

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4560

BY DELEGATES CRISS, HOUSEHOLDER, QUEEN, BARRETT,

SKAFF, RILEY, BATES, WESTFALL, AND LOVEJOY

[Introduced February 07, 2022; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §17A-6A-2, §17A-6A-3, §17A-6A-5, §17A-6A-8a, §17A-6A-10,
2 §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15, §17A-6A-15a, §17A-6A-15c, and
3 §17A-6A-18 of the Code of West Virginia, 1931, as amended, all relating generally to
4 motor vehicle dealers, distributors, wholesalers and manufacturers; clarifying governing
5 law; amending terms related to cancellations of dealer agreements; modifying
6 circumstances not constituting good cause to cancel an agreement; clarifying the standard
7 of proof in termination, cancellation and nonrenewal disputes; modifying compensation
8 terms when contract is discontinued; setting interest rate where payments to dealers from
9 manufacturers or distributors are untimely; increasing the notice period for dealers where
10 a manufacturer or distributor does not approve a successor dealer or executive manager;
11 clarifying provision related to determination of distance between dealerships; restricting
12 manufacturer and distributor use of dealership property; modifying obligations under
13 warranties; clarifying indemnity practices; identifying unlawful practices; and clarifying
14 manufacturer performance standards.

Be it enacted by the Legislature of West Virginia:

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

§17A-6A-2. Governing law.

1 In accord with the settled public policy of this state to protect the rights of its citizens, each
2 franchise or agreement between a manufacturer or distributor and a dealer or dealership which
3 is located in West Virginia, or is to be performed in substantial part in West Virginia, shall be
4 construed and governed by the laws of the State of West Virginia, regardless of the state in which
5 it was made or executed and of any provision in the franchise or agreement to the contrary. The
6 public policy of this state is to protect the rights of its citizens and each new motor vehicle dealer
7 for any agreement governed by this article.

8 The provisions of this article apply only to any franchises and agreements entered into,
9 continued, modified or renewed subsequent to the effective date of this article.

§17A-6A-3. Definitions.

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

3 (1) "Dealer agreement" means the franchise, agreement or contract in writing between a
4 manufacturer, distributor and a new motor vehicle dealer which purports to establish the legal
5 rights and obligations of the parties to the agreement or contract with regard to the operation and
6 business of a new motor vehicle dealership, including, but not limited to, the purchase, lease or
7 sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

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

19 (3) "Distributor" means any person, resident or nonresident who, in whole or in part, offers
20 for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains
21 a factor representative, resident or nonresident, or who controls any person, resident or
22 nonresident who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to
23 a new motor vehicle dealer.

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

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

36 (6) "Factory representative" means an agent or employee of a manufacturer, distributor or
37 factory branch retained or employed for the purpose of making or promoting the sale of new motor
38 vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor
39 vehicle dealers.

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

42 (8) "Manufacturer" means any person who manufactures or assembles new motor
43 vehicles; or any distributor, factory branch or factory representative and, in the case of a school
44 bus, truck tractor, road tractor or truck as defined in section one, article one of this chapter, also
45 means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor
46 or truck, their engines, power trains or rear axles, including when engines, power trains or rear
47 axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch
48 or representative.

49 (9) "Motor vehicle" means that term as defined in section one, article one of this chapter,

50 including motorcycle, school bus, truck tractor, road tractor, truck, recreational vehicle, all-terrain
51 vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv),
52 respectively, of said section, but not including a farm tractor or farm equipment. The term “motor
53 vehicle” also includes a school bus, truck tractor, road tractor, truck, its component parts,
54 including, but not limited to, its engine, transmission or rear axle manufactured for installation in
55 a school bus, truck tractor, road tractor or truck.

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

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

64 (12) “The operation and business of a new motor vehicle dealership” for purpose of this
65 article, shall include, but not be limited to, selling, leasing, exchanging or otherwise conveying a
66 new motor vehicle, accepting orders or reservation for sale, lease, exchange or other conveyance
67 of a new motor vehicle, offers for sale, lease, exchange or other conveyance a new motor vehicle,
68 financing the sale, lease, exchange or other conveyance of a new motor vehicle, advertising to
69 sell, lease, exchange or convey a new motor vehicle, offers through a subscription or like
70 arrangement, displaying new motor vehicles, offering vehicle test drives or demonstrations of new
71 motor vehicle functions or features, or otherwise engaging in any way, in whole or in part, in the
72 business of selling, leasing, exchanging or otherwise conveying new motor vehicles and used
73 motor vehicles, as well as the sale of parts, including the service of new and used motor vehicles,
74 post-sale software and hardware upgrades or changes to vehicle function and features, and
75 accessories for those motor vehicles: *Provided, That* this language shall not include any post-

76 sale software upgrades to the motor vehicle's navigation or entertainment system.

77 ~~(42)~~ (13) "Person" means a natural person, partnership, corporation, association, trust,
78 estate or other legal entity.

79 ~~(43)~~ (14) "Proposed new motor vehicle dealer" means a person who has an application
80 pending for a new dealer agreement with a manufacturer or distributor. "Proposed motor vehicle
81 dealer" does not include a person whose dealer agreement is being renewed or continued.

82 ~~(44)~~ (15) "Relevant market area" means the area located within a twenty-air mile radius
83 around an existing same line-make new motor vehicle dealership: *Provided*, That a fifteen-mile
84 relevant market area as it existed prior to the effective date of this statute shall apply to any
85 proposed new motor vehicle dealership as to which a manufacturer or distributor and the
86 proposed new motor vehicle dealer have executed on or before the effective date of this statute
87 a written agreement, including a letter of intent, performance agreement or commitment letter,
88 concerning the establishment of the proposed new motor vehicle dealership.

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

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

4 (a) A change in ownership of the new motor vehicle dealer's dealership. This subdivision
5 does not authorize any change in ownership which would have the effect of a sale or an
6 assignment of the dealer agreement or a change in the principal management of the dealership
7 without the manufacturer's or distributor's prior written consent which may not be unreasonably
8 or untimely withheld in a manner inconsistent with section eleven of this article.

