

ENGROSSED  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 453**

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

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[Originating in the Committee on  
the Judiciary;  
reported March 2, 2015.]

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A BILL 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;

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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

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follows:

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

**§17A-6A-1. Legislative finding.**

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

13

**§17A-6A-3. Definitions.**

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

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

7           (2) “Designated family member” means the spouse, child,  
8 grandchild, parent, brother or sister of a deceased new motor  
9 vehicle dealer who is entitled to inherit the deceased dealer’s  
10 ownership interest in the new motor vehicle dealership under the  
11 terms of the dealer’s will, or who has otherwise been designated in  
12 writing by a deceased dealer to succeed the deceased dealer in the  
13 new motor vehicle dealership, or is entitled to inherit under the laws  
14 of intestate succession of this state. With respect to an  
15 incapacitated new motor vehicle dealer, the term means the person  
16 appointed by a court as the legal representative of the new motor  
17 vehicle dealer’s property. The term also includes the appointed and  
18 qualified personal representative and the testamentary trustee of a  
19 deceased new motor vehicle dealer. However, the term means only  
20 that designated successor nominated by the new motor vehicle  
21 dealer in a written document filed by the dealer with the  
22 manufacturer or distributor, if such a document is filed.

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1           (3) “Distributor” means any person, resident or nonresident  
2 who, in whole or in part, offers for sale, sells or distributes any new  
3 motor vehicle to a new motor vehicle dealer or who maintains a  
4 factor representative, resident or nonresident, or who controls any  
5 person, resident or nonresident who, in whole or in part, offers for  
6 sale, sells or distributes any new motor vehicle to a new motor  
7 vehicle dealer.

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

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

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1 motor vehicles in this state to new motor vehicle dealers.

2 (6) “Factory representative” means an agent or employee of  
3 a manufacturer, distributor or factory branch retained or employed  
4 for the purpose of making or promoting the sale of new motor  
5 vehicles or for supervising or contracting with new motor vehicle  
6 dealers or proposed motor vehicle dealers.

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

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

18 (9) “Motor vehicle” means that term as defined in section  
19 one, article one of this chapter, including motorcycle, school bus,  
20 truck tractor, road tractor, truck and recreational vehicle, all-terrain  
21 vehicle and utility terrain vehicle as defined in subsections (c), (d),  
22 (f), (h), (l) ~~and~~ (nn) and (vv), respectively, of said section, but not

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1 including a farm tractor or farm equipment. The term “motor  
2 vehicle” also includes, for a school bus, truck tractor, road tractor,  
3 truck, its component parts, including, but not limited to, its engine,  
4 transmission or real axle manufactured for installation in a school  
5 bus, truck tractor, road tractor or truck.

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

10 (11) “New motor vehicle dealer” means a person who holds  
11 a dealer agreement granted by a manufacturer or distributor for the  
12 sale of its motor vehicles, who is engaged in the business of  
13 purchasing, selling, leasing, exchanging or dealing in new motor  
14 vehicles, service of said vehicles, warranty work and sale of parts  
15 who has an established place of business in this state and is licensed  
16 by the Division of Motor Vehicles.

17 (12) “Person” means a natural person, partnership,  
18 corporation, association, trust, estate or other legal entity.

19 (13) “Proposed new motor vehicle dealer” means a person  
20 who has an application pending for a new dealer agreement with a  
21 manufacturer or distributor. “Proposed motor vehicle dealer” does  
22 not include a person whose dealer agreement is being renewed or

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1 continued.

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

12 **§17A-6A-4. Cancellation of dealer contract; notification.**

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

18 (a) Satisfied the notice requirement of section seven of this  
19 article;

20 (b) Acted in good faith;

21 (c) Engaged in full and open communication with  
22 franchised dealer; and



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1 (d) Has good cause for the cancellation, termination,  
2 nonrenewal or discontinuance.

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

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

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

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

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

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

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

22 (g) The dealer's overall performance under the reasonable

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1 terms of the franchise agreement. This shall include the overall  
2 fairness of the agreement terms, the enforceability of the agreement  
3 and the relative bargaining power of the parties.

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

7 (3) If In addition to the requirements of subsection (2) of  
8 this section, if the failure by the new motor vehicle dealer to comply  
9 with a provision of the dealer agreement relates to the performance  
10 of the new motor vehicle dealer in sales or service, good cause  
11 exists for the purposes of a termination, cancellation, nonrenewal  
12 or discontinuance under subsection (1) of this section when the new  
13 motor vehicle dealer failed to effectively carry out the performance  
14 provisions of the dealer agreement if all of the following have  
15 occurred:

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

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

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

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

4 **§17A-6A-5. Circumstances not constituting good cause.**

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

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

16 (b) The refusal of the new motor vehicle dealer to purchase  
17 or accept delivery of any new motor vehicle parts, accessories or  
18 any other commodity or services not ordered by the new motor  
19 vehicle dealer.

