

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4560

BY DELEGATES CRISS, HOUSEHOLDER, QUEEN, BARRETT,

SKAFF, RILEY, BATES, WESTFALL, AND LOVEJOY

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT 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; expanding stated
5 purpose of article; defining terms; clarifying behaviors which do not constitute good cause
6 for a dealer to be sanctioned; addressing compensation for certain dealer actions;
7 clarifying prohibited practices of a manufacturer and distributor; modifying provisions
8 related to dealer successorship or change in executive management; addressing payment
9 to dealers for diagnostic work; clarifying limits of manufacturers and distributors
10 indemnification of dealers; addressing severability; establishing prohibitions against
11 misuse of dealer data; clarifying responsibilities of and restrictions on dealers,
12 manufacturers, distributors and third parties; acknowledging that manufacturer
13 performance standards take local market circumstances into account; and adding to the
14 list of parties subject to West Virginia law; clarifying governing law; amending terms related
15 to cancellations of dealer agreements; modifying circumstances not constituting good
16 cause to cancel an agreement; clarifying the standard of proof in termination, cancellation
17 and nonrenewal disputes; modifying compensation terms when contract is discontinued;
18 setting interest rate where payments to dealers from manufacturers or distributors are
19 untimely; increasing the notice period for dealers where a manufacturer or distributor does
20 not approve a successor dealer or executive manager; clarifying provision related to
21 determination of distance between dealerships; restricting manufacturer and distributor
22 use of dealership property; modifying obligations under warranties; clarifying indemnity
23 practices; identifying unlawful practices; and clarifying manufacturer performance
24 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 (a) In accord with the settled public policy of this state to protect the rights of its citizens,
2 each franchise or agreement between a manufacturer or distributor and a dealer or dealership
3 which is located in West Virginia, or is to be performed in substantial part in West Virginia, shall
4 be construed and governed by the laws of the State of West Virginia, regardless of the state in
5 which it was made or executed and of any provision in the franchise or agreement to the contrary.
6 The public policy of this state is to protect the rights of its citizens and each new motor vehicle
7 dealer for any agreement governed by this article.

8 (b) 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 dealer, including, but not limited to, the purchase, lease, or sale
7 of 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
15 includes the appointed and qualified personal representative and the testamentary trustee of a
16 deceased new motor vehicle dealer. However, the term means only that designated successor
17 nominated by the new motor vehicle dealer in a written document filed by the dealer with the
18 manufacturer or 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
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,
37 or factory branch retained or employed for the purpose of making or promoting the sale of new

38 motor 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 of this code, also means a person
45 engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their
46 engines, power trains, or rear axles, including when engines, power trains or rear axles are not
47 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,
52 of in said section, but not including a farm tractor or farm equipment. The term "motor vehicle"
53 also includes a school bus, truck tractor, road tractor, truck, its component parts, including, but
54 not limited to, its engine, transmission, or rear axle manufactured for installation in a school bus,
55 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 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 motor vehicle dealer”
72 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-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 §17A-
3 6A-4 of this code.

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

9 (2) 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
11 motor vehicle dealer.

12 (3) 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 (4) 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 §17A-6A-11 of this code.

27 (5) 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 (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
4 delivery, preparation, warranty, and factory recall services on its products;

5 (2) 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;

8 (3) Provide the dealer the schedule of compensation, which shall be reasonable, to be
9 paid the dealer for parts, work, and service, including reasonable and adequate allowances for
10 diagnostic time necessary for a qualified technician to perform the service, in connection with
11 warranty and recall services and the time allowance for the performance of the diagnosis, work,
12 and service. If a disagreement arises between the manufacturer, distributor, or wholesaler,
13 factory branch or distributor branch and the new motor vehicle dealer about the time allowance
14 for the performance of the diagnosis, work, or service, the new motor vehicle dealer shall submit
15 a written request for modification of the time allowance. A manufacturer, distributor, or wholesaler,
16 factory branch or distributor branch shall not unreasonably deny a written request submitted by a
17 new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a
18 request submitted by a new motor vehicle dealer for an additional time allowance for either
19 diagnostic or repair work on a specific vehicle covered under warranty, provided the request
20 includes any information and documentation reasonably required by the manufacturer, distributor,
21 or wholesaler, factory branch or distributor branch to assess the merits of the request; and

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

26 (b) In no event may:

27 (1) The schedule of compensation fail to compensate the dealers for the diagnosis, work,
28 and services they are required to perform in connection with the dealer's delivery and preparation
29 obligations, or fail to adequately and fairly compensate the dealers for labor time or rate, parts,

30 and other expenses incurred by the dealer to perform under and comply with manufacturer's
31 warranty agreements and factory recalls;

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

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

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

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

49 (e) The retail rate customarily charged by the dealer for labor rate must be established
50 using the same process as provided under subsection (d) of this section and declaring the
51 average labor rate. The average labor rate must be determined by dividing the amount of the
52 dealer's total labor sales by the number of total hours that generated those sales. If a labor rate
53 and parts markup rate simultaneously declared by the dealer, the dealer may use the same repair
54 orders to complete each calculation as provided under subsection (d) of this section. A reasonable
55 allowance for labor for diagnostic time shall be either included in the manufacturer's labor time

56 allowance or listed as a separate compensable item. A dealer may request additional time
57 allowance for either diagnostic or repair time for a specific repair, which request shall not be
58 unreasonably denied by the manufacturer.

