Va. Code Ann. § 46.2-1500

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 1. Motor Vehicle Dealers, Generally. (§§ 46.2-1500 — 46.2-1507)

§ 46.2-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affiliate" means any entity in which a manufacturer, factory branch, distributor, or distributor branch has voting control or owns at least 51 percent of the ownership equity, or any entity in which another entity has voting control or owns at least 51 percent of the ownership equity and also has voting control and owns at least 51 percent of the ownership of a manufacturer, factory branch, distributor, or distributor branch. An entity that provides vehicle purchase or lease financing that uses the name of the manufacturer or distributor, or the name of any line make of the manufacturer or distributor, in the name of the entity under which it transacts business with a consumer, other than in the name of an individual product offered by the entity, shall be considered an "affiliate."

"Board" means the Motor Vehicle Dealer Board.

"Camping trailer" means a recreational vehicle constructed with collapsible partial side walls that fold for towing by a consumer-owned tow vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle or new trailer, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motor vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Demonstrator" means a new motor vehicle having a gross vehicle weight rating of less than 16,000 pounds that (i) has more than 750 miles accumulated on its odometer that has been driven by dealer personnel or by prospective purchasers during the course of selling, displaying, demonstrating, showing, or exhibiting it and (ii) may be sold as a new motor vehicle, provided the dealer complies with the provisions of subsection D of § 46.2-1530.

"Distributor" means a person who is licensed by the Department under this chapter and who sells or distributes new motor vehicles or new trailers pursuant to a written agreement with the manufacturer to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department under this chapter and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department under this chapter and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department under this chapter and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, offering and delivering pursuant to a lease, servicing, or offering, selling, and servicing new motor vehicles or new trailers of a particular line-make or late model or used motor vehicles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor. "Franchise" includes any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or franchised used motor vehicle dealer" means a dealer selling used motor vehicles, including vehicles purchased from the franchisor, under the trademark of a manufacturer or distributor that has a franchise agreement with a manufacturer or distributor.

"Franchised motor vehicle dealer" or *"franchised dealer"* means a dealer in new motor vehicles or new trailers that has a franchise agreement with a manufacturer or distributor of new motor vehicles or new trailers to sell new motor vehicles or new trailers or to sell used motor vehicles under the trademark of a manufacturer or distributor regardless of the age of the motor vehicles.

"Fund" means the Motor Vehicle Dealer Board Fund.

"Independent motor vehicle dealer" means a dealer in used motor vehicles.

"Late model motor vehicle" means a motor vehicle of the current model year and the immediately preceding model year.

"Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor. The line-make of a motorcycle manufacturer, factory branch, distributor, or distributor branch includes every brand of all-terrain vehicle, autocycle, and off-road motorcycle manufactured or distributed bearing the name of the motorcycle manufacturer or distributer.

"Manufactured home dealer" means any person licensed as a manufactured home dealer under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

"Manufacturer" means a person who is licensed by the Department under this chapter and engaged in the business of constructing or assembling new motor vehicles or new trailers and, in the case of trucks, recreational vehicles, and motor homes, also means a person engaged in the business of manufacturing engines, transmissions, power trains, or rear axles, when such engines, transmissions, power trains, or rear axles are not warranted by the final manufacturer or assembler of the truck, recreational vehicle, or motor home.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle within the term "farm tractor" or "moped" as defined in § 46.2-100. Except as otherwise provided, for the purposes of this chapter, all-terrain vehicles, autocycles, and off-road motorcycles are deemed to be motorcycles.

"Motor home" means a motorized recreational vehicle designed to provide temporary living quarters for recreational, camping, or travel use that contains at least four of the following permanently installed independent life support systems that meet the National Fire Protection Association standards for recreational vehicles: (i) a cooking facility with an onboard fuel source; (ii) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; (iii) a toilet with exterior evacuation; (iv) a gas or electric refrigerator; (v) a heating or air conditioning system with an onboard power or fuel source separate from the vehicle engine; or (vi) a 110-125 volt electric power supply.

"Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter, "motor vehicle" includes trailers, as defined in this section, and does not include (i) manufactured homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (ii) nonrepairable vehicles, as defined in § 46.2-1600; (iii) salvage vehicles, as defined in § 46.2-1600; or (iv) mobile cranes that exceed the size or weight limitations as set forth in § 46.2-1105, 46.2-1110, or 46.2-1113 or Article 17 (§ 46.2-1122 et seq.) of Chapter 10.

"Motor vehicle dealer" or *"dealer"* means any person who:

1. For commission, money, or other thing of value, buys for resale, sells, or exchanges, either outright or on conditional sale, lease, chattel mortgage, or other similar transaction or arranges or offers or attempts to solicit or negotiate on behalf of others the sale, purchase, or exchange of, either outright or on conditional sale, lease, chattel mortgage, or other similar transaction, an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or

2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him.

Any person who offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any 12 consecutive months is presumed to be a motor vehicle dealer and may rebut the presumption by a preponderance of the evidence.

For the purposes of Article 7.2 (§ 46.2-1573.2 et seq.), "dealer" means recreational vehicle dealer. For the purposes of Article 7.3 (§ 46.2-1573.13 et seq.), "dealer" means trailer dealer and watercraft trailer dealer. For the purposes of Article 7.4 (§ 46.2-1573.25 et seq.), "dealer" means motorcycle dealer.

"Motor vehicle dealer" or "dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting vehicles, ambulances, and funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520, and 46.2-1548.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its

business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under this chapter.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

14. The State Department of Social Services or local departments of social services.

15. Any person dealing solely in the sale and distribution of utility or cargo trailers that have unloaded weights of 3,000 pounds or less; however, this exemption shall not exempt any person who deals in stock trailers or watercraft trailers.

16. Any motor vehicle manufacturer or distributor selling a new motor vehicle at wholesale to its franchised dealer or a used motor vehicle to a licensed dealer.

For the purposes of Article 7 (§ 46.2-1566 et seq.), "dealer" does not include recreational vehicle dealers, trailer dealers, watercraft trailer dealers, or motorcycle dealers.

"Motor vehicle salesperson" or *"salesperson"* means (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.

"Motor vehicle show" means a display of motor vehicles to the general public at a location other than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or exchange during or as part of the display.

"New motor vehicle" means any vehicle, excluding trailers, that is in the possession of the manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued by the Department or by the issuing agency of any other state and has less than 7,500 miles accumulated on its odometer.

"New trailer" means any trailer that (i) has not been previously sold except in good faith for the purpose of resale; (ii) has not been used as a rental, driver education, or demonstration trailer or for the personal or business transportation of the manufacturer, distributor, dealer, or any of its employees; (iii) has not been used except for limited use necessary in moving or road testing the trailer prior to delivery to a customer;

(iv) is transferred by a certificate of origin; and (v) has the manufacturer's certification that it conforms to all applicable federal trailer safety and emission standards. Notwithstanding clauses (i) and (iii), a trailer that has been previously sold but not titled shall be deemed a new trailer if it meets the requirements of clauses (ii), (iv), and (v).

"Original license" means a motor vehicle dealer license issued to an applicant who has never been licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been expired for more than 30 days.

"Recreational vehicle" or *"RV"* means a vehicle that (i) is either self-propelled or towed by a consumer-owned tow vehicle, (ii) is primarily designed to provide temporary living quarters for recreational, camping, or travel use; and (iii) complies with all applicable federal vehicle regulations and does not require a special movement permit to legally use the highways. Recreational vehicle includes motor homes, travel trailers, and camping trailers.

"Relevant market area" means as follows:

1. For motor vehicle dealers except motorcycle dealers, in metropolitan localities the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of 10 miles, but in no case less than seven miles.

2. For motor vehicle dealers except motorcycle dealers, if the population in a circular area within a radius of 10 miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of 15 miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that circular area within the 15-mile radius.

3. For motor vehicle dealers except motorcycle dealers, in all other cases the relevant market area shall be a circular area within a radius of 20 miles around an existing franchised dealer or the area of responsibility defined in the franchise agreement, whichever is greater. In any case where the franchise agreement is silent as to area of responsibility, the relevant market area shall be the greater of a circular area within a radius of 20 miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

4. For motorcycle dealers, the relevant market area shall be a circular area within a radius of 20 miles if the population within such area around an existing franchised dealer location is one million or more. If the population in a circular area within a 20-mile radius is less than one million, the relevant market area shall be a circular area within a radius of 30 miles. If the population within a 30-mile radius is less than one million, the relevant market area shall be a circular area within a radius of 40 miles. In all cases, the relevant market area shall be the area described above or the area of responsibility defined in the franchise agreement, whichever is greater. In addition, the relevant market area shall include that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

Notwithstanding the foregoing provision of this section, in the case of dealers in motor vehicles with gross vehicle weight ratings of 26,000 pounds or greater, excluding recreational vehicles, the relevant market area with respect to the dealer's franchise for all such vehicles shall be a circular area around an existing franchised dealer with a radius of 25 miles, except where the population in such circular area is less than 250,000, in which case the relevant market area shall be a circular area around an existing franchised dealer with a radius of 50 miles, or the area of responsibility defined in the franchise, whichever is greater.

In determining population for relevant market areas, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of

contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or *"retail sale"* means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or *"wholesale"* means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with another motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by another motor vehicle, including semitrailers but not manufactured homes, watercraft trailers, camping trailers, or travel trailers.

"Travel trailer" means a vehicle designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight so as not to require a special highway movement permit when towed by a consumer-owned tow vehicle.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.

"Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1.

"Watercraft trailer dealer" means any watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1.

"Wholesale auction" means an auction of motor vehicles restricted to sales at wholesale.

History

Code 1950, § 46-503; 1950, p. 1604; 1956, c. 120; 1958, c. 541, § 46.1-516; 1962, c. 368; 1964, c. 375; 1974, c. 189; 1975, c. 304; 1976, c. 362; 1980, c. 161; 1982, c. 394; 1983, c. 234; 1986, c. 630; 1988, c. 865; 1989, cc. 15, 148, 727; 1992, cc. 134, 148, 572; 1993, c. 124; 1994, c. 888; 1995, cc. 767, 816; 1996, c. 1053; 1997, cc. 801, 848; 1999, cc. 77, 910; 2004, cc. 111, 788; 2005, c. 456; 2006, c. 441; 2010, cc. 284, 292, 318, 459; 2014, cc. 53, 75, 256; 2015, cc. 236, 615; 2019, c. 160; 2020, c. 984.

