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SENATE BILL NO. 1118

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on January 21, 2015)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact § 46.2-1573 of the Code of Virginia, relating to hearing officer requirements and hearing process for motor vehicle franchise dealers.*

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1573 of the Code of Virginia is amended and reenacted as follows:

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

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. In every case of a hearing before the Commissioner authorized under this article based on a request or petition of a motor vehicle dealer, the manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving by a preponderance of the evidence that the manufacturer, factory branch, distributor, or distributor branch has good cause to take the action or actions for which the dealer has filed the petition for a hearing or that such actions are reasonable if required under the relevant provision.

B. The hearing process before the Commissioner under this article shall commence within 90 days of the request for a hearing by prehearing conference between the hearing officer and the parties in person, by telephone, or by other electronic means designated by the Commissioner. The hearing officer will set the hearing on a date or dates consistent with the rights of due process of the parties. The Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia within 60 days following the request for a hearing. *Reasonable efforts shall be made to ensure that a hearing officer shall have at least five years of experience as a hearing officer in administrative hearings in the Commonwealth, shall have telephone and email capability, and shall be an active member of the Virginia State Bar.* On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within 90 days of the conclusion of the hearing.

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

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

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

E. An interested party in a hearing held pursuant to subsection A of this section shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A of this section. If, after notice to such interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of

60 noncompliance. Civil penalties collected under this subsection shall be deposited into the Transportation
61 Trust Fund established pursuant to § 33.2-1524.

62 *F. During the hearing process, parties may obtain documents and materials by discovery pursuant to*
63 *Rules 4:9 and 4:9A of the Supreme Court of Virginia. The parties shall exchange reports of experts,*
64 *which shall meet the standard of Rule 4:1 of the Supreme Court of Virginia, at times to be established*
65 *by the hearing officer. The parties may utilize any other form of discovery provided under the Rules of*
66 *Supreme Court of Virginia if allowed by the hearing officer based on good cause shown. For discovery*
67 *permitted under the Rules of Supreme Court of Virginia, a party may object to the discovery sought or*
68 *seek to limit the discovery sought on any grounds permitted by the Rules or applicable law.*

69 **2. That the Commissioner of the Department of Motor Vehicles shall report to the Chairmen of**
70 **the House and Senate Committees on Transportation by December 1, 2015, and December 1, 2016,**
71 **as to the feasibility of hiring hearing officers as contemplated in subsection B of § 46.2-1573 of the**
72 **Code of Virginia, as amended by this act.**