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

12 (c) The fact that the new motor vehicle dealer owns, has an investment in, participates in

13 the management of, or holds a dealer agreement for the sale of another make or line of new motor
14 vehicles, or that the new motor vehicle dealer has established another make or line of new motor
15 vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided,*
16 That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of
17 new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with
18 the terms and conditions of the dealer agreement and with any reasonable facilities' requirements
19 of the manufacturer or distributor.

20 (d) The fact that the new motor vehicle dealer designates as an executive manager or
21 sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership
22 to the new motor vehicle dealer's spouse, son or daughter: *Provided,* That the sale or transfer
23 shall not have the effect of a sale or an assignment of the dealer agreement or a change in the
24 principal management of the dealership without the manufacturer's or distributor's prior written
25 consent, which may not be unreasonably or untimely withheld or refused in a manner inconsistent
26 with section eleven of this article.

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

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

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

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

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

8 (c) Provide the dealer the schedule of compensation, which shall be consistent with

9 industry manuals and guidelines, to be paid the dealer for parts, work and service, including
10 diagnostic time, in connection with warranty and recall services and the time allowance for the
11 performance of the diagnosis, work and service. If a disagreement should arise between the
12 manufacturer, distributor, wholesaler, factory branch or distributor branch and the new motor
13 vehicle dealer about the time allowance for the performance of the diagnosis, work and service,
14 they shall use the average of three most used nationally accepted independent manuals or
15 guidelines which address time allocation of diagnosis, repair time and service.

16 (2) In no event may:

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

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

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

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

32 (4) The retail rate charged by the dealer for parts is established by the dealer submitting
33 to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service
34 repair orders that contain warranty-like parts or ninety consecutive days of nonwarranty customer-

35 paid service repair orders that contain warranty-like parts covering repairs made no more than
36 one hundred eighty days before the submission and declaring the average percentage markup.
37 A dealer may decide to use a single set of repair orders for the purpose of calculating both the
38 labor rate and parts mark-up or use separate sets of repair orders only for a labor rate and only
39 for its parts mark-up calculations.

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

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

52 (a) Repairs for manufacturer or distributor special events, specials or promotional
53 discounts for ~~retail~~ customer repairs;

54 (b) Parts sold at wholesale;

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

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

58 (e) Tires;

59 (f) Vehicle reconditioning.

60 (7) The average of the parts markup rates and labor rate is presumed to be reasonable

61 and must go into effect 30 days following the manufacturer's approval. A manufacturer or
62 distributor ~~may~~ must approve or rebut the presumption by a preponderance of the evidence that
63 a rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle
64 dealers in an economically similar area of the state offering the same line-make vehicles, not later
65 than 30 days after submission. If the average parts markup rate or average labor rate is ~~rebutted,~~
66 ~~or both~~ disputed by the manufacturer or distributor, the manufacturer or distributor shall provide
67 written notice to the dealer stating the specific reasons for the rebuttal, a full explanation of any
68 and all reasons for the allegation, evidence substantiating the manufacturer or distributor's
69 position, a copy of all calculations used by the franchisor in determining the manufacturer or
70 distributor's position and propose an adjustment of the average percentage markup or labor rate
71 based on that rebuttal not later than 30 days after submission. If the dealer does not agree with
72 the manufacturer's proposed average percentage markup or labor rate, the dealer may file a civil
73 action in the circuit court for the county in which it operates not later than 90 days after receipt of
74 that proposal by the manufacturer or distributor. In the event a civil action is filed, the
75 manufacturer or distributor shall have the burden of proof to establish the new motor vehicle
76 dealer's submitted parts markup rate or labor rate was inaccurate and not established in
77 accordance with this section. The manufacturer or distributor shall be required to prove by a
78 preponderance of the evidence the following to prevail and overcome the presumption in favor of
79 the dealer:

80 (A) That the dealer's submission was materially inaccurate and by providing a full
81 explanation of any and all reasons; and

82 (B) Produce evidence validating each reason; and

83 (C) A labor rate and parts mark-up rate which is substantially more accurate.

84 (8) Each manufacturer, in establishing a schedule of compensation for warranty work,
85 shall rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in
86 subsections (4), (5) and (6) of this section and may not obligate any vehicle dealer to engage in

87 unduly burdensome or time-consuming documentation of rates or parts, including obligating
88 vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

89 (9) A dealer or manufacturer may demand that the average parts markup or average labor
90 rate be calculated using the process provided under subsections (4) and (5) of this section;
91 however, the demand for the average parts markup may not be made within twelve months of the
92 last parts markup declaration and the demand for the average labor rate may not be made within
93 twelve months of the last labor rate declaration. If a parts markup or labor rate is demanded by
94 the dealer or manufacturer, the dealer shall determine the repair orders to be included in the
95 calculation under subsections (4) and (5) of this section.

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

107 (11) All claims made by motor vehicle dealers pursuant to the section for compensation
108 for delivery, preparation, warranty and recall work, including labor, parts and other expenses, shall
109 be paid by the manufacturer within 30 days after approval and shall be approved or disapproved
110 by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall
111 be notified in writing of the grounds for disapproval. No claim which has been approved and paid
112 may be charged back to the dealer unless it can be shown that the claim was false or fraudulent,

113 that the repairs were not properly made or were unnecessary to correct the defective condition or
114 the dealer failed to reasonable substantiate the claim in accordance with the reasonable written
115 requirements of the manufacturer or distributor in effect at the time the claim arose. No charge
116 back may be made until the dealer has had notice and an opportunity to support the claim in
117 question. No otherwise valid reimbursement claims may be denied once properly submitted within
118 manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental
119 failure to comply with a specific claim processing requirement, an administrative technicality, or
120 based on a different level of technician technical certification or the dealer's failure to subscribe
121 to any manufacturer's computerized training programs. The dealer shall have 30 days to respond
122 to any audit by a manufacturer or distributor.

