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HOUSE BILL NO. 1696

Offered January 12, 2011

Prefiled January 10, 2011

A *BILL to amend and reenact §§ 46.2-1569 and 46.2-1573 of the Code of Virginia, relating to prohibited coercion of motor vehicle dealers; hearings and other remedies, and civil penalties related thereto.*

Patrons—Athey, Cline and Landes; Senator: Reynolds

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1569 and 46.2-1573 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. *If a manufacturer, factory branch, distributor, or distributor branch conditions the grant of a new franchise to a dealer on the dealer's consent (i) to provide a site control agreement as defined in subdivision 10, (ii) to provide a written agreement containing an option to purchase the franchise of the dealer, provided, however, that agreements pursuant to § 46.2-1569.1 shall be permitted, or (iii) to provide a termination agreement to be held by the manufacturer, factory branch, distributor, or distributor branch for subsequent use, it shall be considered coercion and an act that is unfair and injurious to 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 shall 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.

2c. *To coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those improvements, signs, or franchisor image elements completed within the preceding 15 years that were required or approved by the manufacturer, factory branch, distributor, or distributor branch or one of its affiliates. If a manufacturer, factory branch, distributor, or distributor branch offers, under a program, incentives or other payments that are premised wholly or in part on dealer facility improvements or installation of franchisor signs or other franchisor image elements, a dealer that constructed improvements or installed signs or other franchisor image elements required by or approved by the manufacturer, factory branch, distributor, or distributor branch and completed within the 15 years preceding the program shall be deemed to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that 15-year period.*

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

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59 title to be a dealer. No such objection shall be effective to prevent the sale, transfer, assignment, or
60 change if the Commissioner has determined, if requested in writing by the dealer within thirty days after
61 receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that
62 the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the
63 circumstances. No franchise may be sold, assigned, or transferred unless (i) the franchisor has been
64 given at least ninety days' prior written notice by the dealer as to the identity, financial ability, and
65 qualifications of the proposed transferee on forms generally utilized by the franchisor to conduct its
66 review, as well as the full agreement for the proposed transaction, and (ii) the sale or transfer of the
67 franchise and business will not involve, without the franchisor's consent, a relocation of the business.

68 3a. To impose a condition on the approval of the sale or transfer of the ownership of a dealership by
69 the sale of the business, stock transfer, or otherwise if the condition would violate the provisions of this
70 title if imposed on the existing dealer.

71 In the event the manufacturer, factory branch, distributor or distributor branch takes action to prevent
72 or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business,
73 stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the
74 executive management or principal operator of the dealership, without a statement of specific grounds
75 for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of
76 subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request
77 review of the action or imposition of the condition in a hearing by the Commissioner. If the
78 Commissioner finds that the action or the imposition of the condition was a violation of this section, the
79 Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch,
80 distributor, or distributor branch, without imposition of the condition. If the existing dealer does not
81 request a hearing by the Commissioner concerning the action or the condition imposed by the
82 manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the
83 proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the
84 applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at
85 law for violation of this section. The action may be commenced in the circuit court of the city or county
86 in which the dealer is located, or in any other circuit court with permissible venue, within two years
87 following the action or the imposition of the condition by the manufacturer, factory branch, distributor,
88 or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation
89 of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's
90 or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of
91 the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to
92 § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

93 4. To grant an additional franchise for a particular line-make of motor vehicle in a relevant market
94 area in which a dealer or dealers in that line-make are already located unless the franchisor has first
95 advised in writing all other dealers in the line-make in the relevant market area. No such additional
96 franchise may be established at the proposed site unless the Commissioner has determined, if requested
97 by a dealer of the same line-make in the relevant market area within thirty days after receipt of the
98 franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter,
99 that the franchisor can show by a preponderance of the evidence that after the grant of the new
100 franchise, the relevant market area will support all of the dealers in that line-make in the relevant market
101 area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has
102 not been in operation for more than two years shall constitute the establishment of a new franchise
103 subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin
104 on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor
105 was legally permitted finally to terminate the franchise. The relocation of a franchise in a relevant
106 market area, whether by an existing dealer or by a dealer who is acquiring the franchise, shall constitute
107 the establishment of a new franchise subject to the terms of this subdivision. This subdivision shall not
108 apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation
109 site is to be more than ten miles distant from any other dealer for the same line-make; (ii) the relocation
110 of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant
111 than the existing site from all other dealers of the same line-make in that relevant market area; or (iii)
112 the relocation of an existing new motor vehicle dealer within two miles of the existing site of the
113 relocating dealer.

