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HOUSE BILL NO. 1232

Offered January 19, 2016

A *BILL to amend and reenact §§ 46.2-1529.1, 46.2-1569, 46.2-1571, and 46.2-1572.4 of the Code of Virginia, relating to disclosures by and compensation of dealers for recalled vehicles.*

Patron—Habeeb

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1529.1, 46.2-1569, 46.2-1571, and 46.2-1572.4 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-1529.1. Sales of used motor vehicles by dealers; disclosures; penalty.

A. If, in any retail sale by a dealer of a used motor vehicle of under 6,000 pounds gross vehicle weight for use on the public highways, and normally used for personal, family or household use, the dealer offers an express warranty, the dealer shall provide the buyer a written disclosure of this warranty. The written disclosure shall be the Buyer's Guide required by federal law, shall be completely filled out and, in addition, signed and dated by the buyer and incorporated as part of the buyer's order.

B. A dealer may sell a used motor vehicle at retail "AS IS" and exclude all warranties only if the dealer provides the buyer, prior to sale, a separate written disclosure as to the effect of an "AS IS" sale. The written disclosure shall be conspicuous and contained on the front of the buyer's order and printed in not less than bold, 10-point type and signed by the buyer: "I understand that this vehicle is being sold "AS IS" with all faults and is not covered by any dealer warranty. I understand that the dealer is not required to make any repairs after I buy this vehicle. I will have to pay for any repairs this vehicle will need." A fully completed Buyer's Guide, as required by federal law, shall be signed and dated by the buyer and incorporated as part of the buyer's order.

C. A dealer that sells a used motor vehicle at retail that (i) is subject to a recall pursuant to 49 U.S.C. § 30111 et seq. and (ii) remains unremedied at the time of sale shall provide to the buyer a written disclosure of the recall. If, at the time of sale, there is a remedy available for such used motor vehicle, the dealer shall disclose to the buyer that (a) there is a remedy for the recall and the buyer must return to have the dealer provide the remedy, if the dealer holds a franchise to sell as new and to service the line-make of such used motor vehicle, or (b) there is a remedy for the recall and the buyer must contact a dealer of the line-make to provide the remedy, if the dealer does not hold a franchise to sell as new and to service the line-make of such used motor vehicle. If, at the time of sale, there is no remedy available for such used motor vehicle, the dealer shall disclose to the buyer that (1) there is no remedy for the recall and the buyer must return to have the dealer provide the remedy when the buyer learns or has notice that the remedy is available, if the dealer holds a franchise to sell as new and to service the line-make of such used motor vehicle, or (2) there is no remedy for the recall and the buyer must contact a dealer of the line-make to provide the remedy when the buyer learns or has notice that the remedy is available, if the dealer does not hold a franchise to sell as new and to service the line-make of such used motor vehicle.

D. Failure to provide the applicable disclosure required by subsection A or B, or C shall be punishable by a civil penalty of no more than \$1,000. Any such civil penalty shall be paid into the general fund of the state treasury. Furthermore, if the applicable disclosure required by subsection A or B, or C is not provided as required in this section, the buyer may cancel the sale within 30 days. In this case, the buyer shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for the use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes. Notice of the provisions of this subsection shall be included as part of every disclosure made under subsection A or B, or C.

~~D.~~ E. The provisions of this section shall not apply to motorcycles, trailers, or travel trailers.

§ 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, distributor branch, or affiliate, or any field representative, officer, agent, or their representatives to do any of the following. It shall further be unlawful for any manufacturer, factory branch, distributor, distributor branch, or any field representative, officer, agent, or their

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59 representatives to engage in conduct prohibited under this section through an affiliate.

