

**MVDB**  
**Motor Vehicle Dealer Board**  
COMMONWEALTH OF VIRGINIA  
**VIRGINIA MOTOR VEHICLE  
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Title 46.2: Motor Vehicles  
Chapter 15: Motor Vehicle Dealers

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# Chapter 15. Motor Vehicle Dealers

## Article 1. Motor Vehicle Dealers, Generally

### § 46.2-1500. Definitions

As used in this chapter, unless the context requires a different meaning:

"Affiliate" means any entity in which a manufacturer, factory branch, distributor, or distributor branch has voting control or owns at least 51 percent of the ownership equity, or any entity in which another entity has voting control or owns at least 51 percent of the ownership equity and also has voting control and owns at least 51 percent of the ownership of a manufacturer, factory branch, distributor, or distributor branch. An entity that provides vehicle purchase or lease financing that uses the name of the manufacturer or distributor, or the name of any line make of the manufacturer or distributor, in the name of the entity under which it transacts business with a consumer, other than in the name of an individual product offered by the entity, shall be considered an "affiliate."

"Board" means the Motor Vehicle Dealer Board.

"Camping trailer" means a recreational vehicle constructed with collapsible partial side walls that fold for towing by a consumer-owned tow vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle or new trailer, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motor vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Demonstrator" means a new motor vehicle having a gross vehicle weight rating of less than 16,000 pounds that (i) has more than 750 miles accumulated on its odometer that has been driven by dealer personnel or by prospective purchasers during the course of selling, displaying, demonstrating, showing, or exhibiting it and (ii) may be sold as a new motor vehicle, provided the dealer complies with the provisions of subsection D of § 46.2-1530.

"Distributor" means a person who is licensed by the Department under this chapter and who sells or distributes new motor vehicles or new trailers pursuant to a written agreement with the manufacturer to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department under this chapter and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department under this chapter and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department under this chapter and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, offering and delivering pursuant to a lease, servicing, or offering, selling, and servicing new motor vehicles or new trailers of a particular line-make or late model or used motor vehicles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor. "Franchise" includes any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or franchised used motor vehicle dealer" means a dealer selling used motor vehicles, including vehicles purchased from the franchisor, under the trademark of a manufacturer or distributor that has a franchise agreement with a manufacturer or distributor.

"Franchised motor vehicle dealer" or "franchised dealer" means a dealer in new motor vehicles or new trailers that has a franchise agreement with a manufacturer or distributor of new motor vehicles or new trailers to sell new motor vehicles or new trailers or to sell used motor vehicles under the trademark of a manufacturer or distributor regardless of the age of the motor vehicles.

"Fund" means the Motor Vehicle Dealer Board Fund.

"Independent motor vehicle dealer" means a dealer in used motor vehicles.

"Late model motor vehicle" means a motor vehicle of the current model year and the immediately preceding model year.

"Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor. The line-make of a motorcycle manufacturer, factory branch, distributor, or distributor branch includes every brand of all-terrain vehicle, auticycle, and off-road motorcycle manufactured or distributed bearing the name of the motorcycle manufacturer or distributor.

"Manufactured home dealer" means any person licensed as a manufactured home dealer under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

"Manufacturer" means a person who is licensed by the Department under this chapter and engaged in the business of constructing or assembling new motor vehicles or new trailers and, in the case of trucks, recreational vehicles, and motor homes, also means a person engaged in the business of manufacturing engines, transmissions, power trains, or rear axles, when such engines, transmissions, power trains, or rear axles are not warranted by the final manufacturer or assembler of the truck, recreational vehicle, or motor home.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle within the term "farm tractor" or "moped" as defined in § 46.2-100. Except as otherwise provided, for the purposes of this chapter, all-terrain vehicles, auticycles, and off-road motorcycles are deemed to be motorcycles.

"Motor home" means a motorized recreational vehicle designed to provide temporary living quarters for recreational, camping, or travel use that contains at least four of the following permanently installed independent life support systems that meet the National Fire Protection Association standards for recreational vehicles: (i) a cooking facility with an onboard fuel source; (ii) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; (iii) a toilet with exterior evacuation; (iv) a gas or electric refrigerator; (v) a heating or air conditioning system with an onboard power or fuel source separate from the vehicle engine; or (vi) a 110-125 volt electric power supply.

"Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter, "motor vehicle" includes trailers, as defined in this section, and does not include (i) manufactured homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (ii) nonrepairable vehicles, as defined in § 46.2-1600; (iii) salvage vehicles, as defined in § 46.2-1600; or (iv) mobile cranes that exceed the size or weight limitations as set forth in § 46.2-1105, 46.2-1110, or 46.2-1113 or Article 17 (§ 46.2-1122 et seq.) of Chapter 10.

"Motor vehicle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys for resale, sells, or exchanges, either outright or on conditional sale, lease, chattel mortgage, or other similar transaction or arranges or offers or attempts to solicit or negotiate on behalf of others the sale, purchase, or exchange of, either outright or on conditional sale, lease, chattel mortgage, or other similar transaction, an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or

2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him.

Any person who offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any 12 consecutive months is presumed to be a motor vehicle dealer and may rebut the presumption by a preponderance of the evidence.

For the purposes of Article 7.2 (§ 46.2-1573.2 et seq.), "dealer" means recreational vehicle dealer. For the purposes of Article 7.3 (§ 46.2-1573.13 et seq.), "dealer" means trailer dealer and watercraft trailer dealer. For the purposes of Article 7.4 (§ 46.2-1573.25 et seq.), "dealer" means motorcycle dealer.

"Motor vehicle dealer" or "dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Persons dealing solely in the sale and distribution of fire-fighting vehicles, ambulances, and funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520, and 46.2-1548.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under this chapter.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

14. The State Department of Social Services or local departments of social services.

15. Any person dealing solely in the sale and distribution of utility or cargo trailers that have unloaded weights of 3,000 pounds or less; however, this exemption shall not exempt any person who deals in stock trailers or watercraft trailers.

16. Any motor vehicle manufacturer or distributor selling a new motor vehicle at wholesale to its franchised dealer or a used motor vehicle to a licensed dealer.

For the purposes of Article 7 (§ 46.2-1566 et seq.), "dealer" does not include recreational vehicle dealers, trailer dealers, watercraft trailer dealers, or motorcycle dealers.

"Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.

"Motor vehicle show" means a display of motor vehicles to the general public at a location other than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or exchange during or as part of the display.

"New motor vehicle" means any vehicle, excluding trailers, that is in the possession of the manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued by the Department or by the issuing agency of any other state and has less than 7,500 miles accumulated on its odometer.

"New trailer" means any trailer that (i) has not been previously sold except in good faith for the purpose of resale; (ii) has not been used as a rental, driver education, or demonstration trailer or for the personal or business transportation of the manufacturer, distributor, dealer, or any of its employees; (iii) has not been used except for limited use necessary in moving or road testing the trailer prior to delivery to a customer; (iv) is transferred by a certificate of origin; and (v) has the manufacturer's certification that it conforms to all applicable federal trailer safety and emission standards. Notwithstanding clauses (i) and (iii), a trailer that has been previously sold but not titled shall be deemed a new trailer if it meets the requirements of clauses (ii), (iv), and (v).

"Original license" means a motor vehicle dealer license issued to an applicant who has never been licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been expired for more than 30 days.

"Recreational vehicle" or "RV" means a vehicle that (i) is either self-propelled or towed by a consumer-owned tow vehicle, (ii) is primarily designed to provide temporary living quarters for recreational, camping, or travel use; and (iii) complies with all applicable federal vehicle regulations and does not require a special movement permit to legally use the highways. Recreational vehicle includes motor homes, travel trailers, and camping trailers.

"Relevant market area" means as follows:

1. For motor vehicle dealers except motorcycle dealers, in metropolitan localities the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of 10 miles, but in no case less than seven miles.

2. For motor vehicle dealers except motorcycle dealers, if the population in a circular area within a radius of 10 miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of 15 miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that circular area within the 15-mile radius.

3. For motor vehicle dealers except motorcycle dealers, in all other cases the relevant market area shall be a circular area within a radius of 20 miles around an existing franchised dealer or the area of responsibility defined in the franchise agreement, whichever is greater. In any case where the franchise agreement is silent as to area of responsibility, the relevant market area shall be the greater of a circular area within a radius of 20 miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

4. For motorcycle dealers, the relevant market area shall be a circular area within a radius of 20 miles if the population within such area around an existing franchised dealer location is one million or more. If the population in a circular area within a 20-mile radius is less than one million, the relevant market area shall be a circular area within a radius of 30 miles. If the population within a 30-mile radius is less than one million, the relevant market area shall be a circular area within a radius of 40 miles. In all cases, the relevant market area

shall be the area described above or the area of responsibility defined in the franchise agreement, whichever is greater. In addition, the relevant market area shall include that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

Notwithstanding the foregoing provision of this section, in the case of dealers in motor vehicles with gross vehicle weight ratings of 26,000 pounds or greater, excluding recreational vehicles, the relevant market area with respect to the dealer's franchise for all such vehicles shall be a circular area around an existing franchised dealer with a radius of 25 miles, except where the population in such circular area is less than 250,000, in which case the relevant market area shall be a circular area around an existing franchised dealer with a radius of 50 miles, or the area of responsibility defined in the franchise, whichever is greater.

In determining population for relevant market areas, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with another motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by another motor vehicle, including semitrailers but not manufactured homes, watercraft trailers, camping trailers, or travel trailers.

"Travel trailer" means a vehicle designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight so as not to require a special highway movement permit when towed by a consumer-owned tow vehicle.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.

"Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1.

"Watercraft trailer dealer" means any watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1.

"Wholesale auction" means an auction of motor vehicles restricted to sales at wholesale.

#### **§ 46.2-1501. General powers of Commissioner**

The Commissioner shall promote the interest of the retail buyers of motor vehicles and endeavor to prevent unfair methods of competition and unfair or deceptive acts or practices.

#### **§ 46.2-1502. Repealed**

Repealed by Acts 1995, cc. 767 and 816.

#### **§ 46.2-1503. Motor Vehicle Dealer Board**

A. The Motor Vehicle Dealer Board is hereby created. The Board shall consist of 19 members appointed by the Governor, subject to confirmation by the General Assembly. Every member appointed by the Governor shall be a citizen of the United States and a resident of Virginia. The Governor may remove any member as provided in subsection A of § 2.2-108. The members shall be at-large members and, insofar as practical, should reflect fair and equitable statewide representation.

B. Ten members shall be licensed franchised motor vehicle dealers who have been licensed as such for at least two years prior to being appointed by the Governor and seven members shall be licensed independent motor vehicle dealers who (i) have been licensed as such for at least two years prior to being appointed by the Governor and (ii) are not also franchised motor vehicle dealers. One of the franchised dealers appointed to the Board shall be a licensed franchised motorcycle dealer who is primarily engaged in the sale of new motorcycles. One of the independent dealers appointed to the Board shall be a licensed independent motorcycle dealer, and one shall be a licensed independent dealer who is also an independent trailer or recreational vehicle dealer or engaged in the rental vehicle business. One member shall be an individual who has no direct or indirect interest, other than as a consumer, in or relating to the motor vehicle industry.

C. Appointments shall be for terms of four years, and no person other than the Commissioner or his designee shall be eligible to serve more than two successive four-year terms. The Commissioner shall serve as chairman of the Board. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. Any person appointed to fill a vacancy may serve two additional successive terms.

D. The Commissioner or his designee shall be an ex officio voting member of the Board.

E. Members of the Board shall be reimbursed their actual and necessary expenses incurred in carrying out their duties, such reimbursement to be paid from the special fund referred to in § 46.2-1520.

#### **§ 46.2-1503.1. Board to employ Executive Director**

The Board shall employ an executive director who shall serve at the pleasure of the Board. He shall direct the affairs of the Board and keep records of all proceedings, transactions, communications, and official acts of the Board. He shall be custodian of all records of the Board and perform such duties as the Board may require. The Executive Director shall call a meeting of the Board at the direction of the chairman or upon written request of three or more Board members. The Executive Director, with approval of the Board, may employ such additional staff as needed. The annual salary of the Executive Director shall be at Level II of the Executive Compensation Plan contained in the Appropriation Act.

#### **§ 46.2-1503.2. State Personnel and Public Procurement Acts not applicable**

A. The Executive Director and all staff employed by the Board shall be exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.) of Title 2.2. Personnel actions under this exemption shall be taken without regard to race, sex, sexual orientation, gender identity, color, national origin, religion, age, handicap, or political affiliation.

B. The Board and the Executive Director shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of Title 2.2.

#### **§ 46.2-1503.3. Motor Vehicle Dealer Board Fund; receipts; disbursements**

The Motor Vehicle Dealer Board Fund is established as a special fund in the state treasury. Except as otherwise provided in this chapter, all fees collected as provided in this chapter and by regulations promulgated by the Board, shall be paid into the state treasury immediately upon collection and credited to the Motor Vehicle Dealer Board Fund. Any interest income shall accrue to the Motor Vehicle Dealer Board Fund. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the Executive Director as authorized by the Board.

#### **§ 46.2-1503.4. General powers and duties of Board**

The powers and duties of the Board shall include, but not be limited to the following:

1. To establish the qualifications of applicants for certification or licensure, provided that all qualifications shall be necessary to ensure competence and integrity.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure, including the preparation, administration and grading of examinations.
3. To certify or license qualified applicants as motor vehicle dealers and motor vehicle salespersons.

4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board.

5. To levy on licensees special assessments necessary to cover expenses of the Board.

6. To revoke, suspend, or fail to renew a certificate or license for just cause as set out in Articles 2 (§ 46.2-1508 et seq.), 3.1 (§ 46.2-1527.1 et seq.), 4 (§ 46.2-1528 et seq.), 8 (§ 46.2-1574 et seq.), and 9 (§ 46.2-1581 et seq.) of this chapter or enumerated in regulations promulgated by the Board.

