

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 453**

(Senators Woelfel, Blair, Ferns, Gaunch,  
M. Hall, Leonhardt, Mullins, Nohe, Plymale,  
Prezioso, Snyder, Takubo, Trump, Walters,  
Williams and Karnes, *original sponsors*)

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[Passed March 14, 2015; in effect ninety days from passage.]

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AN ACT to amend and reenact §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers; adopting legislative findings; defining terms; modifying terms relating to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; adding conduct which is considered a prohibited practice; increasing to one hundred eighty days the notice period afforded dealers should a manufacturer or distributor not approve a successor dealer; clarifying that air miles are used to determine distances between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; and clarifying indemnity practices.

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

That §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all to read as follows:

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

3 **§17A-6A-1. Legislative finding.**

4 The Legislature finds and declares that the distribution and sale of motor vehicles in this state  
5 vitally affects the general economy and the public welfare and that in order to promote the public  
6 welfare and in exercise of its police power, it is necessary to regulate motor vehicle dealers,  
7 manufacturers, distributors and representatives of vehicle manufacturers and distributors doing  
8 business in this state in order to avoid undue control of the independent new motor vehicle dealer  
9 by the vehicle manufacturer or distributor and to ensure that dealers fulfill their obligations under  
10 their franchises and provide adequate and sufficient service to consumers generally, and to protect  
11 and preserve the investments and properties of the citizens and motor vehicle dealers of this state.

12 **§17A-6A-3. Definitions.**

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

15 (1) “Dealer agreement” means the franchise, agreement or contract in writing between a  
16 manufacturer, distributor and a new motor vehicle dealer which purports to establish the legal rights  
17 and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale  
18 of new motor vehicles, accessories, service and sale of parts for motor vehicles.

19 (2) “Designated family member” means the spouse, child, grandchild, parent, brother or sister  
20 of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer’s ownership

1 interest in the new motor vehicle dealership under the terms of the dealer's will, or who has  
2 otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new  
3 motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state.

4 With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by  
5 a court as the legal representative of the new motor vehicle dealer's property. The term also includes  
6 the appointed and qualified personal representative and the testamentary trustee of a deceased new  
7 motor vehicle dealer. However, the term means only that designated successor nominated by the  
8 new motor vehicle dealer in a written document filed by the dealer with the manufacturer or  
9 distributor, if such a document is filed.

10 (3) "Distributor" means any person, resident or nonresident who, in whole or in part, offers  
11 for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains  
12 a factor representative, resident or nonresident, or who controls any person, resident or nonresident  
13 who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor  
14 vehicle dealer.

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

20 (5) "Factory branch" means an office maintained by a manufacturer or distributor for the  
21 purpose of selling or offering for sale vehicles to a distributor, wholesaler or new motor vehicle  
22 dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The  
23 term includes any sales promotion organization maintained by a manufacturer or distributor which  
24 is engaged in promoting the sale of a particular make of new motor vehicles in this state to new  
25 motor vehicle dealers.

26 (6) "Factory representative" means an agent or employee of a manufacturer, distributor or

1 factory branch retained or employed for the purpose of making or promoting the sale of new motor  
2 vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle  
3 dealers.

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

6 (8) “Manufacturer” means any person who manufactures or assembles new motor vehicles;  
7 or any distributor, factory branch or factory representative and, in the case of a school bus, truck  
8 tractor, road tractor or truck as defined in section one, article one of this chapter, also means a person  
9 engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their  
10 engines, power trains or rear axles, including when engines, power trains or rear axles are not  
11 warranted by the final manufacturer or assembler, and any distributor, factory branch or  
12 representative.

13 (9) “Motor vehicle” means that term as defined in section one, article one of this chapter,  
14 including motorcycle, school bus, truck tractor, road tractor, truck, recreational vehicle, all-terrain  
15 vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv),  
16 respectively, of said section, but not including a farm tractor or farm equipment. The term “motor  
17 vehicle” also includes a school bus, truck tractor, road tractor, truck, its component parts, including,  
18 but not limited to, its engine, transmission or rear axle manufactured for installation in a school bus,  
19 truck tractor, road tractor or truck.

20 (10) “New motor vehicle” means a motor vehicle which is in the possession of the  
21 manufacturer, distributor or wholesaler, or has been sold only to a new motor vehicle dealer and on  
22 which the original title has not been issued from the new motor vehicle dealer.

23 (11) “New motor vehicle dealer” means a person who holds a dealer agreement granted by  
24 a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of  
25 purchasing, selling, leasing, exchanging or dealing in new motor vehicles, service of said vehicles,  
26 warranty work and sale of parts who has an established place of business in this state and is licensed

1 by the Division of Motor Vehicles.

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

4 (13) "Proposed new motor vehicle dealer" means a person who has an application pending  
5 for a new dealer agreement with a manufacturer or distributor. "Proposed motor vehicle dealer" does  
6 not include a person whose dealer agreement is being renewed or continued.

7 (14) "Relevant market area" means the area located within a twenty-air mile radius around  
8 an existing same line-make new motor vehicle dealership: *Provided*, That a fifteen-mile relevant  
9 market area as it existed prior to the effective date of this statute shall apply to any proposed new  
10 motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor  
11 vehicle dealer have executed on or before the effective date of this statute a written agreement,  
12 including a letter of intent, performance agreement or commitment letter, concerning the  
13 establishment of the proposed new motor vehicle dealership.

14 **§17A-6A-4. Cancellation of dealer contract; notification.**

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

- 18 (a) Satisfied the notice requirement of section seven of this article;
- 19 (b) Acted in good faith;
- 20 (c) Engaged in full and open communication with franchised dealer; and
- 21 (d) Has good cause for the cancellation, termination, nonrenewal or discontinuance.