60 1. To coerce or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles,
61 parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

62 2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer,
63 factory branch, distributor, or distributor branch, or representative thereof by threat to take or by taking
64 any action in violation of the chapter, or by any other act unfair or injurious to the dealer. If a
65 manufacturer, factory branch, distributor, or distributor branch conditions the grant of a new franchise to
66 a dealer on the dealer's consent (i) to provide a site control agreement as defined in subdivision 10, (ii)
67 to provide a written agreement containing an option to purchase the franchise of the dealer, provided,
68 however, that agreements pursuant to § 46.2-1569.1 shall be permitted, or (iii) to provide a termination
69 agreement to be held by the manufacturer, factory branch, distributor, or distributor branch for
70 subsequent use, it shall be considered coercion and an act that is unfair and injurious to the dealer;
71 provided, however, that the provisions of § 46.2-1572.3 related to the good faith settlement of disputes
72 shall apply to the agreements described in clauses (i), (ii), and (iii) of this subdivision, mutatis mutandis.
73 This subdivision shall not apply to any agreement the enforcement of which is subject to the jurisdiction
74 of a United States Bankruptcy Court.

75 2a. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising
76 association.

77 2b. To coerce or require any dealer to establish in connection with the sale of a motor vehicle prices
78 at which the dealer shall sell products or services not manufactured or distributed by the manufacturer,
79 factory branch, distributor, or distributor branch, whether by agreement, program, incentive provision, or
80 otherwise.

81 2c. To coerce or require any dealer, whether by agreement, program, incentive provision, or
82 otherwise, to construct improvements to its facilities or to install new signs or other franchisor image
83 elements that replace or substantially alter those improvements, signs, or franchisor image elements
84 completed within the preceding 10 years that were required or approved by the manufacturer, factory
85 branch, distributor, or distributor branch or one of its affiliates. If a manufacturer, factory branch,
86 distributor, or distributor branch offers incentives, or other payments under a program offered after the
87 effective date of this subdivision and available to more than one dealer in the Commonwealth that are
88 premised wholly or in part on dealer facility improvements or installation of franchisor signs or other
89 franchisor image elements, a dealer that constructed improvements or installed signs or other franchisor
90 image elements required by or approved by the manufacturer, factory branch, distributor, or distributor
91 branch and completed within the 10 years preceding the program shall be deemed to be in compliance
92 with the program requirements pertaining to construction of facilities or installation of signs or other
93 franchisor image elements that would replace or substantially alter those previously constructed or
94 installed within that 10-year period. This subdivision shall not apply to a program that provides lump
95 sum payments to assist dealers in making facility improvements or to pay for signs or franchisor image
96 elements when such payments are not dependent on the dealer selling or purchasing specific numbers of
97 new vehicles and shall not apply to a program that is in effect with more than one dealer in the
98 Commonwealth on the effective date of this subdivision, nor to any renewal or modification of such a
99 program.

100 2d. To coerce or require any dealer, whether by agreement, program, incentive provision, or
101 provision for loss of incentive payments or other benefits, to refrain from selling any used motor vehicle
102 subject to (i) recall, (ii) stop sale directive, (iii) technical service bulletin, or (iv) other manufacturer,
103 factory branch, distributor, or distributor branch notification to perform work on such used motor
104 vehicle, unless the manufacturer, factory branch, distributor, or distributor branch has a remedy and
105 parts available to the dealer to remediate the basis for the coercion or requirement of the dealer to
106 refrain from selling each affected used motor vehicle. If there is no remedy or there are no parts
107 available from the manufacturer, factory branch, distributor, or distributor branch to remediate each
108 affected used motor vehicle in the inventory of the dealer, the manufacturer, factory branch, distributor,
109 or distributor branch shall (a) compensate the dealer for any affected used motor vehicle in the
110 inventory of the dealer that it cannot sell because of such coercion or requirement at least one percent
111 a month or any part thereof of the cost of such used motor vehicle, including repairs and reconditioning
112 expenses based on the financial records of the dealer, and (b) establish a written procedure to
113 compensate dealers under this subdivision that it shall provide to dealers subject to its coercion or
114 requirement and file with the Commissioner as a franchise document pursuant to § 46.2-1566.

115 Any claim for compensation by a dealer shall be submitted on a monthly basis for the amount owed
116 pursuant to this subdivision. The manufacturer, factory branch, distributor, or distributor branch shall
117 process and pay the claim in the same manner as a claim for warranty reimbursements as provided in
118 § 46.2-1571. This subdivision shall not prevent a manufacturer, factory branch, distributor, or
119 distributor branch from (1) requiring that a motor vehicle not be subject to an open recall or stop sale
120 directive in order to be qualified, remain qualified, or be sold as a certified pre-owned vehicle or

similar designation; (2) paying incentives for selling used vehicles with no unremedied recalls; or (3) paying incentives for performing recall repairs on a vehicle in the dealer's inventory.

