

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 173

By Senators Phillips, Tarr, Oliverio, Swope, Roberts,

Hamilton, Woodrum, and Stuart

[Introduced January 10, 2024]

1 A BILL to amend and reenact §17A-6A-3, §17A-6A-8a, §17A-6A-10, and §17A-6A-18 of the
2 Code of West Virginia, 1931, as amended, all relating generally to new motor vehicle
3 dealers, distributors, wholesalers, manufacturers, factory branches, and distributor
4 branches; defining terms; clarifying a manufacturer's obligations for warranty and recall
5 reimbursement to a new motor vehicle dealer; restricting manufacturer and distributor right
6 of first refusal; identifying and clarifying unlawful and prohibited practices; and clarifying
7 statutory authority of dealer data systems vendor agreements.

Be it enacted by the Legislature of West Virginia:

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

§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 dealer, including, but not limited to, the purchase, lease, or sale of
7 new motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

8 (2) "Designated family member" means the spouse, child, grandchild, parent, brother, or
9 sister of a new motor vehicle dealer who is entitled to inherit the dealer's ownership interest in the
10 new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been
11 designated in writing by a deceased dealer to succeed the deceased dealer in the new motor
12 vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With
13 respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a
14 court as the legal representative of the new motor vehicle dealer's property. The term also includes

15 the appointed and qualified personal representative and the testamentary trustee of a deceased
16 new motor vehicle dealer. However, the term means only that designated successor nominated by
17 the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or
18 distributor, if 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 a
23 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. The
33 term includes any sales promotion organization maintained by a manufacturer or distributor which
34 is engaged in promoting the sale of a particular make of new motor vehicles in this state to new
35 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 §17A-1-1 *et seq.* of this code, also means a
45 person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck,
46 their engines, power trains, or rear axles, including when engines, power trains or rear axles are
47 not warranted by the final manufacturer or assembler, and any distributor, factory branch, or
48 representative.

49 (9) "Motor vehicle" means that term as defined in §17A-1-1 of this code, including a
50 motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain vehicle
51 and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of
52 said section, but not including a farm tractor or farm equipment. The term "motor vehicle" also
53 includes a school bus, truck tractor, road tractor, truck, its component parts, including, but not
54 limited to, its engine, transmission, or rear axle manufactured for installation in a school bus, truck
55 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" or "dealer" means a person who holds a dealer agreement
60 granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the
61 business of purchasing, selling, leasing, exchanging, or dealing in new motor vehicles, service of
62 said vehicles, warranty work, and sale of parts who has an established place of business in this
63 state and is licensed by the Division of Motor Vehicles.

64 (12) "The operation and business of a new motor vehicle dealer or dealership" includes
65 selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing
66 warranty and recall work for a motor vehicle: *Provided*, That the provisions of this subdivision do

67 not apply to over the air updates.

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

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

73 (15) "Relevant market area" means the area located within a 20 air mile radius around an
74 existing same line-make new motor vehicle dealership: *Provided*, That a 15 mile relevant market
75 area as it existed prior to the effective date of this statute shall apply to any proposed new motor
76 vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle
77 dealer have executed on or before the effective date of this statute a written agreement, including
78 a letter of intent, performance agreement, or commitment letter concerning the establishment of
79 the proposed new motor vehicle dealership.

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

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

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

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

8 (3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid
9 the dealer for parts, work, and service, including reasonable and adequate allowances for
10 diagnostic time, including time communicating with the manufacturer, necessary for a qualified
11 technician to perform the service, in connection with warranty and recall services and the time
12 allowance for the performance of the diagnosis, work, and service. If a disagreement arises

13 between the manufacturer, distributor, or wholesaler, factory branch or distributor branch, and the
14 ~~new motor vehicle~~ dealer about the time allowance for the performance of the diagnosis, work, or
15 service, the ~~new motor vehicle~~ dealer shall submit a written request for modification of the time
16 allowance, which shall be presumed reasonable. A manufacturer, distributor, or wholesaler,
17 factory branch, or distributor branch shall not unreasonably deny a written request submitted by a
18 new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a
19 request submitted by a ~~new motor vehicle~~ dealer for an additional time allowance for either
20 diagnostic or repair work on a specific vehicle covered under warranty, provided the request
21 includes any information and documentation reasonably required by the manufacturer, distributor,
22 or wholesaler, factory branch, or distributor branch to assess the merits of the request; and

23 (4) Provide compensation to a new motor vehicle dealer for assistance requested by a
24 ~~customer~~ retail buyer or lessee whose vehicle was subjected to an over-the-air or remote change,
25 repair, or update to any part, system, accessory, or function by the vehicle manufacturer or
26 distributor, and performed at the dealership to satisfy the customer.

27 (b) In no event may:

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

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

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

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

43 (d) The retail rate charged by the dealer for parts is established by the dealer submitting to
44 the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders
45 that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service
46 repair orders that contain warranty-like parts covering repairs made no more than 180 days before
47 the submission and declaring the average percentage markup. A dealer may decide to submit a
48 single set of repair orders for the purpose of calculating both the labor rate and parts markup or
49 submit separate sets of repair orders for a labor rate and parts markup calculation.