7. To ensure that inspections are conducted relating to the motor vehicle sales industry and to ensure that all licensed dealers and salespersons are conducting business in a professional manner, not in violation of any provision of Articles 2 (§ 46.2-1508 et seq.), 3.1 (§ 46.2-1527.1 et seq.), 4 (§ 46.2-1528 et seq.), 7 (§ 46.2-1566 et seq.), 8 (§ 46.2-1574 et seq.), and 9 (§ 46.2-1581 et seq.) of this chapter and within the lawful regulations promulgated by the Board.

8. To receive complaints concerning the conduct of persons and businesses licensed by the Board and to take appropriate disciplinary action if warranted.

9. To enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board.

10. To establish committees of the Board, appoint persons to such committees, and to promulgate regulations establishing the responsibilities of these committees. Each of these committees shall include at least one Board member and the Advertising, Dealer Practices and Transaction Recovery Fund committees shall include at least one citizen member who is not licensed or certified by the Board. The Board may establish one of each committee in each DMV District. Committees to be established shall include, but not be limited to the following:

- a. Advertising;
- b. Licensing;
- c. Dealer Practices;
- d. Franchise Review and Advisory Committee; and
- e. Transaction Recovery Fund.

11. To do all things necessary and convenient for carrying into effect Articles 2, 3.1, 4, 8 and 9 of this chapter or as enumerated in regulations promulgated by the Board.

#### **§ 46.2-1503.5. Biennial report**

The Board shall submit a biennial report to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain, at a minimum, the following information: (i) a summary of the Board's fiscal affairs, (ii) a description of the Board's activities, (iii) statistical information regarding the administrative hearings and decisions of the Board, and (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints.

#### **§ 46.2-1504. Board's powers with respect to hearings under this chapter**

The Board may, in hearings arising under this chapter, except as provided in Articles 7 (§ 46.2-1566 et seq.), 7.2 (§ 46.2-1573.2 et seq.), 7.3 (§ 46.2-1573.13 et seq.), and 7.4 (§ 46.2-1573.25 et seq.), determine the place in the Commonwealth where they shall be held; subpoena witnesses; take depositions of witnesses residing outside the Commonwealth in the manner provided for in civil actions in courts of record; pay these witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

#### **§ 46.2-1505. Suit to enjoin violations**

A. The Board, whenever it believes from evidence submitted to the Board that any person has been violating, is violating, or is about to violate any provision of this chapter, in addition to any other remedy, may bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

B. Any manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative who obtains a license under this chapter is engaged in business in the Commonwealth and is subject to the jurisdiction of the courts of the Commonwealth. Any manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative of motorcycles of a recognized line-make that are sold

or leased in the Commonwealth pursuant to a plan, system, or channel of distribution established, approved, authorized, or known to the manufacturer shall be subject to the jurisdiction of the courts of the Commonwealth in any action seeking relief under or to enforce any of the remedies or penalties provided for in this chapter.

#### **§ 46.2-1506. Regulations**

The Board may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of §§ 46.2-112 and 46.2-629, and any other regulations, not inconsistent with the provisions of this chapter, as it shall consider necessary for the effective administration and enforcement of this chapter. A copy of any regulation promulgated under this section shall be mailed to each motor vehicle dealer licensee thirty days prior to its effective date.

#### **§ 46.2-1506.1. Additional training**

The Board may promulgate regulations specifying additional training or conditions for individuals seeking certification, licensure, or renewal of certificates or licenses.

#### **§ 46.2-1507. Penalties**

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil penalty by the Board. No such civil penalty shall exceed \$1,000 for any single violation. Civil penalties collected under this chapter shall be deposited in the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

## **Article 2. Motor Vehicle Dealer Licenses**

#### **§ 46.2-1508. Licenses required; penalty**

A. It shall be unlawful for any person to engage in business in the Commonwealth as a motor vehicle dealer or salesperson without first obtaining a license as provided in this chapter. It shall be unlawful for any person to engage in business in the Commonwealth as a manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative without first obtaining a license from the Department. Every person licensed as a manufactured home dealer under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 shall obtain a certificate of dealer registration as provided in this chapter. Every person licensed as a watercraft dealer under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1 and who offers for sale watercraft trailers shall obtain a certificate of dealer registration as provided in this chapter but shall not be required to obtain a dealer license unless he also sells other types of trailers. Any nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code, after having obtained a nonprofit organization certificate as provided in this chapter, may consign donated motor vehicles to licensed Virginia motor vehicle dealers. Any person licensed in another state as a motor vehicle dealer may sell motor vehicles at wholesale auctions in the Commonwealth after having obtained a certificate of dealer registration as provided in this chapter. The offering or granting of a motor vehicle dealer franchise in the Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section, and no new motor vehicle may be sold or offered for sale in the Commonwealth unless the franchisor of motor vehicle dealer franchises for that line-make in the Commonwealth, whether such franchisor is a manufacturer, factory branch, distributor, distributor branch, or otherwise, is licensed under this chapter. In the event a license issued to a franchisor of motor vehicle dealer franchises is suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new motor vehicle of such franchisor's line-make manufactured in or brought into the Commonwealth for sale prior to the suspension, revocation or expiration of the license.

Violation of any provision of this subsection shall constitute a Class 1 misdemeanor, and such violation may also serve as the basis for injunctive relief pursuant to subsection B or C.

B. The Board may file a motion with the circuit court for the county or city in which a person who violated any provision of subsection A is located, or with the circuit court for the City of Richmond, and, upon a hearing and for cause shown, the court may grant an injunction restraining such person from violating any provision of subsection A, regardless of whether an adequate remedy at law exists. A single act in violation of

the provisions of subsection A is sufficient basis to authorize the issuance of an injunction. The Board shall not be required to post an injunction bond or other security.

C. Any licensed motor vehicle dealer who sustains injury or damage to his business or property by reason of a violation of subsection A by any person that is not licensed as required by subsection A may file a motion with the circuit court for the county or city in which a person alleged to have committed such violation is located, and, upon a hearing and for cause shown, the court may grant a temporary or permanent injunction prohibiting any further such violation. A single act in violation of the provisions of subsection A shall be sufficient basis to show injury or damage to the business or property of the licensed motor vehicle dealer. A licensed motor vehicle dealer shall not be required to post an injunction bond or other security.

D. If the Board, pursuant to subsection B, or a licensed motor vehicle dealer, pursuant to subsection C, is awarded an injunction, the court may also award reasonable attorney fees and costs.

E. Notwithstanding the provisions of subsection A, a manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative engaged in the manufacture or distribution of all-terrain vehicles or off-road motorcycles that does not also manufacture or distribute in the Commonwealth any motorcycle designed for lawful use on the public highways shall not be required to obtain a license from the Department.

F. Notwithstanding the provisions of subsection A, any manufacturer or distributor of transit buses that sells transit buses to a local government authority or nonprofit provider in the Commonwealth for the purposes of public transportation, as defined in 49 U.S.C. § 5302, shall not be required to obtain a manufacturers license from the Department of Motor Vehicles or a dealers license from the Motor Vehicle Dealer Board for such sales. For purposes of this subsection, "transit bus" means a rubber-tired automotive vehicle used for the provision of public transportation service by or for a recipient of federal or state funding allocated annually by the Commonwealth Transportation Board.

#### **§ 46.2-1508.1. Licensure of certain nonprofit organizations**

A. Any nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code that (i) receives title to motor vehicles as qualified charitable gifts to the organization, (ii) provides no more than twelve of these donated vehicles in any twelve-month period to low-income persons, as defined in § 2.2-5400, in need of transportation, and (iii) receives from the recipients of the vehicles only reimbursement for the costs of repairs, towing, titles, taxes, license fees and inspection fees shall be required to obtain a dealer's license. However, such nonprofit organization shall be exempt from the requirements of § 46.2-1510, Article 3.1 (§ 46.2-1527.1 et seq.) of Chapter 15 of this title, §§ 46.2-1533, and 46.2-1534. Transactions of such nonprofit organization shall not be subject to recovery from the Motor Vehicle Transaction Recovery Fund.

B. Upon application to and approval by the Board, any nonprofit organization exempt from taxation under § 501(c) (3) of the Internal Revenue Code may be issued a nonprofit organization certificate authorizing it to consign donated motor vehicles to licensed Virginia motor vehicle dealers when the nonprofit organization receives title to such motor vehicles as qualified charitable gifts and titles the vehicles in the name of the nonprofit organization.

#### **§ 46.2-1508.2. Display, parking, selling, advertising sale of certain used motor vehicles prohibited**

A. 1. No owner or lessee of any real property shall permit the display or parking of five or more used motor vehicles per property within any 12-month period on such real property for the purpose of selling or advertising the sale of such used motor vehicles by the owner or lessee of such vehicles unless exempted pursuant to this section.

2. No owner or lessee of any used motor vehicle shall display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle if the display or parking of such vehicle will cause the owner or lessee of the real property to be in violation of the provisions of this section.

3. No owner or lessee of any used motor vehicle shall display or park such used motor vehicle on the real property of another for the purpose of selling or advertising the sale of such used motor vehicle unless the owner or lessee of such vehicle has the right to occupy such property pursuant to a lease or other occupancy document or prior written permission of the owner or lessee of the real property. Copies of such written

permission shall be posted on the inside of a side window of the motor vehicle and must be retained by both the property owner or lessee and by the vehicle owner for at least 12 months and shall be made available to law-enforcement officers or agencies, the Board, and local zoning officials upon request.

4. Except as permitted in § 46.2-631 and except as permitted in subsection B, no owner or lessee of any real property shall permit any used motor vehicle to be displayed or parked on such real property for the purpose of selling or advertising the sale of such used motor vehicle if such vehicle is not lawfully titled in the name of the individual or entity offering such vehicle for sale as provided in Chapter 6 (§ 46.2-600 et seq.). However, the limitation of this subdivision shall not apply if the individual offering the vehicle for sale is an immediate family member of the owner or lessee of the real property on which the motor vehicle is displayed or parked for the purpose of selling or advertising the sale of such vehicle.

5. Except as permitted in § 46.2-631, no person shall advertise, display, sell, or offer for sale any used motor vehicle unless such vehicle is lawfully titled in such person's name as provided in Chapter 6 (§ 46.2-600 et seq.). However, this limitation shall not apply if the person offering the vehicle for sale is a motor vehicle dealer licensed under this chapter or has the authority pursuant to law to advertise, display, sell, or offer for sale the used motor vehicle.

B. The provisions of subsection A shall not apply if (i) the owner or lessee of the vehicle displayed or parked is employed by the owner or lessee of the real property on which the vehicle is displayed or parked; (ii) the owner or lessee of the vehicle displayed or parked is conducting business with the owner or lessee of the real property on which the vehicle is parked or displayed at the time such vehicle is displayed or parked; (iii) the real property on which a vehicle is parked is a parking lot for which a fee is charged for the use of such parking lot, the owner or lessee of the parked vehicle has paid the fee for the use of such parking lot, and such vehicle is legitimately parked on the property for purposes other than displaying, selling, or advertising the sale of such vehicle; or (iv) the vehicle displays a dealer's license plate pursuant to § 46.2-1550 and the licensed dealer is not displaying for sale or selling a motor vehicle at a location other than his specific business location without first meeting the requirements of § 46.2-1516.

The provisions of subsection A shall also not apply to (a) any motor vehicle dealer licensed under this chapter or (b) any owner or lessee of real property who permits the display or parking of five or more used motor vehicles on such real property by a licensed motor vehicle dealer within any 12-month period for the purpose of selling or advertising the sale of such used motor vehicles pursuant to § 46.2-1516.

C. Notwithstanding any other provision of law, any law-enforcement officer or agency, local zoning official, or the owner or lessee of any real property upon which a vehicle is displayed or parked in violation of this section for longer than 48 consecutive hours after a notice on a form approved by the Board has been affixed or placed on the vehicle by a law-enforcement officer or agency, Board representative, local zoning official, or the owner or lessee of the real property upon which the vehicle is displayed or parked, may have any such vehicle towed from such real property and stored at the expense of the owner or lessee of such vehicle and may then dispose of such vehicle as provided in § 46.2-1203.

D. The provisions of this section shall not be deemed to eliminate, change, or supersede the requirement for any person to obtain a license under this chapter if such person engages in any conduct or activity for which a license is required under this chapter.

E. Violations of subsection A are punishable as a Class 4 misdemeanor.

#### **§ 46.2-1509. Application for license or certificate of dealer registration**

Application for license or certificate of dealer registration under this chapter shall be made to the Board and contain such information as the Board shall require. Such information shall include whether the applicant will be seeking a license to sell cars, trucks, motorcycles, recreational vehicles, or trailers and whether such vehicles will be new or used. The Board shall maintain a record of this information and place the appropriate endorsement on any license issued under this chapter. The application shall be accompanied by the fee as required by the Board.

The Board shall also require, in the application or otherwise, information relating to the matters set forth in § 46.2-1575 as grounds for refusing licenses, certificates of dealer registration, and to other pertinent matters requisite for the safeguarding of the public interest, including, if the applicant is a dealer in new motor vehicles with factory warranties, a copy of a current service agreement with the manufacturer or with the distributor,

requiring the applicant to perform within a reasonable distance of his established place of business, the service, repair, and replacement work required of the manufacturer or distributor by such vehicle warranty. All of these matters shall be considered by the Board in determining the fitness of the applicant to engage in the business for which he seeks a license or certificate of dealer registration.

**§ 46.2-1510. Dealers required to have established place of business**

No license shall be issued to any motor vehicle dealer unless he has an established place of business, owned or leased by him, where a substantial portion of the sales activity of the business is routinely conducted and which:

1. Satisfies all local zoning regulations;
2. Has sales, service, and office space devoted exclusively to the dealership of at least 250 square feet in a permanent, enclosed building not used as a residence;
3. Houses all records the dealer is required to maintain by § 46.2-1529;
4. Is equipped with a desk, chairs, filing space, a working telephone listed in the name of the dealership, working utilities including electricity and provisions for space heating, and an Internet connection and email address;
5. Displays a sign and business hours as required by this chapter; and
6. Has contiguous space designated for the exclusive use of the dealer adequate to permit the display of at least 10 vehicles.

Any dealer licensed on or before July 1, 1995, shall be considered in compliance with subdivisions 2 and 6 of this section for that licensee.