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

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

63 (2) Parts sold at wholesale;

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

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

67 (5) Tires; and

68 (6) Vehicle reconditioning.

69 (g) The average of the parts markup rates and labor rate is presumed to be reasonable
70 and must go into effect 30 days following the manufacturer's approval. A manufacturer or
71 distributor must approve or rebut the presumption by demonstrating that the submitted parts
72 markup rate or labor rate is: (1) fraudulent or inaccurate; (2) not established in accordance with
73 this section; or (3) the submitted parts markup rate or labor rate is unreasonable in light of the
74 practices of all other same line-make franchised motor vehicle dealers in an economically similar
75 area of the state offering the same line-make vehicles, not later than 30 days after submission. If
76 the average parts markup rate or average labor rate is disputed by the manufacturer or distributor,
77 the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating
78 the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation,
79 and providing a copy of all calculations used by the manufacturer or distributor in determining the
80 manufacturer or distributor's position if the manufacturer's or distributor's objection is based on
81 the accuracy or reasonableness of the new motor vehicle dealer's rate submission, propose an

82 adjustment of the average percentage parts markup or labor rate based on that rebuttal not later
83 than 30 days after submission. If the new motor vehicle dealer does not agree with the
84 manufacturer's proposed average percentage parts markup or labor rate, the new motor vehicle
85 dealer may file a civil action in the circuit court for the county in which it operates not later than 90
86 days after receipt of that proposal by the manufacturer or distributor. In the event a civil action is
87 filed, the manufacturer or distributor has the burden of proof to establish by a preponderance of
88 the evidence that the new motor vehicle dealer's submitted parts markup rate or labor rate was
89 fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light
90 of the practices of all other same line-make franchised motor vehicle dealers in an economically
91 similar area of the state offering the same line-make vehicles.

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

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

104 (j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in, §17A-
105 1-1 of this code with a gross vehicle weight in excess of 26,001 pounds the manufacturer,
106 distributor and/or O. E. M. supplier shall pay the dealer its incurred actual time at the retail labor
107 rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking

108 area. The dealer shall be paid \$50 minimum for each operation that requires the use of each
109 electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid
110 to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed
111 to add to a completed warranty repair order three hours for every 24 hours the manufacturer,
112 distributor, and/or O. E. M. supplier makes the dealer stop working on a vehicle while the
113 manufacturer, distributor, and/or O. E. M. supplier decides how it wants the dealer to proceed with
114 the repairs.

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

131 (l) Notwithstanding the terms of a franchise agreement or provision of law in conflict with
132 this section, the dealer's delivery, preparation, warranty, and recall obligations constitutes the

133 dealer's sole responsibility for product liability as between the dealer and manufacturer and,
134 except for a loss caused by the dealer's failure to adhere to the obligations, a loss caused by the
135 dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a
136 product without manufacturer authorization, the manufacturer shall reimburse the dealer for all
137 loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the
138 dealer having been named a party in a product liability action.

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

142 (1) The manufacturer shall use time allowances for the diagnosis and performance of the
143 warranty and recall work and service that are reasonable and adequate for the work or services
144 to be performed by a qualified technician;

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

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

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

158 does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the
159 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
7 by the manufacturer or distributor;

8 (2) 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 (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
18 agreement or understanding existing between the dealer and the manufacturer or distributor, or
19 any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith
20 to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a
21 violation 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
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 (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 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 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 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 franchiser image elements
59 required by and approved by the manufacturer, factory branch, distributor or distributor branch
60 and completed within 15 years preceding the program shall be determined 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 within that 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 modification of a material term
66 or condition of such program;

67 (10) 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; and

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

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

89 (C) 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 (D) It is 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 (b) A manufacturer or distributor may not do any of the following:

96 (1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a
97 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 or distributor may not penalize a new motor vehicle dealer for an alleged failure
102 to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

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

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

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

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

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

124 (7) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered
125 and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if
126 the order was made prior to the dealer's receipt of the written official price increase notification. A

127 sales contract signed by a private retail consumer and binding on the dealer which has been
128 submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or
129 distributor price reductions or cash rebates, the amount of any reduction or rebate received by a
130 dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in
131 excess of \$5 shall apply to all vehicles in the dealer's inventory which were subject to the price
132 reduction. A price difference applicable to new model or series motor vehicles at the time of the
133 introduction of the new models or the series is not a price increase or price decrease. This
134 subdivision does not apply to price changes caused by the following:

135 (A) The addition to a motor vehicle required or optional equipment pursuant to state or
136 federal law;

