

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Enrolled

Senate Bill 173

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

Hamilton, Woodrum, and Stuart

[Passed March 7, 2024; in effect 90 days from
passage]

1 AN ACT to amend and reenact §17A-6A-3, §17A-6A-8a, §17A-6A-10, and §17A-6A9-18 of the
2 Code of West Virginia, 1931, as amended, all relating generally to new motor vehicle
3 dealers, distributors, wholesalers, manufacturers, factory branches, and distributor
4 branches; defining terms; clarifying a manufacturer's obligations for warranty and recall
5 reimbursement to a new motor vehicle dealer; restricting manufacturer and distributor right
6 of first refusal; identifying and clarifying unlawful and prohibited practices; and clarifying
7 statutory authority of dealer data systems vendor agreements.

Be it enacted by the Legislature of West Virginia:

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

§17A-6A-3.

Definitions.

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

3 (1) "Dealer agreement" means the franchise, agreement, or contract in writing between a
4 manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal
5 rights and obligations of the parties to the agreement or contract with regard to the operation and
6 business of a new motor vehicle dealer, including, but not limited to, the purchase, lease, or sale of
7 new motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

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

15 the appointed and qualified personal representative and the testamentary trustee of a deceased
16 new motor vehicle dealer. However, the term means only that designated successor nominated by
17 the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or
18 distributor, if a document is filed.

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

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

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

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

40 (7) "Good faith" means honesty in fact and the observation of reasonable commercial

41 standards of fair dealing in the trade.

42 (8) "Manufacturer" means any person who manufactures or assembles new motor
43 vehicles; or any distributor, factory branch, or factory representative and, in the case of a school
44 bus, truck tractor, road tractor, or truck as defined in §17A-1-1 *et seq.* of this code, also means a
45 person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck,
46 their engines, power trains, or rear axles, including when engines, power trains or rear axles are
47 not warranted by the final manufacturer or assembler, and any distributor, factory branch, or
48 representative.

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

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

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

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

67 not apply to over the air updates.

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

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

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

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

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

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

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

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

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

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

27 (b) In no event may:

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

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

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

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

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

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

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

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

64 (2) Parts sold at wholesale;

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

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

68 (5) Tires; and

69 (6) Vehicle reconditioning.

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

91 practices of all other same line-make dealers in an economically similar area of the state offering
92 the same line-make vehicles.

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

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

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

116 (k) All claims made by dealers pursuant to this section for compensation for delivery,
117 preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by
118 the manufacturer within 30 days after approval and shall be approved or disapproved by the
119 manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be
120 notified in writing of the grounds for disapproval. A claim which has been approved and paid may
121 not be charged back to the dealer unless it can be shown that the claim was false or fraudulent,
122 that the repairs were not properly made or were unnecessary to correct the defective condition, or
123 the dealer failed to reasonably substantiate the claim in accordance with the reasonable written
124 requirements of the manufacturer or distributor in effect at the time the claim arose. Charge back
125 may not be made until the dealer has had notice and an opportunity to support the claim in
126 question. An otherwise valid reimbursement claim may not be denied once properly submitted
127 within manufacturers' submission guidelines due to a clerical error or omission, a dealer's
128 incidental failure to comply with a specific non-material claim processing requirement or
129 administrative technicality, or based on a different level of technician technical certification or the
130 dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer
131 has 30 days to respond to any audit by a manufacturer or distributor.

132 (l) Notwithstanding the terms of a dealer agreement or provision of law in conflict with this
133 section, the dealer's delivery, preparation, warranty, and recall obligations constitute the dealer's
134 sole responsibility for product liability between the dealer and manufacturer. Except for a loss
135 caused by the dealer's failure to adhere to the obligations or a loss caused by the dealer's
136 negligence or intentional misconduct or a loss caused by the dealer's modification of a product
137 without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss
138 incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer
139 having been named a party in a product liability action.