Annotations

Notes

Editor's note.

Acts 2015, c. 236, cl 2 provides: "That the General Assembly finds that the motor vehicle franchise relationship promotes a stable local business atmosphere, enhances business development opportunities, creates employment, provides vehicle purchase and vehicle service opportunities for consumers, and promotes the general economic well-being of the Commonwealth and its citizens. Accordingly, it is appropriate to exercise the General Assembly's power to regulate commerce to protect the citizens of the Commonwealth."

The 1999 amendments.

The 1999 amendment by c. 77 substituted “manufactured” for “mobile” throughout this section.

The 1999 amendment by c. 910 added subdivision 14 under the paragraph defining “Motor vehicle dealer,” and substituted “also means” for “shall also mean” in the paragraph defining “Motor vehicle salesperson.”

The 2004 amendments.

The 2004 amendment by c. 111 added clause (vii) in the paragraph defining “Motor vehicle”; substituted “12” for “twelve” in subdivision 3 of the paragraph defining “Motor vehicle dealer”; substituted “30” for “thirty” in the paragraph defining “Original license”; in the paragraph defining “Relevant market area,” substituted “10” for “ten” in subdivisions 1 and 2, substituted “15” for “fifteen” in two places in subdivision 2, and substituted “20” for “twenty” in the first and last sentences of subdivision 3; and made minor stylistic changes.

The 2004 amendment by c. 788, effective January 1, 2005, substituted “12” for “twelve” in subdivision 3 of the definition of “motor vehicle dealer”; in the subsection relating to what the term ‘motor vehicle dealer” does not include, deleted former subdivision 4 which pertained to the exemption of person selling fire fighting equipment, ambulances, and funeral vehicles and redesignated former subdivisions 5 through 14 as present subdivisions 4 through 13; in the definition of “relevant market area”, substituted “10” for “ten” in subdivision 1, substituted “10” for ‘’ten” and “15” for “fifteen” twice in subdivision 2, and substituted “20” for “twenty” twice in subdivision 3.

The 2005 amendments.

The 2005 amendment by c. 456, effective March 21, 2005, in the definition of “Motor vehicle dealer,” inserted present subdivision 4 and redesignated former subdivisions 4 through 13 as present subdivisions 5 through 14.

The 2006 amendments.

The 2006 amendment by c. 441, in the definition of “Motor vehicle salesperson,” inserted “(i)” before “any person,” substituted “hired as an employee” for “licensed as and employed as a salesperson,” inserted “and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary, or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv),” and deleted “It also means” before “any person,” and added the last sentence.

The 2010 amendments.

The 2010 amendments by cc. 284 and 318 are identical, and in the definition of “Franchise,” substituted “used” for “factory purchase”; in the thirteenth paragraph, substituted “franchised used” for “factory repurchase” and “selling used motor vehicles, including vehicles purchased from the franchisor, under the trademark of a manufacturer or distributor” for “in late model or factory repurchase motor vehicles, including a franchised new motor vehicle dealer,” deleted “of the line make of the late model or factory repurchase motor vehicles” from the end; in the definition of “Franchised motor vehicle dealer,” added the language following “semitrailers”; and in the definition of “Relevant market area,” added the penultimate paragraph. Acts 2010, c. 318, cl. 2 made the amendments effective April 9, 2010, by emergency clause.

The 2010 amendments by cc. 292 and 459 are identical, and added the definition of “Demonstrator” and rewrote the definition of “new motor vehicle” which read: “ ‘New motor vehicle’ means any vehicle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration motor vehicle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the vehicle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer’s certification that it conforms to all applicable federal motor vehicle safety and emission standards. Notwithstanding provisions (i) and (iii), a motor vehicle that has been previously sold but not titled shall be deemed a new motor vehicle if it meets the requirements of provisions (ii), (iv), and (v).”

The 2014 amendments.

The 2014 amendments by cc. 53 and 256 are identical, and rewrote the introductory paragraph, which read “Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings”; in the definition of “Motor vehicle,” substituted “ ‘motor vehicle’ does” for “it shall,” added clause (v) and redesignated the remaining clauses accordingly; and made minor stylistic changes.

The 2014 amendment by c. 75, in the definition of “Franchise,” inserted “offering and delivering pursuant to a lease” in the first sentence; in the definition of “Manufacturer” inserted “transmissions” twice; and in the second paragraph in the definition of “Relevant market area,” inserted “or the area of responsibility defined in the franchise, whichever is greater.”

The 2015 amendments.

The 2015 amendment by c. 236 added the definition for “Affiliate.”

The 2015 amendment by c. 615 added the definitions for “Camping trailer,” “Manufactured home dealer,” “Motorcycle,” “Motor home,” “New trailer,” “Recreational vehicle,” “Semitrailer,” “Tractor truck,” “Trailer,” “Travel trailer,” “Watercraft trailer” and “Watercraft trailer dealer”; substituted “under this chapter” for “of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.)” following “Department” throughout the definitions for “Distributor,” “Distributor branch,” “Distributor representative,” “Factory representative” and “Manufacturer”; added the second sentence of the definition for “Line-make”; added the second paragraph of subdivision 3 of the definition for “Motor vehicle dealer”; added subdivision 15 of the exclusions from the definition for “Motor vehicle dealer”; added subdivision 4 of the definition for “Relevant market area”; and made related changes.

The 2019 amendments.

The 2019 amendment by c. 160 inserted “or new trailer” following “new motor vehicle” throughout; in the definition for “Motor vehicle,” inserted “includes trailers, as defined in this section, and”; rewrote subdivision 1 of the definition of “Motor vehicle dealer,” which read: “1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or”; combined subdivisions 2 and 3 of “Motor vehicle dealer” by substituting “Any person who offers” for “or 3. Offers” and adding “is presumed to be a motor vehicle dealer and may rebut the presumption by a preponderance of the evidence” at the end; in subdivision 4 of “Motor vehicle dealer” inserted “fire-fighting vehicles, ambulances, and” and added subdivision 16; and made stylistic changes.

The 2020 amendments.

The 2020 amendment by c. 984, in the definition of “Relevant market area” in subdivision 3, inserted “agreement” following the first instance of “franchise”; in subdivision 4 in the first sentence, inserted “if the population within such area” and substituted “is” for “with a population of”; in the second sentence, inserted “in a circular area” and deleted “but greater than 750,000” following “one million”; in the third sentence, substituted “one million” for “750,000” and added the last two sentences.

CASE NOTES

Population for purposes of “relevant market area.” —

Under the plain language of § 46.2-1500, the population for purposes of “relevant market area” is determined by accumulating the most recent census by the U.S. Bureau of the Census or the most recent population update. Although the Motor vehicle Dealer Franchise Law was remedial in nature, nothing in the statute required the

Commissioner of the Department of Motor Vehicles to choose population figures from the data sources that were more "lenient" or more favorable to the interests of an existing dealer. Leesburg Imps., L.L.C. v. Smit, 2008 Va. App. LEXIS 276 (Va. Ct. App. June 10, 2008).

Commissioner of the Department of Motor Vehicles complied with the plain language of § 46.2-1500 in determining population for purposes of an existing car dealer's relevant market area. The Commissioner accumulated the data from and considered the 2000 census and the 2006 census and properly determined that the 2006 data was more accurate than the 2000 data, considering the growth in population in the Northern Virginia area. Leesburg Imps., L.L.C. v. Smit, 2008 Va. App. LEXIS 276 (Va. Ct. App. June 10, 2008).

Standing. —

Existing car dealer lacked standing to protest a manufacturer's establishment of new dealership that was to be located outside dealer's relevant market area. Leesburg Imps., L.L.C. v. Smit, 2008 Va. App. LEXIS 276 (Va. Ct. App. June 10, 2008).

Commissioner's decision was neither arbitrary nor an abuse of discretion. —

Commissioner of the Department of Motor Vehicles was entrusted with wide discretion on issues arising under the Motor Vehicle Dealer Franchise Act, and his decision that a proposed dealership would be located outside an existing car dealer's relevant market area, based on current census data, was not arbitrary or capricious nor a clear abuse of delegated discretion. Leesburg Imps., L.L.C. v. Smit, 2008 Va. App. LEXIS 276 (Va. Ct. App. June 10, 2008).

CIRCUIT COURT OPINIONS

"Franchise" or "dealer." —

Under § 46.2-1500, a company was a "franchise," not a "dealer," because it would service but not sell the franchisor's vehicles; therefore, the Commissioner of the Virginia Department of Motor Vehicles used the proper criteria in determining under subdivision 4 of § 46.2-1569 and subsection D of § 46.2-1573 that the relevant market area would support all dealers in the relevant market area after establishment of the company's franchise. Jennings Motor Co. v. Toyota Motor Sales, USA, Inc., 83 Va. Cir. 531, 2010 Va. Cir. LEXIS 313 (Fairfax County Aug. 26, 2010).

Definition of "RV." —

Even though the property owners could present evidence of their subsequent compliance with the ordinance as a defense in the present enforcement action, they failed to prove that the commercial vehicle was truly converted into an RV because they failed to prove that any of the four conversion items actually worked or complied with this section, as there was not evidence of an onboard power or fuel source for the hot plate and there was no evidence that the exterior spigot could be used to supply the interior water tank. Johnson v. Morgan, 106 Va. Cir. 126, 2020 Va. Cir. LEXIS 191 (Fairfax County Oct. 9, 2020).

Research References & Practice Aids

Cross references.

As to this title being exempt from the hearing officer requirements of the Administrative Process Act, see § 2.2-4024.

Michie's Jurisprudence.

For related discussion, see

2A M.J. Auctions and Auctioneers, § 2; 3C M.J. Commercial Law, § 99.

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§ 46.2-1505. Suit to enjoin violations.

A. The Board, whenever it believes from evidence submitted to the Board that any person has been violating, is violating, or is about to violate any provision of this chapter, in addition to any other remedy, may bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

B. Any manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative who obtains a license under this chapter is engaged in business in the Commonwealth and is subject to the jurisdiction of the courts of the Commonwealth. Any manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative of motorcycles of a recognized line-make that are sold or leased in the Commonwealth pursuant to a plan, system, or channel of distribution established, approved, authorized, or known to the manufacturer shall be subject to the jurisdiction of the courts of the Commonwealth in any action seeking relief under or to enforce any of the remedies or penalties provided for in this chapter.

