

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 739

An Act to amend and reenact § 46.2-1569.1 of the Code of Virginia, relating to manufacturer or distributor right of first refusal.

[S 1464]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1569.1 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-1569.1. Manufacturer or distributor right of first refusal.

A. Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer; *and*

3. ~~The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons; and~~

4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

B. A manufacturer or distributor shall not exercise or enforce a right of first refusal if (i) the proposed sale or transfer is to a dealer licensed in the United States as a dealer holding a franchise from any manufacturer or distributor licensed as a manufacturer or distributor in the Commonwealth unless the manufacturer or distributor has a formal written program to increase the number of minority dealers and a minority dealer will obtain at least 51 percent ownership and control of the dealership's assets after the exercise of the right of first refusal consistent with subdivision 2 of § 46.2-1572 or (ii) the proposed sale or transfer of the dealership's assets involves the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons.

C. The provisions of clause (i) of subsection B shall not apply to any manufacturer or distributor, together with any of its parents, subsidiaries or affiliates that as of January 1, 2019, (i) produced or distributed at least 1,000 motor vehicles in the immediately preceding 12 months, at least 51 percent of which had a gross vehicle weight rating of at least 16,000 pounds and (ii) was on January 1, 2019 a party, including that party's parents, subsidiaries and affiliates, to federal litigation arising from rights and obligations created by Virginia Code § 46.2-1569.1.