50 (e) The retail rate customarily charged by the dealer for labor rate ~~must~~ shall be
51 established using the same process as provided under subsection (d) of this section and declaring
52 the average labor rate. The average labor rate ~~must~~ shall be determined by dividing the amount of
53 the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate
54 and parts markup rate are simultaneously declared by the dealer, the dealer may use the same
55 repair orders to complete each calculation as provided under subsection (d) of this section. A
56 reasonable allowance for labor for diagnostic time shall be either included in the manufacturer's
57 labor time allowance or listed as a separate compensable item. A dealer may request additional
58 time allowance for either diagnostic or repair time for a specific repair. ~~which~~ The request shall not
59 be unreasonably denied by the manufacturer.

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

62 (1) Repairs for manufacturer or distributor special events, specials, or promotional
63 discounts for customer repairs;

64 (2) Parts sold at wholesale;

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

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

68 (5) Tires; and

69 (6) Vehicle reconditioning.

70 (g) The average of the parts markup rates and labor rate is presumed to be reasonable and
71 ~~must go~~ goes into effect 30 days following the manufacturer's approval. A manufacturer or
72 distributor must approve or rebut the presumption by demonstrating that the submitted parts
73 markup rate or labor rate is: (1) Fraudulent or inaccurate; (2) not established in accordance with
74 this section; or (3) ~~the submitted parts markup rate or labor rate is~~ unreasonable in light of the
75 practices of all other same line-make ~~franchised motor vehicle~~ dealers in an economically similar
76 area of the state offering the same line-make vehicles, not later than 30 days after the dealer's
77 submission, or the dealer's submission shall be considered approved. If the average parts markup
78 rate or average labor rate is disputed by the manufacturer or distributor, the manufacturer or
79 distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons
80 for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy
81 of all calculations used by the manufacturer or distributor in determining the manufacturer or
82 distributor's position. If the manufacturer's or distributor's objection is based on the accuracy or
83 reasonableness of the ~~new motor vehicle~~ dealer's rate submission, the manufacturer or distributor
84 shall propose an adjustment of the average percentage parts markup or labor rate based on that
85 rebuttal not later than 30 days after the dealer's submission. If the ~~new motor vehicle~~ dealer does
86 not agree with the manufacturer's proposed average percentage parts markup or labor rate, ~~the~~
87 ~~new motor vehicle~~ the dealer may file a civil action in the circuit court for the county in which it
88 operates not later than 90 days after dealer's receipt of that proposal the written notice of rebuttal
89 or adjustment by the manufacturer or distributor. In the event a civil action is filed, the
90 manufacturer or distributor has the burden of proof to establish, by a preponderance of the

91 evidence, that the ~~new motor vehicle~~ dealer's submitted parts markup rate or labor rate was
92 fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light
93 of the practices of all other same line-make ~~franchised motor vehicle~~ dealers in an economically
94 similar area of the state offering the same line-make vehicles.

95 (h) Each manufacturer, in establishing a schedule of compensation for warranty work,
96 shall rely on the ~~vehicle~~ dealer's declaration of hourly labor rates and parts as stated in
97 subsections (d), (e), and (f) of this section and may not obligate any ~~vehicle~~ dealer to engage in
98 unduly burdensome or time-consuming documentation of rates or parts, including obligating
99 ~~vehicle~~ dealers to engage in transaction-by-transaction or part-by-part calculations.

100 (i) A dealer or manufacturer may demand that the average parts markup or average labor
101 rate be calculated using the process provided under subsections (d) and (e) of this section;
102 however, the demand for the average parts markup may not be made within 12 months of the last
103 parts markup declaration and the demand for the average labor rate may not be made within 12
104 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer
105 or manufacturer, the dealer shall determine the repair orders to be included in the calculation
106 under subsections (d) and (e) of this section.

107 (j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in §17A-1-1
108 of this code, with a gross vehicle weight in excess of 26,001 pounds, the manufacturer, distributor
109 and/or ~~O. E. M.~~ original equipment manufacturer supplier shall pay the dealer its incurred actual
110 time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the
111 dealer's designated parking area. The dealer shall be paid \$50 minimum for each operation that
112 requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may
113 not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge.
114 The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours
115 the manufacturer, distributor, and/or ~~O. E. M.~~ original equipment manufacturer supplier makes the

116 dealer stop working on a vehicle while the manufacturer, distributor, and/or ~~O. E. M.~~ original
117 equipment manufacturer supplier decides how it wants the dealer to proceed with the repairs.

