

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 46.2-1569 of the Code of Virginia, relating to motor vehicle dealers; sale of franchise.

[H 191]

Approved

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

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, including the threat to withhold any incentive payments in whole or in part or to deny the dealer the right to participate in an incentive program in which more than one of the dealers of the line-make in the Commonwealth are eligible to participate and under the same terms as such other dealers. Nothing contained in this section shall require that a dealer be qualified for or entitled to incentive payments or the right to payments or benefits from an incentive program, nor will a manufacturer, factory branch, distributor, or distributor branch be prohibited from informing a dealer thereof, unless the dealer meets all qualifications and performs all applicable requirements and meets all of the applicable standards for such payments or benefits reasonably established by the manufacturer, factory branch, distributor, or distributor branch, or as otherwise provided in this article. 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

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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.

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

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

Nothing in this subdivision shall prevent a manufacturer, factory branch, distributor, or distributor branch from instructing that a dealer repair used vehicles of the line-make for which the dealer holds a franchise with an open recall, provided that the instruction does not involve coercion that imposes a penalty or provision of loss of benefits on the dealer.

2e. To coerce or require any dealer, whether by agreement, program, incentive provision, or provision for loss of incentive payments or other benefits, to amend its franchise agreement or similar agreement governing the sales and leasing of new motor vehicles, or to establish or implement a franchise agreement for the sales and leasing of new motor vehicles, under which the manufacturer, factory branch, distributor, or distributor branch (i) maintains a website or other electronic or digital means of communication for negotiating binding terms of sale or leasing of new motor vehicles directly between the manufacturer, factory branch, distributor, or distributor branch and retail buyers or lessees, including but not limited to agreements on prices or other substantive terms of sale or leasing of new vehicles; (ii) retains ownership of new motor vehicles until they are sold or leased to the retail buyers or lessees thereof; however, a manufacturer, factory branch, distributor, or distributor branch may maintain a common supply of new vehicles of which it maintains ownership until such vehicles are sold to dealers, from which more than one dealer may buy vehicles, provided that the manufacturer, factory branch, distributor, or distributor branch may not use the common supply of new vehicles to engage in the negotiation of binding terms of sales or leases directly with retail buyers or lessees and further provided that a dealer may buy vehicles from the common supply for the dealer's inventory without having reached agreement for sale or lease of any new vehicle with a retail buyer or lessee if the manufacturer, factory branch, distributor, or distributor branch does not otherwise allow its dealers to obtain stock inventory through the vehicle allocation process; (iii) except for the sale or lease of a vehicle to an actual employee of the manufacturer, factory branch, distributor, or distributor branch or in connection with any replacement or buyback under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1, consigns new motor vehicles to dealers for dealer inventory or for sale or lease to retail buyers or lessees; (iv) reserves the right to negotiate binding terms of sale directly with retail buyers or lessees of new motor vehicles, provided that displaying on a website or other electronic or digital means of communication prices set by dealers, lists of available financing sources provided by dealers, or a conditional trade-in value shall not be considered negotiating; (v) reserves the right to offer or negotiate directly with the retail buyers or lessees in connection with and at the time of sale of a new motor vehicle the sale of any service contract, vehicle maintenance agreement, guaranteed asset protection

(GAP) agreement or waiver, or other vehicle-related products and services that are otherwise offered by the dealer; however, a manufacturer, factory branch, distributor, or distributor branch may communicate or negotiate and finalize agreements with vehicle owners or lessees directly concerning any accessory or function of a vehicle that may be initiated, updated, changed, or maintained by the manufacturer, factory branch, distributor, or distributor branch through over-the-air or remote means if the manufacturer, factory branch, distributor, or distributor branch complies with the requirements of subdivision B 10 of § 46.2-1571; or (vi) designates dealers to be only delivery agents for new motor vehicles the binding terms of sale or lease of which are negotiated directly between the manufacturer, factory branch, distributor, or distributor branch and the retail buyers or lessees of the new motor vehicles. No manufacturer, factory branch, distributor, or distributor branch shall engage in any of the activities listed in clauses (i) through (vi). Notwithstanding the foregoing provisions of this subsection, a manufacturer, factory branch, distributor, or distributor branch may engage in fleet sales with a fleet customer that has a designation as such by the manufacturer, factory branch, distributor, or distributor branch because it has purchased or leased or has committed to purchase or lease five or more vehicles under the fleet program. Nothing in this section shall limit a manufacturer, factory branch, distributor, or distributor branch from setting or advertising a manufacturer's suggested retail price.

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 within 60 days of receipt of notice from the dealer as required by this section. Such notice by the dealer shall be deemed complete when it includes (i) the applicant's name, address, financial qualifications, and business experience during the previous five years; (ii) a certification that the applicant meets the standards otherwise established by this title to be a dealer; and (iii) a copy of the full agreement for the proposed transaction in the form existing as of the date of the notice. No subsequent additions, modifications, or amendments to such agreement shall in any way toll the time in which the franchisor is required to provide notice hereunder. The franchisor may request such additional supporting documentation as may be reasonably required by the franchisor to determine if an objection to the sale or transfer may be made, and the dealer will provide such requested documentation within 10 business days. However, no such request shall toll the time in which the franchisor is required to provide notice hereunder. The franchisor and the dealer may, but under no circumstances shall they be required to, mutually agree to toll any of the time periods provided for in this subdivision to facilitate the exchange of information. Failure of the franchisor to notify the motor vehicle dealer within the 60-day period of such rejection shall be deemed an approval of the transfer. 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)~~ (a) lacks good moral character, ~~(ii)~~ (b) lacks reasonable years of motor vehicle dealership management experience and qualifications, ~~(iii)~~ (c) lacks financial ability to be the dealer, or ~~(iv)~~ (d) 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) if the sale or transfer of the franchise and business will not involve, without the franchisor's consent, which consent shall not be unreasonably withheld, 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 the establishment of a new franchise subject to the terms of this subdivision. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more than 10 miles distant from any other dealer for the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant than the existing site from all other dealers of the same line-make in that relevant market area; or (iii) the relocation of an existing new motor vehicle dealer within two miles of the existing site of the relocating dealer.

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

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 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.

9a. To include in any franchise agreement or similar agreement governing the sales, leasing, or service of new motor vehicles, or to enforce or seek to enforce in such franchise agreement or similar agreement, a right for the manufacturer, factory branch, distributor, or distributor branch to unilaterally amend the franchise agreement or similar agreement. Any amendment to a franchise agreement or similar agreement governing the sales, leasing, or service of new vehicles must be agreed by both the manufacturer, factory branch, distributor, or distributor branch and the dealer at the time the franchise agreement or similar agreement is to be amended.

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 to a dealer.

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