History

Code 1950, § 46-506; 1958, c. 541, § 46.1-519; 1989, c. 727; 1995, cc. 767, 816; 2015, c. 615.

Annotations

Notes

The 2015 amendments.

The 2015 amendment by c. 615 added the subsection A designation and added subsection B.

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Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1566. Filing of franchises.

A. It shall be the responsibility of each motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to file with the Commissioner by certified mail a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer which affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a motor vehicle dealer or prospective motor vehicle dealer in the Commonwealth no later than 60 days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a motor vehicle dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

B. The Department shall inform the manufacturer, factory branch, distributor, distributor branch, or subsidiary and the dealer or dealers or other parties named in the agreement of a preliminary recommendation as to the consistency of the agreement with the provisions of this chapter. If any of the parties involved have comments on the preliminary recommendation, they must be submitted to the Commissioner within 30 days of receiving the preliminary recommendation. The Commissioner shall render his decision within 15 days of receiving comments from the parties involved. If the Commissioner does not receive comments within the 30-day time period, he shall make the final determination as to the consistency of the agreement with the provisions of this chapter.

C. Any form or addendum that is not filed as required by this section may not be the basis for (i) any reduction in compensation due to a dealer from the franchisor, (ii) any franchisor demand or requirement by which a dealer must abide, or (iii) any penalty or detriment a franchisor imposes or attempts to impose on a motor vehicle dealer. This section shall not apply to any dealer program or dealer incentive that is not inconsistent with any form or addendum already on file by the manufacturer with the state or that expires within 12 months of its start date, or the continuation, renewal, or modification of any dealer program or dealer incentive that was in place as of July 1, 2015. This section shall not apply to any consumer program or consumer incentive, including discount pricing programs.

History

1988, c. 865, § 46.1-550.5:24; 1989, c. 727; 1994, c. 537; 1995, cc. 767, 816; 2015, c. 236.

Annotations

Notes

The 2015 amendments.

The 2015 amendment by c. 236 substituted “60 days” for “sixty days” in subsection A; in subsection B, substituted “30” for “thirty,” “15” for “fifteen” and “30-day” for “thirty-day”; and added subsection C.

CIRCUIT COURT OPINIONS

No private cause of action. —

Virginia Automobile Dealers Association could not pursue a cause of action under the statute because there was no private cause of action in the statute; rather, procedure for the Virginia Motor Vehicle Dealer Board to bring an action in the event of a violation or suspected violation was specifically provided. Va. Auto. Dealer's Ass'n v. Tesla Motors, Inc., 94 Va. Cir. 269, 2016 Va. Cir. LEXIS 160 (Fairfax County Sept. 9, 2016).

Research References & Practice Aids

Michie’s Jurisprudence.

For related discussion, see

1A M.J. Administrative Law, § 20; 2B M.J. Automobiles, § 129.

Va. Code Ann. § 46.2-1507

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 1. Motor Vehicle Dealers, Generally. (§§ 46.2-1500 — 46.2-1507)

§ 46.2-1507. Penalties.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil penalty by the Board. No such civil penalty shall exceed $1,000 for any single violation. Civil penalties collected under this chapter shall be deposited in the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

History

Code 1950, § 46-509; 1958, c. 541, § 46.1-522; 1988, c. 865; 1989, c. 727; 1995, cc. 767, 816; 2020, cc. 1230, 1275.

Annotations

Notes

Editor's note.

Acts 2020, cc. 1230 and 1275, cl. 18 provides: "That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is $0 for periods of commitment to the custody of the Department of Juvenile Justice."

The 2020 amendments.

The 2020 amendment by cc. 1230 and 1275 are identical, and substituted "Commonwealth Transportation Fund" for "Transportation Trust Fund."

CIRCUIT COURT OPINIONS

Revocation of license. —

Virginia Motor Vehicle Dealer Board acted within its authority under §§ 46.2-1503.4 and 46.2-1507 by revoking licenses held by an automobile dealer and imposing a $1,500 fine on the dealer after the dealer failed to maintain adequate dealer records, odometer disclosure statements, and records of temporary license plates, in violation of

§§ 46.2-1529, 46.2-1532, and 46.2-1559. Bryden v. Motor Vehicle Dealer Bd., 60 Va. Cir. 279, 2002 Va. Cir. LEXIS 393 (Arlington County Oct. 28, 2002).

End of Document

Va. Code Ann. § 46.2-1567

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1567. Exemption of franchises from Retail Franchising Act.

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

History

1988, c. 865, § 46.1-550.5:25; 1989, c. 727.

End of Document

Va. Code Ann. § 46.2-1568

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1568. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts, extended service contracts or extended maintenance plans, financing, or leasing prohibited; penalty.

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, representative, or affiliate of either to coerce or attempt to coerce any retail motor vehicle dealer or prospective retail motor vehicle dealer in the Commonwealth to (i) offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or affiliate of either or (ii) sell, assign, or transfer any retail installment sales contract or lease obtained by the dealer in connection with the sale or lease by him in the Commonwealth of motor vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies, affiliate, leasing company or class of leasing companies, or any other specified persons by any of the following:

1. By any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.

2. By any act that will benefit or injure the dealer.

3. By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the motor vehicle on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the dealer sell, assign, or transfer his retail installment sales contract on or lease of the vehicle, in the Commonwealth, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or any other specified person.

4. By any express or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of his retail sales contracts or leases in the Commonwealth on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. To further avoid any acts or practices, the effect of which may be to lessen or eliminate competition, it shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative thereof, or any person or company affiliated therewith, to condition the provision of lead information to a dealer upon the agreement of the dealer to sell or lease a vehicle to the prospective customer only if the financing or leasing connected with the transaction is effected through a specified finance company or class of finance

companies or leasing company or class of leasing companies. For the purposes of this section, “lead information” means information concerning a prospective customer who contacts or is contacted by the manufacturer or distributor or any person or company affiliated therewith concerning the manufacturer’s or distributor’s products. The provisions of this subsection, however, shall not prohibit a manufacturer or distributor from so conditioning the provision of lead information concerning any prospective customer who qualifies for any manufacturer-sponsored or distributor-sponsored factory employee, factory retiree, or factory vendor new vehicle purchase program.

D. It shall be unlawful for any manufacturer or distributor or any affiliate thereof to coerce or require a dealer that is a franchisee of the manufacturer or distributor to sell products sponsored, sold, or offered by the manufacturer, distributor, or affiliate in connection with sales of vehicles whether or not in connection with any retail installment sales contract or lease; however, this subsection shall not apply to used motor vehicles sold under a manufacturer used vehicle certification program. For purposes of this section, the refusal by an affiliate of a manufacturer or distributor to accept assignment of a retail installment sales contract or lease solely because it includes a product in connection with the sale of the vehicle not sponsored, sold, or offered by the manufacturer or distributor, or any affiliate thereof, shall be unlawful; but an affiliate of a manufacturer or distributor may establish standards for products in connection with a sale of a vehicle to be included in retail installment sales contracts or leases it will accept, provided the standards, including the establishment of maximum prices for products, are equally enforceable and enforced with respect to products in connection with the sale of a vehicle sponsored, sold, or offered by the manufacturer, distributor, or affiliate and products that are not. Nothing in this section prohibits a manufacturer, distributor, or affiliate from offering dealer or consumer incentive programs directly related to the sale of products sponsored, sold, or offered by the manufacturer, distributor, or affiliate whether or not in connection with any retail installment sales contract or lease. A dealer that chooses not to participate in these programs shall not be penalized as a result. Non-payment of the incentive due to non-participation in the incentive programs directly related to the sale of products sponsored, sold, or offered by the manufacturer, distributor, or affiliate by the dealer shall not qualify as a penalty.

E. Any person aggrieved by an action prohibited by this section may seek a hearing, pursuant to § 46.2-1573, against any manufacturer or distributor licensed under this title.

F. Nothing contained in this section shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor vehicle dealer in the Commonwealth who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any retail installment sale or lease by him in the Commonwealth of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company controlled by or affiliated with the manufacturer or distributor.

History

1988, c. 865, § 46.1-550.5:26; 1989, c. 727; 1995, cc. 767, 816; 2001, c. 149; 2005, c. 906; 2015, c. 236.

Annotations

Notes

The 2001 amendments.

The 2001 amendment by c. 149, in subsection A, inserted “or lease” in two places in the introductory paragraph, and inserted “leasing company or class of leasing companies” in the introductory paragraph and in subdivisions 3

and 4, inserted “or lease of” in subdivision 3, inserted “leasing company or leasing companies” in subdivision 4, added present subsection C, and redesignated former subsection C as present subsection D.

The 2005 amendments.

The 2005 amendment by c. 906, in subsection A, inserted “(i) offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or (ii)” in the introductory paragraph, inserted “dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the” in subdivision 3, and inserted “offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or to” in subdivision 4; rewrote subsection D; and added subsection E.

The 2015 amendments.

The 2015 amendment by c. 236 in subsection A, substituted “representative, or affiliate of” for “or representative of,” inserted “or affiliate of either” preceding “or (ii),” added “affiliate” preceding “leasing company,” and deleted “to” preceding “any other specified”; deleted “to” preceding “any other specified person” at the end of subdivision A 3; added subsection D; and redesignated former subsections D and E as E and F, respectively.

Va. Code Ann. § 46.2-1568.1

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1568.1. Discrimination by manufacturers or distributors prohibited.