118 (k) All claims made by ~~motor vehicle~~ dealers pursuant to this section for compensation for
119 delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall
120 be paid by the manufacturer within 30 days after approval and shall be approved or disapproved
121 by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall
122 be notified in writing of the grounds for disapproval. A claim which has been approved and paid
123 may not be charged back to the dealer unless it can be shown that the claim was false or
124 fraudulent, that the repairs were not properly made or were unnecessary to correct the defective
125 condition, or the dealer failed to reasonably substantiate the claim in accordance with the
126 reasonable written requirements of the manufacturer or distributor in effect at the time the claim
127 arose. ~~No~~ A Charge back may not be made until the dealer has had notice and an opportunity to
128 support the claim in question. An otherwise valid reimbursement ~~claims~~ claim may not be denied
129 once properly submitted within manufacturers' submission guidelines due to a clerical error or
130 omission, a dealer's incidental failure to comply with a specific non-material claim processing
131 requirement or administrative technicality, or based on a different level of technician technical
132 certification or the dealer's failure to subscribe to any manufacturer's computerized training
133 programs. The dealer ~~shall have~~ has 30 days to respond to any audit by a manufacturer or
134 distributor.

135 (l) Notwithstanding the terms of a ~~franchise~~ dealer agreement or provision of law in conflict
136 with this section, the dealer's delivery, preparation, warranty, and recall obligations ~~constitutes~~
137 constitute the dealer's sole responsibility for product liability ~~as between the dealer and~~
138 manufacturer. ~~and~~, Except for a loss caused by the dealer's failure to adhere to the obligations or a
139 loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's
140 modification of a product without manufacturer authorization, the manufacturer shall reimburse the

141 dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result
142 of the dealer having been named a party in a product liability action.

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

146 (1) The manufacturer shall use time allowances for the diagnosis and performance of the
147 warranty and recall work and services that are reasonable and adequate for the work or services
148 to be performed by a qualified technician.

149 (2) At the request of the ~~new motor vehicle~~ dealer, the manufacturer shall use any retail
150 labor rate and any retail parts markup percentage established in accordance with this section in
151 calculating the compensation;

152 (3) If the manufacturer provided a part or component to the ~~new motor vehicle~~ dealer at no
153 cost to use in performing repairs under a recall, campaign service action, or warranty repair, the
154 manufacturer shall provide to the ~~new motor vehicle~~ dealer an amount equal to the retail parts
155 markup for that part or component, which shall be calculated by multiplying the dealer cost for the
156 part or component as listed in the manufacturer's price schedule by the retail parts markup
157 percentage; and

158 (4) A manufacturer shall not assess penalties, surcharges, or similar costs to a ~~new motor~~
159 ~~vehicle~~ dealer, transfer or shift any costs to a franchisee dealer, limit allocation of vehicles or parts
160 to a ~~new motor vehicle~~ dealer, or otherwise take retaliatory action against a ~~new motor vehicle~~
161 dealer based on any ~~new motor vehicle~~ dealer's exercise of its rights under this section. This
162 section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part
163 in the ordinary course of business.

§17A-6A-10. Prohibited practices.

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

3 (1) 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 by
7 the manufacturer or distributor;

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

11 (3) 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 (4) 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 required or designated vendor or supplier. Notice in good faith to any
20 dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation
21 of this article;

22 (5) 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 if
26 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 (6) Refrain from participation in the management of, investment in, or the acquisition of
30 any other line of new motor vehicle or related products: ~~provided that~~ Provided, That the dealer
31 maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with
32 reasonable facilities requirements, and makes no change in the principal management of the
33 dealer. Notwithstanding the terms of any ~~franchise dealer~~ dealer agreement, a manufacturer or distributor
34 may not enforce any requirements, including facility or image requirements, that a ~~new motor~~
35 ~~vehicle~~ 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 such actions is on the manufacturer or
39 distributor and must be proven by a preponderance of the evidence;

40 (7) 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 (8) 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 article
48 prevents a ~~motor vehicle~~ dealer, after a civil action is filed, from entering into any agreement of
49 settlement, arbitration, assignment, or waiver of a trial by jury;

50 (9) Coerce or require any dealer, whether by agreement, program, incentive provision, or
51 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 preceding 15 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~~ retail buyer, lessee, or dealer paid on individual new motor vehicle sales or leases
57 under a program offered after the effective date of this subdivision ~~and~~ that are available to more
58 than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or
59 installation of franchiser image elements required by and approved by the manufacturer, factory
60 branch, distributor, or distributor branch, and completed within 15 years preceding the program,
61 ~~shall be~~ the dealer is determined to be in compliance with the program requirements pertaining to
62 construction of facilities or installation of signs or other franchisor image elements that would
63 replace or substantially alter those previously constructed or installed within that 15-year period:
64 Provided, That the provisions of this subdivision apply to any dealer who obtains ownership, either
65 through a stock purchase, asset purchase or other means, of a new motor vehicle dealership
66 which has met the requirements of this subdivision within the 15-year period set forth in this
67 subdivision, unless the dealer selling the new motor vehicle dealership has signed an agreement
68 with the manufacturer agreeing to dealer facility improvements or the installation of franchiser
69 image elements prior to an agreement to transfer ownership to a subsequent dealer. This
70 subdivision shall not apply to a program that is in effect with more than one dealer in the state on
71 the effective date of this subsection, nor to any renewal of ~~such~~ the program, nor to a modification
72 that is not a modification of a material term or condition of ~~such~~ the program;

