

FILED

2005 MAY -2 P 3: 08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2005*

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**ENROLLED**

SENATE BILL NO. 735

(By Senator Oliverio, et al )

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PASSED April 9, 2005

In Effect 90 days from Passage

FILED

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## **Senate Bill No. 735**

(BY SENATORS OLIVERIO, WHITE, EDGELL, FOSTER, HARRISON,  
HUNTER, LANHAM, LOVE AND PREZIOSO)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §17A-6A-7 of the Code of West Virginia, 1931, as amended, all relating to cancellation of a motor vehicle agreement; notice of cancellation of motor vehicle agreement; right of motor vehicle dealer to contest cancellation; grounds for contest of cancellation; effect of agreement pending judicial contest; stay of termination proceedings; conditions permitting cancellation; and effect on motor vehicle agreement of transfer of ownership.

*Be it enacted by the Legislature of West Virginia:*

That §17A-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§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 otherwise provided in this section, notice  
8 shall be made not less than one hundred twenty days prior  
9 to the effective date of the termination, cancellation,  
10 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 (1) A statement of intention to terminate, cancel, not  
15 renew or discontinue the dealer agreement;

16 (2) 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 (3) 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 (1) 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 (2) 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 (3) 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 (4) Revocation of a motor vehicle dealership license in  
45 accordance with section eighteen, article six of this  
46 chapter; or

47 (5) 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, nonre-  
53 newal or discontinuance if a manufacturer or distributor  
54 discontinues production of the new motor vehicle dealer's  
55 product line or discontinues distribution of the product  
56 line in this state.

57 (e) Except as provided in subdivision (c) of this subsec-  
58 tion, any motor vehicle dealer who receives a notice of  
59 intent to discontinue, cancel or not renew a dealer agree-  
60 ment may, within a one hundred twenty-day notice period,  
61 file a petition or complaint for a determination of whether  
62 such action is an unfair or prohibited discontinuation,  
63 cancellation or nonrenewal. Dealer agreements and cer-  
64 tificates of appointment shall continue in effect until a  
65 final determination of the issues raised in such petition or  
66 complaint by the motor vehicle dealer. A discontinuance,  
67 cancellation or nonrenewal is unfair if it is:

68 (1) Not clearly permitted by the dealer agreement;

69 (2) Not undertaken for good cause; or

70 (3) Is based on an alleged breach of the franchise  
71 agreement which is not in fact a material and substantial  
72 breach.

73 (f) No replacement dealer shall be named for this point  
74 or location to engage in business and the dealer's agree-  
75 ment shall remain in effect until a final judgement is  
76 entered after all appeals are exhausted: *Provided*, That  
77 when a motor vehicle dealer appeals a decision upholding  
78 a discontinuation, cancellation or nonrenewal under  
79 subdivisions (f) and (g) of this section, the dealer agree-  
80 ment shall remain in effect pending exhaustion of all  
81 appeals only if the motor vehicle dealer establishes a  
82 likelihood of success on appeal and that the public interest  
83 will not be harmed by keeping the dealer agreement in  
84 effect pending entry of final judgement after such appeal.

85 (g) If a transfer of ownership is proposed after a notice  
86 to discontinue, cancel or not renew a dealer agreement is  
87 received but, prior to the final determination, including  
88 exhaustion of all appellate remedies of a motor vehicle  
89 dealer's complaint or petition contesting such action, the  
90 termination proceedings shall be stayed, without bond,  
91 during the period the transfer is being reviewed by the  
92 manufacturer or distributor. During the period that the  
93 transfer is being reviewed by the manufacturer or distrib-  
94 utor, the dealer agreement shall remain in full force and  
95 effect, and the motor vehicle dealer shall retain all rights  
96 and remedies pursuant to the terms and conditions of the  
97 dealer agreement and applicable law. This shall include,  
98 but is not limited to, all rights of transfer under subdivi-  
99 sion (2), section ten, article six-a, chapter seventeen of this  
100 code until such time as the manufacturer or distributor has  
101 accepted or rejected the proposed transfer. If the proposed  
102 transfer is rejected, the motor vehicle dealer shall retain  
103 all of its rights pursuant to section sixteen of said article  
104 to a judicial determination as to whether the manufacturer  
105 or distributor's rejection is in compliance with the provi-  
106 sions of subdivision (2), section ten of said article and

107 during the pendency of such judicial proceeding, and any  
108 related appellate proceedings, the termination proceedings  
109 shall remain stayed without bond, the dealer agreement  
110 shall remain in full force and effect and the motor vehicle  
111 dealer shall retain all rights and remedies pursuant to the  
112 terms and conditions of the dealer agreement and applica-  
113 ble law including all rights of transfer. If a transfer is  
114 approved by the manufacturer or distributor or mandated  
115 by law, the termination proceedings shall be dismissed  
116 with prejudice as moot.

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

*Chandy White*  
.....  
Chairman Senate Committee

*D. Kirk Bury*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll E. Hobbs*  
.....  
Clerk of the Senate

*Bryce W. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within is approved this the *2nd*  
Day of *May*, 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 29 2005

Time 9:45