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

131 (13) When calculating the compensation that must be provided to a new motor vehicle
132 dealer for labor and parts used to fulfill warranty and recall obligations under this section, all of
133 the following apply:

134 (A) The manufacturer shall use time allowances for the diagnosis and performance of the
135 warranty and recall work and service that are reasonable and adequate for the work or services
136 to be performed by a qualified technician.

137 (B) The manufacturer shall use any retail labor rate and any retail parts markup percentage
138 established in accordance with this section in calculating the compensation.

139 (C) If the manufacturer provided a part or component to the new motor vehicle dealer at
140 no cost to use in performing repairs under a recall, campaign service action, or warranty repair,
141 the manufacturer shall provide to the new motor vehicle dealer an amount equal to the retail parts
142 markup for that part or component, which shall be calculated by multiplying the dealer cost for the
143 part or component as listed in the manufacturer's price schedule by the retail parts markup
144 percentage.

145 (D) A manufacturer shall not assess penalties, surcharges, or similar costs to a new motor
146 vehicle dealer, transfer or shift any costs to a franchisee, limit allocation of vehicles or parts to a
147 new motor vehicle dealer, or otherwise take retaliatory action against a new motor vehicle dealer
148 based on any new motor vehicle dealer's exercise of its rights under this section.

§17A-6A-10. Prohibited practices.

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

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

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

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

15 (d) Enter into any agreement with the manufacturer or distributor or do any other act

16 prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit
17 inventory, invoke sales and service warranty or other types of audits or any contractual agreement
18 or understanding existing between the dealer and the manufacturer or distributor, or any
19 manufacturer or distributor's preferred, approved or recommended vendor or supplier. Notice in
20 good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement
21 is not a violation of this article;

22 (e) Change the capital structure or financial requirements of the new motor vehicle
23 dealership without reasonable business justification in light of the dealer's market, historical
24 performance and compliance with prior capital structure or financial requirements and business
25 necessity, or the means by or through which the dealer finances the operation of the dealership
26 if the dealership at all times meets any reasonable capital standards determined by the
27 manufacturer in accordance with uniformly applied criteria. The burden of proof is on the
28 manufacturer to prove business justification by a preponderance of the evidence;

29 (f) Refrain from participation in the management of, investment in or the acquisition of any
30 other line of new motor vehicle or related products, provided that the dealer maintains a
31 reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable
32 facilities requirements and makes no change in the principal management of the dealer.
33 Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not
34 enforce any requirements, including facility or image requirements, that a new motor vehicle
35 dealer establish or maintain exclusive facilities, personnel or display space, when the
36 requirements are unreasonable considering current economic conditions and are not otherwise
37 justified by reasonable business considerations. The burden of proving that current economic
38 conditions or reasonable business considerations justify ~~exclusive facilities~~ such actions is on the
39 manufacturer or distributor and must be proven by a preponderance of the evidence;

40 (g) Change the location of the new motor vehicle dealership or make any substantial
41 alterations to the dealership premises, where to do so would be unreasonable. The burden is on

42 the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

43 (h) Prospectively assent to a waiver of trial by jury release, arbitration, assignment,
44 novation, waiver or estoppel which would relieve any person from liability imposed by this article
45 or require any controversy between a new motor vehicle dealer and a manufacturer or distributor
46 to be referred to a person other than the duly constituted courts of this state or the United States
47 District Courts of the Northern or Southern Districts of West Virginia. Nothing in this prevents a
48 motor vehicle dealer, after a civil action is filed, from entering into any agreement of settlement,
49 arbitration, assignment or waiver of a trial by jury;

50 (i) To coerce or require any dealer, whether by agreement, program, incentive provision
51 or otherwise, to construct improvements to its facilities or to install new signs or other franchisor
52 image elements that replace or substantially alter those improvements, signs or franchisor image
53 elements completed within the proceeding 10 years that were required and approved by the
54 manufacturer, factory branch, distributor or distributor branch or one of its affiliates. If a
55 manufacturer, factory branch, distributor or distributor branch offers incentives or other payments
56 to a consumer or dealer paid on individual vehicle sales under a program offered after the effective
57 date of this subdivision and available to more than one dealer in the state that are premised,
58 wholly or in part, on dealer facility improvements or installation of franchisor image elements
59 required by and approved by the manufacturer, factory branch, distributor or distributor branch
60 and completed within ~~ten~~ 15 years preceding the program shall be deemed to be in compliance
61 with the program requirements pertaining to construction of facilities or installation of signs or
62 other franchisor image elements that would replace or substantially alter those previously
63 constructed or installed with that ~~ten~~ 15 year period. This subdivision shall not apply to a program
64 that is in effect with more than one dealer in the state on the effective date of this subsection, nor
65 to any renewal of such program, nor to a modification that is not a ~~substantial~~ modification of a
66 material term or condition of such program;

67 (j) To condition the award, sale, transfer, relocation or renewal of a franchise or dealer

68 agreement or to condition sales, service, parts or finance incentives upon site control or an
69 agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary
70 and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited
71 to, a written agreement for which the dealer has accepted separate and valuable consideration,
72 does not constitute a violation;

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

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

79 (ii) It shall be unlawful for any manufacturer, factory branch, captive finance source,
80 distributor or distributor branch, or any field representative, officer, agent or any representative of
81 them, notwithstanding the terms, provisions or conditions of any agreement or franchise, to
82 require any of its franchised dealers located in this state to agree to any terms, conditions or
83 requirements in subdivisions (a) through (j), inclusive, of this subsection in order for any such
84 dealer to sell to any captive finance source any retail installment contract, loan or lease of any
85 motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate
86 in, or otherwise, directly or indirectly, obtain the benefits of the consumer transaction incentive
87 program payable to the consumer or the dealer and offered by or through any captive finance
88 source as to that incentive program.

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

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

94 manufacturer or distributor.

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

96 (a) (i) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within
97 a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market
98 area and facilities, unless the failure is caused by acts or occurrences beyond the control of the
99 manufacturer or distributor, or unless the failure results from an order by the new motor vehicle
100 dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor.