22 (2) Notwithstanding any agreement, good cause exists when a manufacturer or distributor  
23 can demonstrate termination is necessary due to a material breach of a reasonable term or terms of  
24 the agreement by a dealer when weighed against the interests of the dealer and the public. The  
25 burden of proof is on the manufacturer to prove good cause by a preponderance of the evidence. The  
26 interests of the dealer and the public shall include consideration of:

1 (a) The relationship of the dealer's sales to the sales in the relevant market;

2 (b) The investment and financial obligations of the dealer under the terms of the franchise  
3 agreement;

4 (c) The effect on the public cancellation of the franchise agreement would cause;

5 (d) The adequacy of the dealer's sales and service facilities, equipment, parts and personnel  
6 in relation to other dealers in the relevant market;

7 (e) Whether the dealer is honoring existing warranties;

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

10 (g) The dealer's overall performance under the reasonable terms of the franchise agreement.

11 This shall include the overall fairness of the agreement terms, the enforceability of the agreement  
12 and the relative bargaining power of the parties.

13 (h) Whether the manufacturer made available the appropriate volumes and type of motor  
14 vehicles to the dealer and a reasonable opportunity for sales and service training to the dealer.

15 (3) In addition to the requirements of subsection (2) of this section, if the failure by the new  
16 motor vehicle dealer to comply with a provision of the dealer agreement relates to the performance  
17 of the new motor vehicle dealer in sales or service, good cause exists for the purposes of a  
18 termination, cancellation, nonrenewal or discontinuance under subsection (1) of this section when  
19 the new motor vehicle dealer failed to effectively carry out the performance provisions of the dealer  
20 agreement if all of the following have occurred:

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

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

25 (c) The new motor vehicle dealer was afforded a reasonable opportunity to exert good faith  
26 efforts to carry out the dealer agreement; and

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

3 **§17A-6A-5. Circumstances not constituting good cause.**

4 Notwithstanding any agreement, the following alone does not constitute good cause for the  
5 termination, cancellation, nonrenewal or discontinuance of a dealer agreement under subdivision (d),  
6 subsection (1), section four of this article:

7 (a) A change in ownership of the new motor vehicle dealer's dealership. This subdivision  
8 does not authorize any change in ownership which would have the effect of a sale or an assignment  
9 of the dealer agreement or a change in the principal management of the dealership without the  
10 manufacturer's or distributor's prior written consent which may not be unreasonably or untimely  
11 withheld.

12 (b) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new  
13 motor vehicle parts, accessories or any other commodity or services not ordered by the new motor  
14 vehicle dealer.

15 (c) The fact that the new motor vehicle dealer owns, has an investment in, participates in the  
16 management of, or holds a dealer agreement for the sale of another make or line of new motor  
17 vehicles, or that the new motor vehicle dealer has established another make or line of new motor  
18 vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided*, That  
19 the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new  
20 motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the  
21 terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the  
22 manufacturer or distributor.

23 (d) The fact that the new motor vehicle dealer sells or transfers ownership of the dealership  
24 or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son or  
25 daughter: *Provided*, That the sale or transfer shall not have the effect of a sale or an assignment of  
26 the dealer agreement or a change in the principal management of the dealership without the

1 manufacturer's or distributor's prior written consent.

2 (e) This section does not apply to any voluntary agreement entered into after a disagreement  
3 or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any  
4 prospective agreement is void as a matter of law.

5 **§17A-6A-6. Burden of proof.**

6 For each termination, cancellation, nonrenewal or discontinuance, the manufacturer or  
7 distributor has the burden of proof by a preponderance of the evidence for showing that he or she has  
8 acted in good faith, that the notice requirement has been complied with and that there was good  
9 cause by a preponderance of the evidence for the termination, cancellation, nonrenewal or  
10 discontinuance.

11 **§17A-6A-8. Reasonable compensation to dealer.**

12 (1) Upon the termination, cancellation, nonrenewal or discontinuance of any dealer  
13 agreement, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the  
14 manufacturer or distributor for the following:

15 (a) Any new motor vehicle inventory, manufactured for sale in the United States, purchased  
16 from the manufacturer, distributor or other dealers, in the ordinary course of business, which has not  
17 been materially altered, substantially damaged or driven for more than one thousand miles, except  
18 that for any new motorcycle, new all-terrain vehicle or utility terrain vehicle inventory, including  
19 motorhomes and travel trailers, regardless of gross vehicle weight, purchased from the manufacturer  
20 or distributor, that inventory must not have been materially altered, substantially damaged or driven  
21 for more than fifty miles and for motor vehicles with a rating greater than twenty-six thousand one  
22 pounds gross vehicle weight driven no more than five thousand miles. For purposes of a school bus,  
23 truck tractor, road tractor or truck, materially altered does not include dealer add-ons, such as, but  
24 not limited to, racks, mud flaps, fifth wheel assemblies, dump or tank bodies;

25 (b) Supplies and parts inventory purchased at the published list price purchased from, or at  
26 the direction of, the manufacturer or distributor. Parts shall be restricted to those listed in the



1 manufacturer's or distributor's current parts catalog;

2 (c) Equipment, special tools, furnishings and signs purchased or leased from, or at the  
3 direction of, the manufacturer or distributor; and

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

6 (2) Upon the termination, cancellation, nonrenewal or discontinuance of a dealer agreement  
7 by the manufacturer or distributor, the manufacturer or distributor shall also pay to the new motor  
8 vehicle dealer a sum equal to the current, fair rental value of his or her established place of business  
9 for a period of three years from the effective date of termination, cancellation, nonrenewal or  
10 discontinuance, or the remainder of the lease, whichever is less. If the dealer, directly or indirectly,  
11 owns the dealership facility, the manufacturer shall pay the dealer a sum equal to the reasonable  
12 rental value of the dealership premises for three years. However, the dealer shall have the obligation  
13 to mitigate his or her damages, including, but not limited to, listing the facility with a commercial  
14 real estate agent and other reasonable steps to sell or lease the property. During this three-year  
15 period the manufacturer shall have the right to occupy and use the facilities until such time as the  
16 dealer is able to otherwise sell or lease the property to another party. The payment required by this  
17 subsection does not apply to any termination, cancellation, nonrenewal or discontinuance made  
18 pursuant to subsection (c), section seven of this article.