73 (10) Condition the award, sale, transfer, relocation, or renewal of a ~~franchise or~~ dealer
74 agreement, or to condition sales, service, parts, or finance incentives upon site control or an
75 agreement to renovate or make substantial improvements to a facility: *Provided,* That voluntary
76 and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited
77 to, a written agreement for which the dealer has accepted separate and valuable consideration,
78 does not constitute a violation; ~~and~~

79 (11) Enter into a contractual requirement imposed by the manufacturer, distributor, or a
80 captive finance source as follows:

81 (A) In this section, "captive finance source" means any financial source that provides
82 automotive-related loans or purchases retail installment contracts or lease contracts for motor
83 vehicles in this state and is, directly or indirectly, owned, operated, or controlled by ~~such~~ the
84 manufacturer, factory branch, distributor or distributor branch.

85 (B) It is unlawful for any manufacturer, factory branch, captive finance source, distributor
86 or distributor branch, or any field representative, officer, agent, or any representative of them,
87 notwithstanding the terms, provisions, or conditions of any dealer agreement ~~or franchise~~, to
88 require any of its ~~franchised~~ dealers located in this state to agree to any terms, conditions, or
89 requirements in subdivisions (1) through (10), inclusive, of this subsection in order for ~~any such~~ the
90 dealer to sell to any captive finance source any retail installment contract, loan, or lease of any
91 new motor vehicles purchased or leased by any of the dealer's customers, or to be able to
92 participate in, or otherwise, directly or indirectly, obtain the benefits of the ~~consumer~~ retail buyer or
93 lessee transaction incentive program payable to the ~~consumer~~ retail buyer, lessee, or the dealer
94 and offered by or through any captive finance source as to that incentive program.

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

97 (D) It is unlawful for a manufacturer or distributor to use any subsidiary corporation,
98 affiliated corporation, or any other controlled corporation, partnership, association, or person to
99 accomplish what would otherwise be illegal conduct under this section on the part of the
100 manufacturer or distributor; or

101 (12) Agree to any term or provision in the dealer agreement which gives a manufacturer or
102 distributor the right to unilaterally amend the dealer agreement governing the operation and
103 business of a dealer, including, but not limited to, the purchase, sale, lease, or service of new
104 motor vehicles except as provided for in this article. That term or provision is considered null and
105 void. Any amendment to a dealer agreement governing the purchase, sale, lease, or service of

106 new motor vehicles must be agreed upon by both the manufacturer, factory branch, distributor, or
107 distributor branch and the dealer at the time the dealer agreement is amended.

108 (b) A manufacturer or distributor may not do any of the following:

109 (1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a
110 reasonable time and in reasonable quantities relative to the ~~new motor vehicle~~ dealer's market
111 area and facilities, unless the failure is caused by acts or occurrences beyond the control of the
112 manufacturer or distributor, or unless the failure results from an order by the ~~new motor vehicle~~
113 dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. A
114 manufacturer or distributor may not penalize a ~~new motor vehicle~~ dealer for an alleged failure to
115 meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

116 (2) Refuse to offer to its same line-make ~~new motor vehicle~~ dealers all models
117 manufactured for that line-make, including, but not limited to, any model that contains a separate
118 label or badge indicating an upgraded version of the same model regardless of the new motor
119 vehicle's means of propulsion: *Provided*, That the dealer meets any reasonable sales, warranty
120 service repair, and recall standards established by the manufacturer or distributor. This prohibition
121 includes a new line make established by a manufacturer with a dealer agreement in this state, or a
122 subsidiary thereof, or a company affiliated through ownership of the manufacturer, factory branch,
123 distributor, or distributor branch of at least 25 percent of the equity of the company. This provision
124 does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

125 (3) Require as a prerequisite to receiving a model or series of new motor vehicles, that a
126 ~~new motor vehicle~~ dealer pay an extra unreasonable acquisition fee or surcharge, or purchase
127 unreasonable advertising displays or other materials, or conduct unreasonable facility or image
128 remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of
129 unreasonable upgrade requirement;

130 (4) Use new motor vehicles in transit but not yet in the ~~new motor vehicle~~ dealer's physical
131 possession in any sales effective or efficiency formula to the detriment of the ~~new motor vehicle~~
132 dealer;

133 (5) Refuse to disclose to a ~~new motor vehicle~~ dealer the method and manner of
134 distribution of new motor vehicles by the manufacturer or distributor, including any numerical
135 calculation or formula used, nationally or within the dealer's market, to make the allocations within
136 30 days of a request. Any information or documentation provided by the manufacturer may be
137 subject to a reasonable confidentiality agreement;

