

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 462

BY SENATORS PHILLIPS, WOELFEL, WOODRUM, AND

BARRETT

[Originating in the Committee on the Judiciary;

reported on February 22, 2023]

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

Be it enacted by the Legislature of West Virginia:

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

§17A-6A-3. Definitions.

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

3 (1) "Dealer agreement" means the franchise, agreement, or contract in writing between a
4 manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal
5 rights and obligations of the parties to the agreement or contract with regard to the operation and
6 business of a new motor vehicle dealer, including, but not limited to, the purchase, lease, or sale
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 *et seq.* of this code, also means a
45 person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck,
46 their engines, power trains, or rear axles, including when engines, power trains or rear axles are
47 not warranted by the final manufacturer or assembler, and any distributor, factory branch, or
48 representative.

49 (9) "Motor vehicle" means that term as defined in §17A-1-1 *et seq.* of this code, including
50 a motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain
51 vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv),
52 respectively, of in said section, but not including a farm tractor or farm equipment. The term "motor
53 vehicle" also includes a school bus, truck tractor, road tractor, truck, its component parts,
54 including, but not limited to, its engine, transmission, or rear axle manufactured for installation in
55 a school bus, truck tractor, road tractor, or truck.

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

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

64 (12) "The operation and business of a new motor vehicle dealer or dealership" includes
65 selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing

66 warranty and recall work for a motor vehicle: *Provided*, That the provisions of this subdivision do
67 not apply to over the air updates.

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

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

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

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

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

3 (1) Specify in writing to each of its ~~motor vehicle~~ dealers, the dealer's obligation for
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, including time communicating with the manufacturer, necessary for a qualified
11 technician to perform the service, in connection with warranty and recall services and the time

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

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

27 (b) In no event may:

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

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

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

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

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

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

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

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

64 (2) Parts sold at wholesale;

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

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

68 (5) Tires; and

69 (6) Vehicle reconditioning.

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

71 and ~~must go~~ goes into effect 30 days following the manufacturer's approval. A manufacturer or

72 distributor must approve or rebut the presumption by demonstrating that the submitted parts

73 markup rate or labor rate is: (1) Fraudulent or inaccurate; (2) not established in accordance with

74 this section; or (3) ~~the submitted parts markup rate or labor rate is~~ unreasonable in light of the

75 practices of all other same line-make ~~franchised motor vehicle~~ dealers in an economically similar

76 area of the state offering the same line-make vehicles, not later than 30 days after the dealer's

77 submission, or the dealer's submission shall be considered approved. If the average parts markup

78 rate or average labor rate is disputed by the manufacturer or distributor, the manufacturer or

79 distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons

80 for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy

81 of all calculations used by the manufacturer or distributor in determining the manufacturer or

82 distributor's position. If the manufacturer's or distributor's objection is based on the accuracy or

83 reasonableness of the ~~new motor vehicle~~ dealer's rate submission, the manufacturer or distributor

84 shall propose an adjustment of the average percentage parts markup or labor rate based on that

85 rebuttal not later than 30 days after dealer's submission. If the ~~new motor vehicle~~ dealer does not

86 agree with the manufacturer's proposed average percentage parts markup or labor rate, ~~the new~~

87 ~~motor vehicle~~ dealer may file a civil action in the circuit court for the county in which it operates

88 not later than 90 days after dealer's receipt of ~~that proposal~~ the written notice of rebuttal or
89 adjustment by the manufacturer or distributor. In the event a civil action is filed, the manufacturer
90 or distributor has the burden of proof to establish, by a preponderance of the evidence, that the
91 ~~new motor vehicle~~ dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate,
92 not established in accordance with this section, or is unreasonable in light of the practices of all
93 other same line-make ~~franchised motor vehicle~~ dealers in an economically similar area of the
94 state offering the same line-make vehicles.

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

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

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

114 electronic tool charge. The dealer is allowed to add to a completed warranty repair order three
115 hours for every 24 hours the manufacturer, distributor, and/or ~~O. E. M.~~ original equipment
116 manufacturer supplier makes the dealer stop working on a vehicle while the manufacturer,
117 distributor, and/or ~~O. E. M.~~ original equipment manufacturer supplier decides how it wants the
118 dealer to proceed with the repairs.