19 (3) In addition to the items listed in subsections (1) and (2) of this section, the termination,  
20 cancellation or nonrenewal where the manufacturer or distributor is discontinuing the sale of a  
21 product line, the manufacturer or distributor shall pay or provide to the motor vehicle dealer:

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

26 (b) Any actual damages that can be proven by a dealer by a preponderance of the evidence;

1 (c) Any costs the dealer incurred for facility upgrades or alternations required by the  
2 manufacturer, distributor or factory branch within the previous five years; and

3 (d) Within forty-five days after termination, dealer shall submit evidence of items to the  
4 manufacturer in accordance with reasonable manufacturer requirements. The manufacturer shall  
5 have thirty days from receipt of this evidence to note any objection. If not objected thereto, payment  
6 by the manufacturer to the dealer shall be made within thirty days. Thereafter, interest accumulates  
7 at the rate of the Fifth Federal Reserve District's secondary discount rate in effect on January 2 of  
8 the year in which payment is due plus five percentage points. If a dispute arises over the sufficiency  
9 of any evidence or an amount submitted, when interest begins to accumulate will be determined in  
10 accordance with West Virginia common law.

11 **§17A-6A-8a. Compensation to dealers for service rendered.**

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

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

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

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

22 (2) In no event may:

23 (a) The schedule of compensation fail to compensate the dealers for the work and services  
24 they are required to perform in connection with the dealer's delivery and preparation obligations, or  
25 fail to adequately and fairly compensate the dealers for labor, parts and other expenses incurred by  
26 the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

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

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

7 (3) It is a violation of this section for any manufacturer, distributor, wholesaler or  
8 representative to require any dealer to pay in any manner, surcharges, limited allocation, audits,  
9 charge backs or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty  
10 and recall work.

11 (4) The retail rate charged by the dealer for parts is established by the dealer submitting to  
12 the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair  
13 orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-paid  
14 service repair orders that contain warranty-like parts covering repairs made no more than one  
15 hundred eighty days before the submission and declaring the average percentage markup.

16 (5) The retail rate customarily charged by the dealer for labor rate must be established using  
17 the same process as provided under subsection (4) of this section and declaring the average labor  
18 rate. The average labor rate must be determined by dividing the amount of the dealer's total labor  
19 sales by the number of total hours that generated those sales. If a labor rate and parts markup rate  
20 simultaneously declared by the dealer, the dealer may use the same repair orders to complete each  
21 calculation as provided under subsection (4) of this section. A reasonable allowance for labor for  
22 diagnostic time shall be either included in the manufacturer's labor time allowance or listed as a  
23 separate compensable item. A dealer may request additional time allowance for either diagnostic  
24 or repair time, which request shall not be unreasonable denied by the manufacturer.

25 (6) In calculating the retail rate customarily charged by the dealer for parts and labor, the  
26 following work may not be included in the calculation:

1 (a) Repairs for manufacturer or distributor special events, specials or promotional discounts  
2 for retain customer repairs;

3 (b) Parts sold at wholesale;

4 (c) Routine maintenance not covered under any retail customer warranty, including fluids,  
5 filters and belts not provided in the course of repairs;

6 (d) Nuts, bolts fasteners and similar items that do not have an individual part number;

7 (e) Tires;

8 (f) Vehicle reconditioning.

9 (7) The average of the parts markup rates and labor rate is presumed to be reasonable and  
10 must go into effect thirty days following the manufacturer's approval. A manufacturer or distributor  
11 may rebut the presumption by a preponderance of the evidence that a rate is unreasonable in light  
12 of the practices of all other same line-make franchised motor vehicle dealers in an economically  
13 similar area of the state offering the same line-make vehicles, not later than thirty days after  
14 submission. If the average parts markup rate or average labor rate is rebutted, or both, the  
15 manufacturer or distributor shall propose an adjustment of the average percentage markup based on  
16 that rebuttal not later than thirty days after submission.

17 (8) Each manufacturer, in establishing a schedule of compensation for warranty work, shall  
18 rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in subsections (4),  
19 (5) and (6) of this section and may not obligate any vehicle dealer to engage in unduly burdensome  
20 or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage  
21 in transaction-by-transaction or part-by-part calculations.

22 (9) A dealer or manufacturer may demand that the average parts markup or average labor rate  
23 be calculated using the process provided under subsections (4) and (5) of this section; however, the  
24 demand for the average parts markup may not be made within twelve months of the last parts  
25 markup declaration and the demand for the average labor rate may not be made within twelve  
26 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer

1 or manufacturer, the dealer shall determine the repair orders to be included in the calculation under  
2 subsections (4) and (5) of this section.

3 (10) As it applies to a school bus, truck tractor, road tractor and truck as defined in section  
4 one, article one of this chapter, with a gross vehicle weight on excess of twenty-six thousand one  
5 pounds the manufacturer, distributor and/or O. E. M. supplier shall pay the dealer its incurred actual  
6 time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to dealer's  
7 designated parking area. Dealer shall be paid \$50 minimum for each operation that requires the use  
8 of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what  
9 is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is  
10 allowed to add to a completed warranty repair order three hours for every twenty-four hours the  
11 manufacturer, distributor and/or O. E. M. supplier makes the dealer stop working on a vehicle while  
12 the manufacturer, distributor and/or O. E. M. supplier decides how it wants the dealer to proceed  
13 with the repairs.

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

1 programs.

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

10 **§17A-6A-9. Payment of compensation.**

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

18 (2) Reasonable compensation pursuant to subdivision (a), subsection (1), section eight of this  
19 article may not be less than the new motor vehicle dealer's net acquisition cost, including any special  
20 promotions ordered by the manufacturer, such as advertising charges. Reasonable compensation  
21 pursuant to subdivision (b) of said subsection shall be the amount stated in the manufacturer's or  
22 distributor's current parts price list. Reasonable compensation pursuant to subdivisions (c) and (d)  
23 of said subsection shall be the fair market value of the personal property determined by a five-year  
24 straight line depreciation schedule.

25 (3) In the event payment is not made within ninety days as provided in subsection (1) of this  
26 section, interest shall accumulate at the rate of the Fifth Federal Reserve District's secondary

1 discount rate in effect on January 2 of the year in which payment is due plus five percentage points.  
2 In determining when interest begins to accumulate, the court may consider whether the dealer  
3 reasonably complied with the reasonable manufacturer's submission requirements and the  
4 reasonableness of the manufacturer's determinations in refusing or delaying payment to the dealer.