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 30 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 30 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 (a) the franchisor has been given at least 90 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 (b) 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 executive management or principal operator of the dealership, without a statement of specific grounds for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request review of the action or imposition of the condition in a hearing by the Commissioner. If the Commissioner finds that the action or the imposition of the condition was a violation of this section, the Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch, distributor, or distributor branch, without imposition of the condition. If the existing dealer does not request a hearing by the Commissioner concerning the action or the condition imposed by the manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at law for violation of this section. The 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 action or the imposition of the condition by the manufacturer, factory branch, distributor, or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

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 30 days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that the franchisor can show by a preponderance of the evidence that after the grant of the new franchise, the relevant market area 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. The relocation of a franchise in a relevant market area, whether by an existing dealer or by a dealer who is acquiring the franchise, shall constitute

182 the establishment of a new franchise subject to the terms of this subdivision. This subdivision shall not
183 apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation
184 site is to be more than 10 miles distant from any other dealer for the same line-make; (ii) the relocation
185 of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant
186 than the existing site from all other dealers of the same line-make in that relevant market area; or (iii)
187 the relocation of an existing new motor vehicle dealer within two miles of the existing site of the
188 relocating dealer.

189 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,
190 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the
191 dealer and the Commissioner have received written notice of the franchisor's intentions at least 60 days
192 prior to the effective date of such termination, cancellation, or the expiration date of the franchise,
193 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested
194 in writing by the dealer within the 60-day period prior to the effective date of such termination,
195 cancellation, or the expiration date of the franchise and, after a hearing on the matter, that the franchisor
196 has shown by a preponderance of the evidence that there is good cause for the termination, cancellation,
197 or nonrenewal of the franchise. If any manufacturer, factory branch, distributor, or distributor branch
198 takes action that will have the effect of terminating, canceling, or refusing to renew the franchise of any
199 dealer (a) by use of a termination agreement executed by the dealer and obtained more than 90 days
200 before the purported date of use, (b) by exercise of rights under a written option to purchase the
201 franchise of a dealer, or (c) by exercise of rights under a site control agreement as defined in
202 subdivision 10, that action shall be considered a termination, cancellation, or refusal to renew pursuant
203 to the terms of this subdivision and subject to the rights, provisions, and procedures provided herein. In
204 any case where a petition is made to the Commissioner for a determination as to good cause for the
205 termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect
206 pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the
207 decision of the circuit court. Where the termination, cancellation, or nonrenewal of a franchise will
208 result from use of a termination agreement executed by the dealer and obtained more than 90 days
209 before the purported date of use, exercise of rights under a written option to purchase the franchise of a
210 dealer, or exercise of rights under a site control agreement as defined in subdivision 10, such use or
211 exercise shall be stayed pending the Commissioner's decision or, if that decision is appealed to the
212 circuit court, pending the decision of the circuit court, and its use or exercise will be allowed only
213 where the franchisor has shown by a preponderance of the evidence that there is good cause for the
214 termination, cancellation, or nonrenewal of the franchise. In any case in which a franchisor neither
215 advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise
216 beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to
217 by the parties. Notwithstanding the other provisions of this subdivision notice of termination,
218 cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than 15 days prior to
219 the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are
220 any of the following:

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

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

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

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

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

238 5a. To fail to provide continued parts and service support to a dealer which holds a franchise in a
239 discontinued line-make for at least five years from the date of such discontinuance. This requirement
240 shall not apply to a line-make which was discontinued prior to January 1, 1989.

241 5b. Upon the involuntary or voluntary termination, nonrenewal, or cancellation of the franchise of
242 any dealer, by either the manufacturer, distributor, or factory branch or by the dealer, notwithstanding
243 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 in the dealer's inventory acquired from the franchisor or from another dealer of the same line — make in the ordinary course of business within 18 months of termination;

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

For purposes of this subdivision, 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 resulted in the termination, cancellation, or nonrenewal first became general knowledge, or (iii) the day 12 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). Fair market value of the franchise for the line-make shall only include the goodwill value of the dealer's franchise for that line-make in the dealer's relevant market area.