**§ 46.2-1511. Dealer-operator to have certificate of qualification**

A. No license shall be issued to any franchised motor vehicle dealer or any independent motor vehicle dealer owned by a franchised motor vehicle dealer or its dealer-operator and operated by the dealer-operator of a franchised motor vehicle dealer unless the dealer-operator holds a valid certificate of qualification issued by the Board. Such certificate shall be issued only on application to the Board, payment of an application fee of no more than \$50 as determined by the Board, the successful completion of an examination prepared and administered by the Board, and other prerequisites as set forth in this subsection. However, any individual who is the dealer-operator of a licensed dealer on July 1, 1995, shall be entitled to such a certificate without examination on application to the Board made on or before January 1, 1996.

The Board may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

B. No license shall be issued to any independent motor vehicle dealer, except as permitted in subsection A, unless the dealer-operator holds a valid certificate of qualification issued by the Board. Such certificate shall be issued only on application to the Board, payment of an application fee of no more than \$50, as determined by the Board, the successful completion of an examination approved by the Board, and other prerequisites as set forth in this subsection. The Board may establish minimum qualifications for applicants and shall require applicants for an original independent dealer-operator certificate of qualification to be issued pursuant to this subsection to satisfactorily complete a course of study prior to taking the examination. The Board shall develop the course curriculum and set course fees and may approve qualified persons to prepare and present such courses and to administer the examination. This subsection shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 46.2-1512. Salesperson to have certificate of qualification**

No license shall be issued to any motor vehicle salesperson unless he holds a valid certificate of qualification issued by the Board. A certificate shall be issued only on application to the Board, payment of the required application fee of no more than \$50 as determined by the Board, the successful completion of an examination prepared and administered by the Board, and other prerequisites as set forth in this section. Any individual who is licensed as a salesperson on July 1, 1995, shall be entitled to such a certificate without examination on application to the Board made on or before January 1, 1996.

The Board may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

**§ 46.2-1513. Continued operation on loss of a dealer-operator holding certificate of qualification**

Each dealer shall notify the Board in writing immediately when a dealer-operator who holds a certificate of qualification dies, becomes disabled, retires, is removed, or for any other cause ceases to act as dealer-operator. The dealer may continue to operate for 120 days thereafter without a dealer-operator and may be granted approval by the Board to operate for an additional 60 days on application and good cause shown for such delay.

**§ 46.2-1514. Action on applications; hearing on denial; denial for failure to have established place of business**

The Board shall act on all applications for a license or certificate of dealer registration under this chapter within sixty days after receipt by either granting or refusing the application. Any applicant denied a license or certificate shall, on his written request filed within thirty days, be given a hearing at a time and place determined by the Board or a person designated by the Board. All hearings under this section shall be public and shall be held promptly. The applicant may be represented by counsel.

Any applicant denied a license for failure to have an established place of business as provided in § 46.2-1510 may not, nor shall anyone, apply for a license for premises for which a license was denied for thirty days from the date of the rejection of the application.

**§ 46.2-1515. Location to be specified; display of license; change of location**

The licenses of motor vehicle dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business, branch, or other location occupied or to be occupied by the licensee in conducting his business, and the license issued therefor shall be conspicuously displayed at each of the premises. In the event any licensee intends to change a licensed location, he shall provide the Department, or in the case of motor vehicle dealers, the Board, 30 days' advance written notice and a successful inspection of the new location shall be required prior to approval of a change of location. The Department or Board shall endorse the change of location on the license, without charge, if the new location is within the same county or city. A change in location to another county or city shall require a new license and fee.

**§ 46.2-1516. Supplemental sales locations**

The Board may issue a license for a licensed motor vehicle dealer to display for sale or sell vehicles at locations other than his established place of business, subject to compliance with local ordinances and requirements. A license issued pursuant to this section shall not be required for a licensed motor vehicle dealer to display for sale or sell vehicles at wholesale auction; placing vehicles for sale at a wholesale auction shall not be considered a consignment.

A permanent supplemental license may be issued for premises less than 500 yards from the dealer's established place of business, provided a sign is displayed as required for the established place of business. A supplemental license shall not be required for premises otherwise contiguous to the established place of business except for a public thoroughfare.

A temporary supplemental license may be issued for a period not to exceed seven days, or 14 days for trailers and motorcycles, provided that the application is made 15 days prior to the sale. The Board shall not issue a temporary supplemental license (i) for the same jurisdiction for a consecutive seven-day period or (ii) for motorcycles for a consecutive 14-day period. The Board shall not issue more than eight supplemental licenses per year to any licensed motor vehicle dealer.

A temporary supplemental license for the sale of new motor vehicles may be issued only for locations within the dealer's area of responsibility, as defined in his franchise or sales agreement, unless proof is provided that all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought do not oppose the issuance of the temporary license.

A temporary supplemental license for sale of used motor vehicles may be issued only for the county, city, or town in which the dealer is licensed pursuant to § 46.2-1510, or for a contiguous county, city, or town. Temporary licenses may be issued without regard to the foregoing geographic restrictions where the dealer operating under a temporary license provides notice by certified mail, at least 30 days before any proposed sale under a temporary license, to all other dealers licensed in the jurisdiction in which the sale will occur of the intent to conduct a sale and permits any locally licensed dealer who wishes to do so to participate in the sale on the same terms as the dealer operating under the temporary license. Any locally licensed dealer who chooses to participate in the sale must obtain a temporary supplemental license for the sale pursuant to this section. The dealer operating under a temporary license shall provide to the Board a copy of the notice required under this section and a list of the dealers to whom the notice was distributed. A temporary supplemental license for sale of used motor vehicles that are late model vehicles as defined by § 46.2-1600 at a new motor vehicle show that is sponsored by a statewide or local trade association of franchised dealers and held within the geographic area of the dealer members of such association may be issued without regard to the foregoing geographic restrictions or notification and approval provisions, provided that the applicant is lawfully participating in such new motor vehicle show.

A temporary supplemental license may be issued for the sale of boat trailers at a boat show. Any such license shall be valid for no more than 14 days. Application for such a license shall be made and such license obtained prior to the opening of the show. Temporary supplemental licenses for sale of boat trailers at boat shows may be issued for any boat show located anywhere in the Commonwealth without notification of or approval by other boat trailer dealers.

#### **§ 46.2-1517. Changes in form of ownership, make, name**

Any change in the form of ownership or the addition or deletion of a partner shall require a new application, license, and fee.

Any addition or deletion of a franchise or change in the name of a dealer shall require immediate notification to the Department and the Board, and the Board shall endorse the change on the license without a fee. The change of an officer or director of a corporation shall be made at the time of license renewal.

#### **§ 46.2-1518. Display of salesperson's license; notice on termination**

No salesperson shall be employed by more than one dealer, unless the dealers are owned by the same person.

Each dealer shall post and maintain in a place conspicuous to the public a list of salespersons employed.

Each salesperson, factory representative, and distributor representative shall carry his license when engaged in his business and shall display it on request.

Each dealer shall notify the Board in writing not later than the tenth day following the month of the termination of any licensed salesperson's employment. In lieu of written notification, the license of the terminated salesperson may be returned to the Board annotated "terminated" on the face of the license and signed and dated by the dealer-operator, owner, or officer.

#### **§ 46.2-1519. License and registration fees; additional to other licenses and fees required by law**

A. The fee for each license and registration year or part thereof shall be determined by the Board, subject to the following:

1. For motor vehicle dealers, not more than \$300 for each principal place of business, plus not more than \$40 for each supplemental license.
2. For motor vehicle salespersons, not more than \$50.
3. For motor vehicle dealers licensed in other states, but not in the Commonwealth, who sell motor vehicles at wholesale auctions, not more than \$100.
4. For manufactured home dealers, not more than \$100.
5. For watercraft trailer dealers, not more than \$100.

The determination of fees by the Board under this subsection shall not be subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. The licenses, registrations, and fees required by this chapter are in addition to licenses, taxes, and fees imposed by other provisions of law and nothing contained in this chapter shall exempt any person from any license, tax, or fee imposed by any other provision of law.

C. The fee for issuance to a nonprofit organization of a certificate pursuant to subsection B of § 46.2-1508.1 shall be \$25 per year or any part thereof.

D. No nonprofit organization granted a certificate pursuant to subsection B of § 46.2-1508.1 shall, either orally or in writing, assign a value to any donated vehicle for the purpose of establishing tax deduction amounts on any federal or state income tax return.

E. The Board may authorize discounts and other incentives to encourage licensees to conduct transactions with the Board (i) by means of electronic technologies and (ii) for multi-year periods.

F. The fee for reprinting licenses, certificates, and registrations shall be \$10 for each reprint.

G. The fee for reinstating a license, certificate, or registration that has been suspended shall be \$50.

H. The fee for each license and registration year or part thereof for each motor vehicle manufacturer, factory branch, distributor, and distributor branch shall be \$100 and shall be paid to the Department.

#### **§ 46.2-1520. Collection of license and registration fees; payments from fund**

All licensing and registration fees provided for in this chapter, except as identified in Article 3.1 (§ 46.2-1527.1 et seq.) of this chapter shall be collected by the Board and paid into the state treasury and set aside as a special fund to meet the expenses of the Board.

#### **§ 46.2-1521. Issuance, expiration, and renewal of licenses and certificates of registration**

A. All licenses and certificates of registration issued under this chapter shall be issued for a period of 12 consecutive months except, at the discretion of the issuing agency, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the issuing agency or postmarked not more than 30 days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the issuing agency or postmarked no more than 30 days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1519.

C. For dealers and salespersons who have served outside of the United States in the armed services of the United States, licenses and certificates issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in § 46.2-1519 are received by the issuing agency or postmarked not more than 60 days from the date they are no longer serving outside the United States and they have:

1. Held a valid license or certificate issued by the issuing agency at the time the person began service in the armed forces outside of the United States;
2. Not performed sales activities during the period of the person's military service; and
3. Submitted to the issuing agency orders or other military documentation demonstrating that they have served outside of the United States in the armed services of the United States and it has been less than 61 days from the date they are no longer serving outside the United States.

Prior to renewing a license or certificate under this subsection, the applicant shall notify the issuing agency of their intentions and verify that they are in compliance with all other requirements established by the issuing agency and set forth in this title.

D. The issuing agency may offer an optional multiyear license. When such option is offered and chosen by the licensee, all annual and 12-month fees due at the time of licensing shall be multiplied by the number of years or fraction thereof for which the license will be issued.

E. The Board may issue a salesperson's license to an applicant, as required by § 46.2-1508, even though the applicant is not employed by a motor vehicle dealer if (i) the applicant has been certified pursuant to § 46.2-1512 and is employed by a person that has contracted in writing with a dealer or dealers to provide temporary personnel for the sale of products and services to include but not be limited to providing payment, financing and leasing alternatives; and offering and selling extended service agreements, prepaid maintenance agreements, and similar products and services that are sold in connection with the sale of a vehicle; provided, however, that such persons do not negotiate for the sale of the vehicle but may complete the required paperwork for the sale of the vehicle in addition to the other products and services being offered or to provide training to salespersons employed by a dealer, and (ii) the applicant meets the other qualifications to be licensed as a salesperson under this chapter. The requirements of §§ 46.2-1518 and 46.2-1537 shall not apply to any such salesperson so licensed, provided that any salesperson so licensed:

1. May only act as a salesperson for a dealer who has a contract with the salesperson's employer as provided in this subsection;
2. Shall carry his license when engaged in business and shall display it upon request; and
3. Need not be the person who signs the buyer's order on behalf of the dealer, but the name of that salesperson shall be listed on the buyer's order in any transaction in which the salesperson engages.

## **Article 3. Motor Vehicle Transaction Recovery Fund**

### **§§ 46.2-1522 through 46.2-1527. Repealed**

Repealed by Acts 1994, c. 478, effective April 8, 1994.

## **Article 3.1. Motor Vehicle Transaction Recovery Fund**

### **§ 46.2-1527.1. Motor Vehicle Transaction Recovery Fund established**

A. All fees in this article shall be deposited in the Motor Vehicle Transaction Recovery Fund, referred to in this article as "the Fund." The Fund shall be a special fund in the state treasury to pay claims against the Fund and for no other purpose, provided that any such payment does not result in a negative balance of the Fund, except the Board may expend moneys for the administration of this article up to the maximum amount authorized for consumer assistance in the general appropriation act, provided the amount expended for administration does not result in a balance of the Fund of less than \$250,000. The Fund shall be used to satisfy unpaid judgments, as provided for in § 46.2-1527.3. Any interest income shall accrue to the Fund. The Board shall maintain an accurate record of all transactions involving the Fund. The Board may levy a special assessment on all dealers participating in the Fund to pay claims against the Fund and to maintain a minimum Fund balance that is in its judgment adequate. The Board may choose to await a positive balance in the Fund to pay claims ready for payment in chronological order, provided such claims do not go unpaid for more than 60 days.

B. Every applicant renewing a motor vehicle dealer's license shall pay, in addition to other license fees, an annual Fund fee of \$100, and every applicant for a motor vehicle salesperson's license shall pay, in addition to other license fees, an annual Fund fee of \$10, prior to license issue. However, annual Fund renewal fees from salespersons shall not exceed \$100 per year from an individual dealer. These fees shall be deposited in the Motor Vehicle Transaction Recovery Fund. Any salesperson licensed by the Department and having never paid such a fee prior to July 1, 2015, shall be exempt from this subsection.

C. Applicants for an original motor vehicle dealer's license shall pay an annual Fund fee of \$350 each year for three consecutive years. During this period, the \$350 Fund fee will take the place of the annual \$100 Fund fee.

D. In addition to the \$350 annual fee, applicants for an original dealer's license shall have a \$50,000 bond pursuant to § 46.2-1527.2 for three consecutive years. Only those renewing licensees who have not been the subject of a claim against their bond or against the Fund for three consecutive years shall pay the annual \$100 fee and will no longer be required to pay the \$350 annual fee or hold the \$50,000 bond. Any salesperson

licensed by the Department and having never paid such fee prior to July 1, 2015, shall be exempt from this subsection.