No manufacturer or distributor, or any officer, agent, or representative of either, shall discriminate against a dealer holding a franchise of the manufacturer or distributor in favor of another dealer or other dealers of the same line-make in the Commonwealth by:

1. Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in the Commonwealth during a similar time period;

2. Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in the Commonwealth during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in the Commonwealth on substantially comparable terms;

3. Providing lead information to a dealer when the address provided by the prospective customer (or the preferred contact address, if more than one address is provided) is in the relevant market area of another dealer or other dealers of the same line-make without providing or offering to provide the same information on equal terms to the dealer or dealers of the same line-make in whose relevant market area the prospective customer's address (or preferred contact address, if more than one address is provided) is located. The foregoing requirement of this subdivision shall not apply if (i) the lead information is generated under any program administered by an entity in which one or more dealers, together with the manufacturer or distributor, hold an ownership interest, where the program is designed to facilitate sales of motor vehicles through dealers participating in the program, provided that ownership or the right to participate in the entity has been made available to all dealers of the same line-make in the Commonwealth on substantially comparable terms or (ii) the prospective customer requests that the lead information be forwarded to a particular dealer or (iii) the lead information is the result of the prospective customer's request for a specific type of vehicle when the specific type of vehicle in the color and with the equipment desired by the prospective customer is not available at a dealer or dealers of the same line-make in whose relevant market area the prospective customer's address (or preferred contact address, if more than one address is provided) is located. For purposes of this subsection, "lead information" is information concerning a prospective customer (i) who contacts the manufacturer or distributor in response to an advertisement, a solicitation, or a message broadcast, distributed, or made available to the public by the manufacturer or distributor or (ii) who is contacted by the manufacturer or distributor, and (iii) such contact is in relation to the sale of, service on, or parts or accessories for new or used motor vehicles. This subdivision shall not be construed to permit provision of or access to customer information that is otherwise protected from disclosure by law or by agreement between a dealer and a manufacturer or distributor.

History

2001, cc. 817, 849.

End of Document

Va. Code Ann. § 46.2-1569

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

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

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

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

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

3. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, unless the franchisor provides written notice to the dealer of its objection and the reasons therefor by certified mail or overnight delivery or other method designed to ensure delivery to the dealer at least 30 days prior to the proposed effective date of the transfer, sale, assignment, or change. No such objection shall be sufficient unless the failure to approve is reasonable. Notwithstanding the provisions of subsection D of § 46.2-1573, the only grounds that may be considered reasonable for a failure to approve are that an individual who is the applicant or is in control of an entity that is an applicant (i) lacks good moral character, (ii) lacks reasonable motor vehicle dealership management experience and qualifications, (iii) lacks financial ability to be the dealer, or (iv) fails to meet the standards otherwise established by this title to be a dealer. No such objection shall be effective to prevent the sale, transfer, assignment, or change if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the circumstances. No franchise may be sold, assigned, or transferred unless (a) the franchisor has been

given at least 90 days' prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed transferee on forms generally utilized by the franchisor to conduct its review, as well as the full agreement for the proposed transaction, and (b) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.

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

In the event the manufacturer, factory branch, distributor or distributor branch takes action to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, without a statement of specific grounds for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request review of the action or imposition of the condition in a hearing by the Commissioner. If the Commissioner finds that the action or the imposition of the condition was a violation of this section, the Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch, distributor, or distributor branch, without imposition of the condition. If the existing dealer does not request a hearing by the Commissioner concerning the action or the condition imposed by the manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at law for violation of this section. The action may be commenced in the circuit court of the city or county in which the dealer is located, or in any other circuit court with permissible venue, within two years following the action or the imposition of the condition by the manufacturer, factory branch, distributor, or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the line-make is the only line-make for which the dealer holds a franchise in the dealership facilities, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the dealership facilities leased or owned by the dealer as follows: (i) the manufacturer, distributor, or factory branch shall pay the dealer a sum equivalent to the rent for the unexpired term of the

lease or three years' rent, whichever is the lesser, or (ii) if the dealer owns the dealership facilities, the manufacturer, distributor, or factory branch shall pay the dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years.

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

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

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

7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for the line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's

existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or a series of vehicles.

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

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

7d. To fail to provide a notice to a dealer when notifying it of the requirement to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, or distributor branch of the dealer's rights pursuant to subdivision 7c.

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

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

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

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

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

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

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

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

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

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

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

History

1988, c. 865, § 46.1-550.5:27; 1989, cc. 363, 686, 727; 1990, c. 83; 1992, c. 116; 1994, c. 385; 1995, cc. 767, 816; 1998, c. 682; 2007, cc. 827, 837; 2009, cc. 173, 176; 2010, cc. 284, 318; 2011, cc. 774, 856; 2015, cc. 155, 236; 2016, cc. 432, 534.

Annotations

Notes

The 1998 amendment redesignated former subdivision 7a as present subdivision 7b and added present subdivision 7a.

The 2007 amendments.

The 2007 amendment by c. 827, in subdivision 3, inserted “by certified mail or overnight delivery or other method designed to ensure delivery to the dealer” in the first sentence, inserted the present second and third sentences, and inserted “on forms generally utilized by the franchisor to conduct its review, as well as the full agreement for the proposed transaction” in the second instance of clause (i); and added subdivision 3a.

The 2007 amendments.

The 2007 amendment by c. 837 in subdivision 2, inserted “by threat to take or by taking any action in violation of the chapter” and “or injurious,” and deleted “by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer” from the end and made related changes; and inserted subdivision 5b.

The 2009 amendments.

The 2009 amendments by c. 173, effective March 23, 2009, and c. 176, effective March 25, 2009, are nearly identical and added subdivision 2b; in subdivision 4, in the second sentence, substituted “the franchisor can show by a preponderance of the evidence” for “there is reasonable evidence” and “relevant market area” for “market” preceding “will support” and inserted the next-to-last sentence; inserted “the franchisor has shown by a preponderance of the evidence that” in the first sentence of subdivision 5; in paragraph 5b (1), deleted “of current or one year prior model year purchased within 120 days of the termination” following “undamaged motor vehicles” and “whether” following “dealer’s inventory” and added “within 18 months of termination” at the end; substituted “subdivision” for “subsection” in three places in subdivision 5; added subdivision 5c; and added the language beginning “by requiring or otherwise coercing a dealer” at the end of subdivision 7b.

The 2010 amendments.

The 2010 amendments by cc. 284 and 318, are identical, and added subdivision 10. Acts 2010, c. 318, cl. 2 made the amendments effective April 9, 2010, by emergency clause.

The 2011 amendments.

The 2011 amendments by cc. 774 and 856, effective April 6, 2011, are identical, and added subdivisions 2c, 7c, 7d, 7e, and 7f; inserted the second and third sentences of subdivision 2; rewrote the introductory language of subdivision 5; in subdivision 6, added the second sentence, and substituted “family designated the dealer’s successor” for “family previously designated by the dealer as his successor” in the third sentence; and rewrote subdivision 7.

The 2015 amendments.

The 2015 amendment by c. 155 added subdivision 11.

The 2015 amendment by c. 236 in the introductory language, substituted “distributor branch, or affiliate” for “or distributor branch” and added “to do any of the following” in the first sentence and added the second sentence; substituted “10” for “ten” in subdivision 4; and substituted “attorney” for “attorney’s” in subdivision 8 a.

The 2016 amendments.

The 2016 amendments by cc. 432 and 534 are identical, and added subdivision 2d.

CASE NOTES

Constitutionality. —

Judgment finding that a car company violated subsection 7 of § 46.2-1569 was reversed because the company was denied its right to due process as it was not given fair notice that the statute would be interpreted as prohibiting it from not shipping at lease one of each requested vehicle model to a dealer in any month that it was capable of doing so. Volkswagen of Am., Inc. v. Smit, 279 Va. 327, 689 S.E.2d 679, 2010 Va. LEXIS 30, cert. denied, 562 U.S. 834, 131 S. Ct. 138, 178 L. Ed. 2d 35, 2010 U.S. LEXIS 6564 (2010).

Supremacy clause preempted former section. —

Former § 46.1-550.5:27 of the Motor Vehicle Dealer Licensing Act, as interpreted by the Commissioner of the Department of Motor Vehicles, conflicted with the Federal Arbitration Act, and was preempted by the Supremacy Clause, U.S. Const., Art. VI. Saturn Distrib. Corp. v. Williams, 905 F.2d 719, 1990 U.S. App. LEXIS 9082 (4th Cir.), cert. denied, 498 U.S. 983, 111 S. Ct. 516, 112 L. Ed. 2d 527, 1990 U.S. LEXIS 5885 (1990) (decided under former § 46.1-550.5:27).

Applicability. —

Potential buyer’s statutory claim was properly dismissed for lack of standing because, under the plain terms of this statute, no cause of action could lie when a manufacturer conditioned the sale of a franchise on the exercise of its right of first refusal. Priority Auto Group, Inc. v. Ford Motor Co., 757 F.3d 137, 2014 U.S. App. LEXIS 12038 (4th Cir. 2014).

Appropriate construction of this section does not grant a prospective buyer of an automobile dealership the right to challenge the validity of the manufacturer’s exercise of the right of first refusal under § 46.2-1569.1. Priority Auto Group, Inc. v. Ford Motor Co., 757 F.3d 137, 2014 U.S. App. LEXIS 12038 (4th Cir. 2014).

Plain meaning of relocation provision. —

The plain meaning of provision that no franchise may be sold, assigned, or transferred unless the sale or transfer of the franchise and business will not involve, without the franchisor’s consent, a relocation of the business is that sales involving relocations are illegal unless consented to by the franchisor; the statute does not even purport to regulate how an automobile manufacturer’s consent is to be granted. Woody v. GMC, 9 F.3d 1107, 1993 U.S. App. LEXIS 30459 (4th Cir. 1993).

Commissioner correctly applied standard despite reference to sufficiency of evidence. —

Where commissioner stated in his opinion that he had considered the evidence produced at the hearing, the briefs and the recommendations of the Motor Vehicle Dealers’ Advisory Board members in determining that car dealer failed to show reasonable evidence that the market would not support two dealerships, commissioner satisfactorily

applied the reasonable evidence standard in reaching his decision; his incorporation of the hearing officer's reference to insufficient evidence, while confusing, did not refute the other evidence in the opinion showing that he was fully aware of car dealer's burden of proof. Courtesy Motors, Inc. v. Ford Motor Co., 9 Va. App. 102, 384 S.E.2d 118, 6 Va. Law Rep. 305, 1989 Va. App. LEXIS 125 (1989) (decided under former § 46.1-547(d)).

No abuse of discretion found. —

Commissioner of the Department of Motor Vehicles, in carrying out his obligation to promote fair competition under § 46.1-1569, properly determined the relevant market area of an existing car dealer by considering the 2006 census data, rejecting the 2000 census data, and observing the growth rate in the area. The decision that a proposed dealership would be located outside the existing dealer's relevant market area was supported by substantial evidence and was not an abuse of discretion. Leesburg Imps., L.L.C. v. Smit, 2008 Va. App. LEXIS 276 (Va. Ct. App. June 10, 2008).

