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SENATE BILL NO. 256

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 46.2-1569 of the Code of Virginia, relating to the ability of a buyer of a motor vehicle dealership to contest the failure of a manufacturer to approve transfer of the dealership.

Patron—Wagner

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1569 of the Code of Virginia is amended and reenacted as follows:

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

Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

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, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.

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

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 and the applicant whose application is the subject of the proposed sale, transfer, or change of its objection and the reasons therefor at least thirty 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 because an individual who is the applicant or who is in control of an entity that is an applicant lacks good moral character, lacks general business experience, or lacks financial ability to be the dealer or the applicant fails to meet the standards otherwise established by this title to be a dealer. For the purposes of this subdivision, the imposition of a condition upon approval of the sale, transfer, or change that is in violation of any requirement of this title shall be considered an objection or an unreasonable basis by the manufacturer, factory branch, distributor, or distributor branch.

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 thirty 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 (i) the franchisor has been given at least ninety days' prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed transferee, and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business. If the dealer does not request a hearing by the Commissioner concerning the objection to the proposed sale, transfer, or change, the applicant or the dealer may commence an action at law if the manufacturer, factory branch, distributor, or distributor branch fails to approve the sale, transfer, or change in violation of this subdivision. 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 objection of the manufacturer, factory branch, distributor, or distributor branch for damages suffered by the applicant or the dealer as a result of the violation of this subdivision by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's or dealer's reasonable attorney fees and costs of litigation.

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

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59 by a dealer of the same line-make in the relevant market area within thirty days after receipt of the  
60 franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter,  
61 that there is reasonable evidence that after the grant of the new franchise, the market will support all of  
62 the dealers in that line-make in the relevant market area. Establishing a franchised dealer in a relevant  
63 market area to replace a franchised dealer that has not been in operation for more than two years shall  
64 constitute the establishment of a new franchise subject to the terms of this subdivision. The two-year  
65 period for replacing a franchised dealer shall begin on the day the franchise was terminated, or, if a  
66 termination hearing was held, on the day the franchisor was legally permitted finally to terminate the  
67 franchise. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's  
68 relevant market area if the relocation site is to be more than ten miles distant from any other dealer for  
69 the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if  
70 the relocation site is to be more distant than the existing site from all other dealers of the same  
71 line-make in that relevant market area; or (iii) the relocation of an existing new motor vehicle dealer  
72 within two miles of the existing site of the relocating dealer.

73 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,  
74 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the  
75 dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty  
76 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise,  
77 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested  
78 in writing by the dealer within the sixty-day period and, after a hearing on the matter, that there is good  
79 cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is  
80 made to the Commissioner for a determination as to good cause for the termination, cancellation, or  
81 nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's  
82 decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In  
83 any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor  
84 takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue  
85 in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this  
86 subdivision notice of termination, cancellation, or nonrenewal may be provided to a dealer by a  
87 franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or  
88 nonrenewal when the grounds for such action are any of the following:

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

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

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

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

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

106 5a. To fail to provide continued parts and service support to a dealer which holds a franchise in a  
107 discontinued line-make for at least five years from the date of such discontinuance. This requirement  
108 shall not apply to a line-make which was discontinued prior to January 1, 1989.

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

121 business.

122 7. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new vehicles of  
123 each make, series, and model needed by the dealer to receive a percentage of total new vehicle sales of  
124 each make, series, and model equitably related to the total new vehicle production or importation  
125 currently being achieved nationally by each make, series, and model covered under the franchise. Upon  
126 the written request of any dealer holding its sales or sales and service franchise, the manufacturer or  
127 distributor shall disclose to the dealer in writing the basis upon which new motor vehicles are allocated,  
128 scheduled, and delivered to the dealers of the same line-make. In the event that allocation is at issue in  
129 a request for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or  
130 distributor provide to the dealer, within thirty days of such demand, all records of sales and all records  
131 of distribution of all motor vehicles to the same line-make dealers who compete with the dealer  
132 requesting the hearing.

133 7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for the  
134 line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's  
135 existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to  
136 receiving a model or a series of vehicles.

137 7b. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

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

140 8a. For any franchise agreement, to require a motor vehicle dealer to pay the attorney's fees of the  
141 manufacturer or distributor related to hearings and appeals brought under this article.

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