E. In addition to other license fees, applicants for an original Certificate of Dealer Registration or its renewal shall pay a Fund fee of \$60.

F. The Board may suspend or reinstate collection of Fund fees.

G. The provisions of this section shall not apply to manufactured home dealers or nonprofit organizations issued certificates pursuant to subsection B of § 46.2-1508.1.

H. The provisions of this section shall not apply to applicants for the renewal of a motor vehicle dealer's license where such applicants have not been the subject of a claim against a bond issued pursuant to § 46.2-1527.2 or against the Fund for three years and such applicants elect to maintain continuous bonding pursuant to Article 3.2 (§ 46.2-1527.9 et seq.). Such applicants shall not participate in the Fund and shall be exempt from the payment of any Fund fees.

I. The provisions of this article shall not apply to any recreational vehicle, trailer, or motorcycle dealer licensed by the Department prior to July 1, 2015.

#### **§ 46.2-1527.2. Bonding requirements for applicants for an original license**

Before the Board shall issue to an applicant an original license, the applicant shall obtain and file with the Board a bond in the amount of \$50,000. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Board may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file.

If a person suffers any of the following: (i) loss or damage in connection with the purchase or lease of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by a licensed motor vehicle dealer or one of the dealer's salespersons acting within his scope of employment, (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter in connection with the purchase or lease of a motor vehicle, or (iii) loss or damage resulting from a breach of an extended service contract as defined by § 59.1-435 entered into on or after April 8, 1994, that person shall have a claim against the dealer and the dealer's bond, and may recover such damages as may be awarded to such person by final judgment of a court of competent jurisdiction against the dealer as a proximate result of such loss or damage up to but not exceeding \$25,000, from such surety, who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages and attorney fees and shall not include any punitive damages assessed against the dealer or salesperson. On January 1 of each year, the amount that may be awarded against such bond to any person as a result of loss or damage to that person as provided in this section shall be increased by the percentage increase over the most recently available unadjusted 12-month period in the Consumer Price Index for used motor vehicles, as published by the U.S. Bureau of Labor Statistics or any successor index. In the event that this index decreases over any such 12-month period, there shall be no change in the amount that may be awarded.

In those cases in which a dealer's surety shall be liable pursuant to this section, the surety shall be liable only for the first \$50,000 in claims against the dealer. Thereafter, the Fund shall be liable for amounts in excess of the bond up to the amount that may be paid out of the Fund, less the amount of the bond, in those cases in which the Fund itself may be liable. The aggregate liability of the dealer's surety to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in force, shall in no event exceed \$50,000.

The dealer's surety shall notify the Board when a claim is made against a dealer's bond, when a claim is paid and when the bond is cancelled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the dealer's surety upon 30 days' notice to the Board.

### **§ 46.2-1527.3. Recovery from Fund, generally**

Except as otherwise provided in this chapter, whenever any person is awarded a final judgment in a court of competent jurisdiction in the Commonwealth for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of any fraud practiced on him or fraudulent representation made to him by a licensed or registered motor vehicle dealer participating in the Motor Vehicle Transaction Recovery Fund or one of a dealer's salespersons acting for the dealer or within the scope of his employment or (ii) any loss or damage by reason of the violation by a dealer or salesperson participating in the Motor Vehicle Transaction Recovery Fund of any of the provisions of this chapter, the judgment creditor may file a verified claim with the Board, requesting payment from the Fund of the amount unpaid on the judgment subject to the following conditions:

1. The claim shall be filed with the Board no sooner than 30 days and no later than 12 months after the judgment becomes final along with the evidence of compliance with subdivision 3 below.
2. The Board shall consider for payment claims submitted by retail purchasers of motor vehicles, and for purchases of motor vehicles by licensed or registered motor vehicle dealers who contribute to the Fund. The Board shall also consider for payment claims submitted by lessees of motor vehicles leased from licensed or registered motor vehicle dealers who contribute to the Fund.
3. If the final judgment from a court of competent jurisdiction includes, as part of the judgment, an award of attorney fees and court costs, the Fund may include those in its payment of the claim if (i) the claimant had previously submitted to the trial court a detailed and itemized affidavit by counsel for the judgment creditor seeking such fees and costs, including a breakdown of the hours worked and the subject matter of those hours; (ii) said itemized affidavit formed the basis of the court's award of such fees; and (iii) a copy of such affidavit is provided to the Board with the judgment creditor's claim. If the award of attorney fees and costs by the trial court was not based on a detailed and itemized affidavit from counsel for the judgment creditor with a breakdown of the hours worked, then the Board may review and limit any claim for attorney fees to those attorney fees directly attributable to that portion of the final judgment that is determined to be a compensable claim by the Board against the Fund, and the Board may require a detailed itemization from counsel before considering such claim for attorney fees.

### **§ 46.2-1527.4. Opportunity to intervene**

Any action instituted by a person against a licensed or registered dealer or a salesperson, which may become a claim against the Fund, shall be served to the Board in the manner prescribed by law. All subsequent pleadings and documents shall also be served to the Board. Included in such service shall be an affidavit stating all acts constituting fraud or violations of this chapter. Upon service of process, the Board, or duly authorized representative, shall have the right to request leave of the court to intervene. The person shall submit such pleadings or documents to the Board by certified mail or the equivalent.

### **§ 46.2-1527.5. Limitations on recovery from Fund**

The maximum claim of one judgment creditor against the Fund based on an unpaid final judgment arising out of any loss or damage by reason of a claim submitted under § 46.2-1527.2 or 46.2-1527.3 involving a single transaction shall be limited to \$25,000, including any amount paid from the dealer's surety bond, regardless of the amount of the unpaid final judgment of one judgment creditor. On January 1 of each year, the amount that may be awarded to any person as a result of loss or damage to that person as provided in this section shall be increased by the percentage increase over the most recently available unadjusted 12-month period in the Consumer Price Index for used motor vehicles, as published by the U.S. Bureau of Labor Statistics or any successor index. In the event that this index decreases over any such 12-month period, there shall be no change in the amount which may be awarded.

The aggregate of claims against the Fund based on unpaid final judgments arising out of any loss or damage by reason of a claim submitted under § 46.2-1527.3 involving more than one transaction shall be limited to four times the amount that may be awarded to a single judgment creditor, regardless of the total amounts of the unpaid final judgments of judgment creditors.

However, aggregate claims against the Fund under § 46.2-1527.2 shall be limited to the amount that may be paid out of the Fund under the preceding paragraph less the amount of the dealer's bond and then only after the dealer's bond has been exhausted.

If a claim has been made against the Fund, and the Board has reason to believe that there may be additional claims against the Fund from other transactions involving the same licensee or registrant, the Board may withhold any payment from the Fund involving the licensee or registrant for a period not to exceed the end of the relevant license or registration period. After this period, if the aggregate of claims against the licensee or registrant exceeds the aggregate amount that may be paid from the Fund under this section, then such amount shall be prorated among the claimants and paid from the Fund in proportion to the amounts of their unpaid final judgments against the licensee or registrant.

However, claims against motor vehicle dealers and salespersons participating in the Motor Vehicle Transaction Recovery Fund pursuant to § 46.2-1527.2 shall be prorated when the aggregate exceeds \$50,000. Claims shall be prorated only after the dealer's \$50,000 bond has been exhausted.

On receipt of a verified claim filed against the Fund, the Board shall forthwith notify the licensee or registrant who is the subject of the unpaid judgment that a verified claim has been filed and that the licensee or registrant should satisfy the judgment debt. If the judgment debt is not fully satisfied 30 days following the date of the notification by the Board, the Board shall make payment from the Fund subject to the other limitations contained in this article.

Excluded from the amount of any unpaid final judgment on which a claim against the Fund is based shall be any sums representing interest and punitive damages. Awards from the Fund shall be limited to reimbursement of costs paid to the dealer for all charges related to the vehicle including without limitation, the sales price, taxes, insurance, and repairs; other out of pocket costs related to the purchase, insuring and registration of the vehicle, and to the loss of use of the vehicle by the purchaser.

If at any time the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this article, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board. However, claims by retail purchasers shall take precedence over other claims.

#### **§ 46.2-1527.6. Assignment of claimant's rights to the Board; payment of claims**

Subject to the provisions of this article and on the claimant's execution and delivery to the Board of an assignment to the Board of his rights against the licensee or registrant, to the extent he received satisfaction from the Fund, the Board shall pay the claimant from the Fund the amount of the unpaid final judgment.

#### **§ 46.2-1527.7. Revocation of license or certificate of registration on payment from the Fund**

On payment by the Board to a claimant from the Fund as provided in this article, the Board shall immediately notify the licensee or registrant in writing of the Board's payment to the claimant and request full reimbursement be made to the Board within thirty days of the notification. Failure to reimburse the Board in full within the specified period shall cause the Board to immediately revoke the license or certificate of the dealer or the license of a salesperson whose fraud, fraudulent representation, or violation of this chapter resulted in this payment. Any person whose license or certificate is revoked shall not be eligible to apply for a license or certificate as a motor vehicle dealer or a license as a salesperson until the person has repaid in full the amount paid from the Fund on his account, plus interest at the rate of eight percent per year from the date of payment.

#### **§ 46.2-1527.8. No waiver by the Board of disciplinary action against licensee or registrant**

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any licensee or registrant for any violation of this chapter or any regulation promulgated thereunder, nor shall full repayment of the amount paid from the Fund on a licensee's or registrant's account nullify or modify the effect of any disciplinary action against that licensee or registrant for any violation.

## **Article 3.2. Bonding Requirements for Dealers Not Participating in Motor Vehicle Transaction Recovery Fund**

### **§ 46.2-1527.9. Continuous bonding requirements for Fund nonparticipants**

Applicants for a renewal of a motor vehicle dealer's license may elect to obtain and continuously maintain a bond in the amount of \$100,000 in lieu of participation in the Motor Vehicle Transaction Recovery Fund, provided that such applicants have not been the subject of a claim against a bond issued pursuant to § 46.2-1527.2, or against the Fund for three consecutive years. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Board. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. In those cases in which the surety of a dealer electing continuous bonding under this section shall be liable pursuant to this section, the maximum liability to one claimant against the surety by reason of a claim involving a single transaction shall be limited to \$20,000 regardless of the amount of the claim by one claimant, and the aggregate liability of the dealer's surety to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in effect shall in no event exceed \$100,000.

An applicant for a renewal of a motor vehicle dealer's license who is a member of a nonprofit organization established under 26 U.S.C. § 501(c) (6) that provides on behalf of its membership a blanket or umbrella bond in the amount of \$1 million satisfies the bonding requirements of this section. When posted, a blanket or umbrella bond shall be considered a dealer bond for the purposes of § 46.2-1527.10. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General and shall be filed with the Board. In those cases in which the nonprofit organization's surety shall be liable pursuant to § 46.2-1527.10, the maximum liability to one claimant against the surety by reason of a claim involving a single transaction shall be limited to \$20,000, regardless of the amount of the claim by one claimant, and the aggregate liability of the nonprofit organization's surety to any and all persons for claims against a single dealer shall in no event exceed \$100,000. In those cases in which the nonprofit organization's surety shall be liable pursuant to § 46.2-1527.10, the maximum liability to any and all persons, regardless of the number of claims made against the bond or the number of years the bond remains in force shall in no event exceed \$1 million.

The Board may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file. Dealers bonded under this article and those salespersons employed by such dealers shall be exempt from the Fund fees specified in § 46.2-1527.1.

### **§ 46.2-1527.10. Recovery on bond**

With respect to a motor vehicle dealer electing continuous bonding under § 46.2-1527.9, whenever any person is awarded a final judgment in a court of competent jurisdiction in the Commonwealth against the dealer for (i) any loss or damage in connection with the purchase or lease of a motor vehicle by reason of fraud practiced on him or fraudulent representation made to him by the dealer or one of the dealer's salespersons acting within the scope of his employment, (ii) any loss or damage by reason of the violation by the dealer or salesperson of any provision of this chapter in connection with the purchase or lease of a motor vehicle, or (iii) any loss or damage resulting from a breach of an extended service contract, as defined in § 59.1-435, entered into on or after July 1, 2003, the judgment creditor shall have a claim against the dealer bond for such damages as may be awarded such person in final judgment and unpaid by the dealer, and may recover such unpaid damages up to but not exceeding the maximum liability of the surety as set forth in § 46.2-1527.9 from the surety who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages and attorney fees assessed against the dealer or salesperson as part of the underlying judgment but this section does not authorize the award of attorney fees in the underlying judgment. The liability of such surety shall not include any sums representing interest or punitive damages assessed against the dealer or salesperson.

The dealer's surety shall notify the Board when a claim is made against a dealer's bond, when a claim is paid, and when the bond is cancelled. Such notification shall include the amount of claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the dealer's surety upon 30 days' notice to the Board.

**§ 46.2-1527.11. No waiver by the Board of disciplinary action against licensee or registrant**

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any licensee or registrant for any violation of this chapter or any regulation promulgated under this chapter.

## **Article 4. Conduct of Business**

**§ 46.2-1528. Examination or audit of licensee; costs**

The Board or authorized representatives of the Board may examine, during the posted business hours, the records required to be maintained by this chapter. If a licensee is found to have violated this chapter or any order of the Board, the actual cost of the examination shall be paid by the licensee so examined within thirty days after demand therefor by the Board. The Board may maintain an action for the recovery of these costs in any court of competent jurisdiction.

**§ 46.2-1529. Dealer records**

All dealer records regarding employees; lists of vehicles in inventory for sale, resale, or on consignment; vehicle purchases, sales, trades, and transfers of ownership; collections of taxes; titling, uninsured motor vehicle, and registration fees; odometer disclosure statements; records of permanent dealer registration plates assigned to the dealer and temporary transport plates and temporary certificates of registration; proof of safety inspections performed on vehicles sold at retail; and other records required by the Department or the Board shall be maintained on the premises of the licensed location. The Board may, on written request by a dealer, permit his records to be maintained at a location other than the premises of the licensed location for good cause shown. All dealer records shall be preserved in original form or in film, magnetic, or optical media, including microfilm, microfiche, or other electronic media, for a period of five years in a manner that permits systematic retrieval. Certain records may be maintained on a computerized record-keeping system with the prior approval of the Board.