(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 three years' rent, whichever is the lesser, or (ii) if the dealer owns the dealership facilities, the manufacturer, distributor, or factory branch shall pay the dealer a sum equivalent to the reasonable rental value of the dealership facilities for three years.

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

6. To fail to allow a dealer the right at any time to designate a member of his family as a successor to the dealership in the event of the death or incapacity of the dealer. Such designation may be made by the dealer or, in the event of the death or incapacity of the dealer, by the qualified executor or personal representative of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not provided to the member of the family designated the dealer's successor written notice of its objections to the succession and of such person's right to seek a hearing on the matter before the Commissioner

305 pursuant to this article, and the Commissioner determines, if requested in writing by such member of the
306 family within 30 days of receipt of such notice from the franchisor, and after a hearing on the matter
307 before the Commissioner pursuant to this article, that the failure to permit or honor the succession is
308 unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i)
309 the franchisor has been given written notice as to the identity, financial ability, and qualifications of the
310 member of the family in question, and (ii) the succession to the franchise will not involve, without the
311 franchisor's consent, a relocation of the business.

312 7. To delay, refuse, or fail to deliver to any dealer, if ordered by the dealer, in reasonable quantities
313 and within a reasonable time, any new vehicles of each series and model sold or distributed by the
314 franchisor as covered by such franchise and which are publicly advertised by the manufacturer, factory
315 branch, distributor, or distributor branch in the Commonwealth to be available for immediate delivery,
316 provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of
317 this chapter if such failure is due to an act of God, a work stoppage or delay due to a strike or labor
318 difficulty, a shortage of materials, a lack of available manufacturing capacity, a freight embargo, or other
319 cause over which the manufacturer, factory branch, distributor, or distributor branch shall have no
320 control. If ordered by a dealer, a franchisor shall deliver an equitable supply of new vehicles during the
321 model year of each series and model under the dealer's franchise in proportion to the sales objectives or
322 goals established by the franchisor for the dealer compared to the sales objectives or goals established
323 by the other same line-make dealers in the Commonwealth, provided, however, that the failure to deliver
324 any motor vehicle shall not be considered a violation of this chapter if such failure is due to a cause
325 over which the manufacturer, factory branch, distributor, or distributor branch shall have no control.
326 Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer
327 or distributor shall disclose to the dealer in writing the basis upon which new motor vehicles of the
328 same line-make are allocated, scheduled, and delivered to dealers in the Commonwealth, and the basis
329 upon which the current allocation or distribution is being made or will be made to such dealer. In the
330 event that allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to
331 direct that the manufacturer or distributor provide to the dealer, within 30 days of such demand, all
332 records of sales and all records of distribution of all motor vehicles to the same line-make dealers who
333 compete with the dealer requesting the hearing.

334 7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for the
335 line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's
336 existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to
337 receiving a model or a series of vehicles.

338 7b. To require or otherwise coerce a dealer to underutilize the dealer's facilities by requiring or
339 otherwise coercing a dealer to exclude or remove from the dealer's facilities operations for selling or
340 servicing of a line-make of vehicles for which the dealer has a franchise agreement to utilize the
341 facilities.

342 7c. To require a dealer to purchase goods or services from a vendor selected, identified, or
343 designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by
344 agreement, program, incentive provision, or otherwise without making available to the dealer the option
345 to obtain the goods or services of substantially similar quality from a vendor chosen by the dealer. For
346 purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and
347 promotional materials containing material subject to intellectual property rights of, or special tools and
348 training as required by the manufacturer, or parts to be used in repairs under warranty obligations of, a
349 manufacturer, factory branch, distributor, or distributor branch.

350 7d. To fail to provide a notice to a dealer when notifying it of the requirement to purchase goods or
351 services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor,
352 or distributor branch of the dealer's rights pursuant to subdivision 7c.

