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**HOUSE BILL NO. 1469**

House Amendments in [ ] - January 24, 2023

A *BILL to amend and reenact §§ 46.2-1569, 46.2-1571, and 46.2-1572 of the Code of Virginia, relating to motor vehicle dealers; franchise agreements; sale or lease of new motor vehicles.*

Patron Prior to Engrossment—Delegate Leftwich

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 46.2-1569, 46.2-1571, and 46.2-1572 of the Code of Virginia are amended and reenacted as follows:**

**§ 46.2-1569. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of vehicles, parts, and accessories.**

Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer, factory branch, distributor, distributor branch, or affiliate, or any field representative, officer, agent, or their representatives to do any of the following. It shall further be unlawful for any manufacturer, factory branch, distributor, distributor branch, or any field representative, officer, agent, or their representatives to engage in conduct prohibited under this section through an affiliate.

1. To coerce or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, factory branch, distributor, or distributor branch, or representative thereof by threat to take or by taking any action in violation of the chapter, or by any other act unfair or injurious to the dealer, *including the threat to withhold any incentive payments in whole or in part or to deny the dealer the right to participate in an incentive program in which more than one of the dealers of the line-make in the Commonwealth are eligible to participate and under the same terms as such other dealers. Nothing contained in this section shall require that a dealer be qualified for [ or entitled to] incentive payments or the right to payments [ or benefits ] from an incentive program [ , nor will a manufacturer, factory branch, distributor, or distributor branch be prohibited from informing a dealer thereof, ] unless the dealer meets all qualifications [ ~~for payment~~ and performs all applicable requirements and meets all of the applicable standards for such payments or benefits ] reasonably established by the manufacturer, factory branch, distributor, or distributor branch, or as otherwise provided in this article.* If a manufacturer, factory branch, distributor, or distributor branch conditions the grant of a new franchise to a dealer on the dealer's consent (i) to provide a site control agreement as defined in subdivision 10, (ii) to provide a written agreement containing an option to purchase the franchise of the dealer, provided, however, that agreements pursuant to § 46.2-1569.1 shall be permitted, or (iii) to provide a termination agreement to be held by the manufacturer, factory branch, distributor, or distributor branch for subsequent use, it shall be considered coercion and an act that is unfair and injurious to the dealer; provided, however, that the provisions of § 46.2-1572.3 related to the good faith settlement of disputes shall apply to the agreements described in clauses (i), (ii), and (iii) of this subdivision, mutatis mutandis. This subdivision shall not apply to any agreement the enforcement of which is subject to the jurisdiction of a United States Bankruptcy Court.

2a. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.

2b. To coerce or require any dealer to establish in connection with the sale of a motor vehicle prices at which the dealer shall sell products or services not manufactured or distributed by the manufacturer, factory branch, distributor, or distributor branch, whether by agreement, program, incentive provision, or otherwise.

2c. To coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those improvements, signs, or franchisor image elements completed within the preceding 10 years that were required or approved by the manufacturer, factory branch, distributor, or distributor branch or one of its affiliates. If a manufacturer, factory branch, distributor, or distributor branch offers incentives, or other payments under a program offered after the effective date of this subdivision and available to more than one dealer in the Commonwealth that are premised wholly or in part on dealer facility improvements or installation of franchisor signs or other franchisor image elements, a dealer that constructed improvements or installed signs or other franchisor image elements required by or approved by the manufacturer, factory branch, distributor, or distributor

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59 branch and completed within the 10 years preceding the program shall be deemed to be in compliance  
60 with the program requirements pertaining to construction of facilities or installation of signs or other  
61 franchisor image elements that would replace or substantially alter those previously constructed or  
62 installed within that 10-year period. This subdivision shall not apply to a program that provides lump  
63 sum payments to assist dealers in making facility improvements or to pay for signs or franchisor image  
64 elements when such payments are not dependent on the dealer selling or purchasing specific numbers of  
65 new vehicles and shall not apply to a program that is in effect with more than one dealer in the  
66 Commonwealth on the effective date of this subdivision, nor to any renewal or modification of such a  
67 program.

68 2d. To coerce or require any dealer, whether by agreement, program, incentive provision, or  
69 provision for loss of incentive payments or other benefits, to refrain from selling any used motor vehicle  
70 subject to (i) recall, (ii) stop sale directive, (iii) technical service bulletin, or (iv) other manufacturer,  
71 factory branch, distributor, or distributor branch notification to perform work on such used motor  
72 vehicle, unless the manufacturer, factory branch, distributor, or distributor branch has a remedy and parts  
73 available to the dealer to remediate the basis for the coercion or requirement of the dealer to refrain  
74 from selling each affected used motor vehicle. If there is no remedy or there are no parts available from  
75 the manufacturer, factory branch, distributor, or distributor branch to remediate each affected used motor  
76 vehicle in the inventory of the dealer, the manufacturer, factory branch, distributor, or distributor branch  
77 shall (a) compensate the dealer for any affected used motor vehicle in the inventory of the dealer that it  
78 cannot sell because of such coercion or requirement at least one percent a month or any part thereof of  
79 the cost of such used motor vehicle, including repairs and reconditioning expenses based on the financial  
80 records of the dealer, and (b) establish a written procedure to compensate dealers under this subdivision  
81 that it shall provide to dealers subject to its coercion or requirement and file with the Commissioner as a  
82 franchise document pursuant to § 46.2-1566.

83 Any claim for compensation by a dealer shall be submitted on a monthly basis for the amount owed  
84 pursuant to this subdivision. The manufacturer, factory branch, distributor, or distributor branch shall  
85 process and pay the claim in the same manner as a claim for warranty reimbursements as provided in  
86 § 46.2-1571. This subdivision shall not prevent a manufacturer, factory branch, distributor, or distributor  
87 branch from (1) requiring that a motor vehicle not be subject to an open recall or stop sale directive in  
88 order to be qualified, remain qualified, or be sold as a certified pre-owned vehicle or similar  
89 designation; (2) paying incentives for selling used vehicles with no unremedied recalls; or (3) paying  
90 incentives for performing recall repairs on a vehicle in the dealer's inventory.