138 (6) Refuse to disclose to a ~~new motor vehicle~~ dealer the total number of new motor
139 vehicles of a given model, which the manufacturer or distributor has sold during the current model
140 year within the dealer's marketing district, zone, or region, whichever geographical area is the
141 smallest within 30 days of a request;

142 (7) Increase prices of new motor vehicles which the ~~new motor vehicle~~ dealer had ordered
143 and then eventually delivered to the same retail ~~consumer~~ buyer or lessee for whom the vehicle
144 was ordered if the order was made prior to the dealer's receipt of the written official price increase
145 notification. A sales contract signed by a private retail consumer and binding on the dealer which
146 has been submitted to the vehicle manufacturer is evidence of each order. In the event of
147 manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate
148 received by a dealer shall be passed on to the private retail ~~consumer~~ buyer or lessee by the
149 dealer. Any price reduction in excess of \$5 shall apply to all new motor vehicles in the dealer's
150 inventory which were subject to the price reduction. A price difference applicable to new model or
151 series motor vehicles at the time of the introduction of the new models or the series is not a price
152 increase or price decrease. This subdivision does not apply to price changes caused by the
153 following:

154 (A) The addition to a motor vehicle of required or optional equipment pursuant to state or
155 federal law;

156 (B) In the case of foreign-made vehicles or components, revaluation of the United States
157 dollar; or

158 (C) Any increase in transportation charges due to an increase in rates charged by a
159 common carrier and transporters;

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

164 (9) Release to an outside party, except under subpoena or in an administrative or judicial
165 proceeding to which the ~~new motor vehicle~~ dealer or the manufacturer or distributor are parties,
166 any business, financial, or personal information which has been provided by the dealer to the
167 manufacturer or distributor, unless the ~~new motor vehicle~~ dealer gives his or her written consent;

168 (10) Deny a ~~new motor vehicle~~ dealer the right to associate with another ~~new motor~~
169 ~~vehicle~~ dealer for any lawful purpose;

170 (11) Establish, operate, or engage in the business of a new motor vehicle dealership. A
171 manufacturer or distributor is not considered to have established, operated, or engaged in the
172 business of a new motor vehicle dealership if the manufacturer or distributor is:

173 (A) Operating a preexisting dealership temporarily for a reasonable period;

174 (B) Operating a preexisting dealership which is for sale at a reasonable price; ~~and~~ or

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

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

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

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

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

186 (13) A manufacturer or distributor may own an interest in a ~~franchised~~ dealer, or otherwise
187 control a dealership, for a period not to exceed 12 months from the date the manufacturer or
188 distributor acquires the dealership if:

189 (A) The person from whom the manufacturer or distributor acquired the dealership was a
190 ~~franchised~~ dealer; and

191 (B) The dealership is for sale by the manufacturer or distributor at a reasonable price and
192 on reasonable terms and conditions;

193 (14) The 12-month period may be extended for an additional 12 months. Notice of any
194 ~~such~~ extension of the original 12-month period must be given to any dealer of the same line-make
195 whose dealership is located in the same county, or within 20 air miles of, the dealership owned or
196 controlled by the manufacturer or distributor prior to the expiration of the original 12-month period.
197 Any dealer receiving the notice may protest the proposed extension within 30 days of receiving
198 notice by bringing a declaratory judgment action in the circuit court for the county in which the ~~new~~
199 ~~motor vehicle~~ dealer is located to determine whether good cause exists for the extension;

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

206 (A) Has made a significant investment in the dealership, subject to loss;

207 (B) Has an ownership interest in the dealership; and

208 (C) Operates the dealership under a plan to acquire full ownership of the dealership within
209 a reasonable time and under reasonable terms and conditions;

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

212 (17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a
213 dealership within 60 days after receipt of a written application from the ~~new motor vehicle~~ dealer
214 on the forms generally ~~utilized~~ used by the manufacturer or distributor for ~~such~~ that purpose and
215 containing the information required ~~therein~~ in the application. Failure to respond to the request
216 within the 60 days is consent;

217 (18) Unfairly prevent a ~~new motor vehicle~~ dealer from receiving reasonable compensation
218 for the value of the new motor vehicle dealership;

219 (19) Audit any ~~motor vehicle~~ dealer in this state for warranty parts or warranty service
220 compensation, service compensation, service or sales incentives, manufacturer rebates, or other
221 forms of sales incentive compensation more than 12 months after the claim for payment or
222 reimbursement has been made by the ~~automobile~~ dealer. A charge back may not be made until
223 the dealer has had notice and an opportunity to support the claim in question within 30 days of
224 receiving notice of the charge back. An otherwise valid reimbursement ~~claims~~ claim may not be
225 denied once properly submitted in accordance with material and reasonable manufacturer
226 guidelines unless the factory can show that the claim was false or fraudulent, or that the ~~new motor~~
227 ~~vehicle~~ dealer failed to reasonably substantiate the claim consistent with the manufacturer's
228 written, reasonable, and material guidelines. This subsection does not apply where a claim is
229 fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited
230 dealer for all documented copying, postage, and administrative and personnel costs reasonably
231 incurred by the dealer during the audit. Any charges to a dealer as a result of the audit ~~must~~ shall
232 be separately billed to the dealer;