353 7e. To fail to provide to a dealer, when the manufacturer, factory branch, distributor, or distributor
354 branch claims that a vendor chosen by the dealer cannot supply goods and services of substantially
355 similar quality, a disclosure concerning the vendor selected, identified, or designated by the franchisor
356 stating (i) whether the manufacturer, factory branch, distributor, distributor branch, or one of its
357 affiliates, or any officer, director, or employee of the same, has an ownership interest, actual or
358 beneficial, in the vendor and, if so, the percentage of the ownership interest and (ii) whether the
359 manufacturer, factory branch, distributor, distributor branch, or one of its affiliates has an agreement or
360 arrangement by which the vendor pays to the manufacturer, factory branch, distributor, distributor
361 branch, or one of its affiliates, or any officer, director, or employee of the same, any compensation and,
362 if so, the basis and amount of the compensation to be paid as a result of any purchases by the dealer,
363 whether it is to be paid by direct payment by the vendor or by credit from the vendor for the benefit of
364 the recipient.

365 7f. To fail to provide to a dealer, if the goods and services to be supplied to the dealer by a vendor
366 selected, identified, or designated by the manufacturer, factory branch, distributor, or distributor branch

are signs or other franchisor image elements to be leased to the dealer, the right to purchase the signs or other franchisor image elements of like kind and quality from a vendor selected by the dealer. If the vendor selected by the manufacturer, factory branch, distributor, or distributor branch is the only available vendor, the dealer must be given the opportunity to purchase the signs or other franchisor image elements at a price substantially similar to the capitalized lease costs thereof. This subdivision shall not be construed to allow a dealer to impair or eliminate the intellectual property rights of the manufacturer, factory branch, distributor, or distributor branch, nor to permit a dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer, factory branch, distributor, or distributor branch.

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 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.

10. To enter into any agreement with a motor vehicle dealer in which the manufacturer, factory branch, distributor, distributor branch, or one of its affiliates is given site control over the premises of a dealer that does not terminate upon the occurrence of any of the following events: (i) the right of the franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor branch to another; (ii) the final termination of the dealer's franchise for any reason; or (iii) the manufacturer, factory branch, distributor, or distributor branch of its affiliate fails for any reason to exercise its right of first refusal to purchase the assets or ownership of the business of the dealer when given the opportunity to do so by virtue of its franchise agreement, another agreement, or as set forth in § 46.2-1569. For purposes of this subdivision, the term "site control" shall mean the contractual right to control in any way the commercial use and development of the premises upon which a dealer's business operations are located, including the right to approve of additional or different uses for the property beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option to purchase the dealer's property.

11. To require or coerce a motor vehicle dealer, whether by agreement, program, incentive provision, or otherwise, to submit or to provide a manufacturer, factory branch, distributor, or distributor branch access to consumer data maintained by the dealer (i) by any method that violates or would violate the dealer's chosen policies and processes for complying with obligations to protect consumer data under laws of the United States or the Commonwealth or (ii) through franchisor access to the computer database of the dealer if the dealer chooses to submit data specified by the franchisor.

The manufacturer, factory branch, distributor, or distributor branch shall provide a dealer the right to cancel the dealer's participation in a program under which the dealer provides consumer data or access to data to the manufacturer, factory branch, distributor, or distributor branch, provided that a manufacturer, factory branch, distributor, or distributor branch may require notice of up to 60 days of the dealer's decision to cancel the dealer's participation.

If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other payments under a program offered after July 1, 2015, excluding any continuation, renewal, or modification of any existing program, and available to more than one dealer in the Commonwealth that are premised wholly or in part on dealer participation in manufacturer, factory branch, distributor, or distributor branch programs under which consumer data is provided to or accessed by the manufacturer, factory branch, distributor, or distributor branch, a dealer that exercises its rights under this subdivision shall be deemed to be in compliance with the program requirements pertaining to providing consumer data, provided that the dealer has otherwise met program requirements to the extent of providing any consumer data that is not nonpublic personal information.