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

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

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

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

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

§17A-6A-10. Prohibited practices.

1 (a) A manufacturer or distributor may not require any dealer in this state to do any of the
2 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 dealer. This section does not prevent the manufacturer or distributor from requiring that dealers
6 carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

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

10 (3) Unreasonably participate monetarily in any advertising campaign or contest, or
11 purchase any promotional materials, display devices, display decorations, brand signs and dealer
12 identification, nondiagnostic computer equipment and displays, or other materials at the expense
13 of the dealer;

14 (4) Enter into any agreement with the manufacturer or distributor or do any other act
15 prejudicial to the dealer by threatening to terminate a dealer agreement, limit inventory, invoke
16 sales and service warranty, or other types of audits or any contractual agreement or understanding
17 existing between the dealer and the manufacturer or distributor, or any manufacturer or
18 distributor's required or designated vendor or supplier. Notice in good faith to any dealer of the
19 dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

20 (5) Change the capital structure or financial requirements of the new motor vehicle
21 dealership without reasonable business justification in light of the dealer's market, historical
22 performance, and compliance with prior capital structure or financial requirements and business
23 necessity, or the means by or through which the dealer finances the operation of the dealership if
24 the dealership at all times meets any reasonable capital standards determined by the
25 manufacturer in accordance with uniformly applied criteria. The burden of proof is on the
26 manufacturer to prove business justification by a preponderance of the evidence;

27 (6) Refrain from participation in the management of, investment in, or the acquisition of
28 any other line of new motor vehicle or related products: *Provided*, That the dealer maintains a
29 reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable
30 facilities requirements, and makes no change in the principal management of the dealer.
31 Notwithstanding the terms of any dealer agreement, a manufacturer or distributor may not enforce
32 any requirements, including facility or image requirements, that a dealer establish or maintain

33 exclusive facilities, personnel, or display space, when the requirements are unreasonable
34 considering current economic conditions and are not otherwise justified by reasonable business
35 considerations. The burden of proving that current economic conditions or reasonable business
36 considerations justify such actions is on the manufacturer or distributor and must be proven by a
37 preponderance of the evidence;

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

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

48 (9) Coerce or require any dealer, whether by agreement, program, incentive provision, or
49 otherwise, to construct improvements to its facilities or to install new signs, or other franchisor
50 image elements that replace or substantially alter those improvements, signs, or franchisor image
51 elements completed within the preceding 15 years that were required and approved by the
52 manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a
53 manufacturer, factory branch, distributor, or distributor branch offers incentives or other payments
54 to a retail buyer, lessee, or dealer paid on individual new motor vehicle sales or leases under a
55 program offered after the effective date of this subdivision that are available to more than one
56 dealer in the state that are premised, wholly or in part, on dealer facility improvements or
57 installation of franchiser image elements required by and approved by the manufacturer, factory
58 branch, distributor, or distributor branch, and completed within 15 years preceding the program,

59 the dealer is determined to be in compliance with the program requirements pertaining to
60 construction of facilities or installation of signs or other franchisor image elements that would
61 replace or substantially alter those previously constructed or installed within that 15-year period:
62 *Provided*, That the provisions of this subdivision apply to any dealer who obtains ownership, either
63 through a stock purchase, asset purchase or other means, of a new motor vehicle dealership
64 which has met the requirements of this subdivision within the 15-year period set forth in this
65 subdivision, unless the dealer selling the new motor vehicle dealership has signed an agreement
66 with the manufacturer agreeing to dealer facility improvements or the installation of franchisor
67 image elements prior to an agreement to transfer ownership to a subsequent dealer. This
68 subdivision shall not apply to a program that is in effect with more than one dealer in the state on
69 the effective date of this subsection, nor to any renewal of the program, nor to a modification that is
70 not a modification of a material term or condition of the program;

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

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

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

83 (B) It is unlawful for any manufacturer, factory branch, captive finance source, distributor
84 or distributor branch, or any field representative, officer, agent, or any representative of them,

