

1 HOUSE BILL NO. 191
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee on Transportation
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Austin)

6 A BILL to amend and reenact § 46.2-1569 of the Code of Virginia, relating to motor vehicle dealers; sale
 7 of franchise.

8 **Be it enacted by the General Assembly of Virginia:**

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

10 **§ 46.2-1569. Other coercion of dealers; transfer, grant, succession to and cancellation of**
 11 **dealer franchises; delivery of vehicles, parts, and accessories.**

12 Notwithstanding the terms of any franchise agreement, it shall be unlawful for any manufacturer,
 13 factory branch, distributor, distributor branch, or affiliate, or any field representative, officer, agent, or
 14 their representatives to do any of the following. It shall further be unlawful for any manufacturer, factory
 15 branch, distributor, distributor branch, or any field representative, officer, agent, or their representatives
 16 to engage in conduct prohibited under this section through an affiliate.

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

19 2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer,
 20 factory branch, distributor, or distributor branch, or representative thereof by threat to take or by taking
 21 any action in violation of the chapter, or by any other act unfair or injurious to the dealer, including the
 22 threat to withhold any incentive payments in whole or in part or to deny the dealer the right to participate
 23 in an incentive program in which more than one of the dealers of the line-make in the Commonwealth are
 24 eligible to participate and under the same terms as such other dealers. Nothing contained in this section
 25 shall require that a dealer be qualified for or entitled to incentive payments or the right to payments or
 26 benefits from an incentive program, nor will a manufacturer, factory branch, distributor, or distributor

27 branch be prohibited from informing a dealer thereof, unless the dealer meets all qualifications and
28 performs all applicable requirements and meets all of the applicable standards for such payments or
29 benefits reasonably established by the manufacturer, factory branch, distributor, or distributor branch, or
30 as otherwise provided in this article. If a manufacturer, factory branch, distributor, or distributor branch
31 conditions the grant of a new franchise to a dealer on the dealer's consent (i) to provide a site control
32 agreement as defined in subdivision 10, (ii) to provide a written agreement containing an option to
33 purchase the franchise of the dealer, provided, however, that agreements pursuant to § 46.2-1569.1 shall
34 be permitted, or (iii) to provide a termination agreement to be held by the manufacturer, factory branch,
35 distributor, or distributor branch for subsequent use, it shall be considered coercion and an act that is unfair
36 and injurious to the dealer; provided, however, that the provisions of § 46.2-1572.3 related to the good
37 faith settlement of disputes shall apply to the agreements described in clauses (i), (ii), and (iii) of this
38 subdivision, mutatis mutandis. This subdivision shall not apply to any agreement the enforcement of
39 which is subject to the jurisdiction of a United States Bankruptcy Court.

40 2a. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising
41 association.

42 2b. To coerce or require any dealer to establish in connection with the sale of a motor vehicle
43 prices at which the dealer shall sell products or services not manufactured or distributed by the
44 manufacturer, factory branch, distributor, or distributor branch, whether by agreement, program, incentive
45 provision, or otherwise.

46 2c. To coerce or require any dealer, whether by agreement, program, incentive provision, or
47 otherwise, to construct improvements to its facilities or to install new signs or other franchisor image
48 elements that replace or substantially alter those improvements, signs, or franchisor image elements
49 completed within the preceding 10 years that were required or approved by the manufacturer, factory
50 branch, distributor, or distributor branch or one of its affiliates. If a manufacturer, factory branch,
51 distributor, or distributor branch offers incentives, or other payments under a program offered after the
52 effective date of this subdivision and available to more than one dealer in the Commonwealth that are
53 premised wholly or in part on dealer facility improvements or installation of franchisor signs or other

54 franchisor image elements, a dealer that constructed improvements or installed signs or other franchisor
55 image elements required by or approved by the manufacturer, factory branch, distributor, or distributor
56 branch and completed within the 10 years preceding the program shall be deemed to be in compliance
57 with the program requirements pertaining to construction of facilities or installation of signs or other
58 franchisor image elements that would replace or substantially alter those previously constructed or
59 installed within that 10-year period. This subdivision shall not apply to a program that provides lump sum
60 payments to assist dealers in making facility improvements or to pay for signs or franchisor image
61 elements when such payments are not dependent on the dealer selling or purchasing specific numbers of
62 new vehicles and shall not apply to a program that is in effect with more than one dealer in the
63 Commonwealth on the effective date of this subdivision, nor to any renewal or modification of such a
64 program.