233 (20) ~~Unreasonably restrict~~ Restrict or attempt to restrict a dealer's ownership of a
234 dealership through noncompetition covenants, site control, sublease, collateral pledge of lease,
235 right of first refusal, or option to purchase; ~~or otherwise. A right of first refusal is created when:~~

236 (A) ~~A manufacturer has a contractual right of first refusal to acquire the new motor vehicle~~
237 ~~dealer's assets where the dealer owner receives consideration, terms and conditions that are~~
238 ~~either the same as or better than those they have already contracted to receive under the~~
239 ~~proposed change of more than 50 percent of the dealer's ownership;~~

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

243 (i) ~~A designated family member of one or more of the dealer owners;~~

244 ~~(ii) A manager employed by the dealer in the dealership during the previous five years and~~
245 ~~who is otherwise qualified as a dealer operator;~~

246 ~~(iii) A partnership or corporation controlled by a designated family member of one of the~~
247 ~~dealers; or~~

248 ~~(iv) A trust established or to be established for the purpose of allowing the new vehicle~~
249 ~~dealer to continue to qualify as such under the manufacturer's or distributor's standards, or to~~
250 ~~provide for the succession of the franchise agreement to designated family members or qualified~~
251 ~~management in the event of the death or incapacity of the dealer or its principle owner or owners;~~

252 ~~(C) Upon exercising the right of first refusal by a manufacturer, it eliminates any~~
253 ~~requirement under its dealer agreement or other applicable provision of this statute that the~~
254 ~~manufacturer evaluate, process, or respond to the underlying proposed transfer by approving or~~
255 ~~rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer~~
256 ~~by any party;~~

257 (D) ~~Except as otherwise provided in this section, the manufacturer or distributor agrees to~~
258 ~~pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall~~

259 ~~include, but not be limited to, accounting, legal, or appraisal services fees that are incurred by the~~
260 ~~proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first~~
261 ~~refusal. Payment of the expenses and fees for professional services are not required if the dealer~~
262 ~~fails to submit an accounting of those expenses and fees within 20 days of the dealer's receipt of~~
263 ~~the manufacturer's or distributor's written request for such an accounting. Such a written account~~
264 ~~of fees and expenses may be requested by a manufacturer or distributor before exercising its right~~
265 ~~of first refusal;~~

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

268 (22) Make any material or unreasonable change to ~~in any franchise agreement, including,~~
269 ~~but not limited to,~~ the dealer's area of responsibility without giving the ~~new motor vehicle~~ dealer
270 written notice, by certified mail of the change at least 60 days prior to the effective date of the
271 change and which shall include an explanation of the basis for the alteration. Upon written request
272 from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially
273 acceptable copy of all information, data, evaluations, and methodology relied on or based its
274 decision on, to propose the change to the dealer's area of responsibility. Any information or
275 documentation provided by the manufacturer or distributor may be produced subject to a
276 reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a
277 ~~new motor vehicle~~ dealer's area of responsibility, and after the completion of any internal appeal
278 process pursuant to the manufacturer's or distributor's policy manual, the ~~motor vehicle~~ dealer
279 may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the
280 manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of
281 a ~~motor vehicle~~ dealer's area of responsibility unless the franchisor manufacturer shows, by a
282 preponderance of the evidence, that the alteration is reasonable and justifiable in light of market
283 conditions. If a motor vehicle dealer petitions the court, ~~no~~ an alteration to a ~~motor vehicle~~ dealer's
284 area of responsibility shall not become effective until a final determination by the court. If a ~~new~~

285 ~~motor vehicle~~ dealer's area of responsibility is altered, the manufacturer shall allow 24 months for
286 the ~~motor vehicle~~ dealer to become sales effective prior to taking any action claiming a breach or
287 nonperformance of the ~~motor vehicle~~ dealer's sales performance responsibilities;

288 (23) Fail to reimburse a ~~new motor vehicle~~ dealer, at the dealer's regular rate, or the full
289 and actual cost of providing a loaner vehicle to any ~~customer~~ retail buyer or lessee who is having a
290 motor vehicle serviced at the dealership if the provision of the loaner motor vehicle is required by
291 the manufacturer;

292 (24) Compel a ~~new motor vehicle~~ dealer, through its finance subsidiaries, to agree to
293 unreasonable operating requirements, or to directly or indirectly terminate a ~~franchise dealer~~
294 agreement through the actions of a finance subsidiary of the ~~franchisor~~ manufacturer. This
295 subsection does not limit the right of a finance subsidiary to engage in business practices in
296 accordance with the usage of trade in retail or wholesale vehicle financing;

297 (25) Discriminate directly or indirectly between dealers on vehicles of like grade, line,
298 model, or quantity where the effect of the discrimination would substantially lessen competition;

