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HOUSE BILL NO. 2316

Offered January 10, 2007

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A BILL to amend and reenact § 46.2-1569 of the Code of Virginia, relating to coercion and attempted coercion of motor vehicle dealers; repurchase of certain dealer assets in the event of the termination of the dealer's franchise.

 Patron—Welch

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 through coercion or attempted coercion.~~

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 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 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.

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 thirty days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that there is reasonable evidence that after the grant of the new franchise, the market 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. 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 ten 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,

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59 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the
60 dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty
61 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise,
62 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested
63 in writing by the dealer within the sixty-day period and, after a hearing on the matter, that there is good
64 cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is
65 made to the Commissioner for a determination as to good cause for the termination, cancellation, or
66 nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's
67 decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In
68 any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor
69 takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue
70 in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this
71 subdivision notice of termination, cancellation, or nonrenewal may be provided to a dealer by a
72 franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or
73 nonrenewal when the grounds for such action are any of the following:

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

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

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

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

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

91 5a. To fail to provide continued parts and service support to a dealer which holds a franchise in a
92 discontinued line-make for at least five years from the date of such discontinuance. This requirement
93 shall not apply to a line-make which was discontinued prior to January 1, 1989.

94 *5b. Upon the voluntary or involuntary termination, nonrenewal, or cancellation of the franchise of*
95 *any dealer by either the manufacturer, distributor, or factory branch or by the dealer, notwithstanding*
96 *the terms of any franchise, whether entered into before or after the enactment of this section, to fail to*
97 *pay the dealer for at least the following:*

98 a. *The dealer costs plus any charged by the franchisor for distribution, delivery, and taxes paid by*
99 *the dealer, less all allowances paid to the dealer by the franchisor for new and undamaged motor*
100 *vehicles of current or one-year-prior model year in the dealer's inventory, whether acquired from the*
101 *franchisor or from another dealer of the same line-make;*

102 b. *The dealer cost, as shown in the price catalogue of the franchisor current at the time of*
103 *repurchase, of each new, unused, undamaged, and unsold part or accessory if such part or accessory is*
104 *in the current parts catalogue and is still in the original, resalable merchandising package and in*
105 *unbroken lots, except that in the case of sheet metal, a comparable substitute for the original package*
106 *may be used;*

107 c. *The fair market value of each undamaged sign owned by the dealer which bears a trademark,*
108 *trade name, or commercial symbol used or claimed by the franchisor if such sign was purchased from*
109 *or at the request of the franchisor;*

110 d. *The fair market value of all special tools and automotive service equipment owned by the dealer*
111 *which were recommended and designated as special tools or equipment by the franchisor, if the tools*
112 *and equipment are in usable and good condition, normal wear and tear excepted; and*

113 e. *The cost of transporting, handling, packing, and loading of motor vehicles, parts, signs, tools and*
114 *special equipment subject to repurchase hereunder.*

115 6. To fail to allow a dealer the right at any time to designate a member of his family as a successor
116 to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or
117 refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated
118 dealer if the franchisor has not provided to the member of the family previously designated by the
119 dealer as his successor written notice of its objections to the succession and of such person's right to
120 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 thirty 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 fail to ship monthly to any dealer, if ordered by the dealer, the number of new vehicles of each make, series, and model needed by the dealer to receive a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. 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 are allocated, scheduled, and delivered to the dealers of the same line-make. 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 thirty 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.

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's 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.