20 (c) The fact that the new motor vehicle dealer owns, has an  
21 investment in, participates in the management of, or holds a dealer  
22 agreement for the sale of another make or line of new motor

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1 vehicles, or that the new motor vehicle dealer has established  
2 another make or line of new motor vehicles in the same dealership  
3 facilities as those of the manufacturer or distributor: *Provided*, That  
4 the new motor vehicle dealer maintains a reasonable line of credit  
5 for each make or line of new motor vehicles, and that the new  
6 motor vehicle dealer remains in substantial compliance with the  
7 terms and conditions of the dealer agreement and with any  
8 reasonable facilities' requirements of the manufacturer or  
9 distributor.

10 (d) The fact that the new motor vehicle dealer sells or  
11 transfers ownership of the dealership or sells or transfers capital  
12 stock in the dealership to the new motor vehicle dealer's spouse, son  
13 or daughter: *Provided*, That the sale or transfer shall not have the  
14 effect of a sale or an assignment of the dealer agreement or a  
15 change in the principal management of the dealership without the  
16 manufacturer's or distributor's prior written consent.

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

21 **§17A-6A-6. Burden of proof.**

22 For each termination, cancellation, nonrenewal or

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1 discontinuance, the manufacturer or distributor ~~shall have~~ has the  
2 burden of proof by a preponderance of the evidence for showing  
3 that he or she has acted in good faith, that the notice requirement  
4 has been complied with, and that there was good cause by a  
5 preponderance of the evidence for the termination, cancellation,  
6 nonrenewal or discontinuance.

7 **§17A-6A-8. Reasonable compensation to dealer.**

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

12 (a) Any new motor vehicle inventory, manufactured for sale  
13 in the United States, purchased from the manufacturer, distributor  
14 or other dealers, in the ordinary course of business, which has not  
15 been materially altered, substantially damaged or driven for more  
16 than ~~seven hundred fifty~~ one thousand miles, except that for any  
17 new motorcycle, new all-terrain vehicle or utility terrain vehicle  
18 inventory including motorhomes and travel trailers, regardless of  
19 gross vehicle weight, purchased from the manufacturer or  
20 distributor, that inventory must not have been materially altered,  
21 substantially damaged or driven for more than fifty miles and for  
22 motor vehicles with a rating greater than twenty-six thousand one

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1 pounds gross vehicle weight driven no more than five thousand  
2 miles. For purposes of a school bus, truck tractor, road tractor or  
3 truck, materially altered does not include dealer add-ons, such as,  
4 but not limited to, racks, mud flaps, fifth wheel assemblies, dump  
5 or tank bodies;

6 (b) Supplies and parts inventory purchased at the published  
7 list price purchased from, or at the direction of, the manufacturer or  
8 distributor. Parts shall be restricted to those ~~and~~ listed in the  
9 manufacturer's or distributor's current parts catalog;

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

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

16 (2) Upon the termination, cancellation, nonrenewal or  
17 discontinuance of a dealer agreement by the manufacturer or  
18 distributor, the manufacturer or distributor shall also pay to the new  
19 motor vehicle dealer a sum equal to the current, fair rental value of  
20 his or her established place of business for a period of three years  
21 from the effective date of termination, cancellation, nonrenewal or  
22 discontinuance, or the remainder of the lease, whichever is less. If  
23 the dealer, directly or indirectly, owns the dealership facility, the

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1 manufacturer shall pay the dealer a sum equal to the reasonable  
2 rental value of the dealership premises for three years. However,  
3 the dealer shall have the obligation to mitigate his or her damages,  
4 including, but not limited to, listing the facility with a commercial  
5 real estate agent and other reasonable steps to sell or lease the  
6 property. During this three-year period the manufacturer shall have  
7 the right to occupy and use the facilities until such time as the  
8 dealer is able to otherwise sell or lease the property to another  
9 party. The payment required by this subsection does not apply to  
10 any termination, cancellation, nonrenewal or discontinuance made  
11 pursuant to subsection (c), section ~~five~~ seven of this article.

12 (3) ~~Upon~~ In addition to the items listed in subsections (1)  
13 and (2) of this section, the termination, cancellation or nonrenewal  
14 where the manufacturer or distributor is discontinuing the sale of a  
15 product line, the manufacturer or distributor shall pay or provide to  
16 the motor vehicle dealer:

17 ~~(a) Compensation consistent with the length of time the~~  
18 ~~dealer carried the line and the investment and timing thereof~~  
19 ~~required by the manufacturer or distributor of the dealer, and~~

20 ~~(b)~~(a) Support of the manufacturer's or distributor's  
21 warranty obligations by making parts available and compensating  
22 dealers for warranty parts and labor for five years: *Provided*, That  
23 the motor vehicle dealer has adequate facilities, trained personnel

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1 and equipment to perform warranty repairs.