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

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

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

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

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

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

- 154 (A) Operating a preexisting dealership temporarily for a reasonable period;
- 155 (B) Operating a preexisting dealership which is for sale at a reasonable price; and
- 156 (C) Operating a dealership with another person who has made a significant investment in
157 the dealership and who will acquire full ownership of the dealership under reasonable terms and
158 conditions;

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

- 160 (A) Own an interest in a dealer or dealership: *Provided*, That a manufacturer may own
161 stock in a publicly held company solely for investment purposes;
- 162 (B) Operate a new or used motor vehicle dealership, including, but not limited to,
163 displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through
164 franchised dealers, unless the display is part of an automobile trade show that more than two
165 automobile manufacturers participate in; or
- 166 (C) Act in the capacity of a new motor vehicle dealer;

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

- 170 (A) The person from whom the manufacturer or distributor acquired the dealership was a
171 franchised dealer; and
- 172 (B) The dealership is for sale by the manufacturer or distributor at a reasonable price and
173 on reasonable terms and conditions;

174 (14) The 12 month period may be extended for an additional 12 months. Notice of any
175 such extension of the original twelve-month period must be given to any dealer of the same line-
176 make whose dealership is located in the same county, or within 20 air miles of, the dealership

177 owned or controlled by the manufacturer or distributor prior to the expiration of the original 12
178 month period. Any dealer receiving the notice may protest the proposed extension within 30 days
179 of receiving notice by bringing a declaratory judgment action in the circuit court for the county in
180 which the new motor vehicle dealer is located to determine whether good cause exists for the
181 extension;

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

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

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

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

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

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

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

200 (19) Audit any motor vehicle dealer in this state for warranty parts or warranty service
201 compensation, service compensation, service or sales incentives, manufacturer rebates, or other
202 forms of sales incentive compensation more than 12 months after the claim for payment or

203 reimbursement has been made by the automobile dealer. A chargeback not be made until the
204 dealer has had notice and an opportunity to support the claim in question within 30 days of
205 receiving notice of the chargeback. An otherwise valid reimbursement claims may not be denied
206 once properly submitted in accordance with material and reasonable manufacturer guidelines
207 unless the factory can show that the claim was false or fraudulent or that the new motor vehicle
208 dealer failed to reasonably substantiate the claim consistent with the manufacturer's written
209 reasonable and material guidelines. This subsection does not apply where a claim is fraudulent.
210 In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all
211 documented copying, postage, and administrative and personnel costs reasonably incurred by
212 the dealer during the audit. Any charges to a dealer as a result of the audit must be separately
213 billed to the dealer;

214 (20) Unreasonably restrict a dealer's ownership of a dealership through noncompetition
215 covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to
216 purchase, or otherwise. A right of first refusal is created when:

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

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

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

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

227 (iii) A partnership or corporation controlled by a designated family member of one of the
228 dealers; or

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

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

238 (D) Except as otherwise provided in this section, the manufacturer or distributor agrees to
239 pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall
240 include, but not be limited to, accounting, legal, or appraisal services fees that are incurred by the
241 proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first
242 refusal. Payment of the expenses and fees for professional services are not required if the dealer
243 fails to submit an accounting of those expenses and fees within 20 days of the dealer's receipt of
244 the manufacturer's or distributor's written request for such an accounting. Such a written account
245 of fees and expenses may be requested by a manufacturer or distributor before exercising its
246 right of first refusal;

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

249 (22) Make any material or unreasonable change in any franchise agreement, including,
250 but not limited to, the dealer's area of responsibility without giving the new motor vehicle dealer
251 written notice by certified mail of the change at least 60 days prior to the effective date of the
252 change, and shall include an explanation of the basis for the alteration. Upon written request from
253 the dealer, this explanation shall include, but is not limited to, a reasonable and commercially
254 acceptable copy of all information, data, evaluations, and methodology relied on or based its

255 decision on, to propose the change to the dealer's area of responsibility. Any information or
256 documentation provided by the manufacturer or distributor may be produced subject to a
257 reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a
258 new motor vehicle dealer's area of responsibility and after the completion of any internal appeal
259 process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer
260 may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the
261 manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration
262 of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance
263 of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a
264 motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of
265 responsibility shall become effective until a final determination by the court. If a new motor vehicle
266 dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the motor
267 vehicle dealer to become sales effective prior to taking any action claiming a breach or
268 nonperformance of the motor vehicle dealer's sales performance responsibilities;

269 (23) Fail to reimburse a new motor vehicle dealer, at the dealer's regular rate, or the full
270 and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at
271 the dealership if the provision of the loaner vehicle is required by the manufacturer;

272 (24) Compel a new motor vehicle dealer through its finance subsidiaries to agree to
273 unreasonable operating requirements or to directly or indirectly terminate a franchise through the
274 actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a
275 finance subsidiary to engage in business practices in accordance with the usage of trade in retail
276 or wholesale vehicle financing;