**§ 46.2-1529.1. Sales of used motor vehicles by dealers; disclosures; penalty**

A. If, in any retail sale by a dealer of a used motor vehicle of under 6,000 pounds gross vehicle weight for use on the public highways, and normally used for personal, family or household use, the dealer offers an express warranty, the dealer shall provide the buyer a written disclosure of this warranty. The written disclosure shall be the Buyer's Guide required by federal law, shall be completely filled out and, in addition, signed and dated by the buyer and incorporated as part of the buyer's order.

B. A dealer may sell a used motor vehicle at retail "AS IS" and exclude all warranties only if the dealer provides the buyer, prior to sale, a separate written disclosure as to the effect of an "AS IS" sale. The written disclosure shall be conspicuous and contained on the front of the buyer's order and printed in not less than bold, 10-point type and signed by the buyer: "I understand that this vehicle is being sold 'AS IS' with all faults and is not covered by any dealer warranty. I understand that the dealer is not required to make any repairs after I buy this vehicle. I will have to pay for any repairs this vehicle will need." A fully completed Buyer's Guide, as required by federal law, shall be signed and dated by the buyer and incorporated as part of the buyer's order.

C. Failure to provide the applicable disclosure required by subsection A or B shall be punishable by a civil penalty of no more than \$1,000. Any such civil penalty shall be paid into the general fund of the state treasury. Furthermore, if the applicable disclosure required by subsection A or B is not provided as required in this section, the buyer may cancel the sale within 30 days. In this case, the buyer shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for the use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code,

for use of a personal vehicle for business purposes. Notice of the provisions of this subsection shall be included as part of every disclosure made under subsection A or B.

D. The provisions of this section shall not apply to motorcycles, trailers, or travel trailers.

#### **§ 46.2-1530. Buyer's order**

A. Every motor vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange of a motor vehicle. A copy of the buyer's order form shall be made available to a prospective buyer during the negotiating phase of a sale and prior to any sales agreement. The completed original shall be retained for a period of five years in accordance with § 46.2-1529, and a duplicate copy shall be delivered to the purchaser at the time of sale or exchange. A buyer's order shall include:

1. The name and address of the person to whom the vehicle was sold or traded.
2. The date of the sale or trade.
3. The name and address of the motor vehicle dealer selling or trading the vehicle.
4. The make, model year, vehicle identification number and body style of the vehicle.
5. The sale price of the vehicle.
6. The amount of any cash deposit made by the buyer.
7. A description of any vehicle used as a trade-in and the amount credited the buyer for the trade-in. The description of the trade-in shall be the same as outlined in subdivision 4.
8. The amount of any sales and use tax, title fee, uninsured motor vehicle fee, registration fee, purchaser's online systems filing fee, or other fee required by law for which the buyer is responsible and the dealer has collected. Each tax and fee shall be individually listed and identified.
9. The net balance due at settlement.

10. Any item designated as "processing fee," and the amount charged by the dealer, if any, for processing the transaction. As used in this section, processing includes obtaining title and license plates for the purchaser, but does not include any "purchaser's online systems filing fee," as defined in § 46.2-1530.1, or any "dealer's manual transaction fee," as defined in § 46.2-1530.2.

11. Any item designated as "dealer's business license tax," and the amount charged by the dealer, if any.

12. If the dealer delivers to the customer a vehicle purchased by the customer on or after July 1, 2010, that is conditional on dealer-arranged financing, the following notice, printed in bold type no less than 10 point: **"IF YOU ARE FINANCING THIS VEHICLE, PLEASE READ THIS NOTICE: YOU ARE PROPOSING TO ENTER INTO A RETAIL INSTALLMENT SALES CONTRACT WITH THE DEALER. PART OF YOUR CONTRACT INVOLVES FINANCING THE PURCHASE OF YOUR VEHICLE. IF YOU ARE FINANCING THIS VEHICLE AND THE DEALER INTENDS TO TRANSFER YOUR FINANCING TO A FINANCE PROVIDER SUCH AS A BANK, CREDIT UNION OR OTHER LENDER, YOUR VEHICLE PURCHASE DEPENDS ON THE FINANCE PROVIDER'S APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES CONTRACT. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED, THE DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER THE VIRGINIA CONSUMER PROTECTION ACT."**

13. For sales of used motor vehicles, the disclosure required by § 46.2-1529.1.

Except for trailers and travel trailers, if the transaction does not include a policy of motor vehicle liability insurance, the seller shall stamp or mark on the face of the bill of sale in boldface letters no smaller than 18-point type the following words: "No Liability Insurance Included."

A completed buyer's order when signed by both buyer and seller may constitute a bill of sale.

B. The Board shall approve a buyer's order form and each dealer shall file with each original license application its buyer's order form, on which the processing fee amount is stated.

C. If a processing fee is charged, that fact and the amount of the processing fee shall be disclosed by the dealer. Disclosure shall be by placing a clear and conspicuous sign in the public sales area of the dealership. The sign shall be no smaller than eight and one-half inches by 11 inches and the print shall be no smaller than one-half inch, and in a form as approved by the Board.

D. Except for trailers, if the buyer's order is for a new motor vehicle that had accumulated, at the time of the sale, mileage in excess of 750 miles as a demonstrator or as a result of delivery to a prospective purchaser who never took title to the new motor vehicle and returned it, the vehicle may be sold as new, provided the dealer delivers this disclosure in writing on the buyer's order containing type of no smaller than 10 point or in a separate document containing only the disclosure in type of no smaller than 14 point: "Notice: This new motor vehicle has accumulated mileage in excess of 750 miles as the result of use as a demonstrator and/or as the result of delivery to a prior prospective purchaser who never took title to it and who returned it." When delivered as a separate document, this disclosure shall also contain the actual odometer reading for the vehicle and shall be signed by the purchaser.

E. The provisions of this section shall not apply to the sale or exchange of (i) a tractor truck, (ii) a truck having a gross vehicle weight rating of 16,000 pounds or more, or (iii) a semitrailer.

#### **§ 46.2-1530.1. Purchaser's on-line systems filing fee; collection and remittance**

Any dealer licensed under this chapter who uses a Department-approved system of remote electronic filing of documentation necessary to obtain a certificate of title or registration for the purchaser of a vehicle shall collect from the purchaser and remit to the Department-approved electronic systems provider any fees charged for the transaction by the systems provider. Any such fee shall be listed separately on the buyer's order and identified as "on-line systems filing fee."

#### **§ 46.2-1530.2. Dealer's manual transaction fee; use in special fund**

Every dealer licensed under this chapter shall pay to the Department a fee of \$15 for each manual transaction in excess of 20 transactions per month. For purposes of this section, a "manual transaction" shall be any transaction that is not conducted electronically or at a location run by an agent authorized to act on behalf of the Department pursuant to subsection B of § 46.2-205. Such fee shall be in addition to any fees charged by the Department pursuant to this title for the processing of an application for a new certificate of title or registration of a vehicle. The dealer's manual transaction fee authorized by this section shall not apply to any transaction for which there is no Department-approved remote electronic filing option available. Any dealer who has been charged a dealer's manual transaction fee shall not collect such transaction fee from the purchaser of the vehicle. All fees collected under the provisions of this section shall be paid into the state treasury and set aside as a special fund to meet the expenses of the Department.

#### **§ 46.2-1531. Consignment vehicles; contract**

Any motor vehicle dealer offering a vehicle for sale on consignment shall have in his possession a consignment contract for the vehicle, executed and signed by the dealer and the consignor. The consignment contract shall include:

1. The complete name, address, and the telephone number of the owners.
2. The name, address, and dealer certificate number of the selling dealer.
3. A complete description of the vehicle on consignment, including the make, model year, vehicle identification number, and body style, except that trailers shall not be subject to the requirement for vehicle identification number or body style.
4. The beginning and termination dates of the contract.

5. The percentage of commission, the amount of the commission, or the net amount the owner is to receive, if the vehicle is sold.

6. Any fees for which the owner is responsible.

7. A disclosure of all unsatisfied liens on the vehicle and the location of the certificate of title to the vehicle.

8. A requirement that the motor vehicle pass a safety inspection prior to sale or, if the motor vehicle is found not to be in compliance with any safety inspection requirement after having been inspected, the dealer shall either take steps to bring it into compliance or furnish any buyer intending to use that vehicle on the public highways a written disclosure, prior to sale, that the vehicle did not pass a safety inspection.

Any dealer offering a vehicle for sale on consignment shall inform any prospective customer that the vehicle is on consignment.

Dealer license plates shall not be used to demonstrate a vehicle on consignment except on (i) motor vehicles with gross vehicle weight of 15,000 pounds or more, excluding RVs, (ii) vehicles on consignment from another licensed motor vehicle dealer, and (iii) vehicles on consignment from a nonprofit organization certified pursuant to subsection B of § 46.2-1508.1. The owner's license plates may be used if liability insurance coverage is in effect in the amounts prescribed by § 46.2-472.

No vehicles except motorcycles shall be sold on consignment by motorcycle dealers.

No vehicles except recreational vehicles shall be sold on consignment by recreational vehicle dealers.

No vehicles other than trailers shall be sold on consignment by trailer dealers.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

#### **§ 46.2-1532. Odometer disclosure; penalty**

Every motor vehicle dealer shall comply with all requirements of the Federal Odometer Act and § 46.2-629 by completing the appropriate odometer mileage statement form for each vehicle purchased, sold or transferred, or in any other way acquired or disposed of. Odometer disclosure statements shall be maintained by the dealer in a manner that permits systematic retrieval. Any person found guilty of violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

The provisions of this section shall not apply to trailers, travel trailers, all-terrain vehicles, or off-road motorcycles.

#### **§ 46.2-1532.1. Certain disclosures required by manufacturers and distributors**

Motor vehicle manufacturers and distributors shall affix or cause to be affixed in a conspicuous place to every motor vehicle offered for sale as a new vehicle a statement disclosing the place of assembly or manufacture of the vehicle. For disclosures of place of assembly, the assembly plant shall be the same as that designated by the vehicle identification number.

The provisions of this section shall apply only to motor vehicles manufactured for the 1991 or subsequent model years.

#### **§ 46.2-1532.2. Certain disclosures required by motor vehicle manufacturers; motor vehicle recording devices**

A. A manufacturer of a new vehicle sold or leased in the Commonwealth that is equipped with one or more recording devices, as defined in § 46.2-1088.6, installed by the manufacturer shall disclose that fact in the owner's manual for the vehicle.

B. The provisions of this section shall apply only to vehicles manufactured for 2008 and subsequent model years.

#### **§ 46.2-1533. Business hours**

Each motor vehicle dealer shall be open for business a minimum of 20 hours per week, at least 10 of which shall be between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, except that the Board, on written request by a dealer, may modify these requirements for good cause. The dealer's hours shall be posted and maintained conspicuously on or near the main entrance of each place of business.

Each dealer shall include his business hours on the original and every renewal application for a license, and changes to these hours shall be immediately filed with the Department.

**§ 46.2-1533.1. Test driving vehicle; residence districts**

A. For the purposes of this section, "test drive" means the use of dealer's license plates authorized pursuant to subdivision B 1 of § 46.2-1550.

B. The local governing body of any county, city, or town may by ordinance require licensed motor vehicle dealers located within such locality to notify any buyer or potential buyer that test drives a motor vehicle that he is prohibited from conducting such test drive in a resident district designated for increased fines pursuant to § 46.2-878.2. Any governing body that enacts an ordinance pursuant to this section shall notify all licensed motor vehicle dealers located within such locality of the enactment of the ordinance and send a copy of each such notice to the Board.

C. Any motor vehicle dealer licensed under this chapter located within a locality that has enacted an ordinance pursuant to this section shall notify any buyer or potential buyer who is test driving a vehicle of such ordinance prior to such test drive. The notice shall advise the buyer or potential buyer to avoid the designated area during a test drive. Nothing herein shall prohibit a buyer or potential buyer from driving to or from his residence, regardless of whether he lives in any such residence district, provided that he is permitted by the dealer to drive to his residence.

D. If any buyer or potential buyer is convicted of a traffic infraction that occurred in a residence district designated for increased fines pursuant to § 46.2-878.2 while test driving a vehicle in a locality that has enacted an ordinance pursuant to this section, the locality may notify the Board. The Board shall determine whether the dealer that authorized the test drive provided notice to the buyer or potential buyer as required by the ordinance. If the dealer did not make the notification required by the ordinance to the buyer or potential buyer who committed the traffic infraction, that may be considered by the Board as a violation of this chapter, and, in addition to any other sanctions or remedies available to the Board under this chapter, the Board may assess a separate civil penalty pursuant to § 46.2-1507.

E. Under no circumstances shall an actual or alleged violation of this section give rise to or be used as the basis for a claim of civil liability against a licensed dealer for injuries caused by a prospective or actual buyer of a motor vehicle during a test drive.

**§ 46.2-1534. Signs**

Each retail motor vehicle dealer's place of business shall be identified by a permanent sign visible from the front of the business office so that the public may quickly and easily identify the dealership. The sign shall contain the dealer's trade name in letters no less than six inches in height unless otherwise restricted by law or contract.

**§ 46.2-1535. Advertisements**

Unless the dealer is clearly identified by name, whenever any licensee places an advertisement in any newspaper or publication, the abbreviations "VA DLR," denoting a Virginia licensed dealer, shall appear therein.

**§ 46.2-1536. Coercing purchaser to provide insurance coverage on motor vehicle; penalty**

It shall be unlawful for any dealer or salesperson or any employee of a dealer or representative of either to coerce or offer anything of value to any purchaser of a motor vehicle to provide any type of insurance coverage on the motor vehicle.

Nothing in this section shall prohibit a dealer from requiring that a retail customer obtain automobile physical damage insurance to protect collateral secured by an installment sales contract. Any person found guilty of violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

Nothing in this section shall prohibit a dealer from informing the retail customer of the Commonwealth's insurance requirements.

**§ 46.2-1537. Prohibited solicitation and compensation**

It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in § 46.2-1500 unless that person is licensed as required by this chapter.