65 2d. To coerce or require any dealer, whether by agreement, program, incentive provision, or
66 provision for loss of incentive payments or other benefits, to refrain from selling any used motor vehicle
67 subject to (i) recall, (ii) stop sale directive, (iii) technical service bulletin, or (iv) other manufacturer,
68 factory branch, distributor, or distributor branch notification to perform work on such used motor vehicle,
69 unless the manufacturer, factory branch, distributor, or distributor branch has a remedy and parts available
70 to the dealer to remediate the basis for the coercion or requirement of the dealer to refrain from selling
71 each affected used motor vehicle. If there is no remedy or there are no parts available from the
72 manufacturer, factory branch, distributor, or distributor branch to remediate each affected used motor
73 vehicle in the inventory of the dealer, the manufacturer, factory branch, distributor, or distributor branch
74 shall (a) compensate the dealer for any affected used motor vehicle in the inventory of the dealer that it
75 cannot sell because of such coercion or requirement at least one percent a month or any part thereof of the
76 cost of such used motor vehicle, including repairs and reconditioning expenses based on the financial
77 records of the dealer, and (b) establish a written procedure to compensate dealers under this subdivision
78 that it shall provide to dealers subject to its coercion or requirement and file with the Commissioner as a
79 franchise document pursuant to § 46.2-1566.

80 Any claim for compensation by a dealer shall be submitted on a monthly basis for the amount
81 owed pursuant to this subdivision. The manufacturer, factory branch, distributor, or distributor branch
82 shall process and pay the claim in the same manner as a claim for warranty reimbursements as provided
83 in § 46.2-1571. This subdivision shall not prevent a manufacturer, factory branch, distributor, or
84 distributor branch from (1) requiring that a motor vehicle not be subject to an open recall or stop sale
85 directive in order to be qualified, remain qualified, or be sold as a certified pre-owned vehicle or similar
86 designation; (2) paying incentives for selling used vehicles with no unremedied recalls; or (3) paying
87 incentives for performing recall repairs on a vehicle in the dealer's inventory.

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

92 2e. To coerce or require any dealer, whether by agreement, program, incentive provision, or
93 provision for loss of incentive payments or other benefits, to amend its franchise agreement or similar
94 agreement governing the sales and leasing of new motor vehicles, or to establish or implement a franchise
95 agreement for the sales and leasing of new motor vehicles, under which the manufacturer, factory branch,
96 distributor, or distributor branch (i) maintains a website or other electronic or digital means of
97 communication for negotiating binding terms of sale or leasing of new motor vehicles directly between
98 the manufacturer, factory branch, distributor, or distributor branch and retail buyers or lessees, including
99 but not limited to agreements on prices or other substantive terms of sale or leasing of new vehicles; (ii)
100 retains ownership of new motor vehicles until they are sold or leased to the retail buyers or lessees thereof;
101 however, a manufacturer, factory branch, distributor, or distributor branch may maintain a common supply
102 of new vehicles of which it maintains ownership until such vehicles are sold to dealers, from which more
103 than one dealer may buy vehicles, provided that the manufacturer, factory branch, distributor, or
104 distributor branch may not use the common supply of new vehicles to engage in the negotiation of binding
105 terms of sales or leases directly with retail buyers or lessees and further provided that a dealer may buy
106 vehicles from the common supply for the dealer's inventory without having reached agreement for sale or