Evidence was relevant. —

Where commissioner relied in large part upon evidence of car dealer's sales performance in comparison with the potential for manufacturer's sales in the market area, evidence was relevant; evidence that car dealer had not fully penetrated the potential market in the area was relevant to the question whether there was enough business to support two dealerships. Courtesy Motors, Inc. v. Ford Motor Co., 9 Va. App. 102, 384 S.E.2d 118, 6 Va. Law Rep. 305, 1989 Va. App. LEXIS 125 (1989) (decided under former § 46.1-547(d)).

CIRCUIT COURT OPINIONS

Constitutionality. —

Car dealership was unable to prove that either this section or subsection D of § 46.2-1573 violated its procedural due process rights under U.S. Const., Amend. V because the franchise agreement did not, through a mutually explicit understanding between the parties, provide a property right that triggered such due process protection. Mitsubishi Motor Sales of Am., Inc. v. Holcomb, 63 Va. Cir. 164, 2003 Va. Cir. LEXIS 343 (Richmond Sept. 26, 2003).

Car dealership was unable to prove that either this section or subsection D of § 46.2-1573 violated its substantive due process rights under U.S. Const., Amend. XIV because the statutes were rationally related to achieving legitimate state interests. Firstly, the state had an interest in streamlining those claims brought before its agencies and toward that end it prescribed a set of factors to be considered by an administrative agency in resolving claims of franchise termination; secondly, given the disparity in the bargaining power between the manufacturer and dealers, the State's franchise regulations governing this relationship supported the interests of consumers. Mitsubishi Motor Sales of Am., Inc. v. Holcomb, 63 Va. Cir. 164, 2003 Va. Cir. LEXIS 343 (Richmond Sept. 26, 2003).

Considering that statutes are presumed to be constitutional and that courts are called on to construe statutes in a way that affords constitutionality, subdivision 7 of § 46.2-1569 was not unconstitutionally vague, as the statute plainly and unambiguously gave fair notice and warning to auto manufacturers about new vehicle allocation requirements for Virginia car dealers. Volkswagen of Am., Inc. v. Smit, 74 Va. Cir. 235, 2007 Va. Cir. LEXIS 168 (Richmond Oct. 3, 2007), aff'd, 52 Va. App. 751, 667 S.E.2d 817, 2008 Va. App. LEXIS 480 (2008).

Under § 46.2-1500, a company was a "franchise," not a "dealer," because it would service but not sell the franchisor's vehicles; therefore, the Commissioner of the Virginia Department of Motor Vehicles used the proper criteria in determining under subdivision 4 of § 46.2-1569 and subsection D of § 46.2-1573 that the relevant market area would support all dealers in the relevant market area after establishment of the company's franchise. Jennings Motor Co. v. Toyota Motor Sales, USA, Inc., 83 Va. Cir. 531, 2010 Va. Cir. LEXIS 313 (Fairfax County Aug. 26, 2010).

Subsection D of § 46.2-1573 does not create an additional separate and independent "good cause" test the Commissioner of the Virginia Department of Motor Vehicles must apply before approving a new franchise; the reference to subdivision 4 of § 46.2-1569 in subsection D of § 46.2-1573 means the Commissioner is required to consider the eight factors listed in subsection D of § 46.2-1573 in reviewing the proposed action and does not add an additional determination that must be made. Jennings Motor Co. v. Toyota Motor Sales, USA, Inc., 83 Va. Cir. 531, 2010 Va. Cir. LEXIS 313 (Fairfax County Aug. 26, 2010).

Statute violated. —

Substantial evidence in the record supported the decision of the Commonwealth motor vehicle department's commissioner that found the car manufacturer violated the Virginia Motor Vehicle Dealer Franchise Act, subdivision 7 of § 46.2-1569, as the evidence showed that despite the car dealer ordering two different models of cars during certain months, the car manufacturer's allocation of those cars to the car dealer was not equitably related to the number of vehicles that the car manufacturer imported given that no vehicles were shipped to the dealer even though the car manufacturer imported thousands of those two models each month. Volkswagen of Am., Inc. v. Smit, 74 Va. Cir. 235, 2007 Va. Cir. LEXIS 168 (Richmond Oct. 3, 2007), aff'd, 52 Va. App. 751, 667 S.E.2d 817, 2008 Va. App. LEXIS 480 (2008).

Authority to impose remedies. —

Based on substantial evidence, the Commissioner of the Department of Motor Vehicles properly determined that the manufacturer's allocation system violated the statute by failing to ship an equitable number of vehicles to its dealer; however, the Commissioner had no authority to order the adoption of a new allocation methodology or to reserve sanctions for future violations. Volkswagen of Am., Inc. v. Holcomb, 56 Va. Cir. 72, 2001 Va. Cir. LEXIS 442 (Richmond Mar. 15, 2001).

Attorneys' fees. —

See Jennings Motor Co., LLC v. Jennings, 2008 Va. Cir. LEXIS 72 (Fairfax County May 21, 2008).

Research References & Practice Aids

Law Review.

As to preemption and the Federal Arbitration Act, see 13 G.M.U. L. Rev. 325 (1990).

Michie's Jurisprudence.

For related discussion, see

1A Administrative Law, § 18; 2B M.J. Automobiles, § 129; 13A M.J. Monopolies and Restraints of Trade, § 13; 17 M.J. Statutes, § 27.

Va. Code Ann. § 46.2-1569.1

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1569.1. Manufacturer or distributor right of first refusal.

A. Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer; and

3. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

B. A manufacturer or distributor shall not exercise or enforce a right of first refusal if (i) the proposed sale or transfer is to a dealer licensed in the United States as a dealer holding a franchise from any manufacturer or distributor licensed as a manufacturer or distributor in the Commonwealth unless the manufacturer or distributor has a formal written program to increase the number of minority dealers and a minority dealer will obtain at least 51 percent ownership and control of the dealership's assets after the exercise of the right of first refusal consistent with subdivision 2 of § 46.2-1572 or (ii) the proposed sale or transfer of the dealership's assets involves the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons.

C. The provisions of clause (i) of subsection B shall not apply to any manufacturer or distributor, together with any of its parents, subsidiaries or affiliates that as of January 1, 2019, (i) produced or distributed at least 1,000 motor vehicles in the immediately preceding 12 months, at least 51 percent of which had a gross vehicle weight rating of at least 16,000 pounds and (ii) was on January 1, 2019 a party, including that party's parents, subsidiaries and affiliates, to federal litigation arising from rights and obligations created by § 46.2-1569.1.

History

1994, c. 809; 2003, c. 298; 2019, cc. 738, 739.

Annotations

Notes

The 2003 amendments.

The 2003 amendment by c. 298, in subdivision 1, substituted “45” for “forty-five,” and inserted “or” preceding “transfer”; in subdivision 3, substituted “limited liability company, corporation, or other entity” for “or corporation”; and substituted “30” for “thirty” in subdivision 4.

The 2019 amendments.

The 2019 amendments by cc. 738 and 739 are nearly identical, and added the designation for subsection A; deleted former subdivision A 3, which read: “The proposed sale or transfer of the dealership’s assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons; and”; added subsections B and C; and made stylistic changes.

CASE NOTES

Applicability. —

Appropriate construction of § 46.2-1569 does not grant a prospective buyer of an automobile dealership the right to challenge the validity of the manufacturer’s exercise of the right of first refusal under this section. Priority Auto Group, Inc. v. Ford Motor Co., 757 F.3d 137, 2014 U.S. App. LEXIS 12038 (4th Cir. 2014).

Va. Code Ann. § 46.2-1570

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1570. Discontinuation of distributors.

A. If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to motor vehicle dealers in Virginia by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute motor vehicles of the same line-make or the same motor vehicles of a renamed line-make shall be substituted for the discontinued distributor under the existing motor vehicle dealer franchises and those franchises shall be modified accordingly.

B. If a manufacturer or factory branch (i)(a) discontinues its right to manufacture a line-make of motor vehicles or (b) sells or otherwise transfers its right to manufacture a line-make of motor vehicles to another manufacturer or factory branch that will manufacture motor vehicles of the same line-make and (ii) the acquiring manufacturer or factory branch does not honor the existing franchise agreements of motor vehicle dealers in Virginia of the same line-make, such discontinuation, sale, or transfer shall constitute a termination of the franchise pursuant to subdivisions 5b and 5c of § 46.2-1569 and such motor vehicle dealers shall be entitled to compensation pursuant to those subdivisions.

History

1988, c. 865, § 46.1-550.5:29; 1989, c. 727; 2019, cc. 77, 738.

Annotations

Notes

The 2019 amendments.

The 2019 amendments by cc. 77 and 738 are identical, and designated the former provisions as subsection A, added subsection B, and made a stylistic change.

Va. Code Ann. § 46.2-1571

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

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

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

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

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

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

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

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same

manner as recall or warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motor vehicles that constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for recall or warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

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

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

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

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

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

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

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

5. Fail to fully compensate its motor vehicle dealers licensed in the Commonwealth for recall or warranty parts, work, and service pursuant to subsection A either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, distributor, or distributor branch seeks to recover its costs of complying with subsection A, or for legal costs and expenses incurred by such dealers in connection with recall or warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer. Failure to fully reimburse a dealer for the cost to the dealer of a rental vehicle provided to a customer as required, offered, advertised as available, or agreed to by the manufacturer or distributor shall be considered a violation of this subsection. Failure to provide compensation consistent with this section to a dealer for assistance requested by a customer whose vehicle was subjected to an over the air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor and performed at the dealership to satisfy the customer shall be considered a violation of this subsection;

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

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

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

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

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

C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating to the

manufacture, assembly, or design of motor vehicles, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to incorporate provisions consistent with the requirements of this subsection.