91 Nothing in this subdivision shall prevent a manufacturer, factory branch, distributor, or distributor  
92 branch from instructing that a dealer repair used vehicles of the line-make for which the dealer holds a  
93 franchise with an open recall, provided that the instruction does not involve coercion that imposes a  
94 penalty or provision of loss of benefits on the dealer.

95 2e. *To coerce or require any dealer, whether by agreement, program, incentive provision, or*  
96 *provision for loss of incentive payments or other benefits, to amend its franchise agreement or similar*  
97 *agreement governing the sales and leasing of new motor vehicles, or to establish or implement a*  
98 *franchise agreement for the sales and leasing of new motor vehicles, under which the manufacturer,*  
99 *factory branch, distributor, or distributor branch (i) maintains a website or other electronic or digital*  
100 *means of communication for negotiating binding terms of sale or leasing of new motor vehicles directly*  
101 *between the manufacturer, factory branch, distributor, or distributor branch and retail buyers or lessees,*  
102 *including but not limited to agreements on prices or other substantive terms of sale or leasing of new*  
103 *vehicles; (ii) retains ownership of new motor vehicles until they are sold or leased to the retail buyers*  
104 *or lessees thereof; however, a manufacturer, factory branch, distributor, or distributor branch may*  
105 *maintain a common supply of new vehicles [ ~~to~~ of ] which it maintains [ ~~the title~~ ownership ] until such*  
106 *vehicles are sold to dealers, from which more than one dealer may buy vehicles, provided that the*  
107 *manufacturer, factory branch, distributor, or distributor branch may not use the common supply of new*  
108 *vehicles to engage in the negotiation of binding terms of sales or leases directly with retail buyers or*  
109 *lessees and further provided that a dealer may buy vehicles from the common supply for the dealer's*  
110 *inventory without having reached agreement for sale or lease of any new vehicle with a retail buyer or*  
111 *lessee if the manufacturer, factory branch, distributor, or distributor branch does not otherwise allow its*  
112 *dealers to obtain stock inventory through the [ ~~ordinary~~ ] vehicle allocation process; (iii) [ except for*  
113 *the sale or lease of a vehicle to an actual employee of the manufacturer, factory branch, distributor, or*  
114 *distributor branch or in connection with any replacement or buyback under Chapter 17.3 (§ 59.1-207.9*  
115 *et seq.) of Title 59.1, ] consigns new motor vehicles to dealers for dealer inventory or for sale or lease*  
116 *to retail buyers or lessees; (iv) reserves the right to negotiate binding terms of sale directly with retail*  
117 *buyers or lessees of new motor vehicles [ , provided that displaying on a website or other electronic or*  
118 *digital means of communication prices set by dealers, lists of available financing sources provided by*  
119 *dealers, or a conditional trade-in value shall not be considered negotiating ] ; (v) reserves the right to*  
120 *offer or negotiate directly with the retail buyers or lessees in connection with and at the time of sale of*

121 a new motor vehicle the sale of any service contract, vehicle maintenance agreement, guaranteed asset  
 122 protection (GAP) agreement or waiver, or other vehicle-related products and services that are otherwise  
 123 offered by the dealer; however, a manufacturer, factory branch, distributor, or distributor branch may  
 124 communicate or negotiate and finalize agreements with vehicle owners or lessees directly concerning  
 125 any accessory or function of a vehicle that may be initiated, updated, changed, or maintained by the  
 126 manufacturer, factory branch, distributor, or distributor branch through over-the-air or remote means if  
 127 the manufacturer, factory branch, distributor, or distributor branch complies with the requirements of  
 128 subdivision B 10 of § 46.2-1571; or (vi) designates dealers to be only delivery agents for new motor  
 129 vehicles the binding terms of sale or lease of which are negotiated directly between the manufacturer,  
 130 factory branch, distributor, or distributor branch and the retail buyers or lessees of the new motor  
 131 vehicles. No manufacturer, factory branch, distributor, or distributor branch shall engage in any of the  
 132 activities listed in clauses (i) through (vi). Notwithstanding the foregoing provisions of this subsection, a  
 133 manufacturer, factory branch, distributor, or distributor branch may engage in fleet sales with a fleet  
 134 customer that has a designation as such by the manufacturer, factory branch, distributor, or distributor  
 135 branch because it has purchased [ or leased ] or has committed to purchase [ or lease ] five or more  
 136 vehicles under the fleet program. [ Nothing in this section shall limit a manufacturer, factory branch,  
 137 distributor, or distributor branch from setting or advertising a manufacturer's suggested retail price. ]

138 3. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of  
 139 the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a  
 140 change in the executive management or principal operator of the dealership, unless the franchisor  
 141 provides written notice to the dealer of its objection and the reasons therefor by certified mail or  
 142 overnight delivery or other method designed to ensure delivery to the dealer at least 30 days prior to the  
 143 proposed effective date of the transfer, sale, assignment, or change. No such objection shall be sufficient  
 144 unless the failure to approve is reasonable. Notwithstanding the provisions of subsection D of  
 145 § 46.2-1573, the only grounds that may be considered reasonable for a failure to approve are that an  
 146 individual who is the applicant or is in control of an entity that is an applicant (i) lacks good moral  
 147 character, (ii) lacks reasonable motor vehicle dealership management experience and qualifications, (iii)  
 148 lacks financial ability to be the dealer, or (iv) fails to meet the standards otherwise established by this  
 149 title to be a dealer. No such objection shall be effective to prevent the sale, transfer, assignment, or  
 150 change if the Commissioner has determined, if requested in writing by the dealer within 30 days after  
 151 receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that  
 152 the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the  
 153 circumstances. No franchise may be sold, assigned, or transferred unless (a) the franchisor has been  
 154 given at least 90 days' prior written notice by the dealer as to the identity, financial ability, and  
 155 qualifications of the proposed transferee on forms generally utilized by the franchisor to conduct its  
 156 review, as well as the full agreement for the proposed transaction, and (b) the sale or transfer of the  
 157 franchise and business will not involve, without the franchisor's consent, a relocation of the business.