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

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

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

19 **§17A-6A-8a. Compensation to dealers for service rendered.**

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

23 (a) Specify in writing to each of its motor vehicle dealers,



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1 the dealer's obligation for delivery, preparation, warranty and  
2 factory recall services on its products;

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

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

11 (2) In no event may:

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

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

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

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

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

18 (5) The retail rate customarily charged by the dealer for  
19 labor rate must be established using the same process as provided  
20 under subsection (4) of this section and declaring the average labor  
21 rate. The average labor rate must be determined by dividing the  
22 amount of the dealer's total labor sales by the number of total hours  
23 that generated those sales. If a labor rate and parts markup rate

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1 simultaneously declared by the dealer, the dealer may use the same  
2 repair orders to complete each calculation as provided under  
3 subsection (4) of this section. A reasonable allowance for labor for  
4 diagnostic time shall be either included in the manufacturer's labor  
5 time allowance or listed as a separate compensable item. A dealer  
6 may request additional time allowance for either diagnostic or  
7 repair time, which request shall not be unreasonable denied by the  
8 manufacturer.

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

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

14 (b) Parts sold at wholesale;

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

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

20 (e) Tires;

21 (f) Vehicle reconditioning;

22 (7) The average of the parts markup rates and labor rate is  
23 presumed to be reasonable and must go into effect thirty days

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1 following the manufacturer's approval. A manufacturer or  
2 distributor may rebut the presumption by a preponderance of the  
3 evidence that a rate is unreasonable in light of the practices of all  
4 other same line-make franchised motor vehicle dealers in an  
5 economically similar area of the state offering the same line-make  
6 vehicles, not later than thirty days after submission. If the average  
7 parts markup rate or average labor rate is rebutted, or both, the  
8 manufacturer or distributor shall propose an adjustment of the  
9 average percentage markup based on that rebuttal not later than  
10 thirty days after submission.

11 (8) Each manufacturer, in establishing a schedule of  
12 compensation for warranty work, shall rely on the vehicle dealer's  
13 declaration of hourly labor rates and parts as stated in subsections  
14 (4), (5) and (6) of this section and may not obligate any vehicle  
15 dealer to engage in unduly burdensome or time-consuming  
16 documentation of rates or parts, including obligating vehicle dealers  
17 to engage in transaction-by-transaction or part-by-part calculations.

18 (9) A dealer or manufacturer may demand that the average  
19 parts markup or average labor rate be calculated using the process  
20 provided under subsections (4) and (5) of this section; however, the  
21 demand for the average parts markup may not be made within  
22 twelve months of the last parts markup declaration and the demand  
23 for the average labor rate may not be made within twelve months of

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1 the last labor rate declaration. If a parts markup or labor rate is  
2 demanded by the dealer or manufacturer, the dealer shall determine  
3 the repair orders to be included in the calculation under subsections  
4 (4) and (5) of this section.

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

20 ~~(4)~~(11) All claims made by motor vehicle dealers pursuant  
21 to the section for compensation for delivery, preparation, warranty  
22 and recall work, including labor, parts and other expenses, shall be  
23 paid by the manufacturer within thirty days after approval and shall

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1 be approved or disapproved by the manufacturer within thirty days  
2 after receipt. When any claim is disapproved, the dealer shall be  
3 notified in writing of the grounds for disapproval. No claim which  
4 has been approved and paid may be charged back to the dealer  
5 unless it can be shown that the claim was false or fraudulent, that  
6 the repairs were not properly made or were unnecessary to correct  
7 the defective condition or the dealer failed to reasonable  
8 substantiate the claim in accordance with the written requirements  
9 of the manufacturer or distributor in effect at the time the claim  
10 arose. No charge back may be made until the dealer has had notice  
11 and an opportunity to support the claim in question. No otherwise  
12 valid reimbursement claims may be denied once properly submitted  
13 within manufacturers' submission guidelines due to a clerical error  
14 or omission or based on a different level of technician technical  
15 certification or the dealer's failure to subscribe to any  
16 manufacturer's computerized training programs.

17       (5)(12) Notwithstanding the terms of a franchise agreement  
18 or provision of law in conflict with this section, the dealer's  
19 delivery, preparation, warranty and recall obligations constitutes the  
20 dealer's sole responsibility for product liability as between the  
21 dealer and manufacturer and, except for a loss caused by the  
22 dealer's failure to adhere to the obligations, a loss caused by the  
23 dealer's negligence or intentional misconduct or a loss caused by

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1 the dealer's modification of a product without manufacturer  
2 authorization, the manufacturer shall reimburse the dealer for all  
3 loss incurred by the dealer, including legal fees, court costs and  
4 damages, as a result of the dealer having been named a party in a  
5 product liability action.

