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HOUSE BILL NO. 1549

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on January 29, 2015)

(Patron Prior to Substitute—Delegate Greason)

A BILL to amend and reenact § 46.2-1569 of the Code of Virginia, relating to the prohibition of coercion of motor vehicle dealers to provide access to consumer data.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1569 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-1569. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of vehicles, parts, and accessories.

Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

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

2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, factory branch, distributor, or distributor branch, or representative thereof 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. 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; provided, however, that the provisions of § 46.2-1572.3 related to the good faith settlement of disputes shall apply to the agreements described in clauses (i), (ii), and (iii) of this subdivision, mutatis mutandis. This subdivision shall not apply to any agreement the enforcement of which is subject to the jurisdiction of a United States Bankruptcy Court.

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 10 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 incentives, or other payments under a program offered after the effective date of this subdivision and available to more than one dealer in the Commonwealth 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 10 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 10-year period. This subdivision shall not apply to a program that provides lump sum payments to assist dealers in making facility improvements or to pay for signs or franchisor image elements when such payments are not dependent on the dealer selling or purchasing specific numbers of new vehicles and shall not apply to a program that is in effect with more than one dealer in the Commonwealth on the effective date of this subdivision, nor to any renewal or modification of such a program.

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

HOUSE SUBSTITUTE

HB1549H1

60 proposed effective date of the transfer, sale, assignment, or change. No such objection shall be sufficient
61 unless the failure to approve is reasonable. Notwithstanding the provisions of subsection D of
62 § 46.2-1573, the only grounds that may be considered reasonable for a failure to approve are that an
63 individual who is the applicant or is in control of an entity that is an applicant (i) lacks good moral
64 character, (ii) lacks reasonable motor vehicle dealership management experience and qualifications, (iii)
65 lacks financial ability to be the dealer, or (iv) fails to meet the standards otherwise established by this
66 title to be a dealer. No such objection shall be effective to prevent the sale, transfer, assignment, or
67 change if the Commissioner has determined, if requested in writing by the dealer within 30 days after
68 receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that
69 the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the
70 circumstances. No franchise may be sold, assigned, or transferred unless (a) the franchisor has been
71 given at least 90 days' prior written notice by the dealer as to the identity, financial ability, and
72 qualifications of the proposed transferee on forms generally utilized by the franchisor to conduct its
73 review, as well as the full agreement for the proposed transaction, and (b) the sale or transfer of the
74 franchise and business will not involve, without the franchisor's consent, a relocation of the business.

75 3a. To impose a condition on the approval of the sale or transfer of the ownership of a dealership by
76 the sale of the business, stock transfer, or otherwise if the condition would violate the provisions of this
77 title if imposed on the existing dealer.

78 In the event the manufacturer, factory branch, distributor or distributor branch takes action to prevent
79 or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business,
80 stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the
81 executive management or principal operator of the dealership, without a statement of specific grounds
82 for doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of
83 subdivision 3a hereof, that shall constitute a violation of this section. The existing dealer may request
84 review of the action or imposition of the condition in a hearing by the Commissioner. If the
85 Commissioner finds that the action or the imposition of the condition was a violation of this section, the
86 Commissioner may order that the sale or transfer be approved by the manufacturer, factory branch,
87 distributor, or distributor branch, without imposition of the condition. If the existing dealer does not
88 request a hearing by the Commissioner concerning the action or the condition imposed by the
89 manufacturer, factory branch, distributor, or distributor branch, and the action or condition was the
90 proximate cause of the failure of the contract for the sale or transfer of ownership of the dealership, the
91 applicant for approval of the sale or transfer or the existing dealer, or both, may commence an action at
92 law for violation of this section. The action may be commenced in the circuit court of the city or county
93 in which the dealer is located, or in any other circuit court with permissible venue, within two years
94 following the action or the imposition of the condition by the manufacturer, factory branch, distributor,
95 or distributor branch for the damages suffered by the applicant or the dealer as a result of the violation
96 of this section by the manufacturer, factory branch, distributor, or distributor branch, plus the applicant's
97 or dealer's reasonable attorney fees and costs of litigation. Notwithstanding the foregoing, an exercise of
98 the right of first refusal by the manufacturer, factory branch, distributor, or distributor branch pursuant to
99 § 46.2-1569.1 shall not be considered the imposition of a condition prohibited by this section.

100 4. To grant an additional franchise for a particular line-make of motor vehicle in a relevant market
101 area in which a dealer or dealers in that line-make are already located unless the franchisor has first
102 advised in writing all other dealers in the line-make in the relevant market area. No such additional
103 franchise may be established at the proposed site unless the Commissioner has determined, if requested
104 by a dealer of the same line-make in the relevant market area within 30 days after receipt of the
105 franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter,
106 that the franchisor can show by a preponderance of the evidence that after the grant of the new
107 franchise, the relevant market area will support all of the dealers in that line-make in the relevant market
108 area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has
109 not been in operation for more than two years shall constitute the establishment of a new franchise
110 subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin
111 on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor
112 was legally permitted finally to terminate the franchise. The relocation of a franchise in a relevant
113 market area, whether by an existing dealer or by a dealer who is acquiring the franchise, shall constitute
114 the establishment of a new franchise subject to the terms of this subdivision. This subdivision shall not
115 apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation
116 site is to be more than ten miles distant from any other dealer for the same line-make; (ii) the relocation
117 of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant
118 than the existing site from all other dealers of the same line-make in that relevant market area; or (iii)
119 the relocation of an existing new motor vehicle dealer within two miles of the existing site of the
120 relocating dealer.