5 **§17A-6A-10. Prohibited practices.**

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

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

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

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

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

26 (e) Change the capital structure or financial requirements of the new motor vehicle dealership  
27 without reasonable business justification in light of the dealer's market, historical performance and  
28 compliance with prior capital structure or financial requirements and business necessity, or the

1 means by or through which the dealer finances the operation of the dealership if the dealership at all  
2 times meets any reasonable capital standards determined by the manufacturer in accordance with  
3 uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification  
4 by a preponderance of the evidence;

5 (f) Refrain from participation in the management of, investment in or the acquisition of any  
6 other line of new motor vehicle or related products, provided that the dealer maintains a reasonable  
7 line of credit for each make or line of vehicle, remains in compliance with reasonable facilities  
8 requirements and makes no change in the principal management of the dealer. Notwithstanding the  
9 terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements,  
10 including facility requirements, that a new motor vehicle dealer establish or maintain exclusive  
11 facilities, personnel or display space, when the requirements are unreasonable considering current  
12 economic conditions and are not otherwise justified by reasonable business considerations. The  
13 burden of proving that current economic conditions or reasonable business considerations justify  
14 exclusive facilities is on the manufacturer or distributor and must be proven by a preponderance of  
15 the evidence;

16 (g) Change the location of the new motor vehicle dealership or make any substantial  
17 alterations to the dealership premises, where to do so would be unreasonable. The burden is on the  
18 manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

19 (h) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation,  
20 waiver or estoppel which would relieve any person from liability imposed by this article or require  
21 any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred  
22 to a person other than the duly constituted courts of this state or the United States District Courts of  
23 the Northern or Southern Districts of West Virginia. Nothing in this prevents a motor vehicle dealer,  
24 after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment  
25 or waiver of a trial by jury; (i) To coerce or require any dealer, whether by agreement, program,  
26 incentive provision or otherwise, to construct improvements to its facilities or to install new signs  
27 or other franchisor image elements that replace or substantially alter those improvements, signs or  
28 franchisor image elements completed within the proceeding ten years that were required and



1 approved by the manufacturer, factory branch, distributor or distributor branch or one of its affiliates.  
2 If a manufacturer, factory branch, distributor or distributor branch offers incentives or other  
3 payments to a consumer or dealer paid on individual vehicle sales under a program offered after the  
4 effective date of this subdivision and available to more than one dealer in the state that are premised,  
5 wholly or in part, on dealer facility improvements or installation of franchiser image elements  
6 required by and approved by the manufacturer, factory branch, distributor or distributor branch and  
7 completed within ten years preceding the program shall be deemed to be in compliance with the  
8 program requirements pertaining to construction of facilities or installation of signs or other  
9 franchisor image elements that would replace or substantially alter those previously constructed or  
10 installed with that ten year period. This subdivision shall not apply to a program that is in effect with  
11 more than one dealer in the state on the effective date of this subsection, nor to any renewal of such  
12 program, nor to a modification that is not a substantial modification of a material term or condition  
13 of such program;

14 (j) To condition the award, sale, transfer, relocation or renewal of a franchise or dealer  
15 agreement or to condition sales, service, parts or finance incentives upon site control or an agreement  
16 to renovate or make substantial improvements to a facility: *Provided*, That voluntary and  
17 noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a  
18 written agreement for which the dealer has accepted separate and valuable consideration, does not  
19 constitute a violation;

20 (k) To enter into a contractual requirement imposed by the manufacturer, distributor or a  
21 captive finance source as follows:

22 (i) In this section, “captive finance source” means any financial source that provides  
23 automotive-related loans or purchases retail installment contracts or lease contracts for motor  
24 vehicles in this state and is, directly or indirectly, owned, operated or controlled by such  
25 manufacturer, factory branch, distributor or distributor branch.

26 (ii) It shall be unlawful for any manufacturer, factory branch, captive finance source,  
27 distributor or distributor branch, or any field representative, officer, agent or any representative of  
28 them, notwithstanding the terms, provisions or conditions of any agreement or franchise, to require

1 any of its franchised dealers located in this state to agree to any terms, conditions or requirements  
2 in subdivisions (a) through (j), inclusive, of this subsection in order for any such dealer to sell to any  
3 captive finance source any retail installment contract, loan or lease of any motor vehicles purchased  
4 or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or  
5 indirectly, obtain the benefits of the consumer transaction incentive program payable to the consumer  
6 or the dealer and offered by or through any captive finance source as to that incentive program.

7 (iii) The applicability of this section is not affected by a choice of law clause in any  
8 agreement, waiver, novation or any other written instrument.

9 (iv) It shall be unlawful for a manufacturer or distributor to use any subsidiary corporation,  
10 affiliated corporation or any other controlled corporation, partnership, association or person to  
11 accomplish what would otherwise be illegal conduct under this section on the part of the  
12 manufacturer or distributor.

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

14 (a) (i) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within  
15 a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area  
16 and facilities, unless the failure is caused by acts or occurrences beyond the control of the  
17 manufacturer or distributor, or unless the failure results from an order by the new motor vehicle  
18 dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. No  
19 manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet  
20 sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

21 (ii) Refuse to offer to its same line-make new motor vehicle dealers all models manufactured  
22 for that line-make, including, but not limited to, any model that contains a separate label or badge  
23 indicating a upgraded version of the same model. This provision does not apply to motorhome,  
24 travel trailer or fold-down camping trailer manufacturers; or

25 (iii) Require as a prerequisite to receiving a model or series of vehicles that a new motor  
26 vehicle dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable  
27 advertising displays or other materials, or conduct unreasonable remodeling, renovation or  
28 reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

1 (b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution  
2 of new motor vehicles by the manufacturer or distributor, including any numerical calculation or  
3 formula used, nationally or within the dealer's market, to make the allocations within thirty days of  
4 a request. Any information or documentation provided by the manufacturer may be subject to a  
5 reasonable confidentiality agreement;