It shall not constitute a violation of this subdivision for a manufacturer, factory branch, distributor, or distributor branch to require a motor vehicle dealer to provide data (a) concerning a new motor vehicle sale or used motor vehicle sale under a manufacturer certification program, (b) to validate a customer or dealer incentive, (c) to calculate dealer or market sales or evaluate service performance or customer satisfaction to facilitate analysis of product quality and market feedback, (d) to facilitate warranty service work on a vehicle, (e) concerning information with respect to recall repairs or information about a recalled vehicle, (f) pursuant to a mutual agreement between a manufacturer, factory branch, distributor, or distributor branch and a dealer, or (g) where consumer data is reasonably necessary to enable a manufacturer, factory branch, distributor, or distributor branch to provide programs, products, or services

428 to a dealer.

429 A dealer that elects to submit or push data or information to the manufacturer, factory branch,
430 distributor, or distributor branch through any method other than that provided by the manufacturer,
431 factory branch, distributor, or distributor branch shall timely obtain and furnish the requested data in a
432 widely accepted electronic file format. A manufacturer, factory branch, distributor, or distributor branch
433 shall not impose a fee, surcharge, or charge of any type on a dealer that chooses to submit data
434 specified by the manufacturer, factory branch, distributor, or distributor branch rather than provide the
435 manufacturer, factory branch, distributor, or distributor branch access to the dealer's computer database.

436 **§ 46.2-1571. Recall, warranty, and sales incentive obligations.**

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

442 1. Compensation of a dealer for *recall* or warranty parts, service, and diagnostic work shall not be
443 less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service,
444 and diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or
445 performed in the dealer's service department unless the amounts are not reasonable. ~~Warranty~~ *Recall* or
446 *warranty* parts compensation shall be stated as a percentage of markup, which shall be an agreed
447 reasonable approximation of retail markup and which shall be uniformly applied to all of the
448 manufacturer's or distributor's parts unless otherwise provided for in this section. If the dealer and
449 manufacturer or distributor cannot agree on the *recall* or warranty parts compensation markup to be paid
450 to the dealer, the markup shall be determined by an average of the dealer's retail markup on all of the
451 manufacturer's or distributor's parts as described in subdivisions 2 and 3.

452 2. For purposes of determining *recall* or warranty parts and service compensation paid to a dealer by
453 the manufacturer or distributor, menu-priced parts or services, group discounts, special event discounts,
454 and special event promotions shall not be considered in determining amounts charged by the dealer to
455 retail customers. For purposes of determining labor compensation for *recall* or warranty body shop
456 repairs paid to a dealer by the manufacturer or distributor, internal and insurance-paid repairs shall not
457 be considered in determining amounts charged by the dealer to retail customers.

458 3. Increases in dealer *recall* or warranty parts and service compensation and diagnostic work
459 compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100
460 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first, and, in the
461 case of parts, shall be stated as a percentage of markup that shall be uniformly applied to all the
462 manufacturer's or distributor's parts.

463 4. In the case of *recall* or warranty parts compensation, the provisions of this subsection shall be
464 effective only for model year 1992 and succeeding model years.

465 5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in
466 performing work for which the manufacturer or distributor is required to compensate the dealer under
467 this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner
468 as *recall* or warranty parts compensation, less the wholesale costs, for such part as listed in the
469 manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable
470 handling fee instead of the compensation otherwise required by this subsection for special
471 high-performance complete engine assemblies in limited production motor vehicles that constitute less
472 than five percent of model production furnished to the dealer at no cost, if the manufacturer or
473 distributor excludes such special high-performance complete engine assemblies in determining whether
474 the amounts requested by the dealer for *recall* or warranty compensation are consistent with the amounts
475 that the dealer charges its other retail service customers for parts used by the dealer to perform similar
476 work.

477 6. In the case of service work, manufacturer original parts or parts otherwise specified by the
478 manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as
479 defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall
480 be compensated in the same manner as for *recall* or warranty service or parts.