158 3a. To impose a condition on the approval of the sale or transfer of the ownership of a dealership by  
 159 the sale of the business, stock transfer, or otherwise if the condition would violate the provisions of this  
 160 title if imposed on the existing dealer.

161 In the event the manufacturer, factory branch, distributor or distributor branch takes action to prevent  
 162 or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business,  
 163 stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the  
 164 executive management or principal operator of the dealership, without a statement of specific grounds  
 165 for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of  
 166 subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request  
 167 review of the action or imposition of the condition in a hearing by the Commissioner. If the  
 168 Commissioner finds that the action or the imposition of the condition was a violation of this section, the  
 169 Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch,  
 170 distributor, or distributor branch, without imposition of the condition. If the existing dealer does not  
 171 request a hearing by the Commissioner concerning the action or the condition imposed by the  
 172 manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the  
 173 proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the  
 174 applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at  
 175 law for violation of this section. The action may be commenced in the circuit court of the city or county  
 176 in which the dealer is located, or in any other circuit court with permissible venue, within two years  
 177 following the action or the imposition of the condition by the manufacturer, factory branch, distributor,  
 178 or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation  
 179 of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's  
 180 or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of  
 181 the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to

182 § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

183 4. To grant an additional franchise for a particular line-make of motor vehicle in a relevant market  
184 area in which a dealer or dealers in that line-make are already located unless the franchisor has first  
185 advised in writing all other dealers in the line-make in the relevant market area. No such additional  
186 franchise may be established at the proposed site unless the Commissioner has determined, if requested  
187 by a dealer of the same line-make in the relevant market area within 30 days after receipt of the  
188 franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter,  
189 that the franchisor can show by a preponderance of the evidence that after the grant of the new  
190 franchise, the relevant market area will support all of the dealers in that line-make in the relevant market  
191 area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has  
192 not been in operation for more than two years shall constitute the establishment of a new franchise  
193 subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin  
194 on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor  
195 was legally permitted finally to terminate the franchise. The relocation of a franchise in a relevant  
196 market area, whether by an existing dealer or by a dealer who is acquiring the franchise, shall constitute  
197 the establishment of a new franchise subject to the terms of this subdivision. This subdivision shall not  
198 apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation  
199 site is to be more than 10 miles distant from any other dealer for the same line-make; (ii) the relocation  
200 of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant  
201 than the existing site from all other dealers of the same line-make in that relevant market area; or (iii)  
202 the relocation of an existing new motor vehicle dealer within two miles of the existing site of the  
203 relocating dealer.

204 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,  
205 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the  
206 dealer and the Commissioner have received written notice of the franchisor's intentions at least 60 days  
207 prior to the effective date of such termination, cancellation, or the expiration date of the franchise,  
208 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested  
209 in writing by the dealer within the 60-day period prior to the effective date of such termination,  
210 cancellation, or the expiration date of the franchise and, after a hearing on the matter, that the franchisor  
211 has shown by a preponderance of the evidence that there is good cause for the termination, cancellation,  
212 or nonrenewal of the franchise. If any manufacturer, factory branch, distributor, or distributor branch  
213 takes action that will have the effect of terminating, canceling, or refusing to renew the franchise of any  
214 dealer (a) by use of a termination agreement executed by the dealer and obtained more than 90 days  
215 before the purported date of use, (b) by exercise of rights under a written option to purchase the  
216 franchise of a dealer, or (c) by exercise of rights under a site control agreement as defined in  
217 subdivision 10, that action shall be considered a termination, cancellation, or refusal to renew pursuant  
218 to the terms of this subdivision and subject to the rights, provisions, and procedures provided herein. In  
219 any case where a petition is made to the Commissioner for a determination as to good cause for the  
220 termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect  
221 pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the  
222 decision of the circuit court. Where the termination, cancellation, or nonrenewal of a franchise will  
223 result from use of a termination agreement executed by the dealer and obtained more than 90 days  
224 before the purported date of use, exercise of rights under a written option to purchase the franchise of a  
225 dealer, or exercise of rights under a site control agreement as defined in subdivision 10, such use or  
226 exercise shall be stayed pending the Commissioner's decision or, if that decision is appealed to the  
227 circuit court, pending the decision of the circuit court, and its use or exercise will be allowed only  
228 where the franchisor has shown by a preponderance of the evidence that there is good cause for the  
229 termination, cancellation, or nonrenewal of the franchise. In any case in which a franchisor neither  
230 advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise  
231 beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to  
232 by the parties. Notwithstanding the other provisions of this subdivision notice of termination,  
233 cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than 15 days prior to  
234 the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are  
235 any of the following:

236 a. Insolvency of the franchised motor vehicle dealer or filing of any petition by or against the  
237 franchised motor vehicle dealer, under any bankruptcy or receivership law, leading to liquidation or  
238 which is intended to lead to liquidation of the franchisee's business.

239 b. Failure of the franchised motor vehicle dealer to conduct its customary sales and service  
240 operations during its posted business hours for seven consecutive business days, except where the failure  
241 results from acts of God or circumstances beyond the direct control of the franchised motor vehicle  
242 dealer.

243 c. Revocation of any license which the franchised motor vehicle dealer is required to have to operate

244 a dealership.

245 d. Conviction of the dealer or any principal of the dealer of a felony.

246 The change or discontinuance of a marketing or distribution system of a particular line-make product  
247 by a manufacturer or distributor, while the name identification of the product is continued in substantial  
248 form by the same or a different manufacturer or distributor, may be considered to be a franchise  
249 termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and  
250 discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in  
251 which such a change or discontinuance occurring prior to that date has been challenged as constituting a  
252 termination, cancellation or nonrenewal.

253 5a. To fail to provide continued parts and service support to a dealer which holds a franchise in a  
254 discontinued line-make for at least five years from the date of such discontinuance. This requirement  
255 shall not apply to a line-make which was discontinued prior to January 1, 1989.