6 (c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles  
7 of a given model, which the manufacturer or distributor has sold during the current model year  
8 within the dealer's marketing district, zone or region, whichever geographical area is the smallest  
9 within thirty days of a request;

10 (d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered  
11 and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the  
12 order was made prior to the dealer's receipt of the written official price increase notification. A sales  
13 contract signed by a private retail consumer and binding on the dealer which has been submitted to  
14 the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price  
15 reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed  
16 on to the private retail consumer by the dealer. Any price reduction in excess of \$5 shall apply to  
17 all vehicles in the dealer's inventory which were subject to the price reduction. A price difference  
18 applicable to new model or series motor vehicles at the time of the introduction of the new models  
19 or the series is not a price increase or price decrease. This subdivision does not apply to price  
20 changes caused by the following:

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

23 (ii) In the case of foreign-made vehicles or components, revaluation of the United States  
24 dollar; or

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

27 (e) Offer any refunds or other types of inducements to any dealer for the purchase of new  
28 motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state

1 without making the same offer available upon request to all other new motor vehicle dealers of the  
2 same line-make;

3 (f) Release to an outside party, except under subpoena or in an administrative or judicial  
4 proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any  
5 business, financial or personal information which has been provided by the dealer to the  
6 manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

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

9 (h) Establish a new motor vehicle dealership. A manufacturer or distributor is not considered  
10 to have established a new motor vehicle dealership if the manufacturer or distributor is:

11 (A) Operating a preexisting dealership temporarily for a reasonable period.

12 (B) Operating a preexisting dealership which is for sale at a reasonable price.

13 (C) Operating a dealership with another person who has made a significant investment in the  
14 dealership and who will acquire full ownership of the dealership under reasonable terms and  
15 conditions;

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

17 (A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own stock  
18 in a publicly held company solely for investment purposes;

19 (B) Operate a dealership, including, but not limited to, displaying a motor vehicle intended  
20 to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display  
21 is part of an automobile trade show that more than two automobile manufacturers participate in; or

22 (C) Act in the capacity of a new motor vehicle dealer;

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

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

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

1 reasonable terms and conditions;

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

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

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

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

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

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

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

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

28 (p) Audit any motor vehicle dealer in this state for warranty parts or warranty service

1 compensation, service compensation, service or sales incentives, manufacturer rebates or other forms  
2 of sales incentive compensation more than twelve months after the claim for payment or  
3 reimbursement has been made by the automobile dealer. No chargeback may be made until the  
4 dealer has had notice and an opportunity to support the claim in question within thirty days of  
5 receiving notice of the chargeback. No otherwise valid reimbursements claims may be denied once  
6 properly submitted in accordance with the manufacturer's submission guidelines due to clerical error  
7 or omission. This subsection does not apply where a claim is fraudulent. In addition, the  
8 manufacturer or distributor is responsible for reimbursing the audited dealer for all copying, postage  
9 and administrative costs incurred by the dealer during the audit. Any charges to a dealer as a result  
10 of the audit must be separately billed to the dealer;

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

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

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

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

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

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

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

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

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

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

8 (iv) Except as otherwise provided in this subsection, the manufacturer or distributor agrees  
9 to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall  
10 include, but not be limited to, accounting, legal or appraisal services fees that are incurred by the  
11 proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first  
12 refusal. Payment of the expenses and fees for professional services are not required if the dealer fails  
13 to submit an accounting of those expenses and fees within twenty days of the dealer's receipt of the  
14 manufacturer's or distributor's written request for such an accounting. Such a written account of  
15 fees and expenses may be requested by a manufacturer or distributor before exercising its right of  
16 first refusal;

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

19 (s) Make any material or unreasonable change in any franchise agreement, including, but not  
20 limited to, the dealer's area of responsibility without giving the new motor vehicle dealer written  
21 notice by certified mail of the change at least sixty days prior to the effective date of the change, and  
22 shall include an explanation of the basis for the alteration. Upon written request from the dealer, this  
23 explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of  
24 all information, data, evaluations, and methodology relied on or based its decision on, to propose the  
25 change to the dealer's area of responsibility. Any information or documentation provided by the  
26 manufacturer or distributor may be produced subject to a reasonable confidentiality agreement. At  
27 any time prior to the effective date of an alteration of a new motor vehicle dealer's area of  
28 responsibility and after the completion of any internal appeal process pursuant to the manufacturer's

1 or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit  
2 the alteration within thirty days of receipt of the manufacturer's internal appeal process decision. The  
3 court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless  
4 the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and  
5 justifiable in light of market conditions. If a motor vehicle dealer petitions the court, no alteration  
6 to a motor vehicle dealer's area of responsibility shall become effective until a final determination  
7 by the court. If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall  
8 allow twenty-four months for the motor vehicle dealer to become sales effective prior to taking any  
9 action claiming a breach or nonperformance of the motor vehicle dealer's sales performance  
10 responsibilities;

11 (t) Fail to reimburse a new motor vehicle dealer, at the dealer's regular rate, or the full and  
12 actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the  
13 dealership if the provision of the loaner vehicle is required by the manufacturer;

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

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

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

23 (x) To require or coerce any new motor vehicle dealer to sell, offer to sell or sell exclusively  
24 extended service contract, maintenance plan or similar product, including gap or other products,  
25 offered, endorsed or sponsored by the manufacturer or distributor by the following means:

26 (i) By an act of statement that the manufacturer or distributor will adversely impact the  
27 dealer, whether it is express or implied;

28 (ii) By a contract made to the dealer on the condition that the dealer shall sell, offer to sell



1 or sell exclusively an extended service contract, extended maintenance plan or similar product  
2 offered, endorsed or sponsored by the manufacturer or distributor;

3 (iii) By measuring the dealer's performance under the franchise agreement based on the sale  
4 of extended service contracts, extended maintenance plans or similar products offered, endorsed or  
5 sponsored by the manufacturer or distributor;

6 (iv) By requiring the dealer to actively promote the sale of extended service contracts,  
7 extended maintenance plans or similar products offered, endorsed or sponsored by the manufacturer  
8 or distributor;

9 (v) Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive  
10 programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell or sell  
11 exclusively an extended service contract, extended maintenance plan or similar product offered,  
12 endorsed or sponsored by the manufacturer or distributor;

13 (y) Require a dealer to purchase goods or services from a vendor selected, identified or  
14 designated by a manufacturer, factory branch, distributor, distributor branch or one of its affiliates  
15 by agreement, program, incentive provision or otherwise without making available to the dealer the  
16 option to obtain the goods or services of substantially similar quality and overall design from a  
17 vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor or  
18 distributor branch: *Provided*, That such approval may not be unreasonably withheld:  
19 *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer  
20 or distributor provides substantial reimbursement for the goods or services offered. Substantial  
21 reimbursement is equal to the difference in price of the goods and services from manufacturer's  
22 proposed vendor and the motor vehicle dealer's selected vendor: *Provided further*, That the goods  
23 are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade  
24 dress usage guidelines.