481 This section does not apply to compensation for parts such as components, systems, fixtures,
482 appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for
483 nonvehicular, residential purposes. ~~Warranty~~ *Recall*, *warranty*, and sales incentive audits of dealer
484 records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a
485 reasonable basis, and dealer claims for *recall*, warranty, or sales incentive compensation shall not be
486 denied except for good cause, such as performance of nonwarranty repairs, lack of material
487 documentation, fraud, or misrepresentation. A dealer's failure to comply with the specific requirements
488 of the manufacturer or distributor for processing the claim shall not constitute grounds for the denial of
489 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 *recall* or warranty repairs to resolve a condition discovered by the dealer during the course of a separate repair requested by the customer *or to resolve a condition on the basis of advice or recommendation by the dealer*. Claims for dealer compensation shall be paid within 30 days of dealer submission or within 30 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 *recall* or warranty parts or service compensation and service incentives shall only be for the six-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the six-month period immediately following the date of claim. However, such limitations shall not be effective if a manufacturer, factory branch, distributor, or distributor branch has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent. For purposes of this section, "reasonable cause" means a bona fide belief based upon evidence that the material issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. 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, unless the manufacturer, factory branch, distributor, or distributor branch can demonstrate by a preponderance of the evidence that the dealer should have known of and did not exercise due diligence in discovering 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 *recall* or 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 *recall* or 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 *recall* or 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;

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; or

9. Deny any dealer the right to return any part or accessory that the dealer has not sold within 12 months where the part or accessory was not obtained through a specific order initiated by the dealer but instead was specified for, sold to and shipped to the dealer pursuant to an automated ordering system, provided that such part or accessory is in the condition required for return to the manufacturer, factory branch, distributor, or distributor branch, and the dealer returns the part within 30 days of it becoming eligible under this subdivision. For purposes of this subdivision, an "automated ordering system" shall be a computerized system that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory being returned under this subdivision. This subdivision shall not apply if the manufacturer, factory branch, distributor, or distributor branch has available to the dealer an alternate system for ordering parts and accessories that provides for shipment of ordered parts and accessories to the dealer within the same time frame as the dealer would receive them when ordered through the automated ordering system.

551 C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle
552 manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its
553 motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating
554 to the manufacture, assembly, or design of motor vehicles, parts, or accessories, or other functions by
555 the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer,
556 including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor
557 branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the
558 dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor
559 branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that
560 come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer
561 franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to
562 incorporate provisions consistent with the requirements of this subsection.

563 D. On any new motor vehicle, any uncorrected damage or any corrected damage exceeding three
564 percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231
565 -1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery.
566 Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent
567 rule when properly replaced by identical manufacturer's or distributor's original equipment or parts.
568 Whenever a new motor vehicle is damaged in transit, when the carrier or means of transportation is
569 determined by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior
570 to delivery to the new motor vehicle dealer, the new motor vehicle dealer shall:

571 1. Notify the manufacturer or distributor of the damage within three business days from the date of
572 delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time
573 specified in the franchise; and

574 2. Request from the manufacturer or distributor authorization to replace the components, parts, and
575 accessories damaged or otherwise correct the damage, unless the damage to the vehicle exceeds the three
576 percent rule, in which case the dealer may reject the vehicle within three business days.

577 E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within 10
578 days after receipt of notification, or if the dealer rejects the vehicle because damage exceeds the three
579 percent rule, ownership of the new motor vehicle shall revert to the manufacturer or distributor, and the
580 new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to such motor
581 vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any
582 other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to
583 the buyer and an acknowledgement by the buyer is required. If there is less than three percent damage,
584 no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall
585 not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling
586 dealer to a new motor vehicle in excess of the three percent rule shall constitute grounds for revocation
587 of the buyer order, provided that, within 30 days of purchase, the motor vehicle is returned to the dealer
588 with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to
589 this section, the dealer shall accept the vehicle and refund any payments made to the dealer in
590 connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as
591 defined in § 59.1-207.11. Nothing in this section shall be construed to exempt from the provisions of
592 this section damage to a new motor vehicle that occurs following delivery of the vehicle to the dealer.

