

SB 601 S

FILED

2007 APR -4 PM 3: 53

**WEST VIRGINIA LEGISLATURE**  
SEVENTY-EIGHTH LEGISLATURE  
REGULAR SESSION, 2007

OFFICE OF THE  
SECRETARY OF STATE

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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 601**

(SENATORS JENKINS, PLYMALE, KESSLER, CHAFIN, UNGER,  
OLIVERIO, BAILEY, MINARD, GREEN, CARUTH, STOLLINGS,  
DEEM, BOWMAN, HALL, LOVE, YODER, BARNES, HELMICK,  
FANNING, FOSTER, HUNTER, PREZIOSO, EDGELL, MCKENZIE,  
GUILLS AND WHITE, *original sponsors*)

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[Passed March 10, 2007; in effect from passage.]

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AN ACT to amend and reenact §17A-6A-3, 17A-6A-10 and §17A-6A-12 of the Code of West Virginia, 1931, as amended, all relating to the establishment or relocation of additional motor vehicle dealers within a relevant market area; redefining "relevant market area"; creating exceptions for certain relocations and transfers;

exceptions for purposes of adding dealerships to an area;  
and providing notice requirements to existing dealers.

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

That §17A-6A-3, 17A-6A-10 and §17A-6A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

**§17A-6A-3. Definitions.**

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

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

13 (2) "Designated family member" means the spouse,  
14 child, grandchild, parent, brother or sister of a deceased  
15 new motor vehicle dealer who is entitled to inherit the  
16 deceased dealer's ownership interest in the new motor  
17 vehicle dealership under the terms of the dealer's will,  
18 or who has otherwise been designated in writing by a  
19 deceased dealer to succeed the deceased dealer in the  
20 new motor vehicle dealership, or is entitled to inherit  
21 under the laws of intestate succession of this state. With

22 respect to an incapacitated new motor vehicle dealer,  
23 the term means the person appointed by a court as the  
24 legal representative of the new motor vehicle dealer's  
25 property. The term also includes the appointed and  
26 qualified personal representative and the testamentary  
27 trustee of a deceased new motor vehicle dealer.  
28 However, the term means only that designated successor  
29 nominated by the new motor vehicle dealer in a written  
30 document filed by the dealer with the manufacturer or  
31 distributor, if such a document is filed.

32 (3) "Distributor" means any person, resident or  
33 nonresident, who, in whole or in part, offers for sale,  
34 sells or distributes any new motor vehicle to a new  
35 motor vehicle dealer or who maintains a factory  
36 representative, resident or nonresident, or who controls  
37 any person, resident or nonresident, who, in whole or in  
38 part, offers for sale, sells or distributes any new motor  
39 vehicle to a new motor vehicle dealer.

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

49 (5) "Factory branch" means an office maintained by  
50 a manufacturer or distributor for the purpose of selling  
51 or offering for sale vehicles to a distributor, wholesaler  
52 or new motor vehicle dealer, or for directing or  
53 supervising, in whole or in part, factory or distributor  
54 representatives. The term includes any sales promotion

55 organization maintained by a manufacturer or  
56 distributor which is engaged in promoting the sale of a  
57 particular make of new motor vehicles in this state to  
58 new motor vehicle dealers.

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

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

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

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

76 (10) "New motor vehicle" means a motor vehicle  
77 which is in the possession of the manufacturer,  
78 distributor or wholesaler, or has been sold only to a new  
79 motor vehicle dealer and on which the original title has  
80 not been issued from the new motor vehicle dealer.

81 (11) "New motor vehicle dealer" means a person who  
82 holds a dealer agreement granted by a manufacturer or  
83 distributor for the sale of its motor vehicles, who is  
84 engaged in the business of purchasing, selling, leasing,

85 exchanging or dealing in new motor vehicles, service of  
86 said vehicles, warranty work and sale of parts who has  
87 an established place of business in this state and is  
88 licensed by the Division of Motor Vehicles.

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

92 (13) "Proposed new motor vehicle dealer" means a  
93 person who has an application pending for a new dealer  
94 agreement with a manufacturer or distributor.  
95 "Proposed motor vehicle dealer" does not include a  
96 person whose dealer agreement is being renewed or  
97 continued.

