

SB 516

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

SENATE BILL NO. 516

(By Senator Wooten, et al)



PASSED March 9, 1994

In Effect 90 days from Passage

E N R O L L E D

Senate Bill No. 516

(By SENATORS WOOTON, MINARD, ROSS, YODER, DITMAR,
WAGNER, HUMPHREYS, WIEDEBUSCH AND DALTON)

[Passed March 9, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited practices of automobile manufacturers and distributors.

Be it enacted by the Legislature of West Virginia:

That section ten, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLE-SALERS AND MANUFACTURERS.

§17A-6A-10. Prohibited practices.

- 1 (1) A manufacturer or distributor shall not require
- 2 any new motor vehicle dealer in this state to do any
- 3 of the following:
 - 4 (a) Order or accept delivery of any new motor
 - 5 vehicle, part or accessory thereof, equipment or any
 - 6 other commodity not required by law which was not
 - 7 voluntarily ordered by the new motor vehicle dealer.

8 This section shall not be construed to prevent the
9 manufacturer or distributor from requiring that new
10 motor vehicle dealers carry a reasonable inventory of
11 models offered for sale by the manufacturer or
12 distributor.

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

18 (c) Participate monetarily in any advertising cam-
19 paign or contest, or purchase any promotional mate-
20 rials, display devices or display decorations or mate-
21 rials at the expense of the new motor vehicle dealer.

22 (d) Enter into any agreement with the manufacturer
23 or distributor or do any other act prejudicial to the
24 new motor vehicle dealer by threatening to terminate
25 a dealer agreement or any contractual agreement or
26 understanding existing between the dealer and the
27 manufacturer or distributor. Notice in good faith to
28 any dealer of the dealer's violation of any terms or
29 provisions of the dealer agreement shall not constitute
30 a violation of this article.

31 (e) Change the capital structure of the new motor
32 vehicle dealership or the means by or through which
33 the dealer finances the operation of the dealership if
34 the dealership at all times meets any reasonable
35 capital standards determined by the manufacturer in
36 accordance with uniformly applied criteria.

37 (f) Refrain from participation in the management of,
38 investment in, or the acquisition of any other line of
39 new motor vehicle or related products, provided that
40 the dealer maintains a reasonable line of credit for
41 each make or line of vehicle, remains in compliance
42 with reasonable facilities requirements, and makes no
43 change in the principal management of the dealer.

44 (g) Change the location of the new motor vehicle
45 dealership or make any substantial alterations to the
46 dealership premises, where to do so would be

47 unreasonable.

48 (h) Prospectively assent to a release, assignment,
49 novation, waiver or estoppel which would relieve any
50 person from liability imposed by this article or require
51 any controversy between a new motor vehicle dealer
52 and a manufacturer or distributor to be referred to a
53 person other than the duly constituted courts of the
54 state or the United States, if the referral would be
55 binding upon the new motor vehicle dealer.

56 (2) A manufacturer or distributor shall not do any of
57 the following:

58 (a) Fail to deliver new motor vehicles or new motor
59 vehicle parts or accessories within a reasonable time
60 and in reasonable quantities relative to the new motor
61 vehicle dealer's market area and facilities, unless the
62 failure is caused by acts or occurrences beyond the
63 control of the manufacturer or distributor, or unless
64 the failure results from an order by the new motor
65 vehicle dealer in excess of quantities reasonably and
66 fairly allocated by the manufacturer or distributor.

67 (b) Refuse to disclose to a new motor vehicle dealer
68 the method and manner of distribution of new motor
69 vehicles by the manufacturer or distributor.

70 (c) Refuse to disclose to a new motor vehicle dealer
71 the total number of new motor vehicles of a given
72 model, which the manufacturer or distributor has sold
73 during the current model year within the dealer's
74 marketing district, zone or region, whichever geo-
75 graphical area is the smallest.

76 (d) Increase prices of new motor vehicles which the
77 new motor vehicle dealer had ordered and then
78 eventually delivered to, the same retail consumer for
79 whom the vehicle was ordered, if the order was made
80 prior to the dealer's receipt of the written official price
81 increase notification. A sales contract signed by a
82 private retail consumer and binding on the dealer
83 shall constitute evidence of each order. In the event of
84 manufacturer or distributor price reductions or cash
85 rebates, the amount of any reduction or rebate

86 received by a dealer shall be passed on to the private
87 retail consumer by the dealer. Any price reduction in
88 excess of five dollars shall apply to all vehicles in the
89 dealer's inventory which were subject to the price
90 reduction. A price difference applicable to new model
91 or series motor vehicles at the time of the introduction
92 of the new models or the series shall not be considered
93 a price increase or price decrease. This subdivision
94 shall not apply to price changes caused by the
95 following:

96 (i) The addition to a motor vehicle of required or
97 optional equipment pursuant to state or federal law.