**§ 46.2-1538. Salesman selling for other than his employer prohibited**

It shall be unlawful for any motor vehicle salesman licensed under this chapter to sell or exchange or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom he is employed, or to offer, transfer, or assign any sale or exchange that he may have negotiated to any other dealer or salesman.

**§ 46.2-1539. Inspection of vehicles required; penalty**

No person required to be licensed as a dealer under this chapter shall sell at retail any motor vehicle which is intended by the buyer for use on the public highways, and which is required to comply with the safety inspection requirements provided in Article 21 (§ 46.2-1157 et seq.) of Chapter 10 unless between the time the vehicle comes into the possession of the dealer and the time it is sold at retail it is inspected by an official safety inspection station. In the event the vehicle is found not to be in compliance with all safety inspection requirements, the dealer shall either take steps to bring it into compliance or shall furnish any buyer intending it for use on the public highway a written disclosure, prior to sale, that the vehicle did not pass a safety inspection. Any person found guilty of violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

**§ 46.2-1539.1. Safety inspections or disclosure required before sale of certain trailers; penalty**

Any trailer required by any provision of this title to undergo periodic safety inspections shall be inspected by an official inspection station between the time it comes into the possession of a retail dealer and the time the trailer is sold by the dealer or, in lieu of an inspection, the dealer shall present to the purchaser, prior to purchase of the trailer, a written itemization of all the trailer's deficiencies relative to applicable safety inspection requirements. The provisions of this section shall not apply to (i) sales of trailers or watercraft trailers by individuals not ordinarily engaged in the business of selling trailers or watercraft trailers or (ii) the retail sale of five or more trailers to the same buyer. Any person found guilty of violating any provision of this section is guilty of a Class 1 misdemeanor.

**§ 46.2-1540. Inspections prior to sale not required of certain sellers**

The provisions of §§ 46.2-1158 and 46.2-1539 requiring inspection of any motor vehicle prior to sale at retail shall not apply to any person conducting a public auction for the sale of motor vehicles at retail, provided that the individual, firm, or business conducting the auction shall not have taken title to the vehicle, but is acting as an agent for the sale of the vehicle. Nor shall the provisions of §§ 46.2-1158 and 46.2-1539 requiring inspection of any motor vehicle prior to sale at retail apply to any (i) new motor vehicle sold on the basis of a special order placed by a dealer with a manufacturer or dealer outside the Commonwealth on behalf of a customer who is a nonresident of the Commonwealth and takes delivery outside the Commonwealth, (ii) motor vehicle sold on the basis of a special order placed with a dealer or manufacturer outside the Commonwealth by a dealer who makes modifications to such vehicle prior to delivery to the first retail customer who takes delivery outside the Commonwealth, or (iii) new motor vehicle that has previously been inspected and displays a valid Virginia state inspection sticker. Nor shall the provisions of §§ 46.2-1158 and 46.2-1539 requiring inspection of any trailer prior to sale at retail apply to the sale of five or more used trailers with a gross weight of more than 10,000 pounds to the same buyer, provided that the trailers have a valid safety inspection.

The provisions of this section shall also apply to watercraft trailers.

## **§ 46.2-1541. Repealed**

Repealed by Acts 1995, cc. [767](#) and [816](#).

## **§ 46.2-1542. Temporary registration**

A. Notwithstanding §§ [46.2-617](#) and [46.2-628](#), whenever a dealer licensed by the Board sells or conditionally sells and delivers to a purchaser a motor vehicle, the dealer may issue temporary license plates and a certificate of temporary registration. The temporary license plates and the certificates for temporary registration shall be obtained from the Commissioner or may be printed according to terms set by the Commissioner and may be issued if (i) the dealer has the title or the certificate of origin for the vehicle or (ii) is unable at the time of the sale to deliver to the purchaser the certificate of title or certificate of origin for the vehicle because the certificate of title or certificate of origin is lost or is being detained by another in possession or for any other reason beyond the dealer's control. The temporary registration certificate shall bear its date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, the name and address of the person from whom the dealer acquired the vehicle, and whatever other information may be required by the Commissioner. A copy of the temporary registration certificate and a bona fide buyer's order shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle. One copy of the certificate shall be retained by the dealer, which copy may be retained in electronic format under terms set by the Commissioner, and shall be subject to inspection at any time by the Department's agents. The original of the certificate shall be forwarded by the dealer to the Department directly on issuance to the purchaser if the vehicle is to be titled outside the Commonwealth, along with the physical or electronic application for title. The issuance of a temporary certificate of registration to a purchaser pursuant to this section shall have the effect of vesting sufficient interest in the vehicle in the purchaser for the period that the certificate remains effective for purposes of allowing the purchaser (a) to obtain and provide insurance coverage for the vehicle, including insurance indemnifying the purchaser against liability or providing for recovery for damage to or loss of the vehicle and (b) to operate the vehicle as if the purchaser had full rights of ownership, all subject to cancellation by applicable law or agreement between the dealer and the purchaser prior to the time the dealer submits an application for title along with all required fees. If the dealer or purchaser exercises the statutory or contractual rights to cancel a purchaser's contract to buy a vehicle before application for title to the vehicle has been submitted to the Department in the name of the purchaser, the dealer shall have the right to possession of the vehicle without claim of possession by the purchaser within 24 hours of written or oral notice to the purchaser and without regard to the provision of Title 8.9A, provided the dealer's right to possession is enforced otherwise in accordance with law and without breach of the peace. In the event the dealer regains possession of the vehicle, in the same condition, normal wear and tear excepted, as delivered to the purchaser, the purchaser shall have the right to possession of any trade-in and return of any down payment, and if the dealer fails to return the trade-in and/or down payment the dealer may be held liable under § [59.1-200](#) of the Virginia Consumer Protection Act (§ [59.1-196](#)), in addition to any other rights and remedies available by statute or contract.

B. A temporary certificate of registration issued by a dealer to a purchaser pursuant to this section shall expire when the certificate of title to the vehicle is issued by the Department in the name of the purchaser or vehicle ownership is transferred in accordance with § [46.2-603.1](#) and the permanent license plates have been affixed to the vehicle, but in no event shall any temporary certificate of registration issued under this section be effective for more than 30 days from the date of its issuance. In the event that the dealer fails to produce the old certificate of title or certificate of origin to the vehicle, fails to transfer vehicle ownership in accordance with § [46.2-603.1](#), or fails to apply for a replacement certificate of title pursuant to § [46.2-632](#), thereby preventing delivery to the Department or purchaser before the expiration of the temporary certificate of registration, the purchaser's temporary rights may terminate and the purchaser shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, provided the purchaser provides notice to the dealer of a decision to return the vehicle before issuance of a title for the vehicle by the Department, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for use not to exceed one-half the amount allowed per mile by the Internal Revenue Service,

as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes.

C. Notwithstanding subsection B, if the dealer fails to deliver the certificate of title or certificate of origin to the purchaser or fails to transfer vehicle ownership in accordance with § 46.2-603.1 within 30 days, a second temporary certificate of registration may be issued. However, the dealer shall, not later than the expiration of the first temporary certificate, deliver to the Department an application for title, copy of the bill of sale, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of title or certificate of origin to the vehicle. On receipt of the title application with attachments as described herein, the Department shall record the purchaser's rights hereunder to the vehicle and may authorize the dealer to issue a second 30-day temporary certificate of registration. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the second temporary certificate, the purchaser's rights to the vehicle under this section may terminate and he shall have the right to return the vehicle as provided in subsection B.

D. If the dealer is unable to produce the certificate of title or certificate of origin to the vehicle or transfer vehicle ownership in accordance with § 46.2-603.1 within the 60-day period from the date of issuance of the first temporary certificate, the Department may extend temporary registration for an additional period of up to 90 days, provided the dealer makes application in the format required by the Department. If the dealer does not produce the certificate of title or certificate of origin to the vehicle or transfer vehicle ownership in accordance with § 46.2-603.1 before the expiration of the additional 90-day period, the purchaser's rights hereunder to the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B.

E. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the right of the dealer to issue temporary certificates of registration.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers but shall not apply to all-terrain vehicles and off-road motorcycles.

#### **§ 46.2-1543. Use of old license plates and registration number on another vehicle**

An owner who sells or transfers a registered motor vehicle may have the license plates and the registration number transferred to another vehicle titled in the owner's name according to the provisions of Chapter 6 (§ 46.2-600 et seq.), which is in a like vehicle category as specified in § 46.2-694 and requires an identical registration fee, on application to the Department accompanied by a fee of \$2 or, if the other vehicle requires a greater registration fee than that for which the license plates were assigned, on the payment of a fee of \$2 and the amount of the difference in registration fees between the two vehicles, all such transfers to be in accordance with the regulations of the Department. All fees collected under this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department. For purposes of this section, a motor vehicle dealer licensed by the Board may be authorized to act as an agent of the Department for the purpose of receiving, processing, and approving applications from its customers for assignment of license plates and registration numbers pursuant to this section, using the forms and following the procedures prescribed by the Department. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the authority of the dealer to receive, process, and approve the assignment of license plates and registration numbers pursuant to this section.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

#### **§ 46.2-1544. Certificate of title for dealers; penalty**

Except as otherwise provided in this chapter, every dealer shall obtain, on the purchase of each vehicle, a certificate of title issued to the dealer or shall obtain an assignment or reassignment of a certificate of title for each vehicle purchased, except that a certificate of title shall not be required for any new vehicle to be sold as such. Any person found guilty of violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

**§ 46.2-1545. Termination of business**

No dealer, unless his license has been suspended, revoked, or canceled, shall cease business without a 30-day prior notification to the Department and the Board. On cessation of the business, the dealer shall immediately surrender to the Board the dealer's certificate of license, all salespersons' licenses, and any other materials furnished by the Board. The dealer shall also immediately surrender to the Department all dealer and temporary license plates, all fees and taxes collected, and any other materials furnished by the Department. After cessation of business, the former licensee shall continue to maintain and make available to the Department and the Board dealer records as set forth in this chapter.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

## **Article 5. Dealer's License Plates**

**§ 46.2-1545.1. Watercraft trailer dealers and watercraft trailers**

For the purposes of this article:

"Dealer" and "trailer dealer" includes watercraft trailer dealers.

"Trailer" includes watercraft trailers.

**§ 46.2-1545.2. Exclusion of transit buses, all-terrain vehicles, and off-road motorcycles**

Nothing in this article shall apply to transit buses as defined in subsection F of § 46.2-1508, all-terrain vehicles, or off-road motorcycles.

**§ 46.2-1546. Registration of dealers; fees**

Every manufacturer, distributor, or dealer, before he commences to operate vehicles in his inventory for sale or resale, shall apply to the Commissioner for a dealer's certificate of vehicle registration and license plates. For the purposes of this article, a vehicle is in inventory when it is owned by or assigned to a dealer and is offered and available for sale or resale. All dealer's certificates of vehicle registration and license plates issued under this section may, at the discretion of the Commissioner, be placed in a system of staggered issue to distribute the work of issuing vehicle registration certificates and license plates as uniformly as practicable throughout the year. Dealerships which sold fewer than 25 vehicles during the last 12 months of the preceding license year shall be eligible to receive no more than two dealer's license plates; dealerships which sold at least 25 but fewer than 50 vehicles during the last 12 months of the preceding license year shall be eligible to receive no more than four dealer's license plates. However, dealerships that sold 50 or more vehicles during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership. Dealerships that sold 50 or more vehicles during the last 12 months of the preceding license year shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. A new applicant for a dealership shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. For the purposes of this article, a salesperson or employee shall be considered to be employed only if he (i) works for the dealership at least 25 hours each week on a regular basis and (ii) is compensated for this work. All salespersons' or employees' employment records shall be retained in accordance with the provisions of § 46.2-1529. A salesperson shall not be considered employed, within the meaning of this section, if he is an independent contractor as defined by the United States Internal Revenue Code. The fee for the issuance of dealer's license plates shall be determined by the Board, but not more than \$30 per license plate; however, the fee for the first two dealer's plates shall not be less than \$24 and the fee for additional dealer's license plates shall not be less than \$10.40 each. For the first two dealer's license plates issued by the Department to a dealer, \$24 shall be deposited into the Commonwealth Transportation Fund established pursuant to § 33.2-1524 and the remainder shall be deposited into the Motor Vehicle Dealer Fund. For each additional dealer's license plate issued to a dealer, \$10.40 shall be deposited into the Transportation Trust Fund and the remainder shall be deposited into the Motor Vehicle Dealer Fund.

**§ 46.2-1547. License under this chapter prerequisite to receiving dealer's license plates; insurance required; Commissioner may revoke plates**

No motor vehicle manufacturer, distributor, or dealer, unless licensed under this chapter, shall be entitled to receive or maintain any dealer's license plates. It shall be unlawful to use or permit the use of any dealer's license plates for which there is no automobile liability insurance coverage or a certificate of self-insurance as defined in § 46.2-368 on any motor vehicle. No dealer's license plates shall be issued unless the dealer certifies to the Department that there is automobile liability insurance coverage or a certificate of self-insurance with respect to each dealer's license plate to be issued. Such automobile liability insurance or a certificate of self-insurance shall be maintained as to each dealer's license plate for so long as the registration for the dealer's license plate remains valid without regard to whether the plate is actually being used on a vehicle. If insurance or a certificate of self-insurance is not so maintained, the dealer's license plate shall be surrendered to the Department. The Commissioner shall revoke any dealer's license plate as to which there is no insurance or a certificate of self-insurance. The Commissioner may also revoke any dealer's license plate that has been used in any way not authorized by the provisions of this title.

The requirements relating to insurance in this article shall not apply to trailers or watercraft trailers.

**§ 46.2-1548. Transferable license plates**

In lieu of registering each vehicle of a type described in this section, a manufacturer, distributor, or dealer owning and operating any motor vehicle on any highway may obtain a license plate bearing the legend provided in § 46.2-1549 from the Department, on application therefor on the prescribed form and on payment of the fees required by law. These license plates shall be attached to each vehicle as required by subsection A of § 46.2-711. Each plate shall bear a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol indicating that the plate is issued to a manufacturer, distributor, or dealer. Month and year decals indicating the date of expiration shall be affixed to each license plate. Any license plates so issued may, during the calendar year or years for which they have been issued, be transferred from one motor vehicle to another, used or operated by the manufacturer, distributor, or dealer, who shall keep a written record of the motor vehicle on which the dealer's license plates are used. This record shall be in a format approved by the Commissioner and shall be open to inspection by any law-enforcement officer or any officer or employee of the Department.