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

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time specified in the franchise; and

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

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

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty. A manufacturer, factory branch, distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct payment or by charge to the dealer's account, for recall or warranty parts or service compensation, including service incentives, sales incentives, other sales compensation, surcharges, fees, penalties, or any financial imposition of any type arising from an alleged failure of the dealer to comply with a policy of, directive from, or agreement with the manufacturer, factory branch, distributor, or distributor branch until 40 days following final notice of the

amount charged to the dealer following all internal processes of the manufacturer, factory, factory branch, distributor, or distributor branch. Within 30 days following receipt of such final notice, the dealer may petition the Commissioner, in writing, for a hearing. If a dealer requests such a hearing, the manufacturer, factory branch, distributor, or distributor branch may not collect the chargeback, fully or in part, either through direct payment or by charge to the dealer's account, until the completion of the hearing and a final decision of the Commissioner concerning the validity of the chargeback.

History

1988, c. 865, § 46.1-550.5:30; 1989, cc. 365, 727; 1990, c. 250; 1991, c. 92; 1992, c. 135; 1993, c. 90; 1994, c. 783; 1995, cc. 421, 477; 1997, c. 484; 1998, c. 681; 2001, cc. 80, 89; 2006, cc. 809, 818; 2007, c. 830; 2009, cc. 173, 176; 2010, cc. 284, 318; 2013, cc. 260, 630; 2016, cc. 432, 534; 2022, cc. 715, 752.

Annotations

Notes

Editor's note.

Acts 2006, cc. 809 and 818, cl. 2 provides: "That the provisions of this act are declaratory of existing law."

The 1998 amendment, added the second and third sentences in subdivision A 1, and, in the paragraph preceding subsection B, added the third and eighth sentences.

The 2001 amendments.

The 2001 amendments by cc. 80 and 89 are identical, and in subsection A, in the last sentence of the last paragraph, inserted "to a purchaser other than a licensed, franchised motor vehicle dealer," inserted "or resold," and inserted "or resell."

The 2006 amendments.

The 2006 amendments by cc. 809 and 818 are identical, and added the last sentence in subsection E.

The 2007 amendments.

The 2007 amendment by c. 830, in subdivision B 5, inserted "fully" and substitued "either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, distributor, or distributor branch seeks to recover its costs of complying with subsection A" for "of this section" in the first sentence; and added the last three sentences in subsection F.

The 2009 amendments.

The 2009 amendments by c. 173, effective March 23, 2009, and c. 176, effective March 25, 2009, are identical and in the last paragraph of subdivision A 6, inserted the fourth sentence and substituted "unless the manufacturer, factory branch, distributor, or distributor branch can demonstrate by a preponderance of the evidence that the dealer should have known of and did not exercise due diligence in discovering" for "provided the dealer can demonstrate that he exercised due diligence and that the sale was made in good faith and without knowledge of" in the last sentence.

The 2010 amendments.

The 2010 amendments by cc. 284 and 318, are identical, and in the last paragraph of subsection A, substituted "six-month period" for "twelve-month period" near the middle of the seventh sentence and "six-month period" for "eighteen-month period" near the end of the seventh sentence, substituted "if a manufacturer, factory branch, distributor, or distributor branch has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent" for "in the case of intentionally false or fraudulent claims" in the eighth sentence, and inserted the ninth sentence; added subdivision B 9; and made a minor stylistic change. Acts 2010, c. 318, cl. 2 made the amendments effective April 9, 2010, by emergency clause.

The 2013 amendments.

The 2013 amendments by cc. 260 and 630 are nearly identical, and deleted "of this subsection" at the end of subdivision A 1; in subsection F, deleted "of this section" following "subsection A, B, or C" in the first sentence, substituted "including service incentives, sales incentives" for "(including service incentives) or for, sales incentives or," and inserted "surcharges, fees, penalties, or any financial imposition of any type arising from an alleged failure of the dealer to comply with a policy of, directive from, or agreement with the manufacturer, factory branch, distributor, or distributor branch" in the fourth sentence and made minor stylistic changes.

The 2016 amendments.

The 2016 amendments by cc. 432 and 534 are identical, and added references to "recall" and "recall or" throughout the section; and added "or to resolve a condition on the basis of advice or recommendation by the dealer" at the end of the third sentence in the second paragraph of subdivision A 6.

The 2022 amendments.

The 2022 amendment by cc. 715 and 752 are identical and, in subdivision A 1, substituted "dealer's service department and the determination of compensation in accordance with the provisions of this section shall be deemed reasonable due to the substantial number of repair orders reviewed, unless the manufacturer can show that the amounts are not reasonable." for "dealer's service department unless the amounts are not reasonable," in the first sentence and added the second sentence; rewrote subdivision A 2, which read: "For purposes of determining recall or warranty parts and service compensation paid to a dealer by the manufacturer or distributor, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers. For purposes of determining labor compensation for recall or warranty body shop repairs paid to a dealer by the manufacturer or distributor, internal and insurance-paid repairs shall not be considered in determining amounts charged by the dealer to retail customers."; in subdivision A 3, deleted "and, in the case of parts," following "first", added the second sentence, and added "Compensation for parts" preceding "shall be stated"; added the second and third sentences in subdivision B 5; added subdivision B 10; and made stylistic changes.

CASE NOTES

Chargeback or hourly labor rate change. —

To the extent that a manufacturer-imposed chargeback or a lower hourly labor rate imposed by the manufacturer results in an amount of compensation for warranty work that is less than the amount of compensation for non-warranty work, § 46.2-1571 precludes such a chargeback or lower hourly labor rate. Navistar, Inc. v. New Balt. Garage, Inc., 60 Va. App. 599, 731 S.E.2d 13, 2012 Va. App. LEXIS 261 (2012).

When a manufacturer decides to impose a chargeback, refuse a rate increase, or unilaterally decrease the labor rate, it has fair notice of what § 46.2-1571 requires and whether such an action will be in compliance with the statute. To the extent that a manufacturer is uncertain whether a unilateral labor rate reduction or a chargeback would lead to a violation of the statute, it can request applicable documentation from the dealer to ensure that the

rate reduction or the chargeback does not offend the requirements of § 46.2-1571. Navistar, Inc. v. New Balt. Garage, Inc., 60 Va. App. 599, 731 S.E.2d 13, 2012 Va. App. LEXIS 261 (2012).

Request for increase in compensation. —

Denial of a request by an authorized dealer of motor vehicles for an increase in compensation from the manufacturer for warranty repair work was appropriate because the dealer was required by statute to compare amounts of actual non-warranty claims to amounts of actual warranty claims, not to hypothetical figures designed merely to estimate amounts for warranty claims similar to the actual non-warranty claims. Furthermore, the manufacturer had good cause to deny the dealer's request for an increase in its warranty labor rate. Berglund Chevrolet, Inc. v. Va. DMV, 71 Va. App. 747, 840 S.E.2d 19, 2020 Va. App. LEXIS 101 (2020).

Required findings not made. —

Ruling of the Commissioner of the Department of Motor Vehicles, adopted by the circuit court, declaring a chargeback for warranty services imposed by an automobile manufacturer invalid, omitted some of the key steps required by § 46.2-1571, where the testimony offered by the repair service provider was limited to one month rather than the full twelve months of the chargeback and where it was not clear whether warranty work performed for another manufacturer was included in the calculation. Navistar, Inc. v. New Balt. Garage, Inc., 60 Va. App. 599, 731 S.E.2d 13, 2012 Va. App. LEXIS 261 (2012).

CIRCUIT COURT OPINIONS

Three Percent Rule did not apply to "lot" damages. —

Virginia's Three Percent Rule, subsection D of § 46.2-1571, only applied to (1) transit damages and (2) pre-delivery, factory damages, and not to "lot" damages; the Three Percent Rule was not an affirmative defense, and therefore, a corporation was allowed to use it at trial. Smith v. Casey Chevrolet Corp., 68 Va. Cir. 238, 2005 Va. Cir. LEXIS 72 (Newport News July 8, 2005).

Commissioner did not make required findings. —

Decision of the Virginia Commissioner of Motor Vehicles disallowing a charge back for warranty services was reversed because the Commissioner failed to make a factual determination of the actual compensation to a franchise on both warranty and non-warranty work consistent with the requirements of § 46.2-1571. Navistar Inc. v. New Balt. Garage, Inc., 80 Va. Cir. 110, 2010 Va. Cir. LEXIS 21 (Fauquier County Jan. 27, 2010), rev'd, 60 Va. App. 599, 731 S.E.2d 13, 2012 Va. App. LEXIS 261 (2012).

End of Document

Va. Code Ann. § 46.2-1572

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1572. Operation of dealership by manufacturer.

It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any motor vehicle dealership in the Commonwealth. However, this section shall not prohibit:

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

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

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

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

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

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

History

1988, c. 865, § 46.1-550.5:31; 1989, c. 727; 1990, c. 41; 2005, c. 456.

Annotations

Notes

The 2005 amendments.

The 2005 amendment by c. 456 effective March 21, 2005, added the last sentence in subdivision 6.

CIRCUIT COURT OPINIONS

Construction. —

This section falls within the specialized competence of the Department of Motor Vehicles. The DMV is the agency established to govern all aspects of motor vehicles. It is in the best position to determine the criteria of an available dealer and what is in the public interest regarding motor vehicles. Va. Auto. Dealers Ass'n v. Holcomb, 102 Va. Cir. 252, 2019 Va. Cir. LEXIS 266 (Richmond June 21, 2019).

Substantial evidence. —

Ample evidence supported the Commissioner’s decision that no dealer was available where the only dealers who testified or provided letters only expressed a potential interest in a dealership, none of the five dealers testified to taking any step beyond their expression of interest, and the manufacturer presented substantial evidence showing that no dealership could be profitable. Va. Auto. Dealers Ass'n v. Holcomb, 102 Va. Cir. 252, 2019 Va. Cir. LEXIS 266 (Richmond June 21, 2019).

Va. Code Ann. § 46.2-1572.1

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1572.1. Ownership of service facilities.

A. It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control, either directly or indirectly, any motor vehicle warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, from owning, operating, or controlling any warranty or service facility for warranty or service of motor vehicles owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a motor vehicle manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

B. Subsection A shall not apply to the following:

1. Manufacturers of refined fuels truck tanks, persons who assemble refined fuels truck tanks, or persons who exclusively manufacture or assemble school buses or school bus parts; or

2. Manufacturers of engines for trucks having a gross vehicle weight rating of more than 7,500 pounds that owned, operated, or controlled a warranty or service facility in the Commonwealth as of January 1, 2016, provided that the manufacturer:

a. Does not own, operate, or control more than five such facilities in the Commonwealth;

b. Does not otherwise manufacture, distribute, or sell motor vehicles, as defined in § 46.2-1500; and

c. Provides to dealers on substantially equal terms access to all support for completing repairs, including parts and assemblies, training, and technical service bulletins and other information concerning repairs, that the manufacturer provides to facilities owned, operated, or controlled by the manufacturer.