98 (14) "Relevant market area" means the area located  
99 within a twenty air-mile radius around an existing same  
100 line-make new motor vehicle dealership: *Provided*, That  
101 a fifteen mile relevant market area as it existed prior to  
102 the effective date of this statute shall apply to any  
103 proposed new motor vehicle dealership as to which a  
104 manufacturer or distributor and the proposed new  
105 motor vehicle dealer have executed on or before the  
106 effective date of this statute a written agreement,  
107 including a letter of intent, performance agreement or  
108 commitment letter, concerning the establishment of the  
109 proposed new motor vehicle dealership.

**§17A-6A-10. Prohibited practices.**

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

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

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

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

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

33 (e) Change the capital structure of the new motor  
34 vehicle dealership or the means by or through which the  
35 dealer finances the operation of the dealership if the

36 dealership at all times meets any reasonable capital  
37 standards determined by the manufacturer in  
38 accordance with uniformly applied criteria;

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

58 (g) Change the location of the new motor vehicle  
59 dealership or make any substantial alterations to the  
60 dealership premises, where to do so would be  
61 unreasonable; and

62 (h) Prospectively assent to a release, assignment,  
63 novation, waiver or estoppel which would relieve any  
64 person from liability imposed by this article or require  
65 any controversy between a new motor vehicle dealer  
66 and a manufacturer or distributor to be referred to a  
67 person other than the duly constituted courts of the



68 state or the United States, if the referral would be  
69 binding upon the new motor vehicle dealer.

70 (2) A manufacturer or distributor may not do any of  
71 the following:

72 (a) Fail to deliver new motor vehicles or new motor  
73 vehicle parts or accessories within a reasonable time  
74 and in reasonable quantities relative to the new motor  
75 vehicle dealer's market area and facilities, unless the  
76 failure is caused by acts or occurrences beyond the  
77 control of the manufacturer or distributor, or unless the  
78 failure results from an order by the new motor vehicle  
79 dealer in excess of quantities reasonably and fairly  
80 allocated by the manufacturer or distributor. No  
81 manufacturer or distributor may penalize a new motor  
82 vehicle dealer for an alleged failure to meet sales quotas  
83 where the alleged failure is due to actions of the  
84 manufacturer or distributor;

85 (b) Refuse to disclose to a new motor vehicle dealer  
86 the method and manner of distribution of new motor  
87 vehicles by the manufacturer or distributor, including  
88 any numerical calculation or formula used, nationally  
89 or within the dealer's market, to make the allocations;

90 (c) Refuse to disclose to a new motor vehicle dealer the  
91 total number of new motor vehicles of a given model,  
92 which the manufacturer or distributor has sold during  
93 the current model year within the dealer's marketing  
94 district, zone or region, whichever geographical area is  
95 the smallest;

96 (d) Increase prices of new motor vehicles which the  
97 new motor vehicle dealer had ordered and then  
98 eventually delivered to the same retail consumer for

99 whom the vehicle was ordered, if the order was made  
100 prior to the dealer's receipt of the written official price  
101 increase notification. A sales contract signed by a  
102 private retail consumer and binding on the dealer is  
103 evidence of each order. In the event of manufacturer or  
104 distributor price reductions or cash rebates, the amount  
105 of any reduction or rebate received by a dealer shall be  
106 passed on to the private retail consumer by the dealer.  
107 Any price reduction in excess of five dollars shall apply  
108 to all vehicles in the dealer's inventory which were  
109 subject to the price reduction. A price difference  
110 applicable to new model or series motor vehicles at the  
111 time of the introduction of the new models or the series  
112 is not a price increase or price decrease. This  
113 subdivision does not apply to price changes caused by  
114 the following:

115 (i) The addition to a motor vehicle of required or  
116 optional equipment pursuant to state or federal law;

117 (ii) In the case of foreign made vehicles or  
118 components, revaluation of the United States dollar; or

119 (iii) Any increase in transportation charges due to an  
120 increase in rates charged by a common carrier and  
121 transporters;

122 (e) Offer any refunds or other types of inducements to  
123 any dealer for the purchase of new motor vehicles of a  
124 certain line-make to be sold to this state or any political  
125 subdivision of this state without making the same offer  
126 available upon request to all other new motor vehicle  
127 dealers of the same line-make;

128 (f) Release to an outside party, except under subpoena  
129 or in an administrative or judicial proceeding to which