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

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

18 (2) Reasonable compensation pursuant to subdivision (a),  
19 subsection (1), section eight of this article may not be less than the  
20 new motor vehicle dealer's net acquisition cost, including any  
21 special promotions ordered by the manufacturer, such as advertising  
22 charges, ~~and special tools purchased from the manufacturer or~~  
23 ~~distributor within three years of the date of termination,~~

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1 ~~cancellation, nonrenewal or discontinuance.~~ Reasonable  
2 compensation pursuant to subdivision (b) of said subsection shall  
3 be the amount stated in the manufacturer's or distributor's current  
4 parts price list. Reasonable compensation pursuant to subdivisions  
5 (c) and (d) of said subsection shall be the fair market value of the  
6 personal property: determined by a five-year straight line  
7 depreciation schedule.

8 (3) In the event payment is not made within ninety days as  
9 provided in subsection (1) of this section, interest ~~accrues on all~~  
10 ~~amounts due the new motor vehicle dealer at a rate of twelve~~  
11 ~~percent per annum.~~ shall accumulate at the rate of the Fifth Federal  
12 Reserve District's secondary discount rate in effect on January 2 of  
13 the year in which payment is due plus five percentage points. In  
14 determining when interest begins to accumulate, the court may  
15 consider whether the dealer reasonably complied with the  
16 reasonable manufacturer's submission requirements and the  
17 reasonableness of the manufacturer's determinations in refusing or  
18 delaying payment to the dealer.

19 **§17A-6A-10. Prohibited practices.**

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

22 (a) Order or accept delivery of any new motor vehicle, part  
23 or accessory of the vehicle, equipment or any other commodity not



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1 required by law which was not voluntarily ordered by the new  
2 motor vehicle dealer. This section does not prevent the  
3 manufacturer or distributor from requiring that new motor vehicle  
4 dealers carry a reasonable inventory of models offered for sale by  
5 the manufacturer or distributor;

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

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

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

23 (e) Change the capital structure or financial requirements of

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1 the new motor vehicle dealership without reasonable business  
2 justification in light of the dealer's market, historical performance  
3 and compliance with prior capital structure or financial  
4 requirements and business necessity, or the means by or through  
5 which the dealer finances the operation of the dealership if the  
6 dealership at all times meets any reasonable capital standards  
7 determined by the manufacturer in accordance with uniformly  
8 applied criteria. The burden of proof is on the manufacturer to  
9 prove business justification by a preponderance of the evidence;

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

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1 manufacturer or distributor and must be proven by a preponderance  
2 of the evidence;

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

8 (h) Prospectively assent to a waiver of trial by jury release,  
9 arbitration, assignment, novation, waiver or estoppel which would  
10 relieve any person from liability imposed by this article or require  
11 any controversy between a new motor vehicle dealer and a  
12 manufacturer or distributor to be referred to a person other than the  
13 duly constituted courts of ~~the~~ this state or the United States District  
14 Courts of the Northern or Southern Districts of West Virginia.  
15 Nothing in this prevents a motor vehicle dealer, after a civil action  
16 is filed, from entering into any agreement of settlement, arbitration,  
17 assignment or waiver of a trial by jury; if the referral would be  
18 binding upon the new motor vehicle dealer.

19 (i) To coerce or require any dealer, whether by agreement,  
20 program, incentive provision or otherwise, to construct  
21 improvements to its facilities or to install new signs or other  
22 franchisor image elements that replace or substantially alter those  
23 improvements, signs or franchisor image elements completed within

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

21 (j) To condition the award, sale, transfer, relocation or  
22 renewal of a franchise or dealer agreement or to condition sales,  
23 service, parts or finance incentives upon site control or an

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1 agreement to renovate or make substantial improvements to a  
2 facility: *Provided*, That voluntary and noncoerced acceptance of  
3 such conditions by the dealer in writing, including, but not limited  
4 to, a written agreement for which the dealer has accepted separate  
5 and valuable consideration, does not constitute a violation;

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

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

14 (ii) It shall be unlawful for any manufacturer, factory  
15 branch, captive finance source, distributor or distributor branch, or  
16 any field representative, officer, agent or any representative of  
17 them, notwithstanding the terms, provisions or conditions of any  
18 agreement or franchise, to require any of its franchised dealers  
19 located in this state to agree to any terms, conditions or  
20 requirements in subdivisions (a) through (j), inclusive, of this  
21 subsection in order for any such dealer to sell to any captive finance  
22 source any retail installment contract, loan or lease of any motor  
23 vehicles purchased or leased by any of the dealer’s customers, or to

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1 be able to participate in, or otherwise, directly or indirectly, obtain  
2 the benefits of the consumer transaction incentive program payable  
3 to the consumer or the dealer and offered by or through any captive  
4 finance source as to that incentive program.