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

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

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

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

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

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

292 (D) By requiring the dealer to actively promote the sale of extended service contracts,
293 extended maintenance plans or similar products offered, endorsed, or sponsored by the
294 manufacturer or distributor;

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

299 (F) Require a dealer to purchase goods or services from a vendor selected, identified, or
300 designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates
301 by agreement, program, incentive provision, or otherwise without making available to the dealer
302 the option to obtain the goods or services of substantially similar quality and overall design from
303 a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or
304 distributor branch: *Provided*, That such approval may not be unreasonably withheld:
305 *Provided, however*, That the dealer's option to select a vendor is not available if the manufacturer
306 or distributor provides substantial reimbursement for the goods or services offered. Substantial

307 reimbursement is equal to the difference in price of the goods and services from manufacturer's
308 proposed vendor and the motor vehicle dealer's selected vendor: *Provided further*, That the goods
309 are not subject to the manufacturer or distributor's intellectual property or trademark rights, or
310 trade dress usage guidelines.

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

314 (d) Except as may otherwise be provided in this article, a manufacturer or franchisor may
315 not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail customer,
316 offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance
317 the retail sale, lease, exchange, or other conveyance of a new motor vehicle to a retail customer
318 or consumer in this state, except through a new motor vehicle dealer holding a franchise for the
319 line-make covering such new motor vehicle. This subsection does not apply to manufacturer or
320 franchisor sales of new motor vehicles to charitable organizations, qualified vendors, or
321 employees of the manufacturer or franchisor.

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

329 (f) It is be unlawful for any manufacturer, factory branch, distributor, or distributor branch,
330 when providing a new motor vehicle to a new motor vehicle dealer for offer, sale, or lease to the
331 public, to fail to provide to the dealer a written disclosure that may be provided to a potential buyer

332 or lessor of the new motor vehicle of each accessory or function of the vehicle that may be
333 initiated, updated, changed, or maintained by the manufacturer or distributor through over the air
334 or remote means, and the charge to the customer for the initiation, update, change, or
335 maintenance that is known at the time of sale. A manufacturer or distributor may comply with this
336 subdivision by notifying the new motor vehicle dealer that the information is available on a website
337 or by other digital means.

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

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

346 (1) Fail to assign any retail vehicle reservation or request to purchase or lease received
347 by the manufacturer or distributor from a resident of this state to the franchised dealer authorized
348 to sell that make and model which is designated by the customer, or if none is designated, to
349 its franchised dealer authorized to sell that make and model located in closest proximity to the
350 customer's location: *Provided*, That if the customer does not purchase or lease the vehicle from
351 that dealer within 10 days of the vehicle being received by the dealer, or if the customer requests
352 that the transaction be assigned to another dealer, then the manufacturer or distributor may
353 assign the transaction to another franchised dealer authorized to sell that make and model;

354 (2) Prohibit or unreasonably interfere with a new motor vehicle dealer negotiating the final
355 purchase price of the vehicle with a retail customer that has reserved the purchase or lease
356 through a manufacturer or distributor reservation system;

357 (3) Prohibit or unreasonably interfere with a new motor vehicle dealer offering and
358 negotiating directly with the customer the terms of vehicle financing or leasing through all sources
359 available to the dealer for the retail customer that has reserved the purchase or lease of a vehicle
360 through a manufacturer or distributor reservation system;

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

367 (5) Prohibit or unreasonably interfere with a new motor vehicle dealer directly negotiating
368 the trade-in value the customer will receive, or prohibit the dealer from conducting an on-site
369 inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated
370 to accept the trade-in value to negotiated with a retail customer that has reserved to purchase or
371 lease a vehicle through the manufacturer or distributor reservation system;

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

373 (7) Nothing contained in this subdivision shall:

374 (A) Require that a manufacturer or distributor allocate or supply additional or supplemental
375 inventory to a franchised dealer located in this state in order to satisfy a retail customer's vehicle
376 reservation or request submitted directly to the manufacturer or distributor as provided in this
377 section;

378 (B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision
379 the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle
380 submitted directly by a customer or potential customer to a manufacturer or distributor reservation
381 system; or

382 (C) Apply to a reservation or request to purchase or lease a vehicle through the
383 manufacturer or distributor received from the customer that is a resident of this state if the
384 customer designates a dealer outside of this state to be assigned the reservation or request to
385 purchase or lease or if the dealer in closest proximity to the customer's location is in another state
386 and the manufacturer or distributor assigns the reservation or request to purchase or lease to that
387 dealer.

388 (8) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer
389 or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement
390 with any new motor vehicle dealer in this state, offer new motor vehicles through a subscription
391 directly to a retail customer or consumer. However, this subsection is not intended to prevent a
392 manufacturer or distributor from providing or offering new motor vehicles through a subscription
393 program through a new motor vehicle dealer for retail sales to a customer.