History

1990, c. 329; 2016, c. 427.

Annotations

Notes

The 2016 amendments.

The 2016 amendment by c. 427 designated the formerly undesignated first and second paragraphs of the section as subsections A and B, respectively; and rewrote subsection B, which read “The preceding provisions of this

section shall not apply to manufacturers of refined fuels truck tanks or to persons who assemble refined fuels truck tanks or to persons who exclusively manufacture or assemble school buses or school bus parts."

End of Document

Va. Code Ann. § 46.2-1572.2

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1572.2. Mediation of disputes.

At any time before a hearing under this article is commenced before the Commissioner, either party to a franchise agreement for the sale or service of passenger cars, pickup trucks or trucks may demand that a dispute be submitted to nonbinding mediation as a condition precedent to the right to a hearing before the Commissioner.

A demand for mediation may be served on the other party and shall be filed with the Commissioner at any time before a hearing is commenced by the Commissioner. The service of the demand for mediation shall, of itself, toll the time required to file requests for hearings and for the time for commencing and completing hearings under this article until mediation is concluded.

A demand for mediation shall be in writing and shall be served upon the other party by certified mail at an address designated in the franchise agreement or in the records of the Department. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

Within ten days after the date on which the demand for mediation is served, the Commissioner shall select one mediator from his approved list of mediators or from the lists of hearing officers as set forth in § 2.2-4024. Within twenty-five days of the date of demand, the parties shall meet with the mediator for the purpose of attempting to resolve the dispute. The meeting place shall be within the Commonwealth at a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon the stipulation of both parties.

History

1994, c. 418.

Va. Code Ann. § 46.2-1572.3

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1572.3. Waiver prohibited.

No motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall obtain from a motor vehicle dealer a waiver of the dealer's rights by threatening to impose a detriment upon the dealer's business or threatening to withhold from the dealer any entitlement, benefit, or service to which the dealer is entitled by virtue of any franchise agreement, contract, statute, regulation, or law of any kind or which has been granted to more than one other franchisee of the manufacturer, factory branch, distributor, or distributor branch in the Commonwealth. This section shall not apply to good faith settlement of disputes, including disputes pertaining to contract negotiations, in which a waiver is granted in exchange for fair consideration in the form of a benefit conferred upon the dealer; however, this section shall apply to a dispute as to whether a waiver of such rights by a motor vehicle dealer has been obtained in violation of this section.

History

2001, cc. 135, 150; 2010, cc. 284, 318.

Annotations

Notes

The 2010 amendments.

The 2010 amendments by cc. 284 and 318 are identical, and substituted "to which the dealer is entitled by virtue of any franchise agreement, contract, statute, regulation, or law of any kind or which has been granted to more than one other franchisee of the manufacturer, factory branch, distributor, or distributor branch in the Commonwealth" for "required by law" in the first sentence. Acts 2010, c. 318, cl. 2 made the amendments effective April 9, 2010, by emergency clause.

Va. Code Ann. § 46.2-1572.4

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1572.4. Manufacturer or distributor use of performance standards.

A. Any performance standard or program that is used by a manufacturer or distributor for measuring dealership performance and may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable and equitable, and if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

B. A manufacturer or distributor shall not use any data, calculations, or statistical determinations of the sales performance of a dealer for any purpose, including (i) loss of incentive payments or other benefits, (ii) claim of breach or threats thereof, or (iii) notice of termination or threats thereof for the period of time the manufacturer, factory branch, distributor, or distributor branch has established an agreement, program, incentive program, or provision for loss of incentive payments or other benefits that causes a dealer to refrain from selling any used motor vehicle subject to (a) recall, (b) stop sale directive, (c) technical service bulletin, or (d) other manufacturer, factory branch, distributor, or distributor branch notification to perform work on a dealer's used motor vehicles in its inventory when there is no remedy or there are no parts to remediate each such affected used motor vehicle from the manufacturer, factory branch, distributor, or distributor branch and for 90 days after the termination of such agreement, program, incentive program, or provision for loss of incentive payments or other benefits.

The data on which the manufacturer or distributor seeks to rely under this subsection shall only be for a period or periods not excluded under this subsection. For any performance standard or program that is used by a manufacturer or distributor for measuring dealership performance during the period or periods excluded under this subsection, a dealer shall be deemed in compliance with any such program requirements related to sales performance or sales or service customer satisfaction performance of a dealer.

This subsection shall not prevent a manufacturer, factory branch, distributor, or distributor branch from (1) requiring that a motor vehicle not be subject to an open recall or stop sale directive in order to be qualified, remain qualified, or be sold as a certified pre-owned vehicle or similar designation; (2) paying incentives for selling used vehicles with no unremedied recalls; (3) paying incentives for performing recall repairs on a vehicle in the dealer's inventory; or (4) instructing that a dealer repair used vehicles of the line-make for which the dealer holds a franchise with an open recall, provided that the instruction does not involve coercion that imposes a penalty or provision of loss of benefits on the dealer.

C. A dealer may apply to the manufacturer, factory branch, distributor, or distributor branch for adjustment to data, calculations, or statistical determinations of sales performance or sales and service customer satisfaction performance for any period of time that such dealer has at least five percent of its new motor vehicle inventory subject to a recall or stop sale directive and for 90 days after the end of such period of time. Within 30 days of application for adjustment, the manufacturer, factory branch, distributor, or distributor branch shall use reasonable efforts to review and adjust the data, calculations, or other statistical determinations back to the date that the dealer was prevented from selling the new motor vehicles. A dealer

applying for adjustment shall have the burden of showing that the prevention of sale had a material, adverse impact on such dealer's new vehicle sales performance or sales and service customer satisfaction performance, and the adjustments by the manufacturer, factory branch, distributor, or distributor branch shall use reasonable efforts to remediate the effect of the impact shown on the data, calculations, or statistical determinations of sales performance or sales and service customer satisfaction performance.

The manufacturer shall take into consideration any adjustments to a dealer's new vehicle sales performance or sales and service customer satisfaction performance made by the manufacturer under this subsection in determining a dealer's compliance with a manufacturer performance standard or program.

History

2001, cc. 165, 173; 2016, cc. 432, 534.

Annotations

Notes

The number of this section was assigned by the Virginia Code Commission, the number in the 2001 acts having been 46-1572.3.

The 2016 amendments.

The 2016 amendments by cc. 432 and 534 are identical, and designated the former section as subsection A; and added subsections B and C.

Va. Code Ann. § 46.2-1573

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1573. Hearings and other remedies; civil penalties.

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. In every case of a hearing before the Commissioner authorized under this article based on a request or petition of a motor vehicle dealer, the manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving by a preponderance of the evidence that the manufacturer, factory branch, distributor, or distributor branch has good cause to take the action or actions for which the dealer has filed the petition for a hearing or that such actions are reasonable if required under the relevant provision.

B. The hearing process before the Commissioner under this article shall commence within 90 days of the request for a hearing by prehearing conference between the hearing officer and the parties in person, by telephone, or by other electronic means designated by the Commissioner. The hearing officer will set the hearing on a date or dates consistent with the rights of due process of the parties. The Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia within 60 days following the request for a hearing. Reasonable efforts shall be made to ensure that a hearing officer shall have at least five years of experience as a hearing officer in administrative hearings in the Commonwealth, shall have telephone and email capability, and shall be an active member of the Virginia State Bar. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within 90 days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information by the Motor Vehicle Dealer Board or any other person indicating a possible violation of any provision of this article. The Commissioner shall issue a response to the Motor Vehicle Dealer Board or person reporting the alleged violation and any other party to the investigation providing an explanation of action taken under this section and the reason for such action.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 7b of § 46.2-1569 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;

2. The nature and extent of the dealer's investment in its business;

3. The adequacy of the dealer's capitalization to the franchisor's standards and the adequacy of the dealer's facilities, equipment, parts, supplies, and personnel;

4. The effect of the proposed action on the community;

5. The extent and quality of the dealer's service under motor vehicle warranties;

6. The dealer's performance under the terms of its franchise;

7. Other economic and geographical factors reasonably associated with the proposed action; and

8. The recommendations, if any, from a three-member panel composed of members of the Board who are franchised dealers not of the same line-make involved in the hearing and who are appointed to the panel by the Commissioner.

E. An interested party in a hearing held pursuant to subsection A shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A. If, after notice to such interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed $1,000 per day of noncompliance. Civil penalties collected under this subsection shall be deposited into the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

F. During the hearing process, parties may obtain documents and materials by discovery pursuant to Rules 4:9 and 4:9A of the Supreme Court of Virginia. The parties shall exchange reports of experts, which shall meet the standard of Rule 4:1 of the Supreme Court of Virginia, at times to be established by the hearing officer. The parties may utilize any other form of discovery provided under the Rules of Supreme Court of Virginia if allowed by the hearing officer based on good cause shown. For discovery permitted under the Rules of Supreme Court of Virginia, a party may object to the discovery sought or seek to limit the discovery sought on any grounds permitted by the Rules or applicable law.

History

1988, c. 865, § 46.1-550.5:32; 1989, c. 727; 1992, c. 115; 1994, c. 702; 1995, cc. 767, 816; 2000, c. 106; 2001, cc. 165, 173; 2009, cc. 173, 176; 2010, cc. 284, 318; 2011, c. 650; 2015, c. 557; 2019, c. 751; 2020, cc. 1230, 1275.

Annotations

Notes

Editor's note.

The reference in this section to the Transportation Trust Fund was updated at the direction of the Virginia Code Commission to conform to the recodification of Title 33.2 by Acts 2014, c. 805, effective October 1, 2014.

Acts 2015, c. 557, cl 2, provides: "That the Commissioner of the Department of Motor Vehicles shall report to the Chairmen of the House and Senate Committees on Transportation by December 1, 2015, and December 1, 2016, as to the feasibility of hiring hearing officers as contemplated in subsection B of § 46.2-1573 of the Code of Virginia, as amended by this act."