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

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

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

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

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1 sales quotas where the alleged failure is due to actions of the  
2 manufacturer or distributor;

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

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

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

22 (c) Refuse to disclose to a new motor vehicle dealer the  
23 total number of new motor vehicles of a given model, which the

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1 manufacturer or distributor has sold during the current model year  
2 within the dealer's marketing district, zone or region, whichever  
3 geographical area is the smallest within thirty days of a request;

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

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

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



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- 1           (iii) Any increase in transportation charges due to an  
2 increase in rates charged by a common carrier and transporters;
- 3           (e) Offer any refunds or other types of inducements to any  
4 dealer for the purchase of new motor vehicles of a certain line-make  
5 to be sold to this state or any political subdivision of this state  
6 without making the same offer available upon request to all other  
7 new motor vehicle dealers of the same line-make;
- 8           (f) Release to an outside party, except under subpoena or in  
9 an administrative or judicial proceeding to which the new motor  
10 vehicle dealer or the manufacturer or distributor are parties, any  
11 business, financial or personal information which has been provided  
12 by the dealer to the manufacturer or distributor, unless the new  
13 motor vehicle dealer gives his or her written consent;
- 14           (g) Deny a new motor vehicle dealer the right to associate  
15 with another new motor vehicle dealer for any lawful purpose;
- 16           (h) Establish a new motor vehicle dealership. ~~which would~~  
17 ~~unfairly compete with a new motor vehicle dealer of the same line-~~  
18 ~~make operating under a dealer agreement with the manufacturer or~~  
19 ~~distributor in the relevant market area. A manufacturer or~~  
20 distributor ~~shall~~ is not be considered to be unfairly competing to  
21 have established a new motor vehicle dealership if the manufacturer  
22 or distributor is:
- 23           (A) Operating a preexisting dealership temporarily for a

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1 reasonable period.

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

4 (C) Operating a dealership with another person who has  
5 made a significant investment in the dealership and who will  
6 acquire full ownership of the dealership under reasonable terms and  
7 conditions;

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

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

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

18 (C) Act in the capacity of a new motor vehicle dealer.  
19 ~~Provided, That a manufacturer may own an interest, other than~~  
20 ~~stock in a publicly held company, solely for investment purposes;~~

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

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1 distributor acquires the dealership if:

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

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

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

18 (l) For the purpose of broadening the diversity of its dealer  
19 body and enhancing opportunities for qualified persons who are  
20 part of a group who have historically been under represented in its  
21 dealer body, or other qualified persons who lack the resources to  
22 purchase a dealership outright, but for no other purpose, a  
23 manufacturer or distributor may temporarily own an interest in a

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1 dealership if the manufacturer's or distributor's participation in the  
2 dealership is in a bona fide relationship with a franchised dealer  
3 who:

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

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

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

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

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

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

22 (p) Audit any motor vehicle dealer in this state for warranty  
23 parts or warranty service compensation, service compensation,  
24 service or sales incentives, manufacturer rebates or other forms of

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

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

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

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

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

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

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

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

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

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

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

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1 by any party.

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

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

18 (s) Make any material or unreasonable change in any  
19 franchise agreement, including, but not limited to, the dealer's area  
20 of responsibility without giving the new motor vehicle dealer  
21 written notice by certified mail of the change at least sixty days  
22 prior to the effective date of the change, and shall include an  
23 explanation of the basis for the alteration. Upon written request  
24 from the dealer, this explanation shall include, but is not limited to,

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1 a reasonable and commercially acceptable copy of all information,  
2 data, evaluations, and methodology relied on or based its decision  
3 on, to propose the change to the dealer's area of responsibility.  
4 Any information or documentation provided by the manufacturer or  
5 distributor may be produced subject to a reasonable confidentiality  
6 agreement. At any time prior to the effective date of an alteration  
7 of a new motor vehicle dealer's area of responsibility, and after the  
8 completion of any internal appeal process pursuant to the  
9 manufacturer's or distributor's policy manual, the motor vehicle  
10 dealer may petition the court to enjoin or prohibit the alteration  
11 within thirty days of receipt of the manufacturer's internal appeal  
12 process decision. The court shall enjoin or prohibit the alteration of  
13 a motor vehicle dealer's area of responsibility unless the franchisor  
14 shows, by a preponderance of the evidence, that the alteration is  
15 reasonable and justifiable in light of market conditions. If a motor  
16 vehicle dealer petitions the court, no alteration to a motor vehicle  
17 dealer's area of responsibility shall become effective until a final  
18 determination by the court. If a new motor vehicle dealer's area of  
19 responsibility is altered, the manufacturer shall allow twenty-four  
20 months for the motor vehicle dealer to become sales effective prior  
21 to taking any action claiming a breach or nonperformance of the  
22 motor vehicle dealer's sales performance responsibilities;