114 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,
115 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the
116 dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty
117 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise,
118 setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested
119 in writing by the dealer within the sixty-day period *prior to the effective date of such termination,*
120 *cancellation, or the expiration date of the franchise* and, after a hearing on the matter, that the

franchisor has shown by a preponderance of the evidence that there is good cause for the termination, cancellation, or nonrenewal of the franchise. *If any manufacturer, factory branch, distributor, or distributor branch takes action that will have the effect of terminating, canceling, or refusing to renew the franchise of any dealer (i) by use of a termination agreement executed by the dealer and obtained more than 90 days before the purported date of use, (ii) by exercise of rights under a written option to purchase the franchise of a dealer, or (iii) by exercise of rights under a written option to purchase the franchise of a dealer, or (iv) by exercise of rights under a site control agreement as defined in subdivision 10, that action shall be considered a termination, cancellation, or refusal to renew pursuant to the terms of this subdivision and subject to the rights, provisions, and procedures provided herein.* In any case where a petition is made to the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. *Where the termination, cancellation, or nonrenewal of a franchise will result from use of a termination agreement executed by the dealer and obtained more than 90 days before the purported date of use, exercise of rights under a written option to purchase the franchise of a dealer, or exercise of rights under a site control agreement as defined in subdivision 10, such use or exercise shall be stayed pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court and its use or exercise will be allowed only where the franchisor has shown by a preponderance of the evidence that there is good cause for the termination, cancellation, or nonrenewal of the franchise.* In any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this subdivision notice of termination, cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are any of the following:

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

b. Failure of the franchised motor vehicle dealer to conduct its customary sales and service 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 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;

182 (4) The fair market value of all special tools and automotive service equipment owned by the dealer
183 that were recommended and designated as special tools or equipment by the franchisor, if the tools and
184 equipment are in usable and good condition, normal wear and tear excepted; and

185 (5) The reasonable cost of transporting, handling, packing, and loading of motor vehicles, parts,
186 signs, tools, and special equipment subject to repurchase hereunder.

187 The provisions of this subdivision do not apply to a dealer who is unable to convey clear title to the
188 property identified in this subdivision.

189 For purposes of this subdivision, a voluntary termination shall not include the transfer of the
190 terminating dealer's franchised business in connection with a transfer of that business by means of sale
191 of the equity ownership or assets thereof to another dealer.

192 5c. If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the
193 termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch,
194 then, in addition to the payments to the dealer pursuant to subdivision 5b, the manufacturer, distributor,
195 or factory branch shall be liable to the dealer for the following:

196 (1) An amount at least equivalent to the fair market value of the franchise for the line-make, which
197 shall be the greater of that value determined as of (i) the date the franchisor announces the action that
198 results in termination, cancellation, or nonrenewal, (ii) the date the action that resulted in the
199 termination, cancellation, or nonrenewal first became general knowledge, or (iii) the day 12 months prior
200 to the date on which the notice of termination, cancellation, or nonrenewal is issued. In determining the
201 fair market value of a franchise for a line-make, if the line-make is not the only line-make for which the
202 dealer holds a franchise in the dealership facilities, the dealer shall also be entitled to compensation for
203 the contribution of the line-make to payment of the rent or to covering obligation for the fair rental
204 value of the dealership facilities for the period set forth in subdivision 5c (2). Fair market value of the
205 franchise for the line-make shall only include the goodwill value of the dealer's franchise for that
206 line-make in the dealer's relevant market area.

207 (2) If the line-make is the only line-make for which the dealer holds a franchise in the dealership
208 facilities, the manufacturer, distributor, or factory branch shall also pay assistance with respect to the
209 dealership facilities leased or owned by the dealer as follows: (i) the manufacturer, distributor, or factory
210 branch shall pay the dealer a sum equivalent to the rent for the unexpired term of the lease or three
211 years' rent, whichever is the lesser, or (ii) if the dealer owns the dealership facilities, the manufacturer,
212 distributor, or factory branch shall pay the dealer a sum equivalent to the reasonable rental value of the
213 dealership facilities for three years.

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

224 6. To fail to allow a dealer the right at any time to designate a member of his family as a successor
225 to the dealership in the event of the death or incapacity of the dealer. *Such designation may be made by*
226 *the dealer or, in the event of the death or incapacity of the dealer, by the executor or representative of*
227 *the dealer.* It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member
228 of the family of a deceased or incapacitated dealer if the franchisor has not provided to the member of
229 the family ~~previously designated by the dealer as his dealer's~~ successor written notice of its objections
230 to the succession and of such person's right to seek a hearing on the matter before the Commissioner
231 pursuant to this article, and the Commissioner determines, if requested in writing by such member of the
232 family within thirty days of receipt of such notice from the franchisor, and after a hearing on the matter
233 before the Commissioner pursuant to this article, that the failure to permit or honor the succession is
234 unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i)
235 the franchisor has been given written notice as to the identity, financial ability, and qualifications of the
236 member of the family in question, and (ii) the succession to the franchise will not involve, without the
237 franchisor's consent, a relocation of the business.