256 5b. Upon the involuntary or voluntary termination, nonrenewal, or cancellation of the franchise of  
257 any dealer, by either the manufacturer, distributor, or factory branch or by the dealer, notwithstanding  
258 the terms of any franchise whether entered into before or after the enactment of this section, to fail to  
259 pay the dealer for at least the following:

260 (1) The dealer cost plus any charges by the franchisor for distribution, delivery, and taxes paid by  
261 the dealer, less all allowances paid to the dealer by the franchisor, for new and undamaged motor  
262 vehicles in the dealer's inventory acquired from the franchisor or from another dealer of the same line  
263 — make in the ordinary course of business within 18 months of termination;

264 (2) The dealer cost as shown in the price catalog of the franchisor current at the time of repurchase  
265 of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current  
266 parts catalog and is still in the original, resalable merchandising package and in unbroken lots, except  
267 that in the case of sheet metal, a comparable substitute for the original package may be used;

268 (3) The fair market value of each undamaged sign owned by the dealer that bears a trademark, trade  
269 name or commercial symbol used or claimed by the franchisor if such sign was purchased from or at  
270 the request of the franchisor;

271 (4) The fair market value of all special tools and automotive service equipment owned by the dealer  
272 that were recommended and designated as special tools or equipment by the franchisor, if the tools and  
273 equipment are in usable and good condition, normal wear and tear excepted; and

274 (5) The reasonable cost of transporting, handling, packing, and loading of motor vehicles, parts,  
275 signs, tools, and special equipment subject to repurchase hereunder.

276 The provisions of this subdivision do not apply to a dealer who is unable to convey clear title to the  
277 property identified in this subdivision.

278 For purposes of this subdivision, a voluntary termination shall not include the transfer of the  
279 terminating dealer's franchised business in connection with a transfer of that business by means of sale  
280 of the equity ownership or assets thereof to another dealer.

281 5c. If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the  
282 termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch,  
283 then, in addition to the payments to the dealer pursuant to subdivision 5b, the manufacturer, distributor,  
284 or factory branch shall be liable to the dealer for the following:

285 (1) An amount at least equivalent to the fair market value of the franchise for the line-make, which  
286 shall be the greater of that value determined as of (i) the date the franchisor announces the action that  
287 results in termination, cancellation, or nonrenewal, (ii) the date the action that resulted in the  
288 termination, cancellation, or nonrenewal first became general knowledge, or (iii) the day 12 months prior  
289 to the date on which the notice of termination, cancellation, or nonrenewal is issued. In determining the  
290 fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the  
291 dealer holds a franchise in the dealership facilities, the dealer shall also be entitled to compensation for  
292 the contribution of the line-make to payment of the rent or to covering obligation for the fair rental  
293 value of the dealership facilities for the period set forth in subdivision 5c (2). Fair market value of the  
294 franchise for the line-make shall only include the goodwill value of the dealer's franchise for that  
295 line-make in the dealer's relevant market area.

296 (2) If the line-make is the only line-make for which the dealer holds a franchise in the dealership  
297 facilities, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the  
298 dealership facilities leased or owned by the dealer as follows: (i) the manufacturer, distributor, or factory  
299 branch shall pay the dealer a sum equivalent to the rent for the unexpired term of the lease or three  
300 years' rent, whichever is the lesser, or (ii) if the dealer owns the dealership facilities, the manufacturer,  
301 distributor, or factory branch shall pay the dealer a sum equivalent to the reasonable rental value of the  
302 dealership facilities for three years.

303 To be entitled to facilities assistance from the manufacturer, distributor, or factory branch, the dealer  
304 shall have the obligation to mitigate damages by listing the dealership facilities for lease or sublease

305 with a licensed real estate agent within 30 days after the effective date of the termination of the  
306 franchise and thereafter by reasonably cooperating with such real estate agent in the performance of the  
307 agent's duties and responsibilities. If the dealer is able to lease or sublease the dealership facilities on  
308 terms that are consistent with local zoning requirements to preserve the right to sell motor vehicles from  
309 the dealership facilities and the terms of the dealer's lease, the dealer shall be obligated to pay the  
310 manufacturer the net revenue received from such mitigation, but only following receipt of facilities  
311 assistance payments pursuant to clause (i) or (ii) of subdivision 5c (2), and only up to the total amount  
312 of facilities assistance payments that the dealer has received.

313 6. To fail to allow a dealer the right at any time to designate a member of his family as a successor  
314 to the dealership in the event of the death or incapacity of the dealer. Such designation may be made by  
315 the dealer or, in the event of the death or incapacity of the dealer, by the qualified executor or personal  
316 representative of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a  
317 dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not  
318 provided to the member of the family designated the dealer's successor written notice of its objections to  
319 the succession and of such person's right to seek a hearing on the matter before the Commissioner  
320 pursuant to this article, and the Commissioner determines, if requested in writing by such member of the  
321 family within 30 days of receipt of such notice from the franchisor, and after a hearing on the matter  
322 before the Commissioner pursuant to this article, that the failure to permit or honor the succession is  
323 unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i)  
324 the franchisor has been given written notice as to the identity, financial ability, and qualifications of the  
325 member of the family in question, and (ii) the succession to the franchise will not involve, without the  
326 franchisor's consent, a relocation of the business.