98 (ii) In the case of foreign made vehicles or compo-
99 nents, revaluation of the United States dollar.

100 (iii) Any increase in transportation charges due to an
101 increase in rates charged by a common carrier and
102 transporters.

103 (e) Offer any refunds or other types of inducements
104 to any dealer for the purchase of new motor vehicles
105 of a certain line make to be sold to this state or any
106 political subdivision of this state without making the
107 same offer available upon request to all other new
108 motor vehicle dealers of the same line make.

109 (f) Release to an outside party, except under subpoe-
110 na or in an administrative or judicial proceeding to
111 which the new motor vehicle dealer or the manufac-
112 turer or distributor are parties, any business, financial
113 or personal information which has been provided by
114 the dealer to the manufacturer or distributor, unless
115 the new motor vehicle dealer gives his or her written
116 consent.

117 (g) Deny a new motor vehicle dealer the right to
118 associate with another new motor vehicle dealer for
119 any lawful purpose.

120 (h) Establish a dealership which would unfairly
121 compete with a new motor vehicle dealer of the same
122 line make operating under a dealer agreement with
123 the manufacturer or distributor in the relevant
124 market area. A manufacturer or distributor shall not

125 be considered to be unfairly competing if the manufac-
126 turer or distributor is:

127 (i) Operating a dealership temporarily for a reason-
128 able period.

129 (ii) Operating a dealership which is for sale at a
130 reasonable price.

131 (iii) Operating a dealership with another person who
132 has made a significant investment in the dealership
133 and who will acquire full ownership of the dealership
134 under reasonable terms and conditions.

135 (i) Unreasonably withhold consent to the sale,
136 transfer or exchange of the dealership to a qualified
137 buyer capable of being licensed as a new motor vehicle
138 dealer in this state.

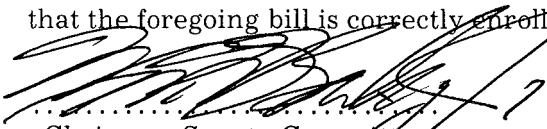
139 (j) Fail to respond in writing to a request for consent
140 to a sale, transfer or exchange of a dealership within
141 sixty days after receipt of a written application from
142 the new motor vehicle dealer on the forms generally
143 utilized by the manufacturer or distributor for such
144 purpose and containing the information required
145 therein. Failure to respond to the request within the
146 sixty days shall be deemed to be consent.

147 (k) Unfairly prevent a new motor vehicle dealer
148 from receiving reasonable compensation for the value
149 of the new motor vehicle dealership.

150 (l) Audit any motor vehicle dealer in this state for
151 warranty parts or warranty service compensation,
152 service compensation, service incentives, rebates or
153 other forms of sales incentive compensation more than
154 two years after the claim for payment or reimburse-
155 ment has been made by the automobile dealer: *Provid-*
156 *ed*, That the provisions of this subsection shall not
157 apply where a claim is fraudulent.

158 (3) A manufacturer or distributor, either directly or
159 through any subsidiary, shall not terminate, cancel,
160 fail to renew or discontinue any lease of the new
161 motor vehicle dealer's established place of business
162 except for a material breach of the lease.

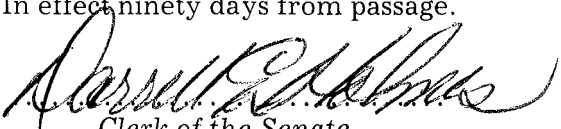
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

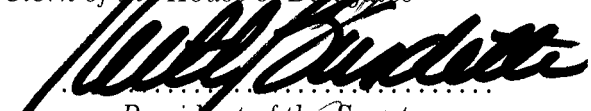
..... Ernest C. Moore
Chairman House Committee


Originated in the Senate.

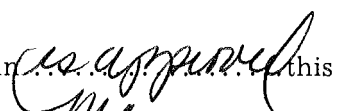
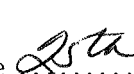
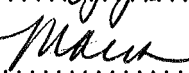
In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within  this the  day of , 1994.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/15/94

Time

3:01pm