130 the new motor vehicle dealer or the manufacturer or  
131 distributor are parties, any business, financial or  
132 personal information which has been provided by the  
133 dealer to the manufacturer or distributor, unless the  
134 new motor vehicle dealer gives his or her written  
135 consent;

136 (g) Deny a new motor vehicle dealer the right to  
137 associate with another new motor vehicle dealer for any  
138 lawful purpose;

139 (h) Establish a new motor vehicle dealership which  
140 would unfairly compete with a new motor vehicle dealer  
141 of the same line-make operating under a dealer  
142 agreement with the manufacturer or distributor in the  
143 relevant market area. A manufacturer or distributor  
144 shall not be considered to be unfairly competing if the  
145 manufacturer or distributor is:

146 (i) Operating a dealership temporarily for a reasonable  
147 period.

148 (ii) Operating a dealership which is for sale at a  
149 reasonable price.

150 (iii) Operating a dealership with another person who  
151 has made a significant investment in the dealership and  
152 who will acquire full ownership of the dealership under  
153 reasonable terms and conditions;

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

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

157 (ii) Operate a dealership; or

158 (iii) Act in the capacity of a new motor vehicle dealer:  
159 *Provided*, That a manufacturer may own an interest,  
160 other than stock in a publicly held company, solely for  
161 investment purposes;

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

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

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

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

186 (l) For the purpose of broadening the diversity of its  
187 dealer body and enhancing opportunities for qualified  
188 persons who are part of a group who have historically

189 been under represented in its dealer body, or other  
190 qualified persons who lack the resources to purchase a  
191 dealership outright, but for no other purpose, a  
192 manufacturer or distributor may temporarily own an  
193 interest in a dealership if the manufacturer's or  
194 distributor's participation in the dealership is in a bona  
195 fide relationship with a franchised dealer who:

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

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

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

202 (m) Unreasonably withhold consent to the sale,  
203 transfer or exchange of the dealership to a qualified  
204 buyer capable of being licensed as a new motor vehicle  
205 dealer in this state;

206 (n) Fail to respond in writing to a request for consent  
207 to a sale, transfer or exchange of a dealership within  
208 sixty days after receipt of a written application from the  
209 new motor vehicle dealer on the forms generally utilized  
210 by the manufacturer or distributor for such purpose and  
211 containing the information required therein. Failure to  
212 respond to the request within the sixty days is consent;

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

216 (p) Audit any motor vehicle dealer in this state for  
217 warranty parts or warranty service compensation,

218 service compensation, service incentives, rebates or  
219 other forms of sales incentive compensation more than  
220 twelve months after the claim for payment or  
221 reimbursement has been made by the automobile dealer:  
222 *Provided*, That the provisions of this subsection does  
223 not apply where a claim is fraudulent. In addition, the  
224 manufacturer or distributor is responsible for  
225 reimbursing the audited dealer for all copying, postage  
226 and administrative costs incurred by the dealer during  
227 the audit. Any charges to a dealer as a result of the  
228 audit must be separately billed to the dealer;

229 (q) Unreasonably restrict a dealer's ownership of a  
230 dealership through noncompetition covenants, site  
231 control, sublease, collateral pledge of lease, right of first  
232 refusal, option to purchase, or otherwise. A right of first  
233 refusal is created when:

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

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

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

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

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

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

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

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

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

269 (iv) Except as otherwise provided in this subsection,  
270 the manufacturer or distributor agrees to pay the  
271 reasonable expenses, including reasonable out-of-  
272 pocket professional fees which shall include, but not be  
273 limited to, accounting, legal or appraisal services fees  
274 that are incurred by the proposed owner or transferee  
275 before the manufacturer's or distributor's exercise of its  
276 right of first refusal. Payment of the expenses and fees  
277 for professional services are not required if the dealer

278 fails to submit an accounting of those expenses and fees  
279 within twenty days of the dealer's receipt of the  
280 manufacturer's or distributor's written request for such  
281 an accounting. Such a written account of fees and  
282 expenses may be requested by a manufacturer or  
283 distributor before exercising its right of first refusal;

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

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

292 (t) Fail to reimburse a new motor vehicle dealer, at the  
293 dealers regular rate, or the full and actual cost of  
294 providing a loaner vehicle to any customer who is  
295 having a vehicle serviced at the dealership if the  
296 provision of the loaner vehicle is required by the  
297 manufacturer;

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

306 (v) Discriminate directly or indirectly between dealers  
307 on vehicles of like grade or quantity where the effect of



308 the discrimination would substantially lessen  
309 competition; and

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

313 (3) A manufacturer or distributor, either directly or  
314 through any subsidiary, may not terminate, cancel, fail  
315 to renew or discontinue any lease of the new motor  
316 vehicle dealer's established place of business except for  
317 a material breach of the lease.