107 lease of any new vehicle with a retail buyer or lessee if the manufacturer, factory branch, distributor, or
108 distributor branch does not otherwise allow its dealers to obtain stock inventory through the vehicle
109 allocation process; (iii) except for the sale or lease of a vehicle to an actual employee of the manufacturer,
110 factory branch, distributor, or distributor branch or in connection with any replacement or buyback under
111 Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1, consigns new motor vehicles to dealers for dealer
112 inventory or for sale or lease to retail buyers or lessees; (iv) reserves the right to negotiate binding terms
113 of sale directly with retail buyers or lessees of new motor vehicles, provided that displaying on a website
114 or other electronic or digital means of communication prices set by dealers, lists of available financing
115 sources provided by dealers, or a conditional trade-in value shall not be considered negotiating; (v)
116 reserves the right to offer or negotiate directly with the retail buyers or lessees in connection with and at
117 the time of sale of a new motor vehicle the sale of any service contract, vehicle maintenance agreement,
118 guaranteed asset protection (GAP) agreement or waiver, or other vehicle-related products and services
119 that are otherwise offered by the dealer; however, a manufacturer, factory branch, distributor, or distributor
120 branch may communicate or negotiate and finalize agreements with vehicle owners or lessees directly
121 concerning any accessory or function of a vehicle that may be initiated, updated, changed, or maintained
122 by the manufacturer, factory branch, distributor, or distributor branch through over-the-air or remote
123 means if the manufacturer, factory branch, distributor, or distributor branch complies with the
124 requirements of subdivision B 10 of § 46.2-1571; or (vi) designates dealers to be only delivery agents for
125 new motor vehicles the binding terms of sale or lease of which are negotiated directly between the
126 manufacturer, factory branch, distributor, or distributor branch and the retail buyers or lessees of the new
127 motor vehicles. No manufacturer, factory branch, distributor, or distributor branch shall engage in any of
128 the activities listed in clauses (i) through (vi). Notwithstanding the foregoing provisions of this subsection,
129 a manufacturer, factory branch, distributor, or distributor branch may engage in fleet sales with a fleet
130 customer that has a designation as such by the manufacturer, factory branch, distributor, or distributor
131 branch because it has purchased or leased or has committed to purchase or lease five or more vehicles
132 under the fleet program. Nothing in this section shall limit a manufacturer, factory branch, distributor, or
133 distributor branch from setting or advertising a manufacturer's suggested retail price.

134 3. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale
135 of the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a
136 change in the executive management or principal operator of the dealership, unless the franchisor provides
137 written notice to the dealer of its objection and the reasons therefor by certified mail or overnight delivery
138 or other method designed to ensure delivery to the dealer ~~at least 30 days prior to the proposed effective~~
139 ~~date of the transfer, sale, assignment, or change~~ within 60 days of receipt of notice from the dealer as
140 required by this section. Such notice by the dealer shall be deemed complete when it includes (i) the
141 applicant's name, address, financial qualifications, and business experience during the previous five years;
142 (ii) a certification that the applicant meets the standards otherwise established by this title to be a dealer;
143 and (iii) a copy of the full agreement for the proposed transaction in the form existing as of the date of the
144 notice. No subsequent additions, modifications, or amendments to such agreement shall in any way toll
145 the time in which the franchisor is required to provide notice hereunder. The franchisor may request such
146 additional supporting documentation as may be reasonably required by the franchisor to determine if an
147 objection to the sale or transfer may be made, and the dealer will provide such requested documentation
148 within 10 business days. However, no such request shall toll the time in which the franchisor is required
149 to provide notice hereunder. The franchisor and the dealer may, but under no circumstances shall they be
150 required to, mutually agree to toll any of the time periods provided for in this subdivision to facilitate the
151 exchange of information. Failure of the franchisor to notify the motor vehicle dealer within the 60-day
152 period of such rejection shall be deemed an approval of the transfer. No such objection shall be sufficient
153 unless the failure to approve is reasonable. Notwithstanding the provisions of subsection D of § 46.2-
154 1573, the only grounds that may be considered reasonable for a failure to approve are that an individual
155 who is the applicant or is in control of an entity that is an applicant ~~(i) (a) lacks good moral character, (ii)~~
156 ~~(b) lacks reasonable years of motor vehicle dealership management experience and qualifications, (iii) (c)~~
157 ~~lacks financial ability to be the dealer, or (iv) (d) fails to meet the standards otherwise established by this~~
158 title to be a dealer. No such objection shall be effective to prevent the sale, transfer, assignment, or change
159 if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of
160 an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that the failure to