394 (i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer
395 or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement
396 with any new motor vehicle dealer in this state, offer direct financing for the purchase, lease, or
397 other conveyance of a motor vehicle to a retail customer. However, this subsection is not intended
398 to prevent a manufacturer or distributor from providing or offering a financing program through a
399 new motor vehicle dealer which is available for retail customers.

§17A-6A-11. Motor vehicle dealer successorship or change in executive management.

1 (1) Any designated family member of a new motor vehicle dealer may succeed the dealer
2 in the ownership or operation, or be a designated executive manager of the dealership under the
3 existing dealer agreement if the designated family member gives the manufacturer or distributor
4 written notice of his or her intention to succeed to, or be designated as the executive manager of,
5 the dealership within 120 days after the dealer's death or incapacity or designation of a successor
6 or executive manager, and agrees to be bound by all of the terms and conditions of the dealer
7 agreement, and the designated family member meets the current criteria generally applied by the

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

17 (2) The manufacturer or distributor may request from a designated family member any
18 information or application reasonably necessary to determine whether the existing dealer
19 agreement should be honored. The designated family member shall supply the personal and
20 financial data promptly upon the request.

21 (3) If a manufacturer or distributor believes that good cause exists for refusing to honor
22 the succession or designation, the manufacturer or distributor may, within 45 days after receipt of
23 the notice of the designated family member's intent to succeed the dealer in the ownership or the
24 appointment of an executive manager in the operation of the dealership, or within forty-five days
25 after the receipt of the requested personal and financial data, serve upon the designated family
26 member notice of its refusal to approve the succession.

27 (4) The notice of the manufacturer or distributor provided in subdivision (3) of this section
28 shall state the specific factual and legal grounds for the refusal to approve the succession or
29 designation of an executive manager.

30 (5) If notice of refusal is not served within the 45 days provided for in subdivision (3) of
31 this section, the dealer agreement continues in effect and is subject to termination only as
32 otherwise permitted by this article.

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

37 (7) If the manufacturer challenges the succession in ownership or executive manager
38 designation, it maintains the burden of proof to show good cause by a preponderance of the
39 evidence. If the person or new motor vehicle dealer seeking succession of ownership or executive
40 manager designation files a civil action within 180 days of the manufacturer's refusal to approve
41 or the one year qualifying period set forth in subdivision (1) of this section, whichever is longer,
42 no action may be taken by the manufacturer contrary to the dealer agreement until such time as
43 the civil action and any appeal has been exhausted: *Provided*, That when a motor vehicle dealer
44 appeals a decision upholding a manufacturer's decision to not allow succession based upon the
45 designated person's insolvency or conviction of a crime punishable by imprisonment in excess of
46 one year under the law which the designated person was convicted, the dealer agreement shall
47 remain in effect pending exhaustion of all appeals only if the new motor vehicle dealer establishes
48 that the public interest will not be harmed by keeping the dealer agreement in effect pending entry
49 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 60 days after receiving the notice provided in subdivision (2) of this section, or
14 within 60 days after the end of any appeal procedure provided by the manufacturer or distributor,
15 a new motor vehicle dealer of the same line-make within the affected relevant market area may
16 bring a declaratory judgment action in the circuit court for the county in which the new motor
17 vehicle dealer is located to determine whether good cause exists for the establishing or relocating
18 of the proposed new motor vehicle dealer: *Provided*, That a new motor vehicle dealer of the same
19 line-make within the affected relevant market area shall not be permitted to bring such an action
20 if the proposed relocation site would be further from the location of the new motor vehicle dealer
21 of the same line-make than the location from which the dealership is being moved. Once an action
22 has been filed, the manufacturer or distributor may not establish or relocate the proposed new
23 motor vehicle dealer until the circuit court has rendered a decision on the matter. An action
24 brought pursuant to this section shall be given precedence over all other civil matters on the
25 court's docket. The manufacturer has the burden of proving that good cause exists for establishing
26 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) The permanency and amount of the investment, including any obligations incurred by
35 the dealer in making the investment;

36 (B) The effect on the retail new motor vehicle business and the consuming public in the
37 relevant 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) The growth or decline of the population and the number of new motor vehicle
46 registrations 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,
3 delivery, and warranty service on its products. The manufacturer or distributor shall compensate
4 the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or
5 distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the
6 schedule of compensation to be paid to the dealer for parts, diagnostic time as applicable, work
7 and service, and the time allowance for the performance of the work, diagnostic time as
8 applicable, and service in a manner in compliance with §17A-6A-8a of this code.

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 §17A-6A-8a of this
13 code shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat trailers,
14 all-terrain vehicles, utility terrain vehicles, and snowmobiles, the compensation of a dealer for
15 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 20 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 or the manufacturer's or distributor's warranty obligation as provided
26 under §17A-6A-8a of this code.

