SENATE BILL NO. 509

(By Senator___)

ENROLLED
Committee Substitute for
SENATE BILL NO. 509

PASSED March 8, 2006

In Effect 90 days from Passage
AN ACT to amend and reenact §17A-6A-3, §17A-6A-4, §17A-6A-8, §17A-6A-8a, §17A-6A-10 and §17A-6A-15 of the Code of West Virginia, 1931, as amended, all relating generally to automobile franchise law; relationship of automobile dealers, distributors and manufacturers; providing clarification that material breach is required for good cause for cancellation of dealer contract; providing factors to be considered for dealer and public interest in cancellation of dealer contract; providing for compensation to a dealer from a manufacturer when a brand or line is phased out; expanding and clarifying prohibited practices; clarifying prohibited coercive acts when requiring a dealer enter into an agreement; adding requirement that manufacturers and distributors use fair and
reasonable performance standards that are statistically sound and verifiable; exception for volume purchases; prohibiting manufacturers and distributors from requiring facility upgrades as a condition of offering certain vehicle models; requiring manufacturer or distributor responsibility for all damage to vehicles prior to dealer taking possession; and providing for payment of reasonable expenses for professional services by the manufacturer or distributor prior to the exercise of a first right of refusal.

Be it enacted by the Legislature of West Virginia:

That §17A-6A-3, §17A-6A-4, §17A-6A-8, §17A-6A-8a, §17A-6A-10 and 17A-6A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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


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.

(1) "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.

(2) "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 representa-
tive and the testamentary trustee of a deceased new motor
dealer. However, the term means only that design-
nated 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.

(3) "Distributor" means any person, resident or nonresi-
dent, 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.

(4) "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.

(5) "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.
(6) "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.

(7) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) "Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch or factory representative.

(9) "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.

(10) "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.

(11) "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.

(12) "Person" means a natural person, partnership, corporation, association, trust, estate or other legal entity.

(13) "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.

(14) "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 when a manufacturer or distributor can demonstrate termination is necessary due to a material breach of a reasonable term or terms of the agreement by a dealer when weighed against the interests of the dealer and the public. The interests of the dealer and the public shall include consideration of:

(a) The relationship of the dealer's sales to the sales in the relevant market;
(b) The investment and financial obligations of the dealer under the terms of the franchise agreement;
(c) The effect on the public cancellation of the franchise agreement would cause;
(d) The adequacy of the dealer's sales and service facilities, equipment, parts and personnel in relation to other dealers in the relevant market;

(e) Whether the dealer is honoring existing warranties;

(f) Whether the dealer is complying, or can comply within a reasonable time, with reasonable capitalization requirements; and

(g) The dealer's overall performance under the reasonable terms of the franchise agreement. This shall include the overall fairness of the agreement terms, the enforceability of the agreement and the relative bargaining power of the parties.

(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.

§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 discontinuance, 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 obligation 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 subsection (c), section five of this article.

(3) Upon the termination, cancellation or nonrenewal where the manufacturer or distributor is discontinuing the sale of a product line, the manufacturer or distributor shall pay or provide to the motor vehicle dealer:

(a) Compensation consistent with the length of time the dealer carried the line and the investment and timing thereof required by the manufacturer or distributor of the dealer; and

(b) Support of the manufacturer's or distributor's warranty obligations by making parts available and compensating dealers for warranty parts and labor for five years: Provided, That the motor vehicle dealer has adequate facilities, trained personnel and equipment to perform warranty repairs.

§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 require any dealer to pay in any manner, 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 com-
puterized training programs.

Notwithstanding the terms of a franchise agreement
or provision of law in conflict with this section, the
dealer's delivery, preparation, warranty and recall obliga-
tions constitutes the dealer's sole responsibility for prod-
uct 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 authori-
zation, 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) 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 inven-
(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, limit inventory, invoke sales and service warranty or other types of audits 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 manufacturer or distributor. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;
(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical 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 smallest;

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer 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:

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

(iii) Act in the capacity of a new motor vehicle dealer:

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 outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in
the dealership is in a bona fide relationship with a franchised 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 containing 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 out-of-pocket professional fees which shall include, but not be limited to, accounting, legal or appraisal services 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 fees for professional services 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 providing 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;

(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;

(v) Discriminate directly or indirectly between dealers on vehicles of like grade or quantity where the effect of the discrimination would substantially lessen competition; and

(w) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer.

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

(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, unreasonable facility or building or any other unreasonable type of upgrade requirement or acquisition fee, shall be available to the franchised dealer at no additional cost for that particular model of vehicle.


Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs and attorney's fees, arising solely out of complaints, claims or actions which relate to the manufacture, assembly, design of a new motor vehicle or other functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim or action.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 23rd Day of March, 2006.

Governor