

093539420

**HOUSE BILL NO. 1778**

Offered January 14, 2009

Prefiled January 8, 2009

*A BILL to amend and reenact §§ 46.2-1569 and 46.2-1571 of the Code of Virginia, relating to coercion of motor vehicle dealers by manufacturers, etc.; warranty obligations and sales incentives.*

Patrons—Athey, Alexander, Amundson, Armstrong, BaCote, Barlow, Bouchard, Bowling, Brink, Bulova, Byron, Caputo, Carrico, Cole, Cosgrove, Dance, Ebbin, Eisenberg, Englin, Gear, Griffith, Hall, Howell, A.T., Hugo, Hull, Joannou, Johnson, Jones, Kilgore, Landes, Lewis, Lingamfelter, Marsden, Mathieson, McClellan, McQuinn, Melvin, Miller, P.J., Morrissey, Nichols, Phillips, Plum, Poisson, Pollard, Purkey, Putney, Scott, J.M., Shannon, Sherwood, Shuler, Sickles, Spruill, Tata, Toscano, Tyler, Valentine, Vanderhye, Ward, Ware, O. and Watts

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That §§ 46.2-1569 and 46.2-1571 of the Code of Virginia are 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 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.

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 must 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.

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 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 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 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 on forms generally utilized by the franchisor to conduct its review, as well as the full agreement for the proposed transaction, and (ii) 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

INTRODUCED

HB1778

54 executive management or principal operator of the dealership, without a statement of specific grounds  
55 for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of  
56 subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request  
57 review of the action or imposition of the condition in a hearing by the Commissioner. If the  
58 Commissioner finds that the action or the imposition of the condition was a violation of this section, the  
59 Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch,  
60 distributor, or distributor branch, without imposition of the condition. If the existing dealer does not  
61 request a hearing by the Commissioner concerning the action or the condition imposed by the  
62 manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the  
63 proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the  
64 applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at  
65 law for violation of this section. The action may be commenced in the circuit court of the city or county  
66 in which the dealer is located, or in any other circuit court with permissible venue, within two years  
67 following the action or the imposition of the condition by the manufacturer, factory branch, distributor,  
68 or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation  
69 of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's  
70 or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of  
71 the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to  
72 § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

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

94 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,  
95 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the  
96 dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty  
97 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise,  
98 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested  
99 in writing by the dealer within the sixty-day period and, after a hearing on the matter, that *the*  
100 *franchisor has shown by a preponderance of the evidence* that there is good cause for the termination,  
101 cancellation, or nonrenewal of the franchise. In any case where a petition is made to the Commissioner  
102 for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the  
103 franchise in question shall continue in effect pending the Commissioner's decision or, if that decision is  
104 appealed to the circuit court, pending the decision of the circuit court. In any case in which a franchisor  
105 neither advises a dealer that it does not intend to renew a franchise nor takes any action to renew a  
106 franchise beyond its expiration date, the franchise in question shall continue in effect on the terms last  
107 agreed to by the parties. Notwithstanding the other provisions of this subdivision notice of termination,  
108 cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than fifteen days prior  
109 to the effective date of such termination, cancellation, or nonrenewal when the grounds for such action  
110 are any of the following:

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

114 b. Failure of the franchised motor vehicle dealer to conduct its customary sales and service  
115 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 of current or one-year-prior model year ~~purchased within 120 days of the termination~~ in the dealer's inventory, whether acquired from the franchisor or from another dealer of the same line-make in the ordinary course of business, *in addition, dealers shall be entitled to the payment under this subsection for new and undamaged motor vehicles having a gross vehicle weight rating of 26,000 pounds or more of a two-year-prior model year;*

(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 subsection do not apply to a dealer who is unable to convey clear title to the property identified in this subsection.

For purposes of this subsection, 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 results in termination, cancellation, or nonrenewal first became general knowledge, or (iii) the day 24 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).*

(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 five years' rent, whichever is the lesser, or (ii) if the dealer owns the dealership facilities, the*

177 manufacturer, distributor, or factory branch shall pay the dealer a sum equivalent to the reasonable  
178 rental value of the dealership facilities for five years.

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

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

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

213 7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for the  
214 line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's  
215 existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to  
216 receiving a model or a series of vehicles.

217 7b. To require or otherwise coerce a dealer to underutilize the dealer's facilities by requiring or  
218 otherwise coercing a dealer to exclude or remove from the dealer's facilities operations for selling or  
219 servicing of a line-make of vehicles for which the dealer has a franchise agreement to utilize the  
220 facilities.

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

223 8a. For any franchise agreement, to require a motor vehicle dealer to pay the attorney's fees of the  
224 manufacturer or distributor related to hearings and appeals brought under this article.

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

230 § 46.2-1571. Warranty and sales incentive obligations.

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

235 1. Compensation of a dealer for warranty parts, service and diagnostic work shall not be less than the  
236 amounts charged by the dealer for the manufacturer's or distributor's original parts, service and  
237 diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or  
238 performed in the dealer's service department unless the amounts are not reasonable. 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 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 of this subsection.

2. For purposes of determining 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 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.

3. Increases in dealer 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 ninety-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup which shall be uniformly applied to all the manufacturer's or distributor's parts.

4. In the case of 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 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 which 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 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 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. 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 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 warranty repairs to resolve a condition discovered by the dealer during the course of a separate repair requested by the customer.* Claims for dealer compensation shall be paid within thirty days of dealer submission or within thirty 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 warranty parts or service compensation and service incentives shall only be for the twelve-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the eighteen-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims. 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, ~~provided unless the dealer~~ *manufacturer, factory branch, distributor, or distributor branch can demonstrate by a preponderance of the evidence that he exercised due diligence and that the sale was not made in good faith and without was made with knowledge of 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 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 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 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;
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; or
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.

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 which 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 ten 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 thirty days of purchase, the motor vehicle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of

362 revocation pursuant to this section, the dealer shall accept the vehicle and refund any payments made to  
363 the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the  
364 vehicle as defined in § 59.1-207.11. Nothing in this section shall be construed to exempt from the  
365 provisions of this section damage to a new motor vehicle that occurs following delivery of the vehicle  
366 to the dealer.

367 F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch  
368 and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either  
369 party may petition the Commissioner in writing, within thirty days after either party has given written  
370 notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on  
371 the parties, subject to rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.)  
372 of Title 2.2. However, nothing contained in this section shall give the Commissioner any authority as to  
373 the content or interpretation of any manufacturer's or distributor's warranty. A manufacturer, factory  
374 branch, distributor, or distributor branch may not collect chargebacks, fully or in part, either through  
375 direct payment or by charge to the dealer's account, for warranty parts or service compensation  
376 (including service incentives) or for sales incentives or other sales compensation until 40 days following  
377 final notice of the amount charged to the dealer following all internal processes of the manufacturer,  
378 factory, factory branch, distributor, or distributor branch. Within 30 days following receipt of such final  
379 notice, the dealer may petition the Commissioner, in writing, for a hearing. If a dealer requests such a  
380 hearing, the manufacturer, factory branch, distributor, or distributor branch may not collect the  
381 chargeback, fully or in part, either through direct payment or by charge to the dealer's account, until the  
382 completion of the hearing and a final decision of the Commissioner concerning the validity of the  
383 chargeback.