Acts 2019, c. 751, cl. 2 provides: "That the Commissioner of the Department of Motor Vehicles shall report to the Chairmen of the House and Senate Committees on Transportation by December 1, 2019, and December 1, 2020, as to the volume and nature of the alleged violations received by the Department and the resulting actions taken by the Commissioner as contemplated in subsection C of § 46.2-1573 of the Code of Virginia, as amended by this act."

Acts 2020, cc. 1230 and 1275, cl. 18 provides: “That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of $50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is $0 for periods of commitment to the custody of the Department of Juvenile Justice.”

The 2000 amendments.

The 2000 amendment by c. 106 added subsection E.

The 2001 amendments.

The 2001 amendments by cc. 165 and 173 are identical, and deleted the former second paragraph in subsection D, which formerly read: “With respect to subdivision 6 of this subsection, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.”

The 2009 amendments.

The 2009 amendments by c. 173, effective March 23, 2009, and c. 176, effective March 25, 2009, are identical and substituted “adequacy of the dealer’s capitalization to the franchisor’s standards and the adequacy of the dealer’s facilities” for “adequacy of the dealer’s service facilities” in subdivision D 3.

The 2010 amendments.

The 2010 amendments by cc. 284 and 318 are identical, and in subdivision B, rewrote the first sentence which formerly read: “Hearings before the Commissioner under this article shall commence within ninety days of the request for a hearing and the Commissioner’s decision shall be rendered within sixty days from the receipt of the hearing officer’s recommendation.”, inserted the second sentence, and inserted “within 60 days following the request for a hearing” at the end of the fourth sentence. Acts 2010, c. 318, cl. 2 made the amendments effective April 9, 2010, by emergency clause.

The 2011 amendments.

The 2011 amendment by c. 650 added the last sentence in subsection A.

The 2015 amendments.

The 2015 amendment by c. 557 inserted the fifth sentence of subsection B and added subsection F.

The 2019 amendments.

The 2019 amendment by c. 751 added the second sentence to subsection C.

The 2020 amendments.

The 2020 amendment by cc. 1230 and 1275 are identical, and, in subsection E, substituted “Commonwealth Transportation Fund” for “Transportation Trust Fund” and made stylistic changes.

CASE NOTES

Board recommendation is prerequisite to action by Commissioner. —

The opinion of the Board is advisory only and the Commissioner is not required to follow the Board's recommendation. However, subsection B of former § 46.1-550.1 [see now this section] specifically provides that before rendering any decision under this article, the Commissioner shall obtain (now request) recommendations on the subject from the Motor Vehicle Dealers' Advisory Board. The clear mandate of former § 46.1-517.1 and § 46.2-1502 [now repealed] and this section is that before the Commissioner can act he must receive a recommendation from a validly constituted Board. Courtesy Motors, Inc. v. Ford Motor Co., 1 Va. App. 366, 339 S.E.2d 202, 1986 Va. App. LEXIS 208 (1986), rev'd, 237 Va. 187, 375 S.E.2d 362, 5 Va. Law Rep. 1553, 1989 Va. LEXIS 11 (1989) (holding disqualification of one member of six-member advisory board harmless error) (decided under prior law).

Good cause to deny dealer's request. —

Denial of a request by a dealer of motor vehicles for an increase in compensation from the manufacturer for warranty repair work was appropriate because the dealer was required to compare amounts of actual non-warranty claims to amounts of actual warranty claims. Furthermore, the manufacturer had good cause to deny the dealer's request for an increase in its warranty labor rate based on the dealer's failure to provide actual work orders for warranty repairs. Berglund Chevrolet, Inc. v. Va. DMV, 71 Va. App. 747, 840 S.E.2d 19, 2020 Va. App. LEXIS 101 (2020).

CIRCUIT COURT OPINIONS

Constitutionality. —

Car dealership was unable to prove that either § 46.2-1569 or subsection D of this section violated its substantive due process rights under U.S. Const., Amend. XIV because the statutes were rationally related to achieving legitimate state interests. Firstly, the state had an interest in streamlining those claims brought before its agencies and toward that end it prescribed a set of factors to be considered by an administrative agency in resolving claims of franchise termination; secondly, given the disparity in the bargaining power between the manufacturer and dealers, the state's franchise regulations governing this relationship supported the interests of consumers. Mitsubishi Motor Sales of Am., Inc. v. Holcomb, 63 Va. Cir. 164, 2003 Va. Cir. LEXIS 343 (Richmond Sept. 26, 2003).

Commissioner applied proper criteria. —

Under § 46.2-1500, a company was a "franchise," not a "dealer," because it would service but not sell the franchisor's vehicles; therefore, the Commissioner of the Virginia Department of Motor Vehicles used the proper criteria in determining under subdivision 4 of § 46.2-1569 and subsection D of this section that the relevant market area would support all dealers in the relevant market area after establishment of the company's franchise. Jennings Motor Co. v. Toyota Motor Sales, USA, Inc., 83 Va. Cir. 531, 2010 Va. Cir. LEXIS 313 (Fairfax County Aug. 26, 2010).

Subsection D does not create additional "good cause" test. —

Subsection D of § 46.2-1573 does not create an additional separate and independent "good cause" test the Commissioner of the Virginia Department of Motor Vehicles must apply before approving a new franchise; the reference to subdivision 4 of § 46.2-1569 in subsection D of this section means the Commissioner is required to consider the eight factors listed in subsection D in reviewing the proposed action and does not add an additional

determination that must be made. Jennings Motor Co. v. Toyota Motor Sales, USA, Inc., 83 Va. Cir. 531, 2010 Va. Cir. LEXIS 313 (Fairfax County Aug. 26, 2010).

Adequate consideration of factors. —

Decision from the Commissioner of the Department of Motor Vehicles adequately considered each of the statutory factors contained in subsection D; the Commissioner found that a terminated franchise had a substantial volume of business in the relevant market area, its primary stockholder had invested approximately $1 million in the franchise, its services and facilities were adequate, its offices were always fully equipped with the necessary machinery, and the community would be inconvenienced by the termination of the franchise. Mitsubishi Motor Sales of Am., Inc. v. Holcomb, 63 Va. Cir. 164, 2003 Va. Cir. LEXIS 343 (Richmond Sept. 26, 2003).

Research References & Practice Aids

Cross references.

As to manufacturer or distributor use of performance standards, see now § 46.2-1572.4.

Va. Code Ann. § 46.2-1573.01

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1573.01. Recovery of attorney's fees.

Any party to a proceeding under § 46.2-1573 who is found to have violated any provision of this article may be ordered by the circuit court before which an application therefor is pending to pay the reasonable attorney's fees and costs incurred by the complaining party, including those attorney's fees and costs incurred as a result of any appeal. Following issuance of the Commissioner's case decision finding that such violation has occurred, the complaining party may make application to an appropriate circuit court for entry of an order awarding it reasonable attorney's fees and costs. Notice of an initial application for entry of such order shall be served in the manner provided by law for the service of a summons in an action. The court shall take such evidence thereon as it deems necessary. Entry of a judgment in conformity with any order awarding such fees and costs shall be stayed pending any appeal of such order or pending any appeal of the Commissioner's underlying decision on the merits. Such application shall be made within sixty days following the date of the Commissioner's order. Venue for the application shall be the circuit court before which any appeal of the Commissioner's decision is pending, and the application may be considered concurrently with consideration of the appeal; otherwise, venue shall be as provided in § 2.2-4003.

History

2001, cc. 812, 843.

Annotations

CIRCUIT COURT OPINIONS

Attorneys' fees and costs. —

Because a franchisee's action was simply dismissed without a determination, there was no case decision; accordingly, § 46.2-1573.01 did not allow the franchisee's claim for attorneys' fees and costs. Mike Pallone Chevrolet, LLC v. GMC, 78 Va. Cir. 277, 2009 Va. Cir. LEXIS 29 (Fairfax County Apr. 27, 2009).

Research References & Practice Aids

Michie's Jurisprudence.

For related discussion, see

5A M.J. Courts, § 37.

End of Document

Va. Code Ann. § 46.2-1573.02

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7. Franchises. (§§ 46.2-1566 — 46.2-1573.02)

§ 46.2-1573.02. Limited right of dealers to sell new motor vehicles following termination of franchise.

Notwithstanding any provision of this title to the contrary, a motor vehicle dealer shall have the right, for 180 days following the termination of its franchise, to continue to sell and advertise as new any existing new motor vehicle inventory of the line-make of the terminated franchise, under the following circumstances:

1. The vehicle was acquired in the ordinary course of business as a new vehicle by a dealer franchised to sell that vehicle;

2. The franchise agreement of the dealer is terminated, canceled, or rejected by the manufacturer, factory branch, distributor, or distributor branch and the termination, cancellation, or rejection is not a result of the revocation of the dealer's license to operate as a dealer or the dealer's conviction of a crime; and

3. The vehicle was held in the inventory of the dealer on the date of the franchise agreement's termination.

This provision does not entitle a dealer whose franchise agreement has been terminated, canceled, or rejected to continue to perform warranty service repairs or continue to be eligible to offer or receive consumer or dealer incentives offered by the manufacturer, factory branch, distributor, or distributor branch, except as earned by the dealer prior to termination of the franchise agreement.

History

2010, cc. 284, 318.

Annotations

Notes

Editor's note.

Acts 2010, c. 318, cl. 2 provides: "That an emergency exists and this act is in force from its passage [April 9, 2010]."

Va. Code Ann. § 46.2-1573.1

Current through the 2022 Regular Session

Code of Virginia 1950 > Title 46.2. Motor Vehicles. > Subtitle IV Dealers and Driver Training Schools. (Chs. 15 — 19.2) > Chapter 15. Motor Vehicle Dealers. (Arts. 1 — 10) > Article 7.1. Late Model and Factory Repurchase Franchises. (§ 46.2-1573.1)

§ 46.2-1573.1. Late model and factory repurchase franchises.

Franchised late model or factory repurchase motor vehicle dealers shall have the same rights and obligations as provided for franchised new motor vehicle dealers in Article 7 (§ 46.2-1566 et seq.) of this chapter, mutatis mutandis.

History

1992, c. 572.

End of Document