23 (t) Fail to reimburse a new motor vehicle dealer, at the  
24 dealer's regular rate, or the full and actual cost of providing a loaner



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1 vehicle to any customer who is having a vehicle serviced at the  
2 dealership if the provision of the loaner vehicle is required by the  
3 manufacturer;

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

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

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

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

22 (i) By an act or statement that the manufacturer or  
23 distributor will adversely impact the dealer, whether it is express or  
24 implied;

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1 (ii) By a contract made to the dealer on the condition that  
2 the dealer shall sell, offer to sell or sell exclusively an extended  
3 service contract, extended maintenance plan or similar product  
4 offered, endorsed or sponsored by the manufacturer or distributor;

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

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

13 (v) Nothing in this paragraph prohibits a manufacturer or  
14 distributor from providing incentive programs to a new vehicle  
15 dealer who makes the voluntary decision to offer to sell, sell or sell  
16 exclusively an extended service contract, extended maintenance  
17 plan or similar product offered, endorsed or sponsored by the  
18 manufacturer or distributor.

19 (y) Require a dealer to purchase goods or services from a  
20 vendor selected, identified or designated by a manufacturer, factory  
21 branch, distributor, distributor branch or one of its affiliates by  
22 agreement, program, incentive provision or otherwise without  
23 making available to the dealer the option to obtain the goods or  
24 services of substantially similar quality and overall design from a

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1 vendor chosen by the dealer and approved by the manufacturer,  
2 factory branch, distributor or distributor branch: *Provided*, That  
3 such approval may not be unreasonably withheld:  
4 *Provided, however*, That the dealer's option to select a vendor is not  
5 available if the manufacturer or distributor provides substantial  
6 reimbursement for the goods or services offered. Substantial  
7 reimbursement is equal to the difference in price of the goods and  
8 services from manufacturer's proposed vendor and the motor  
9 vehicle dealer's selected vendor: *Provided further*, That the goods  
10 are not subject to the manufacturer or distributor's intellectual  
11 property or trademark rights, or trade dress usage guidelines.

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

16 (4) Except as may otherwise be provided in this article, no  
17 manufacturer or franchisor ~~shall~~ may sell, directly or indirectly, any  
18 new motor vehicle to a consumer in this state, except through a new  
19 motor vehicle dealer holding a franchise for the line-make covering  
20 such new motor vehicle. This subsection ~~shall~~ does not apply to  
21 manufacturer or franchisor sales of new motor vehicles to charitable  
22 organizations, qualified vendors or employees of the manufacturer  
23 or franchisor.

24 (5) Except when prevented by an act of God, labor strike,

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1 transportation disruption outside the control of the manufacturer or  
2 time of war, a manufacturer or distributor may not refuse or fail to  
3 deliver, in reasonable quantities and within a reasonable time, to a  
4 dealer having a franchise agreement for the retail sale of any motor  
5 vehicle sold or distributed by the manufacturer, any new motor  
6 vehicle or parts or accessories to new motor vehicles as are covered  
7 by the franchise if the vehicles, parts and accessories are publicly  
8 advertised as being available for delivery or are actually being  
9 delivered. ~~All models offered for sale by the manufacturer, without~~  
10 ~~any enrollment, surcharge, unreasonable facility or building or any~~  
11 ~~other unreasonable type of upgrade requirement or acquisition fee,~~  
12 ~~shall be available to the franchised dealer at no additional cost for~~  
13 ~~that particular model of vehicle.~~

14 **§17A-6A-11. Where motor vehicle dealer deceased or**  
15 **incapacitated.**

16 (1) Any designated family member of a deceased or  
17 incapacitated new motor vehicle dealer may succeed the dealer in  
18 the ownership or operation of the dealership under the existing  
19 dealer agreement if the designated family member gives the  
20 manufacturer or distributor written notice of his or her intention to  
21 succeed to the dealership within one hundred twenty days after the  
22 dealer's death or incapacity, agrees to be bound by all of the terms  
23 and conditions of the dealer agreement, and the designated family  
24 member meets the current criteria generally applied by the

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1 manufacturer or distributor in qualifying new motor vehicle dealers.  
2 A manufacturer or distributor may refuse to honor the existing  
3 dealer agreement with the designated family member only for good  
4 cause. In determining whether good cause exists for refusing to  
5 honor the agreement, the manufacturer or distributor has the burden  
6 of proving that the designated successor is a person who is not of  
7 good moral character or does not meet the manufacturer's existing  
8 written, reasonable and uniformly applied standards for business  
9 experience and financial qualifications. The designated family  
10 member will have a minimum of one year to satisfy that  
11 manufacturer's written and reasonable standards and financial  
12 qualifications for appointment as the dealer and principal.

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

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

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1 the succession.