101 A manufacturer shall not fail to deliver motor vehicles to a new motor vehicle dealer based upon
102 a tiered system or a tier designation of the same line new motor vehicle dealer in this state. No
103 manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet
104 sales quotas where the alleged failure is due to actions of the manufacturer or distributor; or

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

109 (iii) Require as a prerequisite to receiving a model or series of vehicles that a new motor
110 vehicle dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable
111 advertising displays or other materials, or conduct unreasonable facility or image remodeling,
112 renovation or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade
113 requirement. This provision shall specifically prohibit a manufacturer from requiring such actions
114 as withholding dealer compensation, payments and incentives based upon this subsection if the
115 dealer completed, within the proceeding 15 years, facility upgrades and image requirements that
116 were required and approved by the manufacturer, factory branch, distributor or distributor branch
117 or one of its affiliates;

118 (iv) Use motor vehicles in transit but not yet in dealer's physical possession in any
119 allocation or sales effective formula to the detriment of the new motor vehicle dealer.

120 (v) Debit a new motor vehicle dealer's floorplan lending account until the motor vehicle is
121 physically delivered to dealership's physical location and accepted by the new motor vehicle
122 dealer.

123 (b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution
124 of new motor vehicles by the manufacturer or distributor, including any numerical calculation, tier-
125 designation or formula used, nationally or within the dealer's market, to make the allocations within
126 30 days of a request. Any information or documentation provided by the manufacturer may be
127 subject to a reasonable confidentiality agreement;

128 (c) Refuse to disclose to a new motor vehicle dealer the total number of new motor
129 vehicles of a given model, which the manufacturer or distributor has sold during the current model
130 year within the dealer's marketing district, zone or region, whichever geographical area is the
131 smallest within 30 days of a request;

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

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

145 (ii) In the case of foreign-made vehicles or components, revaluation of the United States

146 dollar; or

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

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

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

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

159 (h) Establish, operate or engage in the business of a new motor vehicle dealership. A
160 manufacturer or distributor is not considered to have established, operated or engaged in the
161 business of a new motor vehicle dealership if the manufacturer or distributor is:

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

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

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

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

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

170 (B) Operate a dealership, including, but not limited to, displaying a motor vehicle intended
171 to facilitate the sale of new motor vehicles other than through franchised dealers, unless the

172 display is part of an automobile trade show that more than two automobile manufacturers
173 participate in; or

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

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

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

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

182 (k) The twelve-month period may be extended for an additional twelve months. Notice of
183 any such extension of the original twelve-month period must be given to any dealer of the same
184 line-make whose dealership is located in the same county, or within twenty air miles of, the
185 dealership owned or controlled by the manufacturer or distributor prior to the expiration of the
186 original twelve-month period. Any dealer receiving the notice may protest the proposed extension
187 within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for
188 the county in which the new motor vehicle dealer is located to determine whether good cause
189 exists for the extension;

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

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

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

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

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

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

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

208 (p) Audit any motor vehicle dealer in this state for warranty parts or warranty service
209 compensation, service compensation, service or sales incentives, manufacturer rebates or other
210 forms of sales incentive compensation more than twelve months after the claim for payment or
211 reimbursement has been made by the automobile dealer. No chargeback may be made for
212 clerical errors and omissions, and until the dealer has had notice and an opportunity to support
213 the claim in question within 30 days of receiving notice of the chargeback. No otherwise valid
214 reimbursements claims may be denied once properly submitted in accordance with ~~the~~ material
215 and reasonable manufacturer's ~~submission~~ guidelines unless the factory can show that the claim
216 was false or fraudulent or that the new motor vehicle dealer failed to reasonably substantiate the
217 claim consistent with the manufacturer's written reasonable and material guidelines. ~~due to~~
218 ~~clerical error or omission~~ This subsection does not apply where a claim is fraudulent. In addition,
219 the manufacturer or distributor is responsible for reimbursing the audited dealer for all copying,
220 postage and administrative and personnel costs, including professional fees, incurred by the
221 dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed
222 to the dealer;

223 (q) Unreasonably restrict a dealer's ownership of a dealership through noncompetition

224 covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to
225 purchase, or otherwise. A right of first refusal is created when:

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

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

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

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

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

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

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

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

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

249 (iv) Except as otherwise provided in this subsection, the manufacturer or distributor agrees

250 to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall
251 include, but not be limited to, accounting, legal or appraisal services fees that are incurred by the
252 proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first
253 refusal. Payment of the expenses and fees for professional services are not required if the dealer
254 fails to submit an accounting of those expenses and fees within twenty days of the dealer's receipt
255 of the manufacturer's or distributor's written request for such an accounting. Such a written
256 account of fees and expenses may be requested by a manufacturer or distributor before
257 exercising its right of first refusal;

258 (r) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and
259 recall repair work to be performed by any entity other than a new motor vehicle dealer, including
260 post-sale software and hardware upgrades or changes to vehicle function and features, and
261 accessories for new motor vehicles sold by a licensed new motor vehicle dealer. *Provided*
262 *however, this language shall not include any post-sale software upgrades to the motor vehicle's*
263 *navigation or entertainment system;*

264 (s) Make any material or unreasonable change in any franchise agreement, including, but
265 not limited to, the dealer's area of responsibility without giving the new motor vehicle dealer written
266 notice by certified mail of the change at least sixty days prior to the effective date of the change,
267 and shall include an explanation of the basis for the alteration. Upon written request from the
268 dealer, this explanation shall include, but is not limited to, a reasonable and commercially
269 acceptable copy of all information, data, evaluations, and methodology relied on or based its
270 decision on, to propose the change to the dealer's area of responsibility. Any information or
271 documentation provided by the manufacturer or distributor may be produced subject to a
272 reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a
273 new motor vehicle dealer's area of responsibility and after the completion of any internal appeal
274 process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer
275 may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the