327 7. To delay, refuse, or fail to deliver to any dealer, if ordered by the dealer, in reasonable quantities  
328 and within a reasonable time, any new vehicles of each series and model sold or distributed by the  
329 franchisor as covered by such franchise and which are publicly advertised by the manufacturer, factory  
330 branch, distributor, or distributor branch in the Commonwealth to be available for immediate delivery,  
331 provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of  
332 this chapter if such failure is due to an act of God, a work stoppage or delay due to a strike or labor  
333 difficulty, a shortage of materials, a lack of available manufacturing capacity, a freight embargo, or other  
334 cause over which the manufacturer, factory branch, distributor, or distributor branch shall have no  
335 control. If ordered by a dealer, a franchisor shall deliver an equitable supply of new vehicles during the  
336 model year of each series and model under the dealer's franchise in proportion to the sales objectives or  
337 goals established by the franchisor for the dealer compared to the sales objectives or goals established  
338 by the other same line-make dealers in the Commonwealth, provided, however, that the failure to deliver  
339 any motor vehicle shall not be considered a violation of this chapter if such failure is due to a cause  
340 over which the manufacturer, factory branch, distributor, or distributor branch shall have no control.  
341 Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer  
342 or distributor shall disclose to the dealer in writing the basis upon which new motor vehicles of the  
343 same line-make are allocated, scheduled, and delivered to dealers in the Commonwealth, and the basis  
344 upon which the current allocation or distribution is being made or will be made to such dealer. In the  
345 event that allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to  
346 direct that the manufacturer or distributor provide to the dealer, within 30 days of such demand, all  
347 records of sales and all records of distribution of all motor vehicles to the same line-make dealers who  
348 compete with the dealer requesting the hearing.

349 7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for the  
350 line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's  
351 existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to  
352 receiving a model or a series of vehicles.

353 7b. To require or otherwise coerce a dealer to underutilize the dealer's facilities by requiring or  
354 otherwise coercing a dealer to exclude or remove from the dealer's facilities operations for selling or  
355 servicing of a line-make of vehicles for which the dealer has a franchise agreement to utilize the  
356 facilities.

357 7c. To require a dealer to purchase goods or services from a vendor selected, identified, or  
358 designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by  
359 agreement, program, incentive provision, or otherwise without making available to the dealer the option  
360 to obtain the goods or services of substantially similar quality from a vendor chosen by the dealer. For  
361 purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and  
362 promotional materials containing material subject to intellectual property rights of, or special tools and  
363 training as required by the manufacturer, or parts to be used in repairs under warranty obligations of, a  
364 manufacturer, factory branch, distributor, or distributor branch.

365 7d. To fail to provide a notice to a dealer when notifying it of the requirement to purchase goods or  
366 services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor,

367 or distributor branch of the dealer's rights pursuant to subdivision 7c.

368 7e. To fail to provide to a dealer, when the manufacturer, factory branch, distributor, or distributor  
 369 branch claims that a vendor chosen by the dealer cannot supply goods and services of substantially  
 370 similar quality, a disclosure concerning the vendor selected, identified, or designated by the franchisor  
 371 stating (i) whether the manufacturer, factory branch, distributor, distributor branch, or one of its  
 372 affiliates, or any officer, director, or employee of the same, has an ownership interest, actual or  
 373 beneficial, in the vendor and, if so, the percentage of the ownership interest and (ii) whether the  
 374 manufacturer, factory branch, distributor, distributor branch, or one of its affiliates has an agreement or  
 375 arrangement by which the vendor pays to the manufacturer, factory branch, distributor, distributor  
 376 branch, or one of its affiliates, or any officer, director, or employee of the same, any compensation and,  
 377 if so, the basis and amount of the compensation to be paid as a result of any purchases by the dealer,  
 378 whether it is to be paid by direct payment by the vendor or by credit from the vendor for the benefit of  
 379 the recipient.

380 7f. To fail to provide to a dealer, if the goods and services to be supplied to the dealer by a vendor  
 381 selected, identified, or designated by the manufacturer, factory branch, distributor, or distributor branch  
 382 are signs or other franchisor image elements to be leased to the dealer, the right to purchase the signs or  
 383 other franchisor image elements of like kind and quality from a vendor selected by the dealer. If the  
 384 vendor selected by the manufacturer, factory branch, distributor, or distributor branch is the only  
 385 available vendor, the dealer must be given the opportunity to purchase the signs or other franchisor  
 386 image elements at a price substantially similar to the capitalized lease costs thereof. This subdivision  
 387 shall not be construed to allow a dealer to impair or eliminate the intellectual property rights of the  
 388 manufacturer, factory branch, distributor, or distributor branch, nor to permit a dealer to erect or  
 389 maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer,  
 390 factory branch, distributor, or distributor branch.

391 8. To include in any franchise with a motor vehicle dealer terms that are contrary to, prohibited by,  
 392 or otherwise inconsistent with the requirements of this chapter.

393 8a. For any franchise agreement, to require a motor vehicle dealer to pay the attorney fees of the  
 394 manufacturer or distributor related to hearings and appeals brought under this article.

395 9. To fail to include in any franchise with a motor vehicle dealer the following language: "If any  
 396 provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this  
 397 agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by  
 398 such laws or regulations, such provision shall be deemed to conform to such laws or  
 399 regulations, and all other terms and provisions shall remain in full force," or words to that effect.

400 *9a. To include in any franchise agreement or similar agreement governing the sales, leasing, or*  
 401 *service of new motor vehicles, or to enforce or seek to enforce in such franchise agreement or similar*  
 402 *agreement, a right for the manufacturer, factory branch, distributor, or distributor branch to unilaterally*  
 403 *amend the franchise agreement or similar agreement. Any amendment to a franchise agreement or*  
 404 *similar agreement governing the sales, leasing, or service of new vehicles must be agreed by both the*  
 405 *manufacturer, factory branch, distributor, or distributor branch and the dealer at the time the franchise*  
 406 *agreement or similar agreement is to be amended.*

407 10. To enter into any agreement with a motor vehicle dealer in which the manufacturer, factory  
 408 branch, distributor, distributor branch, or one of its affiliates is given site control over the premises of a  
 409 dealer that does not terminate upon the occurrence of any of the following events: (i) the right of the  
 410 franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is  
 411 sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor  
 412 branch to another; (ii) the final termination of the dealer's franchise for any reason; or (iii) the  
 413 manufacturer, factory branch, distributor, or distributor branch of its affiliate fails for any reason to  
 414 exercise its right of first refusal to purchase the assets or ownership of the business of the dealer when  
 415 given the opportunity to do so by virtue of its franchise agreement, another agreement, or as set forth in  
 416 § 46.2-1569. For purposes of this subdivision, the term "site control" shall mean the contractual right to  
 417 control in any way the commercial use and development of the premises upon which a dealer's business  
 418 operations are located, including the right to approve of additional or different uses for the property  
 419 beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option  
 420 to purchase the dealer's property.