318 (4) Except as may otherwise be provided in this  
319 article, no manufacturer or franchisor shall sell, directly  
320 or indirectly, any new motor vehicle to a consumer in  
321 this state, except through a new motor vehicle dealer  
322 holding a franchise for the line-make covering such new  
323 motor vehicle. This subsection shall not apply to  
324 manufacturer or franchisor sales of new motor vehicles  
325 to charitable organizations, qualified vendors or  
326 employees of the manufacturer or franchisor.

327 (5) Except when prevented by an act of God, labor  
328 strike, transportation disruption outside the control of  
329 the manufacturer or time of war, a manufacturer or  
330 distributor may not refuse or fail to deliver, in  
331 reasonable quantities and within a reasonable time, to  
332 a dealer having a franchise agreement for the retail sale  
333 of any motor vehicle sold or distributed by the  
334 manufacturer, any new motor vehicle or parts or  
335 accessories to new motor vehicles as are covered by the  
336 franchise if the vehicles, parts and accessories are  
337 publicly advertised as being available for delivery or are  
338 actually being delivered. All models offered for sale by  
339 the manufacturer, without any enrollment, surcharge,

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

**§17A-6A-12. Establishment and relocation or establishment of  
additional dealers.**

1 (1) As used in this section, “relocate” and “relocation”  
2 do not include the relocation of a new motor vehicle  
3 dealer within four miles of its established place of  
4 business or an existing new motor vehicle dealer sells or  
5 transfers the dealership to a new owner and the  
6 successor new motor vehicle dealership owner relocates  
7 to a location within four miles of the seller’s last open  
8 new motor vehicle dealership location. The relocation of  
9 a new motor vehicle dealer to a site within the area of  
10 sales responsibility assigned to that dealer by the  
11 manufacturing branch or distributor may not be within  
12 six air miles of another dealer of the same line-make.

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

22 (3) Within sixty days after receiving the notice  
23 provided in subsection (2) of this section, or within sixty  
24 days after the end of any appeal procedure provided by  
25 the manufacturer or distributor, a new motor vehicle

26 dealer of the same line-make within the affected  
27 relevant market area may bring a declaratory judgment  
28 action in the circuit court for the county in which the  
29 new motor vehicle dealer is located to determine  
30 whether good cause exists for the establishing or  
31 relocating of the proposed new motor vehicle dealer:  
32 *Provided*, That a new motor vehicle dealer of the same  
33 line-make within the affected relevant market area  
34 shall not be permitted to bring such an action if the  
35 proposed relocation site would be further from the  
36 location of the new motor vehicle dealer of the same  
37 line-make than the location from which the dealership  
38 is being moved. Once an action has been filed, the  
39 manufacturer or distributor may not establish or  
40 relocate the proposed new motor vehicle dealer until the  
41 circuit court has rendered a decision on the matter. An  
42 action brought pursuant to this section shall be given  
43 precedence over all other civil matters on the court's  
44 docket. The manufacturer has the burden of proving  
45 that good cause exists for establishing or relocating a  
46 proposed new motor vehicle dealer.

47 (4) This section does not apply to the reopening in a  
48 relevant market area of a new motor vehicle dealer that  
49 has been closed or sold within the preceding two years  
50 if the established place of business of the new motor  
51 vehicle dealer is within four miles of the established  
52 place of business of the closed or sold new motor vehicle  
53 dealer.

54 (5) In determining whether good cause exists for  
55 establishing or relocating an additional new motor  
56 vehicle dealer for the same line-make, the court shall  
57 take into consideration the existing circumstances,  
58 including, but not limited to, the following:

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

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

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

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

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

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

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

Enr. Com. Sub. for S. B. No. 601] 20

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

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

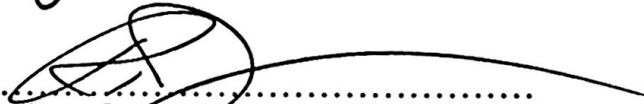
Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved ..... this  
the 4<sup>th</sup> Day of April ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 03 2007

Time 1:48 pm