276 manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration
277 of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance
278 of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a
279 motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of
280 responsibility shall become effective until a final determination by the court. If a new motor vehicle
281 dealer's area of responsibility is altered, the manufacturer shall allow twenty-four months for the
282 motor vehicle dealer to become sales effective prior to taking any action claiming a breach or
283 nonperformance of the motor vehicle dealer's sales performance responsibilities;

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

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

292 (v) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model
293 or quantity, including, but not limited to, payments, incentives or other moneys and compensation
294 to dealer or customers, where the effect of the discrimination would substantially lessen
295 competition;

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

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

301 (i) By an act of statement that the manufacturer or distributor will adversely impact the

302 dealer, whether it is express or implied;

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

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

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

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

316 (y) Require a dealer to purchase goods or services from a vendor selected, identified or
317 designated by a manufacturer, factory branch, distributor, distributor branch or one of its affiliates
318 by agreement, program, incentive provision or otherwise without making available to the dealer
319 the option to obtain the goods or services of substantially similar quality and overall design from
320 a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor or
321 distributor branch: *Provided*, That such approval may not be unreasonably withheld:
322 *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer
323 or distributor provides substantial reimbursement for the goods or services offered. Substantial
324 reimbursement is equal to the difference in price of the goods and services from manufacturer's
325 proposed vendor and the motor vehicle dealer's selected vendor: *Provided further*, That the goods
326 are not subject to the manufacturer or distributor's intellectual property or trademark rights, or
327 trade dress usage guidelines.

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

331 (4) Except as may otherwise be provided in this article, no manufacturer or franchisor may
 332 sell, directly or indirectly, including, but not limited to, accepting orders or reservation for sale,
 333 lease, exchange or other conveyance of a new motor vehicle, offers for sale, lease, exchange or
 334 other conveyance a new motor vehicle, financing the sale, lease, exchange or other conveyance
 335 of a new motor vehicle, advertising to sell, lease, exchange or convey a new motor vehicle, offers
 336 through a subscription or like arrangement, displaying new motor vehicles, offering vehicle test
 337 drives or demonstrations of new motor vehicle functions or features, any new motor vehicle to a
 338 consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-
 339 make covering such new motor vehicle. This subsection does not apply to manufacturer or
 340 franchisor sales of new motor vehicles to charitable organizations, qualified vendors or employees
 341 of the manufacturer or franchisor.

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

**§17A-6A-11. Where motor vehicle dealer deceased or incapacitated Motor vehicle dealer
 successorship or change in executive management.**

1 (1) Any designated family member of a ~~deceased or incapacitated~~ new motor vehicle
 2 dealer may succeed the dealer in the ownership or operation or executive management of the
 3 dealership under the existing dealer agreement if the designated family member gives the

4 manufacturer or distributor written notice of his or her intention to succeed to, or be designated
5 as the executive manager of, the dealership within one hundred twenty days after the dealer's
6 death or incapacity or designation of a successor or executive manager, and agrees to be bound
7 by all of the terms and conditions of the dealer agreement, and the designated family member
8 meets the current criteria generally applied by the manufacturer or distributor in qualifying new
9 motor vehicle dealers or executive managers. A manufacturer or distributor may refuse to honor
10 the designation or change ~~existing dealer agreement~~ with the designated family member only for
11 good cause. In determining whether good cause exists for refusing to honor the agreement, the
12 manufacturer or distributor has the burden of proving that the designated successor is a person
13 who is not of good moral character or does not meet the manufacturer's existing written,
14 reasonable and uniformly applied standards for business experience and financial qualifications.
15 Any denial of the proposed successor or executive manager based upon a failure to agree to
16 terms other than those contained in the existing franchise agreement shall not be considered
17 good cause for such denial. The designated family member will have a minimum of one year to
18 satisfy that manufacturer's written and reasonable standards and financial qualifications for
19 appointment as the dealer or executive manager ~~and principal.~~

20 (2) The manufacturer or distributor may request from a designated family member such
21 information or application ~~personal and financial data~~ as is reasonably necessary to determine
22 whether the existing dealer agreement should be honored. The designated family member shall
23 supply the personal and financial data promptly upon the request.

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

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

34 (5) If notice of refusal is not served within the ~~sixty~~ forty-five days provided for in subsection
35 (3) of this section, the dealer agreement continues in effect and is subject to termination only as
36 otherwise permitted by this article.

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

41 (7) If the manufacturer challenges the succession in ownership, management or
42 designation, it maintains the burden of proof to show good cause by a preponderance of the
43 evidence. If the person seeking succession of ownership, management or designation files a civil
44 action within the one hundred eighty days of the manufacturer's refusal to approve or the one
45 year qualifying period set forth in subsection (1) above, whichever is longer, set forth in subsection
46 ~~(4) of this section~~, no action may be taken by the manufacturer contrary to the dealer agreement
47 until such time as the civil action and any appeal has been exhausted: *Provided*, That when a
48 motor vehicle dealer appeals a decision upholding a manufacturer's decision to not allow
49 succession based upon the designated person's insolvency, conviction of a crime punishable by
50 imprisonment in excess of one year under the law which the designated person was convicted,
51 the dealer agreement shall remain in effect pending exhaustion of all appeals only if the motor
52 vehicle dealer establishes a likelihood of success on appeal and the public interest will not be
53 harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

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

1 (1) As used in this section, "relocate" and "relocation" do not include the relocation of a

2 new motor vehicle dealer within four miles of its established place of business or if an existing
3 new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new
4 motor vehicle dealership owner relocates to a location within four miles of the seller's last open
5 new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within
6 the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor
7 may not be within six air miles of another dealer of the same line-make.

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

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

27 (4) This section does not apply to the reopening in a relevant market area of a new motor

28 vehicle dealer that has been closed within the preceding two years if the established place of
29 business of the new motor vehicle dealer is within four air miles of the established place of
30 business of the closed or sold new motor vehicle dealer.

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

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

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

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

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

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

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

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

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

1 (1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of
2 its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery
3 and warranty service on its products. The manufacturer or distributor shall compensate the new
4 motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor.