421 11. To require or coerce a motor vehicle dealer, whether by agreement, program, incentive provision,  
 422 or otherwise, to submit or to provide a manufacturer, factory branch, distributor, or distributor branch  
 423 access to consumer data maintained by the dealer (i) by any method that violates or would violate the  
 424 dealer's chosen policies and processes for complying with obligations to protect consumer data under  
 425 laws of the United States or the Commonwealth or (ii) through franchisor access to the computer  
 426 database of the dealer if the dealer chooses to submit data specified by the franchisor.

427 The manufacturer, factory branch, distributor, or distributor branch shall provide a dealer the right to

428 cancel the dealer's participation in a program under which the dealer provides consumer data or access  
429 to data to the manufacturer, factory branch, distributor, or distributor branch, provided that a  
430 manufacturer, factory branch, distributor, or distributor branch may require notice of up to 60 days of  
431 the dealer's decision to cancel the dealer's participation.

432 If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other  
433 payments under a program offered after July 1, 2015, excluding any continuation, renewal, or  
434 modification of any existing program, and available to more than one dealer in the Commonwealth that  
435 are premised wholly or in part on dealer participation in manufacturer, factory branch, distributor, or  
436 distributor branch programs under which consumer data is provided to or accessed by the manufacturer,  
437 factory branch, distributor, or distributor branch, a dealer that exercises its rights under this subdivision  
438 shall be deemed to be in compliance with the program requirements pertaining to providing consumer  
439 data, provided that the dealer has otherwise met program requirements to the extent of providing any  
440 consumer data that is not nonpublic personal information.

441 It shall not constitute a violation of this subdivision for a manufacturer, factory branch, distributor, or  
442 distributor branch to require a motor vehicle dealer to provide data (a) concerning a new motor vehicle  
443 sale or used motor vehicle sale under a manufacturer certification program, (b) to validate a customer or  
444 dealer incentive, (c) to calculate dealer or market sales or evaluate service performance or customer  
445 satisfaction to facilitate analysis of product quality and market feedback, (d) to facilitate warranty service  
446 work on a vehicle, (e) concerning information with respect to recall repairs or information about a  
447 recalled vehicle, (f) pursuant to a mutual agreement between a manufacturer, factory branch, distributor,  
448 or distributor branch and a dealer, or (g) where consumer data is reasonably necessary to enable a  
449 manufacturer, factory branch, distributor, or distributor branch to provide programs, products, or services  
450 to a dealer.

451 A dealer that elects to submit or push data or information to the manufacturer, factory branch,  
452 distributor, or distributor branch through any method other than that provided by the manufacturer,  
453 factory branch, distributor, or distributor branch shall timely obtain and furnish the requested data in a  
454 widely accepted electronic file format. A manufacturer, factory branch, distributor, or distributor branch  
455 shall not impose a fee, surcharge, or charge of any type on a dealer that chooses to submit data  
456 specified by the manufacturer, factory branch, distributor, or distributor branch rather than provide the  
457 manufacturer, factory branch, distributor, or distributor branch access to the dealer's computer database.

458 **§ 46.2-1571. Recall, warranty, maintenance and sales incentive obligations.**

459 A. Each motor vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify  
460 in writing to each of its motor vehicle dealers licensed in the Commonwealth the dealer's obligations for  
461 preparation, delivery, recall, and warranty service on its products and (ii) compensate the dealer for  
462 recall or warranty parts, service, and diagnostic work required of the dealer by the manufacturer or  
463 distributor as follows:

464 1. Compensation of a dealer for recall or warranty parts, service, and diagnostic work shall not be  
465 less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service,  
466 and diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or  
467 performed in the dealer's service department, and the determination of compensation in accordance with  
468 the provisions of this section shall be deemed reasonable due to the substantial number of repair orders  
469 reviewed, unless the manufacturer can show that the amounts are not reasonable. All manufacturer or  
470 distributor compensated parts, service, diagnostic work, updates to a vehicle accessory or function, or  
471 initialization or repair of a vehicle part, system, accessory, or function performed by the dealer shall be  
472 subject to this subsection. Recall or warranty parts compensation shall be stated as a percentage of  
473 markup, which shall be an agreed reasonable approximation of retail markup and which shall be  
474 uniformly applied to all of the manufacturer's or distributor's parts unless otherwise provided for in this  
475 section. If the dealer and manufacturer or distributor cannot agree on the recall or warranty parts  
476 compensation markup to be paid to the dealer, the markup shall be determined by an average of the  
477 dealer's retail markup on all of the manufacturer's or distributor's parts as described in subdivisions 2  
478 and 3.

479 2. For purposes of determining recall or warranty parts and service compensation paid to a dealer by  
480 the manufacturer or distributor, including body-shop repairs, only retail repair orders, or the retail  
481 portion of repair orders containing retail and non-retail operations, shall be considered. For the purposes  
482 of this section, "retail" does not include menu-priced parts or services, services and parts used in internal  
483 repairs paid by the dealer, group discounts, special event discounts, special event promotions, and  
484 insurance-paid repairs.

485 3. Increases in dealer recall or warranty parts and service compensation and diagnostic work  
486 compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100  
487 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first. If any portion  
488 of a retail repair order includes amounts that are not retail, such portion shall be excluded.  
489 Compensation for parts shall be stated as a percentage of markup that shall be uniformly applied to all

490 the manufacturer's or distributor's parts.

491 4. In the case of recall or warranty parts compensation, the provisions of this subsection shall be  
492 effective only for model year 1992 and succeeding model years.