Display of a transferable manufacturer's, distributor's, or dealer's license plate or plates on a motor vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

All manufacturer's, distributor's, and dealer's license plates shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as may be necessary to distribute the registrations as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license plate shall be renewed annually on application by the owner and by payment of fees required by law, such renewal to take effect on the first day of the succeeding month.

The Commissioner may offer an optional multi-year license plate registration to manufacturers, distributors, and dealers licensed pursuant to this chapter provided that he has chosen to offer optional multi-year licensing to such persons pursuant to § 46.2-1521. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of registration shall be multiplied by the number of years or fraction thereof the licensee will be licensed pursuant to § 46.2-1521.

**§ 46.2-1549. Dealer's, manufacturer's, and distributor's license plates to distinguish between various types of dealers**

The Commissioner shall provide for the issuance of appropriate franchised or independent dealer's license plates. License plates for manufacturers shall bear the appropriate legend.

**§ 46.2-1549.1. Dealer's promotional license plates**

In addition to any other license plate authorized by this article, the Commissioner may issue permanent or temporary dealer's promotional license plates to a dealer for use on vehicles held for sale or resale in the dealer's inventory. The design of these license plates shall be at the discretion of the Commissioner. These

license plates shall be for use as authorized by the Commissioner. These plates shall be issued under the following conditions:

1. For each permanent promotional license plate issued or renewed, the Commissioner shall charge an annual fee of \$100. Issuance of license plates pursuant to this subdivision shall be subject to the insurance requirement contained in § 46.2-1547. The Commissioner shall limit the validity of any license plate issued under this subdivision to no more than thirty consecutive days. Upon written request from the dealership, the Commissioner may consider an extended use of a license plate issued under this subdivision. The Commissioner's authorization for use of any license plate issued under this subdivision shall be kept in the vehicle on which the license plate is displayed until expiration of the authorization. These license plates shall be included in the number of dealer's license plates authorized under § 46.2-1546 and not in addition thereto.

2. The Commissioner shall limit the validity of each temporary promotional license plate to no more than fourteen consecutive days. For each request, the Commissioner shall charge a fee of twenty-five dollars for the first plate and two dollars for each additional plate. Issuance of license plates pursuant to this subdivision shall be subject to the insurance requirement contained in § 46.2-1547. The Commissioner's authorization for use of any license plate issued under this subdivision shall be kept in the vehicle on which the license plate is displayed until expiration of the authorization. License plates issued under this subdivision shall not be included in the number of dealer's license plates authorized under § 46.2-1546.

#### **§ 46.2-1549.2. Special license plate combination**

A. The Commissioner may issue, upon request of a licensed dealer and when the Commissioner determines that such issuance is feasible, a license plate that is a combination of (i) one series of special license plate authorized pursuant to Article 10 (§ 46.2-725 et seq.) of Chapter 6 and currently issued by the Department and (ii) one type of dealer's license plate authorized pursuant to this article. Such license plate shall be subject to all provisions of this article.

B. The fee for any combination license plate issued pursuant to this section shall be the sum of the fee for the applicable special license plate and the fee for the applicable dealer's license plate. Such fee shall be disbursed in the manner required for special license plates and for dealer's license plates, as if two such plates had been issued separately.

C. The Commissioner may issue multiple combination license plates to a single licensed dealer in a manner the Commissioner determines is feasible.

#### **§ 46.2-1550. Use of dealer's and manufacturer's license plates, generally**

A. Dealer's license plates may be used on vehicles in the inventory of licensed motor vehicle manufacturers, distributors, and dealers in the Commonwealth when operated on the highways of Virginia by dealers or dealer-operators, their spouses, or employees of manufacturers, distributors, and dealers as permitted in this article, which shall include business, personal, and family purposes. Except as otherwise explicitly permitted in this article, it shall be unlawful for any dealer to cause or permit: (i) use of dealer's license plates on vehicles other than those held in inventory for sale or resale; (ii) dealer's license plates to be lent, leased, rented, or placed at the disposal of any persons other than those permitted by this article to use dealer's license plates; and (iii) use of dealer's license plates on any vehicle of a type for which their use is not authorized by this article. Manufacturer's license plates may be used on company vehicles as defined in § 46.2-602.2 operated on the highways of Virginia as provided in § 46.2-602.2 and as permitted by this article. It shall be unlawful for any dealer to cause or permit dealer's license plates to be used on:

1. Motor vehicles such as tow trucks, wrecking cranes, or other service motor vehicles;
2. Vehicles used to deliver or transport (i) other vehicles; (ii) portions of vehicles; (iii) vehicle components, parts, or accessories; or (iv) fuel;
3. Courtesy vehicles; or
4. Vehicles used in conjunction with any other business.

B. A dealer may permit his license plates to be used in the operation of a motor vehicle:

1. By any person whom the dealer reasonably believes to be a bona fide prospective purchaser who is either accompanied by a licensed salesperson or has the written permission of the dealer;

2. When the plates are being used by a customer on a vehicle owned by the dealer in whose repair shop the customer's vehicle is being repaired; or

3. By a person authorized by the dealer on a vehicle that is being driven to or from (i) a point of sale, (ii) an auction, (iii) a repair facility for the purpose of mechanical repairs, painting, or installation of parts or accessories, or (iv) a dealer exchange.

The dealer shall issue to the prospective purchaser, customer whose vehicle is being repaired, or other person authorized under subdivision 3 of this subsection, a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the vehicle. The certificate shall entitle a person to operate with dealer's license plates under (i) subdivision 1 or 2 of this subsection for a specific period of no more than five days or (ii) subdivision 3 of this subsection for no more than twenty-four hours. No more than two certificates may be issued by a dealer to the same person under subdivision 1 or 2 of this subsection for successive periods.

#### **§ 46.2-1550.1. Use of dealer's license plates and temporary transport plates on certain vehicles**

Notwithstanding the provisions of § 46.2-1550, dealer's license plates or dealer's temporary transport plates may be used on vehicles being transported (i) from a motor vehicle auction or other point of purchase or sale, (ii) between properties owned or controlled by the same dealership, or (iii) for repairs, painting, or installation of parts or accessories. This section shall also apply to return trips by such vehicles.

#### **§ 46.2-1550.2. Issuance and use of temporary transport plates, generally**

The Department, subject to the limitations and conditions set forth in this section and the insurance requirements contained in § 46.2-1547, may provide for the issuance of temporary transport plates designed by the Department to any dealer licensed under this chapter who applies for at least 10 plates and who encloses with his application a fee of \$1.50 for each plate. The application shall be made on a form prescribed and furnished by the Department. Temporary transport plates may be used for those purposes outlined in § 46.2-1550.1. Every dealer who has applied for temporary transport plates shall maintain a record of (i) all temporary transport plates delivered to him, (ii) all temporary transport plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary transport plates which may be required by the Department.

Every dealer who issues temporary transport plates shall insert clearly and indelibly on the face of the temporary transport plates the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the vehicle for which issued.

The dealer shall issue to the operator of the specified vehicle a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the vehicle. The certificate shall entitle the person to operate with the dealer's temporary transport plate for a period of no more than five days. Temporary transport plates may also be used by the dealer to demonstrate types of vehicles taken in trade but for which he has not been issued dealer's license plates.

#### **§ 46.2-1550.3. Alternative print-on-demand program for issuance of temporary transport license plates to dealers and vehicle owners**

A. Notwithstanding the provisions of § 46.2-1550.2, the Department may develop and implement procedures and requirements necessary for delivery of temporary transport license plates to dealers and issuance of temporary transport license plates by dealers to vehicle owners, using print-on-demand technology.

B. In the event the Department implements a print-on-demand temporary license plate program pursuant to this section, all dealers licensed on or after the effective date of the program shall be required to purchase and issue only print-on-demand temporary license plates.

C. The Commissioner shall not impose a requirement relating to the minimum number of sets of temporary plates that must be purchased by a dealer pursuant to a print-on-demand temporary license plate program implemented under this section.

D. Except as otherwise provided in this section, temporary license plates delivered and issued pursuant to this section shall be subject to all conditions and limitations set forth in this article.

**§ 46.2-1551. Use of dealer's license plates or temporary transport plates on certain vehicles traveling from one establishment to another for purpose of having special equipment installed**

Notwithstanding the provisions of § 46.2-1550, dealer's license plates or temporary transport plates may be used on tractor trucks or trucks for the purpose of delivering these vehicles to another establishment for the purpose of having a fifth wheel, body, or any special permanently mounted equipment installed on the vehicles, and for the purpose of returning the vehicle to the dealer whose plates are attached to the tractor truck or truck whether or not the title to the vehicle has been retained by the dealer, and no other license, permit, warrant, exemption card, or classification plate from any other agency of the Commonwealth shall be required under these circumstances. No other statute or regulation in conflict with the provisions of this section shall be applicable to the extent of the conflict. This section shall also apply to trips into the Commonwealth by a vehicle owned and operated outside the Commonwealth to an establishment within the Commonwealth and to the return trip of that vehicle from the Commonwealth to another state, provided the operator of the vehicle carries on his person when so operating a bill of sale for the fifth wheel, body, or special equipment.

**§ 46.2-1552. Use of dealer's license plates on newly purchased vehicles**

Notwithstanding the provisions of § 46.2-1550, any dealer who sells and delivers to a purchaser a motor vehicle at a time when the main offices of the Department, its branch offices, or offices of its local agents, are not open for business and the purchaser is therefore unable to register the vehicle, may permit the purchaser to use, for a period not exceeding five days, on the newly purchased vehicle, license plates which have been issued to the dealer, provided that, at the time of the purchase, the dealer executes in duplicate, on forms provided by the Commissioner, a certificate bearing the date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, and whatever other information may be required by the Commissioner. The original of the certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle under dealer plates. One copy of the certificate shall be retained by the dealer, filed by him, and shall be subject to inspection at any time by the Department's agents. If the vehicle is to be titled and registered in the Commonwealth, application for title and registration shall be made by the purchaser on the first business day following issuance of the certificate and a copy of the certificate shall accompany the applications.

License plates temporarily used by the purchaser shall be returned to the dealer by the purchaser not later than five days after the issuance of the certificate.

**§ 46.2-1552.1. Use of dealer's license plates or temporary transport plates for demonstrating trucks or tractor trucks**

Notwithstanding any other provision of this chapter, dealer's license plates issued under § 46.2-1548 and temporary transport plates issued under § 46.2-1550.2 may be used on trucks or tractor trucks in the inventory of licensed motor vehicle dealers for the purpose of demonstrating trucks or tractor trucks in the inventory of a licensed dealer by a bona fide prospective purchaser. Any such demonstration vehicle may be loaded in a manner consistent with the prospective purchaser's usual commercial activities. Such use of dealer's license plates on demonstration trucks or tractor trucks in a prospective purchaser's commercial activities shall be for not more than three days or 750 miles, whichever comes first, and shall not thereafter be used on the same truck or tractor truck by the same prospective purchaser for a period of sixty days. The dealer shall issue to the prospective purchaser, or to his authorized agent, a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the truck or tractor truck. The certificate shall entitle the person to operate with the dealer's license plate or temporary transport plate for a specific period of no more than three days. This certificate shall be in lieu of any other registration, permit, and motor fuel road tax identification otherwise required by law.

**§ 46.2-1553. Operation without license plate prohibited**

No manufacturer or distributor or dealer in motor vehicles shall cause or permit any motor vehicle owned by him to be operated or moved on a public highway without there being displayed on the motor vehicle a license plate or plates issued to him, either under § 46.2-711 or under § 46.2-1548, except as otherwise authorized in §§ 46.2-733, 46.2-1554 and 46.2-1555.

**§ 46.2-1554. Movement by manufacturer to place of shipment or delivery**

Any manufacturer of motor vehicles may operate or move or cause to be moved or operated on the highways for a distance of no more than twenty-five miles motor vehicles from the factory where manufactured or assembled to a railway depot, vessel, or place of shipment or delivery, without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways and on displaying in plain sight on each motor vehicle a placard bearing the name and address of the manufacturer authorizing or directing the movement.

**§ 46.2-1555. Movement by dealers to salesrooms**

Any dealer in motor vehicles may operate or move, or cause to be operated or moved, any motor vehicle on the highways for a distance of no more than twenty-five miles from a vessel, railway depot, warehouse, or any place of shipment or from a factory where manufactured or assembled to a salesroom, warehouse, or place of shipment or transshipment without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways and on displaying in plain sight on each motor vehicle a placard bearing the name and address of the dealer authorizing or directing the movement.

**§ 46.2-1556. Operation under foreign dealer's license**

It shall be unlawful, except as provided for by reciprocal agreement, for any person to operate a motor vehicle or for the owner thereof to permit a motor vehicle to be operated in the Commonwealth on a foreign dealer's license, unless the operation of the motor vehicle on the license is specifically authorized by the Commissioner.

**§ 46.2-1557. Use of certain foreign-registered motor vehicles in driver education programs**

Dealer's license plates may be displayed on motor vehicles used by Virginia school systems in connection with driver education programs approved by the State Board of Education. In the event of such use of a motor vehicle or vehicles by a school system, any dealer, his employees and agents furnishing the motor vehicle or vehicles shall be immune from liability in any suit, claim, action, or cause of action, including but not limited to, actions or claims for injury to persons or property arising out of such use. Nothing in this section shall authorize the sale of any motor vehicle or vehicles so used in such driver education program as a demonstrator vehicle.

Notwithstanding the provisions of §§ 46.2-1500 and 46.2-1556, school divisions either (i) bordering on Kentucky, Maryland, North Carolina, Tennessee, or West Virginia, or (ii) located in Accomack or Northampton County may use motor vehicles bearing foreign motor vehicle dealer's license plates in connection with their driver education programs.

