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## SENATE BILL NO. 407

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation  
on February 3, 2000)

(Patron Prior to Substitute—Senator Williams)

A BILL to amend and reenact §§ 46.2-1573, 46.2-1982, 46.2-1992.75, and 46.2-1993.73 of the Code of Virginia, relating to certain hearings before the Commissioner of the Department of Motor Vehicles; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1573, 46.2-1982, 46.2-1992.75, and 46.2-1993.73 of the Code of Virginia are amended and reenacted as follows:

§ 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 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.

E. An interested party in a hearing held pursuant to subsection A of this section 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 of this section. If 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 Transportation Trust Fund.

§ 46.2-1982. Hearings and other remedies; civil penalties.

A. In every case of a hearing before the Commissioner authorized under this article, the

60 Commissioner shall give reasonable notice of each hearing to all interested parties, and the  
61 Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and  
62 appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9.

63 B. Hearings before the Commissioner under this article shall commence within ninety days of the  
64 request for a hearing and the Commissioner's decision shall be rendered within sixty days from the  
65 receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided  
66 over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court  
67 of Virginia. On request of the Commissioner, the Executive Secretary will name a hearing officer from  
68 the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall  
69 provide recommendations to the Commissioner within ninety days of the conclusion of the hearing.

70 C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate  
71 investigations, conduct hearings, and determine the rights of parties under this article whenever he is  
72 provided information indicating a possible violation of any provision of this article.

73 D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 9 of  
74 § 46.2-1976 with respect to which the Commissioner is to determine whether there is good cause for a  
75 proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall  
76 consider:

- 77 1. The volume of the affected dealer's business in the relevant market area;
- 78 2. The nature and extent of the dealer's investment in its business;
- 79 3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
- 80 4. The effect of the proposed action on the community;
- 81 5. The extent and quality of the dealer's service under T&M vehicle warranties;
- 82 6. The dealer's performance under the terms of its franchise; and
- 83 7. Other economic and geographical factors reasonably associated with the proposed action.

84 With respect to subdivision 6 of this subsection, any performance standard or program for measuring  
85 dealership performance that may have a material effect on a dealer, and the application of any such  
86 standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if  
87 based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a  
88 manufacturer or distributor shall disclose in writing to the dealer a description of how a performance  
89 standard or program is designed and all relevant information used in the application of the performance  
90 standard or program to that dealer.

91 *E. An interested party in a hearing held pursuant to subsection A of this section shall comply with*  
92 *the effective date of compliance established by the Commissioner in his decision in such hearing, unless*  
93 *a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is*  
94 *under judicial review and appeal as provided in subsection A of this section. If the Commissioner finds*  
95 *an interested party has not complied with his decision by the designated date of compliance, unless a*  
96 *stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is*  
97 *under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not*  
98 *to exceed \$1,000 per day of noncompliance. Civil penalties collected under this subsection shall be*  
99 *deposited into the Transportation Trust Fund.*

100 § 46.2-1992.75. Hearings and other remedies; civil penalties.

101 A. In every case of a hearing before the Commissioner authorized under this article, the  
102 Commissioner shall give reasonable notice of each hearing to all interested parties, and the  
103 Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and  
104 appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9.

105 B. Hearings before the Commissioner under this article shall commence within ninety days of the  
106 request for a hearing and the Commissioner's decision shall be rendered within sixty days from the  
107 receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided  
108 over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court  
109 of Virginia. On request of the Commissioner, the Executive Secretary will name a hearing officer from  
110 the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall  
111 provide recommendations to the Commissioner within ninety days of the conclusion of the hearing.

112 C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate  
113 investigations, conduct hearings, and determine the rights of parties under this article whenever he is  
114 provided information indicating a possible violation of any provision of this article.

115 D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 9 of  
116 § 46.2-1992.69 with respect to which the Commissioner is to determine whether there is good cause for  
117 a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall  
118 consider:

- 119 1. The volume of the affected dealer's business in the relevant market area;
- 120 2. The nature and extent of the dealer's investment in its business;
- 121 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 trailer warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

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.

*E. An interested party in a hearing held pursuant to subsection A of this section 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 of this section. If 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 Transportation Trust Fund.*

§ 46.2-1993.73. 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 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 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 9 of § 46.2-1993.67 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 motorcycle warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

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.

*E. An interested party in a hearing held pursuant to subsection A of this section 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 of this section. If 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*

**183** *deposited into the Transportation Trust Fund.*