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

28 (4) Except as may otherwise be provided in this article, no manufacturer or

1 franchisor may sell, directly or indirectly, any new motor vehicle to a consumer in this state, except  
2 through a new motor vehicle dealer holding a franchise for the line-make covering such new motor  
3 vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles  
4 to charitable organizations, qualified vendors or employees of the manufacturer or franchisor.

5 (5) Except when prevented by an act of God, labor strike, transportation disruption outside  
6 the control of the manufacturer or time of war, a manufacturer or distributor may not refuse or fail  
7 to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise  
8 agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new  
9 motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the  
10 vehicles, parts and accessories are publicly advertised as being available for delivery or are actually  
11 being delivered.

12 **§17A-6A-11. Where motor vehicle dealer deceased or incapacitated.**

13 (1) Any designated family member of a deceased or incapacitated new motor vehicle dealer  
14 may succeed the dealer in the ownership or operation of the dealership under the existing dealer  
15 agreement if the designated family member gives the manufacturer or distributor written notice of  
16 his or her intention to succeed to the dealership within one hundred twenty days after the dealer's  
17 death or incapacity, agrees to be bound by all of the terms and conditions of the dealer agreement,  
18 and the designated family member meets the current criteria generally applied by the manufacturer  
19 or distributor in qualifying new motor vehicle dealers. A manufacturer or distributor may refuse to  
20 honor the existing dealer agreement with the designated family member only for good cause. In  
21 determining whether good cause exists for refusing to honor the agreement, the manufacturer or  
22 distributor has the burden of proving that the designated successor is a person who is not of good  
23 moral character or does not meet the manufacturer's existing written, reasonable and uniformly  
24 applied standards for business experience and financial qualifications. The designated family  
25 member will have a minimum of one year to satisfy that manufacturer's written and reasonable  
26 standards and financial qualifications for appointment as the dealer and principal.

27 (2) The manufacturer or distributor may request from a designated family member such  
28 personal and financial data as is reasonably necessary to determine whether the existing dealer

1 agreement should be honored. The designated family member shall supply the personal and financial  
2 data promptly upon the request.

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

8 (4) The notice of the manufacturer or distributor provided in subsection (3) of this section  
9 shall state the specific grounds for the refusal to approve the succession and that discontinuance of  
10 the agreement shall take effect not less than one hundred-eighty days after the date the notice is  
11 served.

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

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

19 (7) If the manufacturer challenges the succession, it maintains the burden of proof to show  
20 good cause by a preponderance of the evidence. If the person seeking succession files a civil action  
21 within the one hundred eighty days set forth in subsection (4) of this section, no action may be taken  
22 by the manufacturer contrary to the dealer agreement until such time as the civil action and any  
23 appeal has been exhausted: *Provided*, That when a motor vehicle dealer appeals a decision upholding  
24 a manufacturer's decision to not allow succession based upon the designated person's insolvency,  
25 conviction of a crime punishable by imprisonment in excess of one year under the law which the  
26 designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of  
27 all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and the  
28 public interest will not be harmed by keeping the dealer agreement in effect pending entry of final

1 judgment after the appeal.

2 **§17A-6A-12. Establishment and relocation or establishment of additional dealers.**

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

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

15 (3) Within sixty days after receiving the notice provided in subsection (2) of this section, or  
16 within sixty days after the end of any appeal procedure provided by the manufacturer or distributor,  
17 a new motor vehicle dealer of the same line-make within the affected relevant market area may bring  
18 a declaratory judgment action in the circuit court for the county in which the new motor vehicle  
19 dealer is located to determine whether good cause exists for the establishing or relocating of the  
20 proposed new motor vehicle dealer. *Provided*, That a new motor vehicle dealer of the same line-  
21 make within the affected relevant market area shall not be permitted to bring such an action if the  
22 proposed relocation site would be further from the location of the new motor vehicle dealer of the  
23 same line-make than the location from which the dealership is being moved. Once an action has  
24 been filed, the manufacturer or distributor may not establish or relocate the proposed new motor  
25 vehicle dealer until the circuit court has rendered a decision on the matter. An action brought  
26 pursuant to this section shall be given precedence over all other civil matters on the court’s docket.  
27 The manufacturer has the burden of proving that good cause exists for establishing or relocating a  
28 proposed new motor vehicle dealer.

1 (4) This section does not apply to the reopening in a relevant market area of a new motor  
2 vehicle dealer that has been closed within the preceding two years if the established place of business  
3 of the new motor vehicle dealer is within four air miles of the established place of business of the  
4 closed or sold new motor vehicle dealer.

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

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

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

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

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

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

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

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

23 **§17A-6A-12a. Restriction on motor vehicle dealer's use of dealership property.**

24 (1) A manufacturer shall not require that a new motor vehicle dealer, a proposed new motor  
25 vehicle dealer, or any owner of an interest in a dealership facility enter into or agree to a property use  
26 agreement as a condition to any of the following:

27 (a) Awarding a dealer agreement to a prospective new motor vehicle dealer.

28 (b) Adding a line make or dealer agreement to an existing new motor vehicle dealer.

1 (c) Renewing a dealer agreement with an existing new motor vehicle dealer.

2 (d) Approving a relocation of a new motor vehicle dealer's place of business.

3 (e) Approving a sale or transfer of the ownership of a dealership or a transfer of a dealer  
4 agreement to another person.