27 (4) All claims made by a new motor vehicle dealer pursuant to this section for labor and
28 parts shall be paid within 30 days after their approval. All claims shall be either approved or
29 disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form
30 generally used by the manufacturer or distributor and containing the usually required information
31 therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the
32 form is considered to be approved and payment shall be made within 30 days. The manufacturer
33 has the right to initiate an audit of a claim within twelve months after payment and to charge back
34 to the new motor vehicle dealer the amount of any false, fraudulent, or unsubstantiated claim,
35 subject to the requirements of §17A-6A-8a of this code.

36 (5) The manufacturer shall accept the return of any new and unused part, component, or
37 accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged
38 to the dealer for the part, component, or accessory if the dealer returns the part and makes a
39 claim for the return of the part within one year of the dealer's receipt of the part, component, or
40 accessory and provides reasonable documentation, to include any changed part numbers to
41 match new part 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
4 extent such complaints, claims, or actions relate to the manufacture, assembly, or design of a
5 new motor vehicle, manufacturer's warranty obligations excluding dealer negligence, or other
6 functions by the manufacturer or distributor beyond the control of the dealer, including, without
7 limitation, the selection by the manufacturer or distributor of parts or components for the vehicle,
8 and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to
9 the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle
10 dealer gives timely notice to the manufacturer 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 its customer information to the manufacturer or
3 distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to
4 validate and pay consumer or dealer incentives, for manufacturer's marketing purposes, for
5 evaluation of dealer performance, for analytics, or to support claims submitted by the new motor
6 vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit

7 the manufacturer's ability to require or use customer information to satisfy any safety or recall
8 notice 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, data systems vendor, or any
13 third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or
14 dealer or data systems vendor may not prohibit a dealer from providing a means to regularly and
15 continually monitor, or conduct an audit of, the specific data accessed from or written to the
16 dealer's data systems and from complying with applicable state and federal laws and any rules
17 or regulations promulgated thereunder. These provisions do not impose an obligation on a
18 manufacturer, factory branch, distributor, distributor branch, dealer, vendor, or any third party
19 acting on behalf of any manufacturer, factory branch, distributor, distributor branch, dealer, or
20 data systems vendor to provide that capability.

21 (c) A manufacturer, factory branch, distributor, distributor branch, dealer, data systems
22 vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor,
23 distributor branch or dealer, or data systems vendor, may not provide access to customer or
24 dealership information maintained in a dealer data systems used by a motor vehicle dealer
25 located in this state, other than a subsidiary or affiliate of the manufacturer factory branch,
26 distributor or distributor branch without first obtaining the dealer's prior express written consent
27 and agreement, revocable by the dealer upon 10 business days written notice, to provide the
28 access.

29 (d) Upon a written request from a motor vehicle dealer, the manufacturer, factory branch,
30 distributor, distributor branch, dealer, or data systems vendor, or any third party acting on behalf
31 of or through any manufacturer, factory branch, distributor, distributor branch or dealer data
32 systems vendor shall provide to the dealer a written list of all specific third parties other than a

33 subsidiary or affiliate of the manufacturer, factory branch, distributor or distributor branch to whom
34 any data obtained from the dealer has actually been provided within the 12 month period prior to
35 date of dealer's written request. If requested by the dealer, the list shall further describe the scope
36 and specific fields of the data provided. The consent does not change the person's obligations to
37 comply with the terms of this section and any additional state or federal laws, and any rules or
38 regulations promulgated thereunder, applicable to them with respect to the access.

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

45 (f) A manufacturer or distributor or a third party acting on behalf of a manufacturer or
46 distributor may not require a dealer to provide any customer information: Any individual who is
47 not a customer of such manufacturer's or distributor's own vehicle makes; for any purpose other
48 than for reasonable marketing purposes on behalf of that dealer, market research, consumer
49 surveys, market analysis, or dealership performance analysis; if sharing that information would
50 not be permissible under local, state, or federal law; except to the extent the requested information
51 relates solely to specific program requirements or goals associated with such manufacturer's or
52 distributor's own vehicle makes; that is general customer information or other information related
53 to the dealer, unless the requested information can be provided in a manner consistent with
54 dealer's current privacy policies and Gramm-Leach-Bliley Act privacy notice, a dealer may not be
55 required to amend that notice to accommodate data sharing with the manufacturer or distributor.

56 (g) As used in this section:

57 (1) "Authorized Integrator" means any third party with whom a dealer has entered into a
58 written contract to perform a specific function for a dealer that permits the third party to access

59 protected dealer data and/or to write data to a dealer data system to carry out the specified
60 function (the “authorized integrator contract”).

61 (2) “Dealer” means a new motor vehicle dealer as defined by §17A-6A-3(11) of this code
62 and any authorized dealer personnel.

63 (3) “Dealer data system” means any software, hardware, or firmware used by a dealer in
64 its business operations to store, process, or maintain protected dealer data.

65 (4) “Dealer data systems vendor” means any dealer management system provider,
66 customer relationship management system provider, or other vendor that permissibly stores
67 protected dealer data pursuant to a written contract with the dealer (“dealer data systems vendor
68 contract”).