493 5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in  
494 performing work for which the manufacturer or distributor is required to compensate the dealer under  
495 this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner  
496 as recall or warranty parts compensation, less the wholesale costs, for such part as listed in the  
497 manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable  
498 handling fee instead of the compensation otherwise required by this subsection for special  
499 high-performance complete engine assemblies in limited production motor vehicles that constitute less  
500 than five percent of model production furnished to the dealer at no cost, if the manufacturer or  
501 distributor excludes such special high-performance complete engine assemblies in determining whether  
502 the amounts requested by the dealer for recall or warranty compensation are consistent with the amounts  
503 that the dealer charges its other retail service customers for parts used by the dealer to perform similar  
504 work.

505 6. In the case of service work, manufacturer original parts or parts otherwise specified by the  
506 manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as  
507 defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be  
508 compensated in the same manner as for recall or warranty service or parts.

509 This section does not apply to compensation for parts such as components, systems, fixtures,  
510 appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for  
511 nonvehicular, residential purposes. Recall, warranty, and sales incentive audits of dealer records may be  
512 conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis,  
513 and dealer claims for recall, warranty, or sales incentive compensation shall not be denied except for  
514 good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or  
515 misrepresentation. A dealer's failure to comply with the specific requirements of the manufacturer or  
516 distributor for processing the claim shall not constitute grounds for the denial of the claim or reduction  
517 of the amount of compensation to the dealer as long as reasonable documentation or other evidence has  
518 been presented to substantiate the claim. The manufacturer, factory branch, distributor, or distributor  
519 branch shall not deny a claim or reduce the amount of compensation to the dealer for recall or warranty  
520 repairs to resolve a condition discovered by the dealer during the course of a separate repair requested  
521 by the customer or to resolve a condition on the basis of advice or recommendation by the dealer.  
522 Claims for dealer compensation shall be paid within 30 days of dealer submission or within 30 days of  
523 the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory  
524 branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine  
525 the validity of all such paid claims for dealer compensation. Any chargebacks for recall or warranty  
526 parts or service compensation and service incentives shall only be for the six-month period immediately  
527 following the date of the claim and, in the case of chargebacks for sales compensation only, for the  
528 six-month period immediately following the date of claim. However, such limitations shall not be  
529 effective if a manufacturer, factory branch, distributor, or distributor branch has reasonable cause to  
530 believe that a claim submitted by a dealer is intentionally false or fraudulent. For purposes of this  
531 section, "reasonable cause" means a bona fide belief based upon evidence that the material issues of fact  
532 are such that a person of ordinary caution, prudence, and judgment could believe that a claim was  
533 intentionally false or fraudulent. A dealer shall not be charged back or otherwise liable for sales  
534 incentives or charges related to a motor vehicle sold by the dealer to a purchaser other than a licensed,  
535 franchised motor vehicle dealer and subsequently exported or resold, unless the manufacturer, factory  
536 branch, distributor, or distributor branch can demonstrate by a preponderance of the evidence that the  
537 dealer should have known of and did not exercise due diligence in discovering the purchaser's intention  
538 to export or resell the motor vehicle.

539 B. It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor  
540 branch to:

541 1. Fail to perform any of its recall or warranty obligations, including tires, with respect to a motor  
542 vehicle;

543 2. Fail to assume all responsibility for any liability resulting from structural or production defects;

544 3. Fail to include in written notices of factory recalls to vehicle owners and dealers the expected date  
545 by which necessary parts and equipment will be available to dealers for the correction of defects;

546 4. Fail to compensate any of the motor vehicle dealers licensed in the Commonwealth for repairs  
547 effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier  
548 is designated by the manufacturer, factory branch, distributor, or distributor branch;

549 5. Fail to fully compensate its motor vehicle dealers licensed in the Commonwealth for recall or  
550 warranty parts, work, and service pursuant to subsection A either by reduction in the amount due to the

551 dealer or by separate charge, surcharge, or other imposition by which the motor vehicle manufacturer,  
552 factory branch, distributor, or distributor branch seeks to recover its costs of complying with subsection  
553 A, or for legal costs and expenses incurred by such dealers in connection with recall or warranty  
554 obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally  
555 responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon  
556 the dealer. Failure to fully reimburse a dealer for the cost to the dealer of a rental vehicle provided to a  
557 customer as required, offered, advertised as available, or agreed to by the manufacturer or distributor  
558 shall be considered a violation of this subsection. Failure to provide compensation consistent with this  
559 section to a dealer for assistance requested by a customer whose vehicle was subjected to an ~~over the air~~  
560 *over-the-air* or remote change, repair, or update to any part, system, accessory, or function by the  
561 vehicle manufacturer or distributor and performed at the dealership to satisfy the customer shall be  
562 considered a violation of this subsection;

563 6. Misrepresent in any way to purchasers of motor vehicles that warranties with respect to the  
564 manufacture, performance, or design of the vehicle are made by the dealer, either as warrantor or  
565 co-warrantor;

566 7. Require the dealer to make warranties to customers in any manner related to the manufacture,  
567 performance, or design of the vehicle;

568 8. Shift or attempt to shift to the motor vehicle dealer, directly or indirectly, any liabilities of the  
569 manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle  
570 Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission  
571 by the dealer;

572 9. Deny any dealer the right to return any part or accessory that the dealer has not sold within 12  
573 months where the part or accessory was not obtained through a specific order initiated by the dealer but  
574 instead was specified for, sold to and shipped to the dealer pursuant to an automated ordering system,  
575 provided that such part or accessory is in the condition required for return to the manufacturer, factory  
576 branch, distributor, or distributor branch, and the dealer returns the part within 30 days of it becoming  
577 eligible under this subdivision. For purposes of this subdivision, an "automated ordering system" shall be  
578 a computerized system that automatically specifies parts and accessories for sale and shipment to the  
579 dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch,  
580 distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory  
581 being returned under this subdivision. This subdivision shall not apply if the manufacturer, factory  
582 branch, distributor, or distributor branch has available to the dealer an alternate system for ordering parts  
583 and accessories that provides for shipment of ordered parts and accessories to the dealer within the same  
584 time frame as the dealer would receive them when ordered through the automated ordering system; or

585 10. When providing a new motor vehicle to a dealer for offer or sale to the public, fail to provide to  
586 such dealer a written disclosure that may be provided to a potential buyer of the new motor vehicle of  
587 each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the  
588 manufacturer or distributor through ~~over the air~~ *over-the-air* or remote means, and the charge to the  
589 customer *at the time of the new motor vehicle sale* for such initiation, update, change, or maintenance. A  
590 manufacturer or distributor may comply with this subdivision by notifying the dealer that such  
591 information is available on a website or by other digital means.