5 (2) Subsection (1) of this section does not apply to a property use agreement if any of the  
6 following are offered and accepted for that agreement:

7 (a) Monetary consideration.

8 (b) Separate and valuable consideration that can be calculated to a sum certain.

9 (3) If a manufacturer and new motor vehicle dealer are in parties to a property use agreement,  
10 the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a  
11 manufacturer or by a successor manufacturer or by operation of law and the reason for the  
12 termination is not a reason described in paragraphs (1) through (5), inclusive, subdivision (c), section  
13 seven of this article, the property use agreement terminates and ceases to be effective at the time the  
14 dealer agreement is terminated.

15 (4) If any provision contained in a property use agreement entered into on or after the  
16 effective date of the amendatory act that added this subsection is inconsistent with this section, the  
17 provision is voidable at the election of the affected new motor vehicle dealer, proposed new motor  
18 vehicle dealer, or owner of an interest in the dealership facility.

19 (5) As used in this section, "property use agreement" means any of the following:

20 (a) An agreement that requires that a new motor vehicle dealer establish or maintain  
21 exclusive dealership facilities.

22 (b) An agreement that restricts the ability of a new motor vehicle dealer, or the ability of the  
23 dealer's lessor if the dealer is leasing the dealership facility, to transfer, sell, lease, or change the use  
24 of the place of business of the dealership, whether by sublease, lease, collateral pledge of lease, right  
25 of first refusal to purchase or lease, option to purchase, option to lease, or other similar agreement,  
26 regardless of who the parties to that agreement are.

27 (c) Any similar agreement between a manufacturer and a new motor vehicle dealer and  
28 commonly known as a site control agreement or exclusive use agreement.

1     **§17A-6A-13. Obligations regarding warranties.**

2           (1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its  
3 new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery and  
4 warranty service on its products. The manufacturer or distributor shall compensate the new motor  
5 vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The  
6 manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of  
7 compensation to be paid to the dealer for parts, work and service, and the time allowance for the  
8 performance of the work and service in a manner in compliance with section eight-a of this article.

9           (2) The schedule of compensation shall include reasonable compensation for diagnostic  
10 work, as well as repair service and labor. Time allowances for the diagnosis and performance of  
11 warranty work and service shall be reasonable and adequate for the work to be performed. In the  
12 determination of what constitutes reasonable compensation under this section, section eight-a of this  
13 article shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat trailers,  
14 all-terrain vehicles, utility terrain vehicles and snowmobiles, the compensation of a dealer for  
15 warranty parts is the greater of the dealer's cost of acquiring the part plus thirty percent or the  
16 manufacturer's suggested retail price: *Provided, however*, That in the case of a dealer of travel  
17 trailers, fold-down camping trailers and motorhomes, the compensation of a dealer's cost for  
18 warranty parts is not less than the dealer's cost of acquiring the part plus twenty percent.

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

20           (a) Fail to perform any warranty obligation;

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

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

26           (4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts  
27 shall be paid within thirty days after their approval. All claims shall be either approved or  
28 disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form

1 generally used by the manufacturer or distributor and containing the usually required information  
2 therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the  
3 form is considered to be approved and payment shall be made within thirty days. The manufacturer  
4 has the right to initiate an audit of a claim within twelve months after payment and to charge back  
5 to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim, subject  
6 to the requirements of section eight-a of this article.

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

13 **§17A-6A-14a. Open account protection.**

14 If there is a dispute between the manufacturer, factory branch, distributor or distributor  
15 branch and the dealer with respect to any matter referred to this article, either party may notify, in  
16 writing, the other party of its request to challenge, through the manufacturer's appeal process or the  
17 circuit courts of the state of West Virginia. A manufacturer, factory branch, distributor, or distributor  
18 branch may not collect chargebacks, fully or in part, either through direct payment or by charge to  
19 the dealer's account, for warranty parts or service compensation, including service incentives, sales  
20 incentives, other sales compensation, surcharges, fees, penalties or any financial imposition of any  
21 type arising from an alleged failure of the dealer to comply with a policy of, directive from or  
22 agreement with the manufacturer, factory branch, distributor or distributor branch until thirty days  
23 following final notice of the amount charged to the dealer following all internal processes of the  
24 manufacturer, factory, factory branch, distributor or distributor branch. Within thirty days following  
25 receipt of final notice, the dealer may, in writing, request a hearing or seek civil relief from the  
26 manufacturer's appeal process or the circuit courts of the state of West Virginia. If a dealer requests  
27 a hearing or files a civil action, the manufacturer, factory branch, distributor or distributor branch  
28 may not collect the chargeback, fully or in part, either through direct payment or by charge to the



1 dealer's account, until the completion of the hearing or civil action, and all appeal, civil or otherwise,  
2 have been exhausted concerning the validity of the chargeback.

3 **§17A-6A-15. Indemnity.**

4 Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall  
5 indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages,  
6 court costs and attorney's fees, arising out of complaints, claims or actions to the extent such  
7 complaints, claims or actions relate to the manufacture, assembly, design of a new motor vehicle or  
8 other functions by the manufacturer or distributor beyond the control of the dealer, including,  
9 without limitation, the selection by the manufacturer or distributor of parts or components for the  
10 vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer  
11 to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle  
12 dealer gives timely notice to the manufacturer or distributor of the complaint, claim or action.

13 **§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent**  
14 **to access dealership information; indemnification of dealer.**

15 (a) Except as expressly authorized in this section, a manufacturer or distributor cannot require  
16 a motor vehicle dealer to provide it customer information to the manufacturer or distributor unless  
17 necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay  
18 consumer or dealer incentives, for manufacturer's marketing purposes, for evaluation of dealer  
19 performance, for analytics or to support claims submitted by the new motor vehicle dealer for  
20 reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer's  
21 ability to require or use customer information to satisfy any safety or recall notice obligation or other  
22 legal obligation.

