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SENATE BILL NO. 407

Offered January 21, 2000

A BILL to amend and reenact § 46.2-1573 of the Code of Virginia, relating to certain hearings before the Commissioner of the Department of Motor Vehicles.

Patrons—Williams, Barry, Houck, Marsh, Newman, Norment, Potts, Puller, Saslaw, Schrock, Ticer and Watkins; Delegates: Abbitt, Amundson, Bolvin, Darner, Drake, Howell, Katzen, Larrabee, Moran, Pollard, Rollison and Wardrup

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1573 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-1573. Hearings and other remedies.

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 1.1:1 (§ 9-6.14:1 et seq.) of Title 9.

B. 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. 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. 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 ninety 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.

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 service 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.

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.

In a decision rendered pursuant to subsection A of this section, the Commissioner may, consistent with the powers granted him under § 46.2-1501, include such affirmative relief as he finds necessary and appropriate. Such affirmative relief may include an award to any party who requested the hearing of compensatory damages for injuries and losses resulting from the action that was the subject of the hearing, as well as his costs and reasonable attorney's fees.

INTRODUCED

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