161 permit or honor the sale, transfer, assignment, or change is unreasonable under the circumstances. No
162 franchise may be sold, assigned, or transferred ~~unless (a) the franchisor has been given at least 90 days'~~
163 ~~prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed~~
164 ~~transferee on forms generally utilized by the franchisor to conduct its review, as well as the full agreement~~
165 ~~for the proposed transaction, and (b) if the sale or transfer of the franchise and business will not involve,~~
166 without the franchisor's consent, which consent shall not be unreasonably withheld, a relocation of the
167 business.

168 3a. To impose a condition on the approval of the sale or transfer of the ownership of a dealership
169 by the sale of the business, stock transfer, or otherwise if the condition would violate the provisions of
170 this title if imposed on the existing dealer.

171 In the event the manufacturer, factory branch, distributor or distributor branch takes action to
172 prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business,
173 stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the
174 executive management or principal operator of the dealership, without a statement of specific grounds for
175 doing so that is consistent with subdivision 3 hereof or imposes a condition in violation of subdivision 3a
176 hereof, that shall constitute a violation of this section. The existing dealer may request review of the action
177 or imposition of the condition in a hearing by the Commissioner. If the Commissioner finds that the action
178 or the imposition of the condition was a violation of this section, the Commissioner may order that the
179 sale or transfer be approved by the manufacturer, factory branch, distributor, or distributor branch, without
180 imposition of the condition. If the existing dealer does not request a hearing by the Commissioner
181 concerning the action or the condition imposed by the manufacturer, factory branch, distributor, or
182 distributor branch, and the action or condition was the proximate cause of the failure of the contract for
183 the sale or transfer of ownership of the dealership, the applicant for approval of the sale or transfer or the
184 existing dealer, or both, may commence an action at law for violation of this section. The action may be
185 commenced in the circuit court of the city or county in which the dealer is located, or in any other circuit
186 court with permissible venue, within two years following the action or the imposition of the condition by
187 the manufacturer, factory branch, distributor, or distributor branch for the damages suffered by the

188 applicant or the dealer as a result of the violation of this section by the manufacturer, factory branch,
189 distributor, or distributor branch, plus the applicant's or dealer's reasonable attorney fees and costs of
190 litigation. Notwithstanding the foregoing, an exercise of the right of first refusal by the manufacturer,
191 factory branch, distributor, or distributor branch pursuant to § 46.2-1569.1 shall not be considered the
192 imposition of a condition prohibited by this section.