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

301 (27) Require or coerce any ~~new motor vehicle~~ dealer to sell, offer to sell, or sell exclusively
302 an extended service contract, maintenance plan, or similar product, including gap or other
303 products offered, endorsed, or sponsored by the manufacturer or distributor by the following
304 means:

305 (A) By an act of statement that the manufacturer or distributor will adversely impact the
306 dealer, whether it is express or implied;

307 (B) By a contract made to the dealer on the condition that the dealer ~~shall sell~~ sells, offer
308 offers to sell, or ~~sell~~ sells exclusively an extended service contract, extended maintenance plan, or
309 similar product offered, endorsed, or sponsored by the manufacturer or distributor;

310 (C) By measuring the dealer's performance under the ~~franchise~~ dealer agreement based
311 on the sale of extended service contracts, extended maintenance plans, or similar products
312 offered, endorsed, or sponsored by the manufacturer or distributor;

313 (D) By requiring the dealer to actively promote the sale of extended service contracts,
314 extended maintenance plans, or similar products offered, endorsed, or sponsored by the
315 manufacturer or distributor: ~~(E)~~ Provided, That nothing in this paragraph prohibits a manufacturer
316 or distributor from providing incentive programs to a ~~new vehicle~~ dealer who makes the voluntary
317 decision to offer to sell, sell, or sell exclusively an extended service contract, extended
318 maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or
319 distributor;

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

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

335 (d) Except as may otherwise be provided in this article, a manufacturer ~~or franchisor~~ may
336 not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail ~~customer,~~
337 buyer or lessee offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or
338 directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle to a
339 retail ~~customer or consumer~~ buyer or lessee in this state, except through a ~~new motor vehicle~~
340 dealer holding a franchise for the line-make covering ~~such~~ the new motor vehicle. This subsection
341 does not apply to manufacturer ~~or franchisor~~ sales of new motor vehicles to charitable
342 organizations, qualified vendors, or employees of the manufacturer ~~or franchisor~~.

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

350 (f) It is ~~be~~ unlawful for any manufacturer, factory branch, distributor, or distributor branch,
351 when providing a new motor vehicle to a ~~new motor vehicle~~ dealer for offer, sale, or lease in this
352 state to the public, to fail to provide to the dealer a written disclosure that may be provided to a
353 potential retail buyer or ~~lessor~~ lessee of the new motor vehicle of each accessory or function of the
354 motor vehicle that may be initiated, updated, changed, or maintained by the manufacturer or
355 distributor through over the air or remote means, and the charge to the ~~customer~~ retail buyer or
356 lessee for the initiation, update change, or maintenance that is known at the time of sale. A
357 manufacturer or distributor may comply with this subdivision by notifying the ~~new motor vehicle~~
358 dealer that the information is available on a website or by other digital means.

359 (g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act
360 prejudicial against a new motor vehicle dealer arising from the retail price at which a ~~new motor~~
361 ~~vehicle~~ dealer sells a new motor vehicle.

362 (h) Notwithstanding the terms of any ~~franchise or~~ dealer agreement, or the terms of any
363 program or policy, a manufacturer or distributor may not do any of the following if it has a dealer
364 agreement with any ~~new motor vehicle~~ dealer in this state and if the manufacturer or distributor
365 permits retail customers the option of reserving the purchase or lease of a vehicle through a
366 manufacturer or distributor reservation system:

367 (1) Fail to assign any retail vehicle reservation, or request to purchase, or lease received
368 by the manufacturer or distributor from a resident of this state to the ~~franchised~~ dealer authorized
369 to sell that make and model which is designated by the ~~customer~~ retail buyer or lessee, or if none is
370 designated, to its ~~franchised~~ dealer authorized to sell that make and model located in closest
371 proximity to the ~~customer's~~ retail buyer or lessee's location: *Provided*, That if the ~~customer~~ retail
372 buyer or lessee does not purchase or lease the vehicle from that dealer within 10 days of the new
373 motor vehicle being received by the dealer, or if the ~~customer~~ retail buyer or lessee requests that
374 the transaction be assigned to another dealer, then the manufacturer or distributor may assign the
375 transaction to another ~~franchised~~ dealer authorized to sell that make and model;

376 (2) Prohibit or ~~unreasonably~~ interfere with a ~~new motor vehicle~~ dealer negotiating the final
377 purchase price of the new motor vehicle with a retail ~~customer~~ buyer or lessee that has reserved
378 the purchase or lease through a manufacturer or distributor reservation system;

379 (3) Prohibit or ~~unreasonably~~ interfere with a ~~new motor vehicle~~ dealer offering and
380 negotiating directly with the customer retail buyer or lessee the terms of vehicle financing or
381 leasing through all sources available to the dealer for the retail ~~customer~~ buyer or lessee that has
382 reserved the purchase or lease of a new motor vehicle through a manufacturer or distributor
383 reservation system;