5 The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of
6 compensation to be paid to the dealer for parts, diagnostic time, work and service, and the time
7 allowance for the performance of the work, diagnostic time, and service in a manner in compliance
8 with section eight-a of this article.

9 (2) The schedule of compensation shall include reasonable compensation for diagnostic
10 work, as well as repair service and labor. Time allowances for the diagnosis and performance of
11 warranty work and service shall be reasonable and adequate for the work to be performed. In the
12 determination of what constitutes reasonable compensation under this section, section eight-a of
13 this article shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat
14 trailers, all-terrain vehicles, utility terrain vehicles and snowmobiles, the compensation of a dealer
15 for warranty parts is the greater of the dealer's cost of acquiring the part plus 30 percent or the
16 manufacturer's suggested retail price: *Provided, however*, That in the case of a dealer of travel
17 trailers, fold-down camping trailers and motorhomes, the compensation of a dealer's cost for
18 warranty parts is not less than the dealer's cost of acquiring the part plus twenty percent.

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

20 (a) Fail to perform any warranty obligation;

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

24 (c) Fail to compensate any of the new motor vehicle dealers licensed in this state for
25 repairs effected by the recall at retail rate for parts, work, labor and diagnostic time.

26 (4) All claims made by a new motor vehicle dealer pursuant to this section for labor and
27 parts shall be paid within 30 days after their approval. All claims shall be either approved or
28 disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form
29 generally used by the manufacturer or distributor and containing the usually required information
30 therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the

31 form is considered to be approved and payment shall be made within 30 days. The manufacturer
32 has the right to initiate an audit of a claim within twelve months after payment and to charge back
33 to the new motor vehicle dealer the amount of any false, fraudulent or unsubstantiated claim,
34 subject to the requirements of section eight-a of this article.

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

§17A-6A-15. Indemnity.

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

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

1 (a) Except as expressly authorized in this section, a manufacturer or distributor cannot
2 require a motor vehicle dealer to provide it customer information to the manufacturer or distributor

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

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

22 (c) A manufacturer, factory branch, distributor, distributor branch, dealer management
23 computer system vendor, or any third party acting on behalf of any manufacturer, factory branch,
24 distributor, distributor branch or dealer management computer system vendor, may not provide
25 access to customer or dealership information maintained in a dealer management computer
26 system used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of
27 the manufacturer factory branch, distributor or distributor branch without first obtaining the
28 dealer's prior express written consent, revocable by the dealer upon ten business days written

29 notice, to provide the access.

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

41 (d) A manufacturer, factory branch, distributor, distributor branch, dealer management
42 computer system vendor or any third party acting on behalf of or through any dealer management
43 computer system vendor, having electronic access to customer or motor vehicle dealership data
44 in a dealership management computer system used by a motor vehicle dealer located in this state
45 shall provide notice in a reasonable timely manner to the dealer of any security breach of
46 dealership or customer data obtained through the access.

47 (e) At the request of a manufacturer or distributor or of a third party acting on behalf of a
48 manufacturer or distributor, a dealer may only be required to provide customer information related
49 solely to such manufacturer's or distributor's own vehicle makes for reasonable marketing
50 purposes, market research, consumer surveys, market analysis, and dealership performance
51 analysis, but the dealer is only required to provide such customer information to the extent lawfully
52 permissible; to the extent the requested information relates solely to specific program
53 requirements or goals associated with such manufacturer's or distributor's own vehicle makes
54 and does not require the dealer to provide general customer information or other information

55 related to the dealer; and to the extent the requested information can be provided without requiring
56 that the dealer allow any customer the right to opt out under the federal Gramm-Leach-Bliley Act,
57 15 U.S.C., Subchapter I, § 6801, et seq.

58 (f) A dealer management computer system vendor shall do the following:

59 (1) Adopt and make available a standardized framework for the exchange, integration
60 and sharing of data from dealer data systems with authorized integrators and the retrieval of data
61 by authorized integrators using the Standards for Technology in Automotive Retail Standards
62 (“STAR”) or a standard that is compatible with the STAR Standards.

63 (2) Provide access to open application programming interfaces to authorized integrators.
64 If the application programming interfaces are not the reasonable commercial or technical standard
65 for secure data integration, the dealer management computer system vendor may provide a
66 similar open access integration method if that method provides the same or better access to
67 authorized integrators as an application programming interface and uses the required
68 standardized framework.

69 (g) A dealer management computer system vendor:

70 (1) May access, use, store or share protected dealer data or any other data from a dealer
71 data system only to the extent allowed in the written agreement with the dealer.

72 (2) Must make any agreement relating to access to, sharing or selling of, copying, using
73 or transmitting protected dealer data terminable on 90 days’ notice from the dealer.

74 (3) On notice of the dealer’s intent to terminate the agreement, in order to prevent any
75 risk of consumer harm or inconvenience, must work to ensure a secure transition of all protected
76 dealer data to a successor dealer data vendor or authorized integrator, including:

77 (A) Providing access to or an electronic copy of all protected dealer data and all other data
78 stored in the dealer data system in a commercially reasonable time and format that a successor
79 dealer data vendor or authorized integrator can access and use.

80 (B) Deleting or returning to the dealer all protected dealer data before the contract

81 terminates pursuant to the dealer's written directions.

82 (4) On a dealer's request, must provide the dealer with a listing of all entities with whom
83 it is sharing protected dealer data or with whom it has allowed access to protected dealer data.