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

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

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

17 (7) If the manufacturer challenges the succession, it  
18 maintains the burden of proof to show good cause by a  
19 preponderance of the evidence. If the person seeking succession  
20 files a civil action within the one hundred eighty days set forth in  
21 subsection (4) of this section, no action may be taken by the  
22 manufacturer contrary to the dealer agreement until such time as the  
23 civil action and any appeal has been exhausted: *Provided, That*  
24 when a motor vehicle dealer appeals a decision upholding a

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1 manufacturer's decision to not allow succession based upon the  
2 designated person's insolvency, conviction of a crime punishable by  
3 imprisonment in excess of one year under the law which the  
4 designated person was convicted, the dealer agreement shall remain  
5 in effect pending exhaustion of all appeals only if the motor vehicle  
6 dealer establishes a likelihood of success on appeal and the public  
7 interest will not be harmed by keeping the dealer agreement in  
8 effect pending entry of final judgment after the appeal.

9 **§17A-6A-12. Establishment and relocation or establishment of**  
10 **additional dealers.**

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

21 (2) Before a manufacturer or distributor enters into a dealer  
22 agreement establishing or relocating a new motor vehicle dealer  
23 within a relevant market area where the same line-make is  
24 represented, the manufacturer or distributor shall give written notice

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1 to each new motor vehicle dealer of the same line-make in the  
2 relevant market area of its intention to establish an additional dealer  
3 or to relocate an existing dealer within that relevant market area.

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

24           (4) This section does not apply to the reopening in a



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1 relevant market area of a new motor vehicle dealer that has been  
2 closed ~~or sold~~ within the preceding two years if the established  
3 place of business of the new motor vehicle dealer is within four air  
4 miles of the established place of business of the closed or sold new  
5 motor vehicle dealer.

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

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

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

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

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

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

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

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

3 **§17A-6A-12a. Restriction on motor vehicle dealer's use of**  
4 **dealership property.**

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

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

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

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

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

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

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

22 (a) Monetary consideration.

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

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

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

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

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

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

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1 agreement, regardless of who the parties to that agreement are.

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

5 **§17A-6A-13. Obligations regarding warranties.**

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

17 (2) The schedule of compensation shall include reasonable  
18 compensation for diagnostic work, as well as repair service and  
19 labor. Time allowances for the diagnosis and performance of  
20 warranty work and service shall be reasonable and adequate for the  
21 work to be performed. In the determination of what constitutes  
22 reasonable compensation under this section, ~~the principal factor to~~  
23 ~~be given consideration shall be the prevailing wage rates being paid~~  
24 ~~by dealers in the community in which the dealer is doing business,~~

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1 ~~and in no event may the compensation of a dealer for warranty~~  
2 ~~labor and parts be less than the rates charged by the dealer for like~~  
3 ~~service to retail customers for nonwarranty service and repairs,~~  
4 ~~provided that the rates are reasonable. section eight-a of this article~~  
5 ~~shall govern: However, Provided, That in the case of a new motor~~  
6 ~~vehicle dealer of new motorcycles or recreational vehicles,~~  
7 ~~motorboat trailers, all-terrain vehicles, utility terrain vehicles and~~  
8 ~~snowmobiles, in no event may the compensation of a dealer for~~  
9 ~~warranty parts be less than is the greater of the dealer's cost of~~  
10 ~~acquiring the part plus twenty forty percent or the manufacturer's~~  
11 ~~suggested retail price: *Provided, however,* That in the case of a~~  
12 ~~dealer of travel trailers, fold-down camping trailers and~~  
13 ~~motorhomes, the compensation of a dealer's cost for warranty parts~~  
14 ~~is not less than the dealer's cost of acquiring the part plus twenty~~  
15 ~~percent.~~

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

18 (a) Fail to perform any warranty obligation;

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

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

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1           (4) All claims made by a new motor vehicle dealer pursuant  
2 to this section for labor and parts shall be paid within thirty days  
3 after their approval. All claims shall be either approved or  
4 disapproved by the manufacturer or distributor within thirty days  
5 after their receipt on a proper form generally used by the  
6 manufacturer or distributor and containing the usually required  
7 information therein. Any claim not specifically disapproved in  
8 writing within thirty days after the receipt of the form is considered  
9 to be approved and payment shall be made within thirty days. The  
10 manufacturer has the right to initiate an audit of a claim within  
11 twelve months after payment and to charge back to the new motor  
12 vehicle dealer the amount of any false, fraudulent or  
13 unsubstantiated claim, subject to the requirements of section eight-a  
14 of this article.

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

24 **§17A-6A-14a. Open account protection.**

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

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1 civil or otherwise, have been exhausted concerning the validity of  
2 the chargeback.