384 (4) Prohibit or ~~unreasonably~~ interfere with a ~~new motor vehicle~~ dealer's ability to offer to sell
385 or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed
386 asset protection agreement, or any other vehicle-related products and services offered by the
387 dealer with a retail ~~customer~~ buyer or lessee that has reserved to purchase or lease through a
388 manufacturer or distributor reservation system: *Provided*, That a manufacturer, distributor, or
389 captive finance source shall not be required to finance the product or service;

390 (5) Prohibit or ~~unreasonably~~ interfere with a ~~new motor vehicle~~ dealer directly negotiating
391 the trade-in value the ~~customer~~ retail buyer or lessee will receive, or prohibit the dealer from
392 conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes
393 contractually obligated to accept the trade-in value ~~to~~ negotiated with a retail ~~customer~~ buyer or
394 lessee that has reserved to purchase or lease a new motor vehicle through the manufacturer or
395 distributor reservation system;

396 (6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

397 (7) Nothing contained in this subdivision shall:

398 (A) Require that a manufacturer or distributor allocate or supply additional or
399 supplemental inventory to a ~~franchised~~ dealer located in this state in order to satisfy a retail
400 ~~customer's~~ buyer or lessee's vehicle reservation or request submitted directly to the manufacturer
401 or distributor as provided in this section;

402 (B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision,
403 the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle
404 submitted directly by a ~~customer or potential customer~~ retail buyer or lessee or a potential retail
405 buyer or lessee to a manufacturer or distributor reservation system; or

406 (C) Apply to a reservation or request to purchase or lease a new motor vehicle through the
407 manufacturer or distributor received from the ~~customer~~ retail buyer or lessee that is a resident of
408 this state if the ~~customer~~ retail buyer or lessee designates a dealer outside of this state to be
409 assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the

410 ~~customer's retail buyer or lessee's~~ location is in another state and the manufacturer or distributor
411 assigns the reservation or request to purchase or lease to that dealer.

412 ~~(8)(i)~~ Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer
413 or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement
414 with any ~~new motor vehicle~~ dealer in this state, offer new motor vehicles through a subscription
415 directly to a retail ~~customer or consumer~~ buyer or lessee. However, this subsection is not intended
416 to prevent a manufacturer or distributor from providing or offering new motor vehicles through a
417 subscription program through a ~~new motor vehicle~~ dealer for ~~retail sales to a customer~~ sale or
418 lease to a retail buyer or lessee.

419 ~~(i)(j)~~ Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer
420 or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement
421 with any ~~new motor vehicle~~ dealer in this state, offer direct financing for the purchase, lease, or
422 other conveyance of a new motor vehicle to a retail ~~customer~~ buyer or lessee. However, this
423 subsection is not intended to prevent a manufacturer or distributor from providing or offering a
424 financing program through a ~~new motor vehicle~~ dealer which is available for retail ~~customers~~
425 buyers or lessees.

426 (k) A manufacturer may not coerce or require any dealer, whether by agreement, program,
427 incentive provision, or provision for loss of incentive payments or other benefits, to amend its
428 dealer agreement or to establish a dealer agreement under which the manufacturer:

429 (1) Maintains a website or other electronic or digital means of communication for
430 negotiating prices or other binding terms of sale or lease of new motor vehicles directly with retail
431 buyers or lessees, including, but not limited to, agreements between the manufacturer, factory
432 branch, distributor, or distributor branch on prices or other substantive terms for the sale or leasing
433 of new motor vehicles directly with retail buyers or lessees;

434 (2) Retains ownership of new motor vehicles until they are sold or leased to retail buyers or
435 lessees; except that, a manufacturer or distributor may maintain a common supply of new motor

436 vehicles to which it retains ownership until the new motor vehicles are sold to dealers pursuant to
437 the manufacturer or distributor's allocation policies and procedures, and may maintain a common
438 supply of new motor vehicles from which a dealer may buy vehicles for the dealer's inventory
439 without having reached agreement for sale or lease of any new motor vehicle with a retail buyer or
440 lessee if the manufacturer, factory branch, or distributor, or distributor branch does not otherwise
441 allow its dealers to obtain stock inventory through the new motor vehicle allocation process and
442 pursuant to the manufacturer or distributor's allocation policies and procedures;

443 (3) Consigns new motor vehicles to dealers for dealer inventory or for sale to a retail buyer
444 or lessee;

445 (4) Reserves the right to negotiate binding terms of sale or lease directly with retail buyers
446 or lessees of new motor vehicles; or

447 (5) Designates dealers to be only delivery agents for new motor vehicles, for which the
448 binding terms of sale or lease are negotiated directly between the manufacturer and the retail
449 buyer or lessee of the new motor vehicle.

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

1 Notwithstanding the terms, provisions, or requirements of any ~~franchise~~ dealer 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~~ dealer data systems vendor, or
4 any subsidiary, affiliate, or partner of a manufacturer or distributor, or captive finance source or
5 ~~dealer management system~~ dealer data systems vendor, the provisions of this code apply to all
6 such agreements and contracts listed in this section or governed by ~~the~~ this article. Any provisions
7 in the agreements and contracts which violate the terms of this section are null and void.