193 4. To grant an additional franchise for a particular line-make of motor vehicle in a relevant market
194 area in which a dealer or dealers in that line-make are already located unless the franchisor has first advised
195 in writing all other dealers in the line-make in the relevant market area. No such additional franchise may
196 be established at the proposed site unless the Commissioner has determined, if requested by a dealer of
197 the same line-make in the relevant market area within 30 days after receipt of the franchisor's notice of
198 intention to establish the additional franchise, and after a hearing on the matter, that the franchisor can
199 show by a preponderance of the evidence that after the grant of the new franchise, the relevant market
200 area will support all of the dealers in that line-make in the relevant market area. Establishing a franchised
201 dealer in a relevant market area to replace a franchised dealer that has not been in operation for more than
202 two years shall constitute the establishment of a new franchise subject to the terms of this subdivision.
203 The two-year period for replacing a franchised dealer shall begin on the day the franchise was terminated,
204 or, if a termination hearing was held, on the day the franchisor was legally permitted finally to terminate
205 the franchise. The relocation of a franchise in a relevant market area, whether by an existing dealer or by
206 a dealer who is acquiring the franchise, shall constitute the establishment of a new franchise subject to the
207 terms of this subdivision. This subdivision shall not apply to (i) the relocation of an existing dealer within
208 that dealer's relevant market area if the relocation site is to be more than 10 miles distant from any other
209 dealer for the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market
210 area if the relocation site is to be more distant than the existing site from all other dealers of the same line-
211 make in that relevant market area; or (iii) the relocation of an existing new motor vehicle dealer within
212 two miles of the existing site of the relocating dealer.

213 5. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise,
214 to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the

215 dealer and the Commissioner have received written notice of the franchisor's intentions at least 60 days
216 prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting
217 forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested in writing
218 by the dealer within the 60-day period prior to the effective date of such termination, cancellation, or the
219 expiration date of the franchise and, after a hearing on the matter, that the franchisor has shown by a
220 preponderance of the evidence that there is good cause for the termination, cancellation, or nonrenewal of
221 the franchise. If any manufacturer, factory branch, distributor, or distributor branch takes action that will
222 have the effect of terminating, canceling, or refusing to renew the franchise of any dealer (a) by use of a
223 termination agreement executed by the dealer and obtained more than 90 days before the purported date
224 of use, (b) by exercise of rights under a written option to purchase the franchise of a dealer, or (c) by
225 exercise of rights under a site control agreement as defined in subdivision 10, that action shall be
226 considered a termination, cancellation, or refusal to renew pursuant to the terms of this subdivision and
227 subject to the rights, provisions, and procedures provided herein. In any case where a petition is made to
228 the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal
229 of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision or,
230 if that decision is appealed to the circuit court, pending the decision of the circuit court. Where the
231 termination, cancellation, or nonrenewal of a franchise will result from use of a termination agreement
232 executed by the dealer and obtained more than 90 days before the purported date of use, exercise of rights
233 under a written option to purchase the franchise of a dealer, or exercise of rights under a site control
234 agreement as defined in subdivision 10, such use or exercise shall be stayed pending the Commissioner's
235 decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court, and
236 its use or exercise will be allowed only where the franchisor has shown by a preponderance of the evidence
237 that there is good cause for the termination, cancellation, or nonrenewal of the franchise. In any case in
238 which a franchisor neither advises a dealer that it does not intend to renew a franchise nor takes any action
239 to renew a franchise beyond its expiration date, the franchise in question shall continue in effect on the
240 terms last agreed to by the parties. Notwithstanding the other provisions of this subdivision notice of
241 termination, cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than 15 days

242 prior to the effective date of such termination, cancellation, or nonrenewal when the grounds for such
243 action are any of the following:

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

247 b. Failure of the franchised motor vehicle dealer to conduct its customary sales and service
248 operations during its posted business hours for seven consecutive business days, except where the failure
249 results from acts of God or circumstances beyond the direct control of the franchised motor vehicle dealer.

250 c. Revocation of any license which the franchised motor vehicle dealer is required to have to
251 operate a dealership.

252 d. Conviction of the dealer or any principal of the dealer of a felony.

253 The change or discontinuance of a marketing or distribution system of a particular line-make
254 product by a manufacturer or distributor, while the name identification of the product is continued in
255 substantial form by the same or a different manufacturer or distributor, may be considered to be a franchise
256 termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and
257 discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in
258 which such a change or discontinuance occurring prior to that date has been challenged as constituting a
259 termination, cancellation or nonrenewal.