85 notwithstanding the terms, provisions, or conditions of any dealer agreement, to require any of its
86 dealers located in this state to agree to any terms, conditions, or requirements in subdivisions (1)
87 through (10), inclusive, of this subsection in order for the dealer to sell to any captive finance
88 source any retail installment contract, loan, or lease of any new motor vehicles purchased or
89 leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or
90 indirectly, obtain the benefits of the retail buyer or lessee transaction incentive program payable to
91 the retail buyer, lessee, or the dealer and offered by or through any captive finance source as to
92 that incentive program.

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

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

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

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

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

111 reasonably and fairly allocated by the manufacturer or distributor. A manufacturer or distributor
112 may not penalize a dealer for an alleged failure to meet sales quotas where the alleged failure is
113 due to actions of the manufacturer or distributor;

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

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

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

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

135 (6) Refuse to disclose to a dealer the total number of new motor vehicles of a given model,
136 which the manufacturer or distributor has sold during the current model year within the dealer's

137 marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a
138 request;

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

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

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

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

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

160 (9) Release to an outside party, except under subpoena or in an administrative or judicial
161 proceeding to which the dealer or the manufacturer or distributor are parties, any business,

162 financial, or personal information which has been provided by the dealer to the manufacturer or
163 distributor, unless the dealer gives his or her written consent;

164 (10) Deny a dealer the right to associate with another dealer for any lawful purpose;

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

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

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

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

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

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

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

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

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

184 (A) The person from whom the manufacturer or distributor acquired the dealership was a
185 dealer; and

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

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

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

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

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

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

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

207 (17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a
208 dealership within 60 days after receipt of a written application from the dealer on the forms
209 generally used by the manufacturer or distributor for that purpose and containing the information
210 required in the application. Failure to respond to the request within the 60 days is consent;

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

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

226 (20) Restrict or attempt to restrict a dealer's ownership of a dealership through
227 noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, or
228 option to purchase;

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

231 (22) Make any material or unreasonable change to the dealer's area of responsibility
232 without giving the dealer written notice, by certified mail of the change at least 60 days prior to the
233 effective date of the change which shall include an explanation of the basis for the alteration. Upon
234 written request from the dealer, this explanation shall include, but is not limited to, a reasonable
235 and commercially acceptable copy of all information, data, evaluations, and methodology relied on
236 or based its decision on, to propose the change to the dealer's area of responsibility. Any
237 information or documentation provided by the manufacturer or distributor may be produced
238 subject to a reasonable confidentiality agreement. At any time prior to the effective date of an

239 alteration of a dealer's area of responsibility, and after the completion of any internal appeal
240 process pursuant to the manufacturer's or distributor's policy manual, the dealer may petition the
241 court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal
242 appeal process decision. The court shall enjoin or prohibit the alteration of a dealer's area of
243 responsibility unless the manufacturer shows, by a preponderance of the evidence, that the
244 alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer
245 petitions the court, an alteration to a dealer's area of responsibility shall not become effective until
246 a final determination by the court. If a dealer's area of responsibility is altered, the manufacturer
247 shall allow 24 months for the dealer to become sales effective prior to taking any action claiming a
248 breach or nonperformance of the dealer's sales performance responsibilities;

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

252 (24) Compel a dealer, through its finance subsidiaries, to agree to unreasonable operating
253 requirements, or to directly or indirectly terminate a dealer agreement through the actions of a
254 finance subsidiary of the manufacturer. This subsection does not limit the right of a finance
255 subsidiary to engage in business practices in accordance with the usage of trade in retail or
256 wholesale vehicle financing;

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

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

261 (27) Require or coerce any dealer to sell, offer to sell, or sell exclusively an extended
262 service contract, maintenance plan, or similar product, including gap or other products offered,
263 endorsed, or sponsored by the manufacturer or distributor by the following means:

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

266 (B) By a contract made to the dealer on the condition that the dealer sells, offers to sell, or
267 sells exclusively an extended service contract, extended maintenance plan, or similar product
268 offered, endorsed, or sponsored by the manufacturer or distributor;

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

272 (D) By requiring the dealer to actively promote the sale of extended service contracts,
273 extended maintenance plans, or similar products offered, endorsed, or sponsored by the
274 manufacturer or distributor: *Provided*, That nothing in this paragraph prohibits a manufacturer or
275 distributor from providing incentive programs to a dealer who makes the voluntary decision to offer
276 to sell, sell, or sell exclusively an extended service contract, extended maintenance plan, or similar
277 product offered, endorsed, or sponsored by the manufacturer or distributor;

278 (E) By requiring a dealer to purchase goods or services from a vendor selected, identified,
279 or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its
280 affiliates by agreement, program, incentive provision, or otherwise without making available to the
281 dealer the option to obtain the goods or services of substantially similar quality and overall design
282 from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor,
283 or distributor branch: *Provided*, That the approval may not be unreasonably withheld: *Provided*,
284 *however*, That the dealer's option to select a vendor is not available if the manufacturer or
285 distributor provides substantial reimbursement for the goods or services offered. Substantial
286 reimbursement is equal to the difference in price of the goods and services from manufacturer's
287 proposed vendor and the dealer's selected vendor: *Provided further*, That the goods are not
288 subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress
289 usage guidelines.

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

293 (d) Except as may otherwise be provided in this article, a manufacturer may not directly or
294 indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail, buyer or lessee offer for
295 retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance the retail
296 sale, lease, exchange, or other conveyance of a new motor vehicle to a retail buyer or lessee in
297 this state, except through a dealer holding a franchise for the line-make covering the new motor
298 vehicle. This subsection does not apply to manufacturer sales of new motor vehicles to charitable
299 organizations, qualified vendors, or employees of the manufacturer.

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

307 (f) It is unlawful for any manufacturer, factory branch, distributor, or distributor branch,
308 when providing a new motor vehicle to a dealer for offer, sale, or lease in this state to the public, to
309 fail to provide to the dealer a written disclosure that may be provided to a potential retail buyer or
310 lessee of the new motor vehicle of each accessory or function of the motor vehicle that may be
311 initiated, updated, changed, or maintained by the manufacturer or distributor through over the air
312 or remote means, and the charge to the retail buyer or lessee for the initiation, update change, or
313 maintenance that is known at the time of sale. A manufacturer or distributor may comply with this
314 subdivision by notifying the dealer that the information is available on a website or by other digital
315 means. (g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act

316 prejudicial against a new motor vehicle dealer arising from the retail price at which a dealer sells a
317 new motor vehicle.

318 (h) Notwithstanding the terms of any dealer agreement, or the terms of any program or
319 policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement
320 with any dealer in this state and if the manufacturer or distributor permits retail customers the
321 option of reserving the purchase or lease of a vehicle through a manufacturer or distributor
322 reservation system:

323 (1) Fail to assign any retail vehicle reservation, or request to purchase, or lease received
324 by the manufacturer or distributor from a resident of this state to the dealer authorized to sell that
325 make and model which is designated by the retail buyer or lessee, or if none is designated, to its
326 dealer authorized to sell that make and model located in closest proximity to the retail buyer or
327 lessee's location: *Provided*, That if the retail buyer or lessee does not purchase or lease the
328 vehicle from that dealer within 10 days of the new motor vehicle being received by the dealer, or if
329 the retail buyer or lessee requests that the transaction be assigned to another dealer, then the
330 manufacturer or distributor may assign the transaction to another dealer authorized to sell that
331 make and model;

332 (2) Prohibit or interfere with a dealer negotiating the final purchase price of the new motor
333 vehicle with a retail buyer or lessee that has reserved the purchase or lease through a
334 manufacturer or distributor reservation system;

