chised dealer who:

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

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

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

(m) 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;

(n) 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 contain-
ing the information required therein. Failure to respond
to the request within the sixty days is consent;

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

(p) 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 does not apply where a claim
is fraudulent. In addition, the manufacturer or distributor
is responsible for reimbursing the audited dealer for all
copying, postage and administrative costs incurred by the
dealer during the audit. Any charges to a dealer as a result
of the audit must be separately billed to the dealer;
(q) Unreasonably restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:

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

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

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

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

(C) A partnership or corporation controlled by a designated family member of one of the dealers;

(D) A trust established or to be established:

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

(2) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.

(iii) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute, that the manufacturer evaluate, process or respond to the underlying proposed transfer by approving or
rejecting the proposal, is not subject to challenge as a
rejection or denial of the proposed transfer by any party.

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

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

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

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

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

(3) A manufacturer or distributor, either directly or
through any subsidiary, may not terminate, cancel, fail to
renew or discontinue any lease of the new motor vehicle
(4) Except as may otherwise be provided in this article, no manufacturer or franchisor shall sell, directly or indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-make covering such new motor vehicle. This subsection shall not apply to manufacturer or franchisor sales of new motor vehicles to charitable organizations, qualified vendors or employees of the manufacturer or franchisor.

(5) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered. All models offered for sale by the manufacturer, without any enrollment, surcharge or acquisition fee, shall be available to the franchised dealer at no additional cost for that particular model of vehicle.

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

(1) Any designated family member of a deceased or incapacitated new motor vehicle dealer may succeed the dealer in the ownership or operation of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to the dealership within one hundred twenty days after the dealer's death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to honor the existing dealer agree-
ment with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer's existing written, reasonable and uniformly applied standards for business experience and financial qualifications.

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

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

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

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

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.
§17A-6A-12. Relocation.

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

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

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

4. (4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle
(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

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

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

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

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

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

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

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


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

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factor to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event may 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 the 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 may 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; or

(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 informa-
tion therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form is 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, subject to the requirements of section eight-a of this article.

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

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

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

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

(3) The new motor vehicle dealer is liable for damages to new motor vehicles after delivery to the carrier only if the dealer selects the method of transportation, mode of transportation and the carrier. In all other instances, the manufacturer or distributor is liable for new motor vehicle damage.
(4) If the new motor vehicle dealer rejects a new motor vehicle pursuant to this section, the manufacturer or distributor shall credit the dealer's account within ten business days after receipt of the notice of rejection.

§17A-6A-16. Actions at law; damages.

(1) If a manufacturer or distributor terminates, cancels, fails to renew or discontinues a dealer agreement for other than good cause as defined in this article, or commits any other violation of this article, the new motor vehicle dealer adversely affected by the actions may bring an action for damages and equitable relief against the manufacturer or distributor. If the new motor vehicle dealer prevails, the dealer may recover, in addition to actual damages, treble damages up to three times the amount of the actual damages awarded, plus reasonable attorney's fees, regardless of the amount in controversy. For the purposes of the award of attorney's fees and costs, whenever the new motor vehicle dealer is seeking injunctive or other relief, the dealer may be considered to have prevailed when a judgment or other final order providing equitable relief is entered in its favor.

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

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

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

(5) In addition to any county in which venue is proper in accordance with the constitution and laws of this state, in
any cause of action brought by a new motor vehicle dealer
against a manufacturer or distributor for any violation of
this article or for the determination of any rights created
by the dealer's franchise agreement, venue is proper in the
county in which the dealer is engaged in the business of
selling the products or services of the manufacturer or
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... Day of...

March

Governor