121 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,

to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the dealer and the Commissioner have received written notice of the franchisor's intentions at least 60 days prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested in writing by the dealer within the 60-day period prior to the effective date of such termination, 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 (a) by use of a termination agreement executed by the dealer and obtained more than 90 days before the purported date of use, (b) by exercise of rights under a written option to purchase the franchise of a dealer, or (c) 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 15 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

183 parts catalog and is still in the original, resalable merchandising package and in unbroken lots, except
184 that in the case of sheet metal, a comparable substitute for the original package may be used;

185 (3) The fair market value of each undamaged sign owned by the dealer that bears a trademark, trade
186 name or commercial symbol used or claimed by the franchisor if such sign was purchased from or at
187 the request of the franchisor;

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

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

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

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

198 5c. If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the
199 termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch,
200 then, in addition to the payments to the dealer pursuant to subdivision 5b, the manufacturer, distributor,
201 or factory branch shall be liable to the dealer for the following:

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

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

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

230 6. To fail to allow a dealer the right at any time to designate a member of his family as a successor
231 to the dealership in the event of the death or incapacity of the dealer. Such designation may be made by
232 the dealer or, in the event of the death or incapacity of the dealer, by the qualified executor or personal
233 representative of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a
234 dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not
235 provided to the member of the family designated the dealer's successor written notice of its objections to
236 the succession and of such person's right to seek a hearing on the matter before the Commissioner
237 pursuant to this article, and the Commissioner determines, if requested in writing by such member of the
238 family within 30 days of receipt of such notice from the franchisor, and after a hearing on the matter
239 before the Commissioner pursuant to this article, that the failure to permit or honor the succession is
240 unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i)
241 the franchisor has been given written notice as to the identity, financial ability, and qualifications of the
242 member of the family in question, and (ii) the succession to the franchise will not involve, without the
243 franchisor's consent, a relocation of the business.

244 7. To delay, refuse, or fail to deliver to any dealer, if ordered by the dealer, in reasonable quantities

and within a reasonable time, any new vehicles of each 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, provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of this chapter if such failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty, a shortage of materials, a lack of available manufacturing capacity, a freight embargo, or other cause over which the manufacturer, factory branch, distributor, or distributor branch shall have no control. If ordered by a dealer, a franchisor shall deliver an equitable supply of new vehicles during the model year of each series and model under the dealer's franchise in proportion to the sales objectives or goals established by the franchisor for the dealer compared to the sales objectives or goals established by the other same line-make dealers in the Commonwealth, provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of this chapter if such failure is due to a cause over which the manufacturer, factory branch, distributor, or distributor branch shall have no control. 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 dealers 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 30 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 substantially similar quality from a vendor chosen by the dealer. For purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and promotional materials containing material subject to intellectual property rights of, or special tools and training as required by the manufacturer, or parts to be used in repairs under warranty obligations of, a manufacturer, factory branch, distributor, or distributor branch.

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 substantially similar quality, a disclosure concerning the vendor selected, identified, or designated by the franchisor 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. 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

306 maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer,
307 factory branch, distributor, or distributor branch.

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

310 8a. For any franchise agreement, to require a motor vehicle dealer to pay the attorney's fees of the
311 manufacturer or distributor related to hearings and appeals brought under this article.

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

317 10. To enter into any agreement with a motor vehicle dealer in which the manufacturer, factory
318 branch, distributor, distributor branch, or one of its affiliates is given site control over the premises of a
319 dealer that does not terminate upon the occurrence of any of the following events: (i) the right of the
320 franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is
321 sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor
322 branch to another; (ii) the final termination of the dealer's franchise for any reason; or (iii) the
323 manufacturer, factory branch, distributor, or distributor branch of its affiliate fails for any reason to
324 exercise its right of first refusal to purchase the assets or ownership of the business of the dealer when
325 given the opportunity to do so by virtue of its franchise agreement, another agreement, or as set forth in
326 § 46.2-1569. For purposes of this subdivision, the term "site control" shall mean the contractual right to
327 control in any way the commercial use and development of the premises upon which a dealer's business
328 operations are located, including the right to approve of additional or different uses for the property
329 beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option
330 to purchase the dealer's property.

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

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

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

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

361 *A dealer that elects to submit or push data or information to the manufacturer, factory branch,*
362 *distributor, or distributor branch through any method other than that provided by the manufacturer,*
363 *factory branch, distributor, or distributor branch shall timely obtain and furnish the requested data in a*
364 *widely accepted electronic file format. A manufacturer, factory branch, distributor, or distributor branch*
365 *shall not impose a fee, surcharge, or charge of any type on a dealer that chooses to submit data*
366 *specified by the manufacturer, factory branch, distributor, or distributor branch rather than provide the*
367 *manufacturer, factory branch, distributor, or distributor branch access to the dealer's computer*

368 *database.*

HOUSE SUBSTITUTEE

HB1549H1