260 5a. To fail to provide continued parts and service support to a dealer which holds a franchise in a
261 discontinued line-make for at least five years from the date of such discontinuance. This requirement shall
262 not apply to a line-make which was discontinued prior to January 1, 1989.

263 5b. Upon the involuntary or voluntary termination, nonrenewal, or cancellation of the franchise of
264 any dealer, by either the manufacturer, distributor, or factory branch or by the dealer, notwithstanding the
265 terms of any franchise whether entered into before or after the enactment of this section, to fail to pay the
266 dealer for at least the following:

267 (1) The dealer cost plus any charges by the franchisor for distribution, delivery, and taxes paid by
268 the dealer, less all allowances paid to the dealer by the franchisor, for new and undamaged motor vehicles

269 in the dealer's inventory acquired from the franchisor or from another dealer of the same line — make in
270 the ordinary course of business within 18 months of termination;

271 (2) The dealer cost as shown in the price catalog of the franchisor current at the time of repurchase
272 of each new, unused, undamaged, and unsold part or accessory if such part or accessory is in the current
273 parts catalog and is still in the original, resalable merchandising package and in unbroken lots, except that
274 in the case of sheet metal, a comparable substitute for the original package may be used;

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

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

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

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

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

288 5c. If the termination, cancellation, or nonrenewal of the dealer's franchise is the result of the
289 termination, elimination, or cessation of a line-make by the manufacturer, distributor, or factory branch,
290 then, in addition to the payments to the dealer pursuant to subdivision 5b, the manufacturer, distributor,
291 or factory branch shall be liable to the dealer for the following:

292 (1) An amount at least equivalent to the fair market value of the franchise for the line-make, which
293 shall be the greater of that value determined as of (i) the date the franchisor announces the action that
294 results in termination, cancellation, or nonrenewal, (ii) the date the action that resulted in the termination,
295 cancellation, or nonrenewal first became general knowledge, or (iii) the day 12 months prior to the date

296 on which the notice of termination, cancellation, or nonrenewal is issued. In determining the fair market
297 value of a franchise for a line-make, if the line-make is not the only line-make for which the dealer holds
298 a franchise in the dealership facilities, the dealer shall also be entitled to compensation for the contribution
299 of the line-make to payment of the rent or to covering obligation for the fair rental value of the dealership
300 facilities for the period set forth in subdivision 5c (2). Fair market value of the franchise for the line-make
301 shall only include the goodwill value of the dealer's franchise for that line-make in the dealer's relevant
302 market area.

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

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

320 6. To fail to allow a dealer the right at any time to designate a member of his family as a successor
321 to the dealership in the event of the death or incapacity of the dealer. Such designation may be made by
322 the dealer or, in the event of the death or incapacity of the dealer, by the qualified executor or personal

323 representative of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership
324 by a member of the family of a deceased or incapacitated dealer if the franchisor has not provided to the
325 member of the family designated the dealer's successor written notice of its objections to the succession
326 and of such person's right to seek a hearing on the matter before the Commissioner pursuant to this article,
327 and the Commissioner determines, if requested in writing by such member of the family within 30 days
328 of receipt of such notice from the franchisor, and after a hearing on the matter before the Commissioner
329 pursuant to this article, that the failure to permit or honor the succession is unreasonable under the
330 circumstances. No member of the family may succeed to a franchise unless (i) the franchisor has been
331 given written notice as to the identity, financial ability, and qualifications of the member of the family in
332 question, and (ii) the succession to the franchise will not involve, without the franchisor's consent, a
333 relocation of the business.