238 7. To ~~delay, refuse, or fail to ship monthly deliver~~ to any dealer, if ordered by the dealer, ~~the~~
239 ~~number of new vehicles of each make, series, and model needed by the dealer to receive a percentage of~~
240 ~~total new vehicle sales of each make, series, and model equitably related to the total new vehicle~~
241 ~~production or importation currently being achieved nationally by each make, series, and model covered~~
242 ~~under the franchise in reasonable quantities and within a reasonable time, any new vehicles of each~~
243 ~~series and model sold or distributed by the franchisor as covered by such franchise and which are~~

publicly advertised by the manufacturer, factory branch, distributor, or distributor branch in the Commonwealth to be available for immediate delivery. Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer or distributor shall disclose to the dealer in writing the basis upon which new motor vehicles of the same line-make are allocated, scheduled, and delivered to the dealers of the same line-make in the Commonwealth, and the basis upon which the current allocation or distribution is being made or will be made to such dealer. In the event that allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor provide to the dealer, within thirty days of such demand, all records of sales and all records of distribution of all motor vehicles to the same line-make dealers who compete with the dealer requesting the hearing.

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

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

7c. To require a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch or one of its affiliates by agreement, program, incentive provision or otherwise without making available to the dealer the option to obtain the goods or services of like kind and quality from a vendor chosen by the dealer.

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

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

7f. To fail to provide to a dealer, if the goods and services to be supplied to the dealer by a vendor 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.

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

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

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

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

305 given the opportunity to do so by virtue of its franchise agreement, another agreement, or as set forth in
306 § 46.2-1569. For purposes of this subdivision, the term "site control" shall mean the contractual right to
307 control in any way the commercial use and development of the premises upon which a dealer's business
308 operations are located, including the right to approve of additional or different uses for the property
309 beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option
310 to purchase the dealer's property.

311 § 46.2-1573. Hearings and other remedies; civil penalties.

312 A. In every case of a hearing before the Commissioner authorized under this article, the
313 Commissioner shall give reasonable notice of each hearing to all interested parties, and the
314 Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and
315 appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. *In every case of a hearing before the*
316 *Commissioner authorized under this article based on a request or petition of a motor vehicle dealer, the*
317 *manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving by a*
318 *preponderance of the evidence that the manufacturer, factory branch, distributor, or distributor branch*
319 *has good cause, that it will be reasonable under the circumstances, and that it will be in compliance*
320 *with this article to take the action or actions for which the dealer has filed the petition for a hearing.*

321 B. The hearing process before the Commissioner under this article shall commence within 90 days of
322 the request for a hearing by prehearing conference between the hearing officer and the parties in person,
323 by telephone, or by other electronic means designated by the Commissioner. The hearing officer will set
324 the hearing on a date or dates consistent with the rights of due process of the parties. The
325 Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's
326 recommendation. Hearings authorized under this article shall be presided over by a hearing officer
327 selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia within 60
328 days following the request for a hearing. On request of the Commissioner, the Executive Secretary will
329 name a hearing officer from the list, selected on a rotation system administered by the Executive
330 Secretary. The hearing officer shall provide recommendations to the Commissioner within ninety days of
331 the conclusion of the hearing.

332 C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate
333 investigations, conduct hearings, and determine the rights of parties under this article whenever he is
334 provided information by the Motor Vehicle Dealer Board or any other person indicating a possible
335 violation of any provision of this article.

336 D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 7b of
337 § 46.2-1569 with respect to which the Commissioner is to determine whether there is good cause for a
338 proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall
339 consider:

- 340 1. The volume of the affected dealer's business in the relevant market area;
- 341 2. The nature and extent of the dealer's investment in its business;
- 342 3. The adequacy of the dealer's capitalization to the franchisor's standards and the adequacy of the
343 dealer's facilities, equipment, parts, supplies, and personnel;
- 344 4. The effect of the proposed action on the community;
- 345 5. The extent and quality of the dealer's service under motor vehicle warranties;
- 346 6. The dealer's performance under the terms of its franchise;
- 347 7. Other economic and geographical factors reasonably associated with the proposed action; and
- 348 8. The recommendations, if any, from a three-member panel composed of members of the Board
349 who are franchised dealers not of the same line-make involved in the hearing and who are appointed to
350 the panel by the Commissioner.

351 E. An interested party in a hearing held pursuant to subsection A of this section shall comply with
352 the effective date of compliance established by the Commissioner in his decision in such hearing, unless
353 a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under
354 judicial review and appeal as provided in subsection A of this section. If, after notice to such interested
355 party and an opportunity to comment, the Commissioner finds an interested party has not complied with
356 his decision by the designated date of compliance, unless a stay or extension of such date has been
357 granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the
358 Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of
359 noncompliance. Civil penalties collected under this subsection shall be deposited into the Transportation
360 Trust Fund.