69 (5) “Data access overcharge” means any charge to a dealer or authorized integrator for
70 integration beyond reimbursement for any direct costs incurred by the dealer data systems vendor
71 for such Integration. If a dealer data systems vendor chooses to seek reimbursement from any
72 dealer or authorized integrator for such direct costs, the direct costs must be disclosed to the
73 dealer, and justified by documentary evidence of the costs associated with such Integration or it
74 will be considered a data access overcharge.

75 (6) “Integration” means access to protected dealer data in a dealer’s dealer data system
76 by an authorized integrator, or an authorized integrator writing data to a dealer’s dealer data
77 system. Integration does not require access to any copyrighted material but must allow for access
78 to all protected dealer data. Integration may be accomplished by any commercially reasonable
79 means that do not violate this section, but all dealer data vendors must include an option to
80 integrate via a secure open application programming interface (API), which must be made
81 available to dealers and authorized integrators. In the event that APIs are no longer the
82 reasonable commercial or technical standard for secure data integration, a similar open access
83 integration method may be provided, to the extent it provides the same or better secure access
84 to dealers and authorized Integrators as an API.

85 (7) "Prior express written consent" means written consent provided by the dealer that is
86 contained in a document separate from any other consent, contract, franchise agreement, or other
87 writing that specifically outlines the dealer's consent for the authorized Integrator to obtain the
88 dealer data, as well as the scope and duration of that consent. This consent may be unilaterally
89 revoked by the dealer: (A) without cause, upon 30 days' notice, and (B) immediately for cause.

90 (8) "Protected dealer data" means any of the following data that is stored in a dealer data
91 system:

92 (A) Personal, financial, or other data pertaining to a consumer, or a consumer's vehicle
93 that is provided to a dealer by a consumer or otherwise obtained by a dealer: *Provided*, That this
94 subdivision does not give a new motor vehicle dealer any ownership or rights to share or use the
95 motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide
96 warranty, repair, or service work to its customers; or

97 (B) Any other data regarding a dealer's business operations in that dealer's dealer data
98 system:

99 (9) "Secure open API" means an application programming interface that allows authorized
100 integrators to integrate with dealer data systems remotely and securely. The APIs must be "open"
101 in that all required information to Integrate via the API (software development toolkit and any other
102 necessary technical or other information) must be made available by a dealer data systems
103 vendor to any authorized integrator upon request by a dealer. The secure open API must include
104 all relevant endpoints to allow for access to all protected dealer data, or as are needed to integrate
105 with protected dealer data, and must provide granularity and control necessary for dealers and
106 authorized integrators to Integrate the data necessary under the authorized integrator contract.
107 "Open" does not mean that the API must be available publicly or at no cost to an authorized
108 integrator, however no data access overcharge may be assessed in connection with a secure
109 open API.

110 (10) "Third party" includes service providers, vendors, including dealer data systems
111 vendors and authorized integrators, and any other individual or entity other than the dealer. Third
112 party does not include any manufacturer, factory branch, distributor, distributor branch or
113 governmental entity acting pursuant to federal, state, or local law, or any third party acting
114 pursuant to a valid court order.

115 (h) Prohibited Action

116 1. A third party may not:

117 (A) Access, share, sell, copy, use, or transmit protected dealer data from a dealer data
118 system without the express written consent of a dealer;

119 (B) Take any action, by contract, by technical means, or otherwise, that would prohibit or
120 limit a dealer's ability to protect, store, copy, share, or use any protected dealer data. This
121 includes, but is not limited to:

122 (i) Imposing any data access overcharges or other restrictions of any kind on the dealer
123 or any authorized integrator for integration;

124 (ii) Prohibiting any third party that the dealer has identified as one of its authorized
125 integrators from integrating with that dealer's dealer data system;

126 (iii) Place unreasonable restrictions on integration by any authorized integrator or other
127 third party that the dealer wishes to be an authorized integrator. Examples of unreasonable
128 restrictions include, but are not limited to:

129 (I) Unreasonable restrictions on the scope or nature of the data shared with an authorized
130 integrator;

131 (II) Unreasonable restrictions on the ability of the authorized integrator to write data to a
132 dealer data system;

133 (III) Unreasonable restrictions or conditions on a third party accessing or sharing protected
134 dealer data, or writing data to a dealer data system; and

135 (IV) Requiring unreasonable access to sensitive, competitive, or other confidential
136 business information of a third party as a condition for access to protected dealer data or sharing
137 protected dealer data with an authorized integrator;

138 (iv) Prohibiting or limiting a dealer's ability to store, copy, securely share or use protected
139 dealer data outside the dealer data system in any manner and for any reason; or

140 (v) Permitting access to or accessing protected dealer data without express written
141 consent by the dealer.

142 (i) Nothing in this section shall be interpreted to prevent any dealer or third party from
143 discharging its obligations as a service provider under an agreement or otherwise under federal,
144 state, or local law to protect and secure protected dealer data, or to otherwise limit those
145 responsibilities.