593 F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch
594 and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition
595 the Commissioner in writing, within 30 days after either party has given written notice of the dispute to
596 the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to
597 rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.
598 However, nothing contained in this section shall give the Commissioner any authority as to the content
599 or interpretation of any manufacturer's or distributor's warranty. A manufacturer, factory branch,
600 distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct
601 payment or by charge to the dealer's account, for *recall* or warranty parts or service compensation,
602 including service incentives, sales incentives, other sales compensation, surcharges, fees, penalties, or
603 any financial imposition of any type arising from an alleged failure of the dealer to comply with a
604 policy of, directive from, or agreement with the manufacturer, factory branch, distributor, or distributor
605 branch until 40 days following final notice of the amount charged to the dealer following all internal
606 processes of the manufacturer, factory, factory branch, distributor, or distributor branch. Within 30 days
607 following receipt of such final notice, the dealer may petition the Commissioner, in writing, for a
608 hearing. If a dealer requests such a hearing, the manufacturer, factory branch, distributor, or distributor
609 branch may not collect the chargeback, fully or in part, either through direct payment or by charge to
610 the dealer's account, until the completion of the hearing and a final decision of the Commissioner
611 concerning the validity of the chargeback.

612 **§ 46.2-1572.4. Manufacturer or distributor use of performance standards.**

613 A. Any performance standard or program that is used by a manufacturer or distributor for measuring
614 dealership performance and may have a material effect on a dealer, and the application of any such
615 standard or program by a manufacturer or distributor, shall be fair, reasonable and equitable, and if
616 based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a
617 manufacturer or distributor shall disclose in writing to the dealer a description of how a performance
618 standard or program is designed and all relevant information used in the application of the performance
619 standard or program to that dealer.

620 B. A manufacturer or distributor shall not use any data, calculations, or statistical determinations of
621 the sales performance of a dealer for any purpose, including (i) loss of incentive payments or other
622 benefits, (ii) claim of breach or threats thereof, or (iii) notice of termination or threats thereof for the
623 period of time the manufacturer, factory branch, distributor, or distributor branch has established an
624 agreement, program, incentive program, or provision for loss of incentive payments or other benefits
625 that causes a dealer to refrain from selling any used motor vehicle subject to (a) recall, (b) stop sale
626 directive, (c) technical service bulletin, or (d) other manufacturer, factory branch, distributor, or
627 distributor branch notification to perform work on a dealer's used motor vehicles in its inventory when
628 there is no remedy or there are no parts to remediate each such affected used motor vehicle from the
629 manufacturer, factory branch, distributor, or distributor branch and for 90 days after the termination of
630 such agreement, program, incentive program, or provision for loss of incentive payments or other
631 benefits.

632 This subsection shall not prevent a manufacturer, factory branch, distributor, or distributor branch
633 from (1) requiring that a motor vehicle not be subject to an open recall or stop sale directive in order
634 to be qualified, remain qualified, or be sold as a certified pre-owned vehicle or similar designation; (2)
635 paying incentives for selling used vehicles with no unremedied recalls; or (3) paying incentives for
636 performing recall repairs on a vehicle in the dealer's inventory.

637 C. A dealer may apply to the manufacturer, factory branch, distributor, or distributor branch for
638 adjustment to data, calculations, or statistical determinations of sales performance or sales and service
639 customer satisfaction performance for any period of time that such dealer has at least five percent of its
640 new motor vehicle inventory subject to a recall or stop sale directive and for 90 days after the end of
641 such period of time. Within 30 days of application for adjustment, the manufacturer, factory branch,
642 distributor, or distributor branch shall use reasonable efforts to review and adjust the data, calculations,
643 or other statistical determinations back to the date that the dealer was prevented from selling the new
644 motor vehicles. A dealer applying for adjustment shall have the burden of showing that the prevention
645 of sale had an adverse impact on such dealer's new vehicle sales performance or sales and service
646 customer satisfaction performance, and the adjustments by the manufacturer, factory branch, distributor,
647 or distributor branch shall remediate the effect of the impact shown on the data, calculations, or
648 statistical determinations of sales performance or sales and service customer satisfaction performance.

649 The data on which the manufacturer or distributor seeks to rely under this section shall only be for
650 a period or periods not excluded under subsections B and C. For any performance standard or program
651 that is used by a manufacturer or distributor for measuring dealership performance during such period
652 or periods, a dealer shall be deemed in compliance with any such program requirements related to sales
653 performance or sales or service customer satisfaction performance of a dealer.