

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 379

BY SENATORS GAUNCH AND JEFFRIES

[Introduced February 21, 2017; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §17A-6A-3 of the Code of West Virginia, 1931, as amended, relating
 2 to excluding certain manufacturers and motor vehicles from the definitions of
 3 “manufacturer” and “motor vehicle” under the law regulating motor vehicle dealers,
 4 distributors, wholesalers and manufacturers.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 6A. 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 purchase,
 6 lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

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

16 successor nominated by the new motor vehicle dealer in a written document filed by the dealer
17 with the manufacturer or distributor, if such a document is filed.

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

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

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

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

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

41 (8) "Manufacturer" means any person who manufactures or assembles new motor

42 vehicles; or any distributor, factory branch or factory representative and, in the case of a school
43 bus, truck tractor, road tractor or truck as defined in section one, article one of this chapter, also
44 means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor
45 or truck, their engines, power trains or rear axles, including when engines, power trains or rear
46 axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch
47 or representative: Provided, That the term "manufacturer" does not apply to a manufacturer of
48 engines for school buses, truck tractors, road tractors, or trucks, as defined in section one, article
49 one of this chapter, if the manufacturer: (i) Owned an interest in a dealer or dealership, operated
50 a dealership, or acted in the capacity of a new motor vehicle dealer as of January 1, 2016, but
51 does not otherwise manufacture motor vehicles as defined in this article; and (ii) the manufacturer
52 provides to motor vehicle dealers on substantially equal terms access to all support for completing
53 repairs, including parts and assemblies, training and technical service bulletins and other
54 information concerning repairs, that the manufacturer provides to facilities owned, operated or
55 controlled by the manufacturer.

56 (9) "Motor vehicle" means that term as defined in section one, article one of this chapter,
57 including motorcycle, school bus, truck tractor, road tractor, truck, recreational vehicle, all-terrain
58 vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv),
59 respectively, of said section, but not including a farm tractor or farm equipment. The term "motor
60 vehicle" also includes, in the case of a school bus, truck tractor, road tractor, or truck, its
61 component parts, including, but not limited to, its engine, transmission or rear axle manufactured
62 for installation in a school bus, truck tractor, road tractor or truck: Provided, That the term "motor
63 vehicle" does not apply to engines manufactured for school buses, truck tractors, road tractors,
64 or trucks, as defined in section one, article one of this chapter, if the manufacturer of those
65 engines: (i) Owned an interest in a dealer or dealership, operated a dealership, or acted in the
66 capacity of a new motor vehicle dealer as of January 1, 2016, but does not otherwise manufacture
67 motor vehicles as defined in this article; and (ii) the manufacturer provides to motor vehicle dealers

68 on substantially equal terms access to all support for completing repairs, including parts and
69 assemblies, training and technical service bulletins and other information concerning repairs, that
70 the manufacturer provides to facilities owned, operated or controlled by the manufacturer.

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

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

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

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

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

NOTE: The purpose of this bill is to exclude certain manufacturers and motor vehicles from the definitions of "manufacturer" and "motor vehicle" under the law regulating motor vehicle dealers, distributors, wholesalers and manufacturers.

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