84 ~~(e)~~ (h) As used in this section:

85 (1) "Dealer Data or Dealer's Data" means any information or other data that has been
86 entered, by direct entry or otherwise, or stored on the dealer's dealer management computer
87 system by an officer or employee of the dealer or third party contracted by the dealer, whether
88 stored or hosted on-site at a dealer location or on the cloud or at any other remote location, that
89 contains data or other information about any of the following:

90 (A) The dealer's sales, service, or parts customers or the dealer's customer transactions;

91 (B) Customer leads generated by or provided to the dealer;

92 (C) The tracking, history, or performance of the dealer's internal processing of customer
93 orders and work;

94 (D) Customer deal files;

95 (E) Customer recommendations or complaints communicated by any means to the dealer;

96 (F) The tracking of dealer or customer incentive payments sought or received from any
97 manufacturer or distributor;

98 (G) Business plans, goals, objectives, or strategies created by any officer, employer, or
99 contractee of the dealer;

100 (H) The dealer's internal bank, financial, or business records;

101 (I) Email, voice, and other communications between or among the dealer's officers or
102 employees;

103 (J) Email, voice, and other communications between the dealer's officers or employees
104 and third parties;

105 (K) Contracts and agreements with third parties and all records related to the performance
106 of such contracts and agreements;

107 (L) Employee performance;

108 (M) Dealer personnel records; and

109 (N) Dealer inventory data.

110 The terms “dealer data” and “dealer’s data” specifically exclude the proprietary software,
111 intellectual property, data, or information of a dealer management computer system vendor,
112 manufacturer, factory branch, distributor, or distributor branch, data specifically licensed from a
113 third party by a dealer management computer system vendor, manufacturer, factory branch,
114 distributor, or distributor branch, and data provided to a dealer by a manufacturer, factory branch,
115 distributor, distributor branch, subsidiary, or affiliate.

116 (2) “Dealer management computer system” means a computer hardware and software
117 system that is owned or leased by the dealer, including a dealer’s use of web applications,
118 excluding a web application operated by a manufacturer, software or hardware, whether located
119 at the dealership or provided at a remote location and that provides access to customer records
120 and transactions by a motor vehicle dealer located in this state and that allows the motor vehicle
121 dealer timely information in order to sell vehicles, parts or services through the motor vehicle
122 dealership.

123 ~~(2)~~ (3) “Dealer management computer system vendor” means a seller or reseller of dealer
124 management computer systems, a person that sells computer software for use on dealer
125 management computer systems or a person who services or maintains dealer management
126 computer systems.

127 ~~(3)~~ (4) “Security breach” means an incident of unauthorized access to and acquisition of
128 records or data containing dealership or dealership customer information where unauthorized use
129 of the dealership or dealership customer information has occurred.

130 ~~(4)~~ (5) “Customer information” means “nonpublic personal” as defined in 16 C. F. R. §313.

131 (6) Notwithstanding the terms of any contract or agreement, it shall be unlawful for any
132 dealer management computer system vendor, or any third party having access to any dealer

133 management computer system, to:

134 (A) Unreasonably interfere with a dealer's ability to protect, store, copy, share, or use any
135 dealer data downloaded from a dealer management computer system utilized by a new motor
136 vehicle dealer located in this state. Unlawful conduct prohibited by this section includes, but is not
137 limited to:

138 (i) Imposing any unreasonable fees or other restrictions on the dealer or any third party
139 for access to or sharing of dealer data. For purposes of this section, the term "unreasonable fees"
140 means charges for access to customer or dealer data beyond any direct costs incurred by any
141 dealer management computer system vendor in providing access to the dealer's customer or
142 dealer data to a third party that the dealer has authorized to access its dealer management
143 computer system or allowing any third party that the dealer has authorized to access its dealer
144 management computer system to write data to its dealer management computer system. Nothing
145 contained in this subdivision shall be deemed to prohibit the charging of a fee, which includes the
146 ability of the service provider to recoup development costs incurred to provide the services
147 involved and to make a reasonable profit on the services provided. Any charges must be both (I)
148 reasonable in amount and (II) disclosed to the dealer in reasonably sufficient detail prior to the
149 fees being charged to the dealer, or they will be deemed prohibited, unreasonable fees.

150 (ii) Imposing unreasonable restrictions on secure integration by any third party that the
151 dealer has explicitly authorized to access its dealer management computer system for the
152 purpose of accessing dealer data. Examples of unreasonable restrictions include, but are not
153 limited to, any of the following:

154 (I) Unreasonable restrictions on the scope or nature of the dealer's data shared with a
155 third party authorized by the dealer to access the dealer's dealer management computer system.

156 (II) Unreasonable restrictions on the ability of a third party authorized by the dealer to
157 securely access the dealer's dealer management computer system to share dealer data or
158 securely write dealer data to a dealer management computer system.

159 (III) Requiring unreasonable access to sensitive, competitive, or other confidential
160 business information of a third party as a condition for access dealer data.

161 (IV) It shall not be an unreasonable restriction to condition a third party's access to the
162 dealer management computer system on that third party's compliance with reasonable security
163 standards or operational protocols that the dealer management computer system vendor
164 specifies.

165 (V) Sharing dealer data with any third party, if sharing the data is not authorized by the
166 dealer.

167 (VI) Prohibiting or unreasonably limiting a dealer's ability to store, copy, securely share,
168 or use dealer data outside the dealer's dealer management computer system in any manner and
169 for any reason once it has been downloaded from the dealer management computer system.

170 (VII) Permitting access to or accessing dealer data without first obtaining the dealer's
171 express written consent in a standalone document or contractual provision that is conspicuous in
172 appearance, contained in a separate page or screen from any other written material, and requires
173 an independent mark or affirmation from a dealer principal, general manager, or other
174 management level employee of the dealership expressly authorized in writing by the dealer
175 principal or general manager.

176 (VIII) Upon receipt of a written request from a dealer, failing or refusing to block specific
177 data fields containing dealer data from being shared with one or more third parties. Where
178 blocking hinders, blocks, diminishes, or otherwise interferes with the functionality of a third party's
179 service or product or the dealer's ability to participate in an incentive or other program of a
180 manufacturer, factory branch, distributor, or distributor branch, or other third party authorized by
181 the dealer, the dealer management computer system vendor shall be held harmless from the
182 dealer's decision to block specified data fields, so long as the dealer management computer
183 system vendor was acting at the direction of the dealer.

184 (IX) Access, use, store, or share any dealer data from a dealer management computer

185 system in any manner other than as expressly permitted in its written agreement with the dealer.