23 (b) The dealer is only required to provide the customer information to the extent lawfully  
24 permissible; and to the extent the requested information relates solely to specific program  
25 requirements or goals associated with the manufacturer's or distributor's own vehicle makes. A  
26 manufacturer, factory branch, distributor, distributor branch, dealer management computer system  
27 vendor or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor  
28 branch or dealer management computer system vendor may not prohibit a dealer from providing a

1 means to regularly and continually monitor the specific data accessed from or written to the dealer's  
2 computer system and from complying with applicable state and federal laws and any rules or  
3 regulations promulgated thereunder. These provisions do not impose an obligation on a  
4 manufacturer, factory branch, distributor, distributor branch, dealer management computer system  
5 vendor or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor  
6 branch or dealer management computer system vendor to provide that capability.

7 (c) A manufacturer, factory branch, distributor, distributor branch, dealer management  
8 computer system vendor, or any third party acting on behalf of any manufacturer, factory branch,  
9 distributor, distributor branch or dealer management computer system vendor, may not provide  
10 access to customer or dealership information maintained in a dealer management computer system  
11 used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of the  
12 manufacturer factory branch, distributor or distributor branch without first obtaining the dealer's  
13 prior express written consent, revocable by the dealer upon ten business days written notice, to  
14 provide the access.

15 Upon a written request from a motor vehicle dealer, the manufacturer, factory branch,  
16 distributor, distributor branch, dealer management computer system vendor, or any third party acting  
17 on behalf of or through any manufacturer, factory branch, distributor, distributor branch or dealer  
18 management computer system vendor shall provide to the dealer a written list of all specific third  
19 parties other than a subsidiary or affiliate of the manufacturer, factory branch, distributor or  
20 distributor branch to whom any data obtained from the dealer has actually been provided within the  
21 twelve-month period prior to date of dealer's written request. If requested by the dealer, the list shall  
22 further describe the scope and specific fields of the data provided. The consent does not change the  
23 person's obligations to comply with the terms of this section and any additional state or federal laws,  
24 and any rules or regulations promulgated thereunder, applicable to them with respect to the access.

25 (d) A manufacturer, factory branch, distributor, distributor branch, dealer management  
26 computer system vendor or any third party acting on behalf of or through any dealer management  
27 computer system vendor, having electronic access to customer or motor vehicle dealership data in  
28 a dealership management computer system used by a motor vehicle dealer located in this state shall

1 provide notice in a reasonable timely manner to the dealer of any security breach of dealership or  
2 customer data obtained through the access.

3 (e) As used in this section:

4 (1) "Dealer management computer system" means a computer hardware and software system  
5 that is owned or leased by the dealer, including a dealer's use of web applications, excluding a web  
6 application operated by a manufacturer, software or hardware, whether located at the dealership or  
7 provided at a remote location and that provides access to customer records and transactions by a  
8 motor vehicle dealer located in this state and that allows the motor vehicle dealer timely information  
9 in order to sell vehicles, parts or services through the motor vehicle dealership.

10 (2) "Dealer management computer system vendor" means a seller or reseller of dealer  
11 management computer systems, a person that sells computer software for use on dealer management  
12 computer systems or a person who services or maintains dealer management computer systems.

13 (3) "Security breach" means an incident of unauthorized access to and acquisition of records  
14 or data containing dealership or dealership customer information where unauthorized use of the  
15 dealership or dealership customer information has occurred.

16 (4) "Customer information" means "nonpublic personal" as defined in 16 C. F. R. §313.

17 (f) Notwithstanding the terms or conditions of any consent, authorization, release, novation,  
18 franchise or other contract or agreement, every manufacturer, factory branch, distributor, distributor  
19 branch, dealer management computer system vendor or any third party acting on behalf of or through  
20 a manufacturer, factory branch, distributor, distributor branch or dealer management computer  
21 system vendor shall fully indemnify, defend and hold harmless any dealer or manufacturer, factory  
22 branch, distributor or distributor branch from all damages, attorney fees and costs, other costs and  
23 expenses incurred by the dealer from complaints, claims or actions arising out of manufacturer's,  
24 factory's branch, distributor's, distributor's branch, dealer management computer system vendor's  
25 or any third party for its willful, negligent or illegal use or disclosure of dealers consumer or  
26 customer data or other information in dealer's computer system. The indemnification includes, but  
27 is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs,  
28 costs related to the disclosure of security breaches and attorneys' fees arising out of complaints,

1 claims, civil or administrative actions.

2 (g) This section applies to contracts entered into after the effective date of this section.

3 **§17A-6A-15b. Exports; rebuttable presumption on behalf of dealer.**

4 It is unlawful for a manufacturer or distributor to take or threaten to take any adverse action  
5 against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased  
6 a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in  
7 violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to  
8 the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known  
9 of the customer's intent to export or resell the vehicle in violation of the prohibition at the time of  
10 sale or lease. If the dealer causes the vehicle to be registered in this state or any other state and has  
11 determined that the customer is not on a list of known or suspected exporters provided by the  
12 manufacturer at the time of sale, a rebuttable presumption is established that the dealer did not have  
13 reason to know of the customer's intent to export or resell the vehicle.

14 **§17A-6A-15c. Manufacturer performance standards; uniform application, prohibited**  
15 **practices.**

16 A manufacturer may not require dealer adherence to a performance standard or standards  
17 which are not applied uniformly to other similarly situated dealers. In addition to any other  
18 requirements of the law, the following shall apply:

19 (1) A performance standard, sales objective or program for measuring dealer performance  
20 that may have a material effect on a dealer, including the dealer's right to payment under any  
21 incentive or reimbursement program, and the application of the standard, sales objective or program  
22 by a manufacturer, distributor or factory branch shall be reasonable and based on accurate  
23 information.

24 (2) Upon written request from a dealer participating in the program, the manufacturer shall  
25 provide in writing the dealer's performance requirement or sales goal or objective, which shall  
26 include a reasonable and general explanation of the methodology, criteria and calculations used.

27 (3) A manufacturer shall allocate a reasonable and appropriate supply of vehicles to assist  
28 the dealer in achieving any performance standards established by the manufacturer and distributor.

1           (4) The manufacturer or distributor has the burden of proving by a preponderance of the  
2 evidence that the performance standard, sales objective or program for measuring dealership  
3 performance complies with this article.

4 **§17A-6A-18. West Virginia law to apply.**

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