334 7. To delay, refuse, or fail to deliver to any dealer, if ordered by the dealer, in reasonable quantities
335 and within a reasonable time, any new vehicles of each series and model sold or distributed by the
336 franchisor as covered by such franchise and which are publicly advertised by the manufacturer, factory
337 branch, distributor, or distributor branch in the Commonwealth to be available for immediate delivery,
338 provided, however, that the failure to deliver any motor vehicle shall not be considered a violation of this
339 chapter if such failure is due to an act of God, a work stoppage or delay due to a strike or labor difficulty,
340 a shortage of materials, a lack of available manufacturing capacity, a freight embargo, or other cause over
341 which the manufacturer, factory branch, distributor, or distributor branch shall have no control. If ordered
342 by a dealer, a franchisor shall deliver an equitable supply of new vehicles during the model year of each
343 series and model under the dealer's franchise in proportion to the sales objectives or goals established by
344 the franchisor for the dealer compared to the sales objectives or goals established by the other same line-
345 make dealers in the Commonwealth, provided, however, that the failure to deliver any motor vehicle shall
346 not be considered a violation of this chapter if such failure is due to a cause over which the manufacturer,
347 factory branch, distributor, or distributor branch shall have no control. Upon the written request of any
348 dealer holding its sales or sales and service franchise, the manufacturer or distributor shall disclose to the
349 dealer in writing the basis upon which new motor vehicles of the same line-make are allocated, scheduled,

350 and delivered to dealers in the Commonwealth, and the basis upon which the current allocation or
351 distribution is being made or will be made to such dealer. In the event that allocation is at issue in a request
352 for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor
353 provide to the dealer, within 30 days of such demand, all records of sales and all records of distribution of
354 all motor vehicles to the same line-make dealers who compete with the dealer requesting the hearing.

355 7a. To fail or refuse to offer to its same line-make franchised dealers all models manufactured for
356 the line-make, or require a dealer to pay any extra fee, or remodel, renovate, or recondition the dealer's
357 existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to
358 receiving a model or a series of vehicles.

359 7b. To require or otherwise coerce a dealer to underutilize the dealer's facilities by requiring or
360 otherwise coercing a dealer to exclude or remove from the dealer's facilities operations for selling or
361 servicing of a line-make of vehicles for which the dealer has a franchise agreement to utilize the facilities.

362 7c. To require a dealer to purchase goods or services from a vendor selected, identified, or
363 designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by
364 agreement, program, incentive provision, or otherwise without making available to the dealer the option
365 to obtain the goods or services of substantially similar quality from a vendor chosen by the dealer. For
366 purposes of this subdivision, the term "goods" does not include moveable displays, brochures, and
367 promotional materials containing material subject to intellectual property rights of, or special tools and
368 training as required by the manufacturer, or parts to be used in repairs under warranty obligations of, a
369 manufacturer, factory branch, distributor, or distributor branch.

370 7d. To fail to provide a notice to a dealer when notifying it of the requirement to purchase goods
371 or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor,
372 or distributor branch of the dealer's rights pursuant to subdivision 7c.

373 7e. To fail to provide to a dealer, when the manufacturer, factory branch, distributor, or distributor
374 branch claims that a vendor chosen by the dealer cannot supply goods and services of substantially similar
375 quality, a disclosure concerning the vendor selected, identified, or designated by the franchisor stating (i)
376 whether the manufacturer, factory branch, distributor, distributor branch, or one of its affiliates, or any

377 officer, director, or employee of the same, has an ownership interest, actual or beneficial, in the vendor
378 and, if so, the percentage of the ownership interest and (ii) whether the manufacturer, factory branch,
379 distributor, distributor branch, or one of its affiliates has an agreement or arrangement by which the vendor
380 pays to the manufacturer, factory branch, distributor, distributor branch, or one of its affiliates, or any
381 officer, director, or employee of the same, any compensation and, if so, the basis and amount of the
382 compensation to be paid as a result of any purchases by the dealer, whether it is to be paid by direct
383 payment by the vendor or by credit from the vendor for the benefit of the recipient.