3 **§17A-6A-15. Indemnity.**

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

18 **§17A-6A-15a. Dealer data, obligation of manufacturer,**  
19 **vendors, suppliers and others; consent to access**  
20 **dealership information; indemnification of dealer.**

21 (a) Except as expressly authorized in this section, a  
22 manufacturer or distributor cannot require a motor vehicle dealer to  
23 provide it customer information to the manufacturer or distributor  
24 unless necessary for the sale and delivery of a new motor vehicle to



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1 a consumer, to validate and pay consumer or dealer incentives, for  
2 manufacturer's marketing purposes, for evaluation of dealer  
3 performance, for analytics, or to support claims submitted by the  
4 new motor vehicle dealer for reimbursement for warranty parts or  
5 repairs. Nothing in this section shall limit the manufacturer's ability  
6 to require or use customer information to satisfy any safety or recall  
7 notice obligation or other legal obligation.

8 (b) The dealer is only required to provide the customer  
9 information to the extent lawfully permissible; and to the extent the  
10 requested information relates solely to specific program  
11 requirements or goals associated with the manufacturer's or  
12 distributor's own vehicle makes. A manufacturer, factory branch,  
13 distributor, distributor branch, dealer management computer system  
14 vendor or any third party acting on behalf of any manufacturer,  
15 factory branch, distributor, distributor branch or dealer management  
16 computer system vendor may not prohibit a dealer from providing  
17 a means to regularly and continually monitor the specific data  
18 accessed from or written to the dealer's computer system and from  
19 complying with applicable state and federal laws and any rules or  
20 regulations promulgated thereunder. These provisions do not  
21 impose an obligation on a manufacturer, factory branch, distributor,  
22 distributor branch, dealer management computer system vendor or  
23 any third party acting on behalf of any manufacturer, factory  
24 branch, distributor, distributor branch or dealer management

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1 computer system vendor to provide that capability.

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

13 Upon a written request from a motor vehicle dealer, the  
14 manufacturer, factory branch, distributor, distributor branch, dealer  
15 management computer system vendor, or any third party acting on  
16 behalf of, or through any manufacturer, factory branch, distributor,  
17 distributor branch or dealer management computer system vendor  
18 shall provide to the dealer a written list of all specific third parties  
19 other than a subsidiary or affiliate of the manufacturer, factory  
20 branch, distributor or distributor branch to whom any data obtained  
21 from the dealer has actually been provided within the twelve-month  
22 period prior to date of dealer's written request. If requested by the  
23 dealer, the list shall further describe the scope and specific fields of  
24 the data provided. The consent does not change the person's

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1 obligations to comply with the terms of this section and any  
2 additional state or federal laws, and any rules or regulations  
3 promulgated thereunder, applicable to them with respect to the  
4 access.

5 (d) A manufacturer, factory branch, distributor, distributor  
6 branch, dealer management computer system vendor or any third  
7 party acting on behalf of or through any dealer management  
8 computer system vendor, having electronic access to customer or  
9 motor vehicle dealership data in a dealership management computer  
10 system used by a motor vehicle dealer located in this state shall  
11 provide notice in a reasonable timely manner to the dealer of any  
12 security breach of dealership or customer data obtained through the  
13 access.

14 (e) As used in this section:

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

24 (2) "Dealer management computer system vendor" means

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1 a seller or reseller of dealer management computer systems, a  
2 person that sells computer software for use on dealer management  
3 computer systems or a person who services or maintains dealer  
4 management computer systems.

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

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

11 (f) Notwithstanding the terms or conditions of any consent,  
12 authorization, release, novation, franchise or other contract or  
13 agreement, every manufacturer, factory branch, distributor,  
14 distributor branch, dealer management computer system vendor or  
15 any third party acting on behalf of or through a manufacturer,  
16 factory branch, distributor, distributor branch or dealer management  
17 computer system vendor shall fully indemnify, defend and hold  
18 harmless any dealer or manufacturer, factory branch, distributor or  
19 distributor branch from all damages, attorney fees and costs, other  
20 costs and expenses incurred by the dealer from complaints, claims  
21 or actions arising out of manufacturer's, factory's branch,  
22 distributor's, distributor's branch, dealer management computer  
23 system vendor's or any third party for its willful, negligent or illegal  
24 use or disclosure of dealers consumer or customer data or other

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1 information in dealer's computer system. The indemnification  
2 includes, but is not limited to, judgments, settlements, fines,  
3 penalties, litigation costs, defense costs, court costs, costs related to  
4 the disclosure of security breaches and attorneys' fees arising out of  
5 complaints, claims, civil or administrative actions.

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

8 **§17A-6A-15b. Exports; rebuttable presumption on behalf of**  
9 **dealer.**

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

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1 **§17A-6A-15c. Manufacturer performance standards; uniform**  
2 **application, prohibited practices.**

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

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

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

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

22 (4) The manufacturer or distributor has the burden of  
23 proving by a preponderance of the evidence that the performance  
24 standard, sales objective or program for measuring dealership

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1 performance complies with this article.

2 **§17A-6A-18. West Virginia law to apply.**

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