592 C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle  
593 manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its  
594 motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating  
595 to the manufacture, assembly, or design of motor vehicles, parts, or accessories, or other functions by  
596 the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer,  
597 including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor  
598 branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the  
599 dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor  
600 branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that  
601 come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer  
602 franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to  
603 incorporate provisions consistent with the requirements of this subsection.

604 D. On any new motor vehicle, any uncorrected damage or any corrected damage exceeding three  
605 percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231  
606 -1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery.  
607 Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent  
608 rule when properly replaced by identical manufacturer's or distributor's original equipment or parts.  
609 Whenever a new motor vehicle is damaged in transit, when the carrier or means of transportation is  
610 determined by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior  
611 to delivery to the new motor vehicle dealer, the new motor vehicle dealer shall:

612 1. Notify the manufacturer or distributor of the damage within three business days from the date of

613 delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time  
614 specified in the franchise; and

615 2. Request from the manufacturer or distributor authorization to replace the components, parts, and  
616 accessories damaged or otherwise correct the damage, unless the damage to the vehicle exceeds the three  
617 percent rule, in which case the dealer may reject the vehicle within three business days.

618 E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within 10  
619 days after receipt of notification, or if the dealer rejects the vehicle because damage exceeds the three  
620 percent rule, ownership of the new motor vehicle shall revert to the manufacturer or distributor, and the  
621 new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to such motor  
622 vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any  
623 other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to  
624 the buyer and an acknowledgement by the buyer is required. If there is less than three percent damage,  
625 no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall  
626 not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling  
627 dealer to a new motor vehicle in excess of the three percent rule shall constitute grounds for revocation  
628 of the buyer order, provided that, within 30 days of purchase, the motor vehicle is returned to the dealer  
629 with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to  
630 this section, the dealer shall accept the vehicle and refund any payments made to the dealer in  
631 connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as  
632 defined in § 59.1-207.11. Nothing in this section shall be construed to exempt from the provisions of  
633 this section damage to a new motor vehicle that occurs following delivery of the vehicle to the dealer.

634 F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch  
635 and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition  
636 the Commissioner in writing, within 30 days after either party has given written notice of the dispute to  
637 the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to  
638 rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.  
639 However, nothing contained in this section shall give the Commissioner any authority as to the content or  
640 interpretation of any manufacturer's or distributor's warranty. A manufacturer, factory branch,  
641 distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct  
642 payment or by charge to the dealer's account, for recall or warranty parts or service compensation,  
643 including service incentives, sales incentives, other sales compensation, surcharges, fees, penalties, or  
644 any financial imposition of any type arising from an alleged failure of the dealer to comply with a  
645 policy of, directive from, or agreement with the manufacturer, factory branch, distributor, or distributor  
646 branch until 40 days following final notice of the amount charged to the dealer following all internal  
647 processes of the manufacturer, factory, factory branch, distributor, or distributor branch. Within 30 days  
648 following receipt of such final notice, the dealer may petition the Commissioner, in writing, for a  
649 hearing. If a dealer requests such a hearing, the manufacturer, factory branch, distributor, or distributor  
650 branch may not collect the chargeback, fully or in part, either through direct payment or by charge to  
651 the dealer's account, until the completion of the hearing and a final decision of the Commissioner  
652 concerning the validity of the chargeback.

653 **§ 46.2-1572. Operation of dealership by manufacturer.**

654 It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor  
655 branch, or subsidiary thereof, to own, operate, or control any motor vehicle dealership in the  
656 Commonwealth. *This prohibition includes the ownership, operation, or control of any dealership of a*  
657 *new line-make established by a manufacturer, factory branch, distributor, or distributor branch, licensed*  
658 *as such by the Department [ ~~on or before July 1, 2023~~ ], or a subsidiary thereof or a company*  
659 *affiliated through ownership of the manufacturer, factory branch, distributor, or distributor branch of at*  
660 *least 25 percent of the equity of the company.* However, this section shall not prohibit:

661 1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary  
662 thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one  
663 owner or operator to another;

664 2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor  
665 branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase  
666 option to the operator of the dealership;

667 3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor,  
668 distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, distributor  
669 branch, or subsidiary has been engaged in the retail sale of motor vehicles through the dealership for a  
670 continuous period of three years prior to July 1, 1972, and if the Commissioner determines, after a  
671 hearing on the matter at the request of any party, that there is no dealer independent of the manufacturer  
672 or distributor, factory branch or distributor branch, or subsidiary thereof available in the community to  
673 own and operate the franchise in a manner consistent with the public interest;

674 4. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor,  
675 distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of  
676 any party, that there is no dealer independent of the manufacturer or distributor, factory branch or  
677 distributor branch, or subsidiary thereof available in the community or trade area to own and operate the  
678 franchise in a manner consistent with the public interest;

679 5. The ownership, operation, or control of a dealership dealing exclusively with school buses by a  
680 school bus manufacturer or school bus parts manufacturer or a person who assembles school buses; or

681 6. The ownership, operation, or control of a dealership dealing exclusively with refined fuels truck  
682 tanks by a manufacturer of refined fuels truck tanks or by a person who assembles refined fuels truck  
683 tanks. Notwithstanding any contrary provision of this chapter, any manufacturer of fire-fighting  
684 equipment who, on or before December 31, 2004, had requested a hearing before the Department or the  
685 Commissioner in accordance with subdivision 4 for licensure as a dealer in fire-fighting equipment  
686 and/or ambulances may be licensed as a dealer in fire-fighting equipment and/or ambulances.