335 (3) Prohibit or interfere with a dealer offering and negotiating directly with the customer
336 retail buyer or lessee the terms of vehicle financing or leasing through all sources available to the
337 dealer for the retail buyer or lessee that has reserved the purchase or lease of a new motor vehicle
338 through a manufacturer or distributor reservation system;

339 (4) Prohibit or interfere with a dealer's ability to offer to sell or sell any service contract,
340 extended warranty, vehicle maintenance contract, or guaranteed asset protection agreement, or
341 any other vehicle-related products and services offered by the dealer with a retail buyer or lessee

342 that has reserved to purchase or lease through a manufacturer or distributor reservation system:
343 *Provided*, That a manufacturer, distributor, or captive finance source shall not be required to
344 finance the product or service;

345 (5) Prohibit or interfere with a dealer directly negotiating the trade-in value the retail buyer
346 or lessee will receive, or prohibit the dealer from conducting an on-site inspection of the condition
347 of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value
348 negotiated with a retail buyer or lessee that has reserved to purchase or lease a new motor vehicle
349 through the manufacturer or distributor reservation system;

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

351 (7) Nothing contained in this subdivision shall:

352 (A) Require that a manufacturer or distributor allocate or supply additional or
353 supplemental inventory to a dealer located in this state in order to satisfy a retail buyer or lessee's
354 vehicle reservation or request submitted directly to the manufacturer or distributor as provided in
355 this section;

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

360 (C) Apply to a reservation or request to purchase or lease a new motor vehicle through the
361 manufacturer or distributor received from the retail buyer or lessee that is a resident of this state if
362 the retail buyer or lessee designates a dealer outside of this state to be assigned the reservation or
363 request to purchase or lease or if the dealer in closest proximity to the retail buyer or lessee's
364 location is in another state and the manufacturer or distributor assigns the reservation or request
365 to purchase or lease to that dealer.

366 (i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer
367 or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement

368 with any dealer in this state, offer new motor vehicles through a subscription directly to a retail
369 buyer or lessee. However, this subsection is not intended to prevent a manufacturer or distributor
370 from providing or offering new motor vehicles through a subscription program through a dealer for
371 sale or lease to a retail buyer or lessee.

372 (j) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer
373 or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement
374 with any dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a
375 new motor vehicle to a retail buyer or lessee. However, this subsection is not intended to prevent a
376 manufacturer or distributor from providing or offering a financing program through a dealer which
377 is available for retail buyers or lessees.

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

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

386 (2) Retains ownership of new motor vehicles until they are sold or leased to retail buyers or
387 lessees; except that, a manufacturer or distributor may maintain a common supply of new motor
388 vehicles to which it retains ownership until the new motor vehicles are sold to dealers pursuant to
389 the manufacturer or distributor's allocation policies and procedures, and may maintain a common
390 supply of new motor vehicles from which a dealer may buy vehicles for the dealer's inventory
391 without having reached agreement for sale or lease of any new motor vehicle with a retail buyer or
392 lessee if the manufacturer, factory branch, or distributor, or distributor branch does not otherwise

393 allow its dealers to obtain stock inventory through the new motor vehicle allocation process and
394 pursuant to the manufacturer or distributor's allocation policies and procedures;

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

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

399 (5) Designates dealers to be only delivery agents for new motor vehicles, for which the
400 binding terms of sale or lease are negotiated directly between the manufacturer and the retail
401 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 dealer agreement, contract,
2 or other agreement of any kind between a dealer and a manufacturer or distributor captive finance
3 source, dealer data systems vendor, or any subsidiary, affiliate, or partner of a manufacturer or
4 distributor, or captive finance source or dealer data systems vendor, the provisions of this code
5 apply to all such agreements and contracts listed in this section or governed by this article. Any
6 provisions in the agreements and contracts which violate the terms of this section are null and
7 void.