186 (X) Fail to provide the dealer with the option and ability to securely obtain and push or
187 otherwise distribute specified dealer data within the dealer's dealer management computer
188 system to any third party instead of the third party receiving the dealer data directly from the
189 dealer's dealer management computer system vendor or providing the third party direct access
190 to the dealer's dealer management computer system. A dealer management computer system
191 vendor shall be held harmless for any errors, breach, misuse, or any harms directly or indirectly
192 caused by a dealer sharing data with any third party beyond the control of the dealer management
193 computer system vendor. In the event a dealer sharing data with a third party outside of the control
194 of the dealer computer management system vendor causes damage to the dealer management
195 computer system or any third party, the party or parties that caused the damage shall be liable
196 for the damage.

197 (XI) Fail to provide the dealer, within seven days of receiving a dealer's written request,
198 access to any System and Organization Control assessment, known as a SOC2 audit conducted
199 on behalf of the dealer management computer system vendor and related to the services licensed
200 by the dealer.

201 (XII) Fail to promptly provide a dealer, upon the dealer's written request, a written listing
202 of all entities with whom it is currently sharing any data from the dealer's dealer management
203 computer system and with whom it has, within the immediately 12 preceding months, shared any
204 data from the dealer's dealer management computer system, the specific data fields shared with
205 each entity identified, and the dates any data was shared, to the extent that information can
206 reasonably be stored by the dealership management computer system vendor.

207 (XIII) Upon receipt of a dealer's written request to terminate any contract or agreement for
208 the provision of hardware or software related to the dealer's dealer management computer
209 system, to fail to promptly provide a copy of the dealer's data maintained on its dealership
210 management computer system to the dealer in a secure, usable format.

211 Nothing in this section prevents the charging of a fee, which includes the ability of the
212 dealer management computer system vendor to recoup costs incurred to provide the services
213 involved and to make a reasonable profit on the services provided. Charges must be disclosed to
214 and approved by the dealer prior to the time the dealer incurs the charges.

215 Nothing in this section prevents any dealer or third party from discharging its obligations
216 as a service provider under federal, state, or local law to protect and secure protected dealer data.

217 Nothing in this section shall be deemed to prohibit a dealer management computer system
218 vendor from conditioning a party's access to, or integration with, a dealer's dealer management
219 computer system on that party's compliance with reasonable security standards or other
220 operational protocols that the dealer's computer management system vendor specifies.

221 For purposes of this subsection, the term "third party" shall not be applicable to any
222 manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof.

223 (i) Notwithstanding any of the terms or provisions contained in this section or in any
224 consent, authorization, release, novation, franchise, or other contract or agreement, whenever
225 any manufacturer, factory branch, distributor, distributor branch, dealer management computer
226 system vendor, or any third party acting on behalf of or through, or approved, referred, endorsed,
227 authorized, certified, granted preferred status, or recommended by, any manufacturer, factory
228 branch, distributor, distributor branch, or dealer management computer system vendor requires
229 that a new motor vehicle dealer provide any dealer, consumer, or customer data or information
230 through direct access to a dealer's computer system, the dealer is not required to provide, and
231 shall not be required to consent to provide in any written agreement, such direct access to its
232 computer system. The dealer may instead provide the same dealer, consumer, or customer data
233 or information specified by the requesting party by timely obtaining and pushing or otherwise
234 furnishing the requested data to the requesting party in a widely accepted file format such as
235 comma delimited. When a dealer would otherwise be required to provide direct access to its
236 computer system under the terms of a consent, authorization, release, novation, franchise, or

237 other contract or agreement, a dealer that elects to provide data or information through other
238 means may be charged a reasonable initial set-up fee and a reasonable processing fee based on
239 the actual incremental costs incurred by the party requesting the data for establishing and
240 implementing the process for the dealer. Any term or provision contained in any consent,
241 authorization, release, novation, franchise, or other contract or agreement that is inconsistent with
242 any term or provision contained in this subsection is voidable at the option of the dealer.

243 ~~(f)~~ (j) Notwithstanding the terms or conditions of any consent, authorization, release,
244 novation, franchise or other contract or agreement, every manufacturer, factory branch,
245 distributor, distributor branch, dealer management computer system vendor or any third party
246 acting on behalf of or through a manufacturer, factory branch, distributor, distributor branch or
247 dealer management computer system vendor shall fully indemnify, defend and hold harmless any
248 dealer or manufacturer, factory branch, distributor or distributor branch from all damages, attorney
249 fees and costs, other costs and expenses incurred by the dealer from complaints, claims or
250 actions arising out of manufacturer's, factory's branch, distributor's, distributor's branch, dealer
251 management computer system vendor's or any third party for its willful, negligent or illegal use or
252 disclosure of dealers consumer or customer data or other information in dealer's computer
253 system. The indemnification includes, but is not limited to, judgments, settlements, fines,
254 penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security
255 breaches and attorneys' fees arising out of complaints, claims, civil or administrative actions.

256 (k) The rights conferred on motor vehicle dealers in this section are not waivable and may
257 not be reduced or otherwise modified by any contract or agreement.

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

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

1 A manufacturer may not require dealer adherence to a performance standard or standards
2 which are not applied uniformly to other similarly situated dealers. In addition to any other

3 requirements of the law, the following shall apply:

4 (1) A performance standard, sales objective or program for measuring dealer performance
5 that may have a material effect on a dealer, including the dealer's right to payment under any
6 incentive or reimbursement program, and the application of the standard, sales objective or
7 program by a manufacturer, distributor or factory branch shall be reasonable and based on
8 accurate information, including, but not limited to, the dealer's specific local market
9 circumstances, geographical characteristics and traffic patterns.

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

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

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

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

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

NOTE: The purpose of this bill relates generally to motor vehicle dealers, distributors,

wholesalers and manufacturers; clarifying governing law; amending terms related to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; increasing the notice period for dealers where a manufacturer or distributor does not approve a successor dealer or executive manager; clarifying provision related to determination of distance between dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; clarifying indemnity practices; identifying unlawful practices; and clarifying manufacturer performance standards.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.