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

136 (l) Notwithstanding the terms of a ~~franchise~~ dealer agreement or provision of law in conflict
137 with this section, the dealer's delivery, preparation, warranty, and recall obligations ~~constitutes~~
138 constitute the dealer's sole responsibility for product liability ~~as~~ between the dealer and
139 manufacturer. ~~and~~, Except for a loss caused by the dealer's failure to adhere to the obligations or

140 a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's
141 modification of a product without manufacturer authorization, the manufacturer shall reimburse
142 the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a
143 result of the dealer having been named a party in a product liability action.

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

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

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

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

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

§17A-6A-10. Prohibited practices.

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

3 (1) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle,
4 equipment, or any other commodity not required by law which was not voluntarily ordered by the
5 ~~new motor vehicle~~ dealer. This section does not prevent the manufacturer or distributor from
6 requiring that ~~new motor vehicle~~ dealers carry a reasonable inventory of models offered for sale
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~~ Provided, That the dealer
31 maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with
32 reasonable facilities requirements, and makes no change in the principal management of the
33 dealer. Notwithstanding the terms of any franchise dealer agreement, a manufacturer or
34 distributor may not enforce any requirements, including facility or image requirements, that a ~~new~~
35 ~~motor vehicle~~ dealer establish or maintain exclusive facilities, personnel, or display space, when
36 the requirements are unreasonable considering current economic conditions and are not
37 otherwise justified by reasonable business considerations. The burden of proving that current
38 economic conditions or reasonable business considerations justify such actions is on the
39 manufacturer or distributor and must be proven by a preponderance of the evidence;

40 (7) Change the location of the new motor vehicle dealership or make any substantial
41 alterations to the dealership premises, where to do so would be unreasonable. The burden is on
42 the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

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

50 (9) Coerce or require any dealer, whether by agreement, program, incentive provision, or
51 otherwise, to construct improvements to its facilities or to install new signs, or other franchisor

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

73 (10) Condition the award, sale, transfer, relocation, or renewal of a ~~franchise or~~ dealer
74 agreement, or to condition sales, service, parts, or finance incentives upon site control or an
75 agreement to renovate or make substantial improvements to a facility: *Provided, That* voluntary
76 and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited

77 to, a written agreement for which the dealer has accepted separate and valuable consideration,
78 does not constitute a violation; ~~and~~

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

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

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

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

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

101 (12) Agree to any term or provision in the dealer agreement which gives a manufacturer
102 or distributor the right to unilaterally amend the dealer agreement governing the operation and

103 business of a dealer, including, but not limited to, the purchase, sale, lease, or service of new
104 motor vehicles except as provided for in this article. That term or provision is considered null and
105 void. Any amendment to a dealer agreement governing the purchase, sale, lease, or service of
106 new motor vehicles, must be agreed upon by both the manufacturer, factory branch, distributor,
107 or distributor branch and the dealer at the time the dealer agreement is amended.

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

109 (1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a
110 reasonable time and in reasonable quantities relative to the ~~new motor vehicle~~ dealer's market
111 area and facilities, unless the failure is caused by acts or occurrences beyond the control of the
112 manufacturer or distributor, or unless the failure results from an order by the ~~new motor vehicle~~
113 dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor.

114 A manufacturer or distributor may not penalize a ~~new motor vehicle~~ dealer for an alleged failure
115 to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

116 (2) Refuse to offer to its same line-make ~~new motor vehicle~~ dealers all models
117 manufactured for that line-make, including, but not limited to, any model that contains a separate
118 label or badge indicating an upgraded version of the same model regardless of the new motor
119 vehicle's means of propulsion. *Provided*, that the dealer meets any reasonable sales, warranty

120 service repair, and recall standards established by the manufacturer or distributor. This prohibition
121 includes a new line make established by a manufacturer with a dealer agreement in this state, or
122 a subsidiary thereof, or a company affiliated through ownership of the manufacturer, factory
123 branch, distributor, or distributor branch of at least 25 percent of the equity of the company. This