146 (j) A dealer data systems vendor or authorized integrator is not responsible for any action
147 taken directly by the dealer, or for any action it takes in appropriately following the written
148 instructions of the dealer, to the extent that such action prevents it from meeting any legal
149 obligation regarding the protection of protected dealer data or results in any liability as a
150 consequence of such actions by the dealer.

151 (k) A dealer is not responsible for any action taken directly by any of its dealer data
152 systems vendors or authorized integrators, or for any action it takes in appropriately following the
153 written instructions of any of its dealer data systems vendors or authorized integrators, to the
154 extent that such action prevents it from meeting any legal obligation regarding the protection of
155 protected dealer data or results in any liability as a consequence of such actions by the dealer
156 data systems vendor or authorized integrator.

157 (l) Additional responsibilities and restrictions

158 (1) All dealer data systems vendors must adopt and make available a standardized
159 Integration framework (use of the STAR Standards or a standard compatible with the STAR
160 standards shall be deemed to be in compliance with this requirement) and allow for integration
161 via secure open APIs to authorized integrators. In the event that APIs are no longer the

162 reasonable commercial or technical standard for secure data integration, a similar open access
163 integration method may be provided, to the extent it provides the same or better secure Integration
164 to dealers and authorized integrators as a secure open API.

165 (2) All dealer data systems vendors and authorized integrators:

166 (A) May Integrate, or otherwise access, use, store, or share protected dealer data, only
167 as outlined in, and to the extent permitted by their dealer data systems vendor contract or
168 authorized integrator contract;

169 (B) Must make any dealer data systems vendor contract or authorized integrator contract
170 terminable upon no more than 90 days notice from the dealer;

171 (C) Must, upon notice of the dealer's intent to terminate its dealer data systems vendor
172 contract or authorized integrator contract, in order to prevent any risk of consumer harm or
173 inconvenience, work to ensure a secure transition of all protected dealer data to a successor
174 dealer data systems vendor or authorized integrator. This includes, but is not limited to:

175 (i) Providing unrestricted access to all protected dealer data and all other data stored in
176 the dealer data system in a commercially reasonable time and format that a successor dealer
177 data systems vendor or authorized integrator can access and use; and

178 (ii) Deleting or returning to the dealer all protected dealer data prior to termination of the
179 contract pursuant to any written directions of the dealer;

180 (iii) Providing a dealer, upon request, with a listing of all entities with whom it is sharing
181 or has shared protected dealer data, or with whom it has allowed access to protected dealer data;
182 and

183 (iv) Allowing a dealer to audit the dealer data systems vendor or authorized integrator's
184 access to and use of any protected dealer data.

185 (m) Notwithstanding the terms or conditions of any consent, authorization, release,
186 novation, franchise, or other contract or agreement, every manufacturer, factory branch,
187 distributor, distributor branch, dealer, data systems vendor, or any third party acting on behalf of
188 or through a manufacturer, factory branch, distributor, distributor branch or dealer, data systems

189 vendor shall fully indemnify, defend, and hold harmless any dealer or manufacturer, factory
190 branch, distributor or distributor branch from all damages, attorney fees, and costs, other costs
191 and expenses incurred by the dealer from complaints, claims, or actions arising out of
192 manufacturer's, factory's branch, distributor's, distributor's branch, dealer data systems vendors,
193 or any third party for its willful, negligent, or impermissible use or disclosure of dealer data or
194 customer data or other sensitive information in the dealer's data system. The indemnification
195 includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense
196 costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising
197 out of complaints, claims, civil, or administrative actions.

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

200 (o) This section applies to contracts entered into after the effective date of this section.

201 (p) If any provision of this section or its application to any person or circumstance is held
202 invalid, the invalidity does not affect other provisions or applications of this section which can be
203 given effect without the invalid provision or application, and to this end the provisions of this
204 section are severable.

205 (q) A manufacturer, factory branch, distributor, distributor branch, dealer, data
206 management computer systems vendor, or any third party acting on behalf of itself, or through a
207 manufacturer, factory branch, distributor, distributor branch, or dealer data management
208 computer system vendor shall not take an act prejudicial against a new motor vehicle dealer
209 because of a new motor vehicle dealer exercising its rights under 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
5 performance used by a manufacturer, distributor, or factory branch in determining a dealer's
6 compliance with the dealer agreement shall be reasonable and based on accurate information,
7 including, but not limited to, the dealer's specific local market circumstances and geographical
8 characteristics. A manufacturer, distributor, or factory branch may not impose unreasonable
9 restrictions on a dealer relative to compliance with a sales performance standard or sales
10 objective.

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

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

17 (4) The manufacturer or distributor has the burden of proving by a preponderance of the
18 evidence that the performance standard, sales objective, or program for measuring dealership
19 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, or captive finance source or dealer management system,
5 the provisions of this code apply to all such agreements and contracts listed in this section or
6 governed by the article. Any provisions in the agreements and contracts which violate the terms
7 of this section are null and void.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2022.

.....
Governor