384 7f. To fail to provide to a dealer, if the goods and services to be supplied to the dealer by a vendor
385 selected, identified, or designated by the manufacturer, factory branch, distributor, or distributor branch
386 are signs or other franchisor image elements to be leased to the dealer, the right to purchase the signs or
387 other franchisor image elements of like kind and quality from a vendor selected by the dealer. If the vendor
388 selected by the manufacturer, factory branch, distributor, or distributor branch is the only available vendor,
389 the dealer must be given the opportunity to purchase the signs or other franchisor image elements at a
390 price substantially similar to the capitalized lease costs thereof. This subdivision shall not be construed to
391 allow a dealer to impair or eliminate the intellectual property rights of the manufacturer, factory branch,
392 distributor, or distributor branch, nor to permit a dealer to erect or maintain signs that do not conform to
393 the intellectual property usage guidelines of the manufacturer, factory branch, distributor, or distributor
394 branch.

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

397 8a. For any franchise agreement, to require a motor vehicle dealer to pay the attorney fees of the
398 manufacturer or distributor related to hearings and appeals brought under this article.

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

404 9a. To include in any franchise agreement or similar agreement governing the sales, leasing, or
405 service of new motor vehicles, or to enforce or seek to enforce in such franchise agreement or similar
406 agreement, a right for the manufacturer, factory branch, distributor, or distributor branch to unilaterally
407 amend the franchise agreement or similar agreement. Any amendment to a franchise agreement or similar
408 agreement governing the sales, leasing, or service of new vehicles must be agreed by both the
409 manufacturer, factory branch, distributor, or distributor branch and the dealer at the time the franchise
410 agreement or similar agreement is to be amended.

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

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

431 The manufacturer, factory branch, distributor, or distributor branch shall provide a dealer the right
432 to cancel the dealer's participation in a program under which the dealer provides consumer data or access
433 to data to the manufacturer, factory branch, distributor, or distributor branch, provided that a manufacturer,
434 factory branch, distributor, or distributor branch may require notice of up to 60 days of the dealer's decision
435 to cancel the dealer's participation.

436 If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other
437 payments under a program offered after July 1, 2015, excluding any continuation, renewal, or modification
438 of any existing program, and available to more than one dealer in the Commonwealth that are premised
439 wholly or in part on dealer participation in manufacturer, factory branch, distributor, or distributor branch
440 programs under which consumer data is provided to or accessed by the manufacturer, factory branch,
441 distributor, or distributor branch, a dealer that exercises its rights under this subdivision shall be deemed
442 to be in compliance with the program requirements pertaining to providing consumer data, provided that
443 the dealer has otherwise met program requirements to the extent of providing any consumer data that is
444 not nonpublic personal information.

445 It shall not constitute a violation of this subdivision for a manufacturer, factory branch, distributor,
446 or distributor branch to require a motor vehicle dealer to provide data (a) concerning a new motor vehicle
447 sale or used motor vehicle sale under a manufacturer certification program, (b) to validate a customer or
448 dealer incentive, (c) to calculate dealer or market sales or evaluate service performance or customer
449 satisfaction to facilitate analysis of product quality and market feedback, (d) to facilitate warranty service
450 work on a vehicle, (e) concerning information with respect to recall repairs or information about a recalled
451 vehicle, (f) pursuant to a mutual agreement between a manufacturer, factory branch, distributor, or
452 distributor branch and a dealer, or (g) where consumer data is reasonably necessary to enable a
453 manufacturer, factory branch, distributor, or distributor branch to provide programs, products, or services
454 to a dealer.

455 A dealer that elects to submit or push data or information to the manufacturer, factory branch,
456 distributor, or distributor branch through any method other than that provided by the manufacturer, factory
457 branch, distributor, or distributor branch shall timely obtain and furnish the requested data in a widely

458 accepted electronic file format. A manufacturer, factory branch, distributor, or distributor branch shall not
459 impose a fee, surcharge, or charge of any type on a dealer that chooses to submit data specified by the
460 manufacturer, factory branch, distributor, or distributor branch rather than provide the manufacturer,
461 factory branch, distributor, or distributor branch access to the dealer's computer database.

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