124 provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

125 (3) Require as a prerequisite to receiving a model or series of new motor vehicles, that a
126 ~~new motor vehicle~~ dealer pay an extra unreasonable acquisition fee or surcharge, or purchase
127 unreasonable advertising displays or other materials, or conduct unreasonable facility or image

128 remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of
129 unreasonable upgrade requirement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

201 (15) For the purpose of broadening the diversity of its dealer body and enhancing
202 opportunities for qualified persons who are part of a group who have historically been under
203 represented in its dealer body, or other qualified persons who lack the resources to purchase a
204 dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own

205 an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in
206 a bona fide relationship with a ~~franchised~~ dealer who:

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

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

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

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

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

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

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

231 dealer for all documented copying, postage, and administrative and personnel costs reasonably
232 incurred by the dealer during the audit. Any charges to a dealer as a result of the audit ~~must~~ shall
233 be separately billed to the dealer;

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

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

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

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

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

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

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

253 (C) ~~Upon exercising the right of first refusal by a manufacturer, it eliminates any~~
254 ~~requirement under its dealer agreement or other applicable provision of this statute that the~~
255 ~~manufacturer evaluate, process, or respond to the underlying proposed transfer by approving or~~

256 ~~rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer~~
257 ~~by any party;~~

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

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

269 (22) Make any material or unreasonable change to ~~in any franchise agreement, including,~~
270 ~~but not limited to,~~ the dealer's area of responsibility without giving the ~~new motor vehicle~~ dealer
271 written notice, by certified mail of the change at least 60 days prior to the effective date of the
272 change ~~and~~ which shall include an explanation of the basis for the alteration. Upon written request
273 from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially
274 acceptable copy of all information, data, evaluations, and methodology relied on or based its
275 decision on, to propose the change to the dealer's area of responsibility. Any information or
276 documentation provided by the manufacturer or distributor may be produced subject to a
277 reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a
278 ~~new motor vehicle~~ dealer's area of responsibility, and after the completion of any internal appeal
279 process pursuant to the manufacturer's or distributor's policy manual, the ~~motor vehicle~~ dealer
280 may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the
281 manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration

282 of a ~~motor vehicle~~ dealer's area of responsibility unless the ~~franchisor~~ manufacturer shows, by a
283 preponderance of the evidence, that the alteration is reasonable and justifiable in light of market
284 conditions. If a motor vehicle dealer petitions the court, ~~no~~ an alteration to a ~~motor vehicle~~ dealer's
285 area of responsibility shall not become effective until a final determination by the court. If a ~~new~~
286 ~~motor vehicle~~ dealer's area of responsibility is altered, the manufacturer shall allow 24 months for
287 the ~~motor vehicle~~ dealer to become sales effective prior to taking any action claiming a breach or
288 nonperformance of the ~~motor vehicle~~ dealer's sales performance responsibilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

358 manufacturer or distributor may comply with this subdivision by notifying the ~~new motor vehicle~~
359 dealer that the information is available on a website or by other digital means.

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

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

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

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

380 (3) Prohibit or ~~unreasonably~~ interfere with a ~~new motor vehicle~~ dealer offering and
381 negotiating directly with the customer retail buyer or lessee the terms of vehicle financing or
382 leasing through all sources available to the dealer for the retail ~~customer~~ buyer or lessee that has

383 reserved the purchase or lease of a new motor vehicle through a manufacturer or distributor
384 reservation system;

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

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

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

398 (7) Nothing contained in this subdivision shall:

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

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

407 (C) Apply to a reservation or request to purchase or lease a new motor vehicle through
408 the manufacturer or distributor received from the ~~customer~~ retail buyer or lessee that is a resident

409 of this state if the ~~customer~~ retail buyer or lessee designates a dealer outside of this state to be
410 assigned the reservation or request to purchase or lease or if the dealer in closest proximity to
411 the ~~customer's~~ retail buyer or lessee's location is in another state and the manufacturer or
412 distributor assigns the reservation or request to purchase or lease to that dealer.

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

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

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

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

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

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

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

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

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

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