**§ 46.2-1557.1. Removal of plates by Department of Motor Vehicles investigators; cancellation; reissuance**

If any Department of Motor Vehicles investigator finds that a vehicle bearing license plates or temporary transport plates issued under this article is being operated in a manner inconsistent with (i) the requirements of this article or (ii) the Commissioner's authorization provided for in this article, the Department of Motor Vehicles investigator may remove the license plate for cancellation. Once a license plate has been cancelled, the dealership may reapply for the license plate. Reissuance of the license plate shall be subject to the approval of the Commissioner and the payment of the fee prescribed for issuance of license plates under this article.

**§ 46.2-1557.2. Penalties for violations of article; service of summons**

Notwithstanding § 46.2-1507, any person violating any of the provisions of this article shall be guilty of a Class 3 misdemeanor. Any summons issued for any violation of any provision of this article relating to use or misuse of dealer's license plates shall be served upon the dealership to whom the plates were issued or to the person expressly permitting the unlawful use, or upon the operator of the motor vehicle if the plates are used contrary to the use authorized by the certificate issued pursuant to § 46.2-1550.

**Article 6. Issuance of Temporary License Plates by Dealers**

**§ 46.2-1557.3. Exclusion of transit buses, all-terrain vehicles, and off-road motorcycles**

Nothing in this article shall apply to transit buses as defined in subsection F of § 46.2-1508, all-terrain vehicles, or off-road motorcycles.

**§ 46.2-1557.4. Watercraft trailer dealers and watercraft trailers**

For the purposes of this article:

"Dealer" and "trailer dealer" includes watercraft trailer dealers.

"Trailer" includes watercraft trailers.

**§ 46.2-1558. Issuance of temporary license plates to dealers and vehicle owners**

The Department may, subject to the limitations and conditions set forth in this article, deliver temporary license plates designed by the Department to any dealer licensed under this chapter who applies for at least 10 sets of plates and who encloses with his application a fee of \$3 for each set applied for. The application shall be made on a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions set forth in this article, may issue temporary license plates to owners of vehicles. The owners shall comply with the provisions of this article and §§ 46.2-705, 46.2-706 and 46.2-707. Dealers issuing temporary license plates may do so free of charge, but if they charge a fee for issuing temporary plates, the fee shall be no more than the fee charged the dealer by the Department under this section.

Display of a temporary license plate or plates on a motor vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

**§ 46.2-1558.1. Alternative print-on-demand program for issuance of temporary license plates to dealers and vehicle owners**

A. Notwithstanding the provisions of § 46.2-1558, the Department may develop and implement procedures and requirements necessary for delivery of temporary license plates to dealers and issuance of temporary license plates by dealers to vehicle owners, using print-on-demand technology.

B. In the event the Department implements a print-on-demand temporary license plate program pursuant to this section, all dealers licensed on or after the effective date of the program shall be required to purchase and issue only print-on-demand temporary license plates.

C. The Commissioner shall not impose a requirement relating to the minimum number of sets of temporary plates that must be purchased by a dealer pursuant to a print-on-demand temporary license plate program implemented under this section.

D. Except as otherwise provided in this section, temporary license plates delivered and issued pursuant to this section shall be subject to all conditions and limitations set forth in this article.

**§ 46.2-1559. Records to be kept by dealers; inspection**

Every dealer who has applied for temporary license plates shall maintain a permanent record of (i) all temporary license plates delivered to him, (ii) all temporary license plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary license plates which may be required by the Department. Each record shall be kept for at least one year from the date of entry. Every dealer shall allow full access to these records during regular business hours to authorized representatives of the Department and to law-enforcement officers.

**§ 46.2-1560. Application for temporary license plate**

No dealer shall issue a temporary license plate except on written application by the person entitled to receive the license plate, which application shall be forwarded by the dealer to the Department as provided in § 46.2-1542.

**§ 46.2-1561. To whom temporary plates shall not be issued; dealer to forward application for current titling and registration; misstatements and false information**

No dealer shall issue, assign, transfer, or deliver temporary license plates to other than the bona fide purchaser or owner of a vehicle, whether or not the vehicle is to be registered in the Commonwealth. If the vehicle is to be registered in the Commonwealth, the dealer shall submit to the Department a written application for the current titling and registration of the purchased vehicle, accompanied by the prescribed fees. Any dealer who issues temporary license plates to a purchaser who fails or declines to request that his application be forwarded promptly to the Department forthwith shall notify the Department of the issuance in the manner provided in this article. No dealer shall lend temporary license plates to any person for use on any vehicle. If the dealer does not have in his possession the certificate of title or certificate of origin he may issue temporary license plates even though the purchaser has current license plates to be transferred. The dealer shall present the title or certificate of origin to the customer or transfer vehicle ownership in accordance with § 46.2-603.1 within 30 days of purchase and after this transaction is completed the customer shall transfer his current license plates to the vehicle. If the title or certificate of origin cannot be produced for a vehicle or the dealer fails to transfer vehicle ownership in accordance with § 46.2-603.1 within 30 days, a second set of temporary license plates may be issued provided that a temporary certificate of registration is issued as provided in § 46.2-1542. It shall be unlawful for any person to issue any temporary license plates containing any misstatement of fact, or for any person issuing or using temporary license plates knowingly to insert any false information on their face.

**§ 46.2-1562. Dealer to insert his name, date of issuance and expiration, make and identification number of vehicle**

Every dealer who issues temporary license plates shall insert clearly and indelibly on the face of each temporary license plate the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the vehicle for which issued.

**§ 46.2-1563. Suspension of right of dealer to issue**

The Commissioner, on determining that the provisions of this chapter or the directions of the Department are not being complied with by any dealer, may suspend, after a hearing, the right of a dealer to issue temporary license plates.

**§ 46.2-1564. Plates to be destroyed on expiration**

Every person to whom temporary license plates have been issued shall destroy them on the thirtieth day after issue or immediately on receipt of the permanent license plates from the Department, whichever occurs first.

**§ 46.2-1565. When plates to expire; refunds or credit**

Temporary license plates shall expire on the receipt of the permanent license plates from the Department, or on the rescission of a contract to purchase a motor vehicle, or on the expiration of thirty days from the date of issuance, whichever occurs first. No refund or credit of fees paid by dealers to the Department for temporary license plates shall be allowed, except that when the Department discontinues the right of a dealer to issue temporary license plates, the dealer, on returning temporary license plates to the Department, may receive a refund or a credit for them.

**§ 46.2-1565.1. Penalties**

Any person violating any of the provisions of this article is guilty of a Class 1 misdemeanor. Any summons issued for any violation of any provision of this article relating to use or misuse of temporary license plates shall be served upon the dealership to whom the plates were issued or to the person expressly permitting

the unlawful use, or upon the operator of the motor vehicle if the plates are used contrary to the use authorized pursuant to § 46.2-1561.

## **Article 7. Franchises**

### **§ 46.2-1566. Filing of franchises**

A. It shall be the responsibility of each motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to file with the Commissioner by certified mail a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer which affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a motor vehicle dealer or prospective motor vehicle dealer in the Commonwealth no later than 60 days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a motor vehicle dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

B. The Department shall inform the manufacturer, factory branch, distributor, distributor branch, or subsidiary and the dealer or dealers or other parties named in the agreement of a preliminary recommendation as to the consistency of the agreement with the provisions of this chapter. If any of the parties involved have comments on the preliminary recommendation, they must be submitted to the Commissioner within 30 days of receiving the preliminary recommendation. The Commissioner shall render his decision within 15 days of receiving comments from the parties involved. If the Commissioner does not receive comments within the 30-day time period, he shall make the final determination as to the consistency of the agreement with the provisions of this chapter.

C. Any form or addendum that is not filed as required by this section may not be the basis for (i) any reduction in compensation due to a dealer from the franchisor, (ii) any franchisor demand or requirement by which a dealer must abide, or (iii) any penalty or detriment a franchisor imposes or attempts to impose on a motor vehicle dealer. This section shall not apply to any dealer program or dealer incentive that is not inconsistent with any form or addendum already on file by the manufacturer with the state or that expires within 12 months of its start date, or the continuation, renewal, or modification of any dealer program or dealer incentive that was in place as of July 1, 2015. This section shall not apply to any consumer program or consumer incentive, including discount pricing programs.

### **§ 46.2-1567. Exemption of franchises from Retail Franchising Act**

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

### **§ 46.2-1568. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts, extended service contracts or extended maintenance plans, financing, or leasing prohibited; penalty**

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, representative, or affiliate of either to coerce or attempt to coerce any retail motor vehicle dealer or prospective retail motor vehicle dealer in the Commonwealth to (i) offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or affiliate of either or (ii) sell, assign, or transfer any retail installment sales contract or lease obtained by the dealer in connection with the sale or lease by him in the Commonwealth of motor vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies, affiliate, leasing company or class of leasing companies, or any other specified persons by any of the following:

1. By any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is express or implied or made directly or indirectly.

2. By any act that will benefit or injure the dealer.

3. By any contract, or any express or implied offer of contract, made directly or indirectly to the dealer, for handling the motor vehicle on the condition that the dealer shall offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or that the dealer sell, assign, or transfer his retail installment sales contract on or lease of the vehicle, in the Commonwealth, to a specified finance company or class of finance companies, leasing company or class of leasing companies, or any other specified person.

4. By any express or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of his retail sales contracts or leases in the Commonwealth on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. To further avoid any acts or practices, the effect of which may be to lessen or eliminate competition, it shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative thereof, or any person or company affiliated therewith, to condition the provision of lead information to a dealer upon the agreement of the dealer to sell or lease a vehicle to the prospective customer only if the financing or leasing connected with the transaction is effected through a specified finance company or class of finance companies or leasing company or class of leasing companies. For the purposes of this section, "lead information" means information concerning a prospective customer who contacts or is contacted by the manufacturer or distributor or any person or company affiliated therewith concerning the manufacturer's or distributor's products. The provisions of this subsection, however, shall not prohibit a manufacturer or distributor from so conditioning the provision of lead information concerning any prospective customer who qualifies for any manufacturer-sponsored or distributor-sponsored factory employee, factory retiree, or factory vendor new vehicle purchase program.

D. It shall be unlawful for any manufacturer or distributor or any affiliate thereof to coerce or require a dealer that is a franchisee of the manufacturer or distributor to sell products sponsored, sold, or offered by the manufacturer, distributor, or affiliate in connection with sales of vehicles whether or not in connection with any retail installment sales contract or lease; however, this subsection shall not apply to used motor vehicles sold under a manufacturer used vehicle certification program. For purposes of this section, the refusal by an affiliate of a manufacturer or distributor to accept assignment of a retail installment sales contract or lease solely because it includes a product in connection with the sale of the vehicle not sponsored, sold, or offered by the manufacturer or distributor, or any affiliate thereof, shall be unlawful; but an affiliate of a manufacturer or distributor may establish standards for products in connection with a sale of a vehicle to be included in retail installment sales contracts or leases it will accept, provided the standards, including the establishment of maximum prices for products, are equally enforceable and enforced with respect to products in connection with the sale of a vehicle sponsored, sold, or offered by the manufacturer, distributor, or affiliate and products that are not. Nothing in this section prohibits a manufacturer, distributor, or affiliate from offering dealer or consumer incentive programs directly related to the sale of products sponsored, sold, or offered by the manufacturer, distributor, or affiliate whether or not in connection with any retail installment sales contract or lease. A dealer that chooses not to participate in these programs shall not be penalized as a result. Non-payment of the incentive due to non-participation in the incentive programs directly related to the sale of products sponsored, sold, or offered by the manufacturer, distributor, or affiliate by the dealer shall not qualify as a penalty.

E. Any person aggrieved by an action prohibited by this section may seek a hearing, pursuant to § 46.2-1573, against any manufacturer or distributor licensed under this title.

F. Nothing contained in this section shall prohibit a manufacturer or distributor from offering or providing incentive benefits or bonus programs to a retail motor vehicle dealer or prospective retail motor

vehicle dealer in the Commonwealth who makes the voluntary decision to offer to sell or sell any extended service contract or extended maintenance plan offered, sold, backed, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any retail installment sale or lease by him in the Commonwealth of motor vehicles manufactured or sold by the manufacturer or distributor to a specified finance company or leasing company controlled by or affiliated with the manufacturer or distributor.

**§ 46.2-1568.1. Discrimination by manufacturers or distributors prohibited**

No manufacturer or distributor, or any officer, agent, or representative of either, shall discriminate against a dealer holding a franchise of the manufacturer or distributor in favor of another dealer or other dealers of the same line-make in the Commonwealth by:

1. Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in the Commonwealth during a similar time period;
2. Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in the Commonwealth during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in the Commonwealth on substantially comparable terms;
3. Providing lead information to a dealer when the address provided by the prospective customer (or the preferred contact address, if more than one address is provided) is in the relevant market area of another dealer or other dealers of the same line-make without providing or offering to provide the same information on equal terms to the dealer or dealers of the same line-make in whose relevant market area the prospective customer's address (or preferred contact address, if more than one address is provided) is located. The foregoing requirement of this subdivision shall not apply if (i) the lead information is generated under any program administered by an entity in which one or more dealers, together with the manufacturer or distributor, hold an ownership interest, where the program is designed to facilitate sales of motor vehicles through dealers participating in the program, provided that ownership or the right to participate in the entity has been made available to all dealers of the same line-make in the Commonwealth on substantially comparable terms or (ii) the prospective customer requests that the lead information be forwarded to a particular dealer or (iii) the lead information is the result of the prospective customer's request for a specific type of vehicle when the specific type of vehicle in the color and with the equipment desired by the prospective customer is not available at a dealer or dealers of the same line-make in whose relevant market area the prospective customer's address (or preferred contact address, if more than one address is provided) is located. For purposes of this subsection, "lead information" is information concerning a prospective customer (i) who contacts the manufacturer or distributor in response to an advertisement, a solicitation, or a message broadcast, distributed, or made available to the public by the manufacturer or distributor or (ii) who is contacted by the manufacturer or distributor, and (iii) such contact is in relation to the sale of, service on, or parts or accessories for new or used motor vehicles. This subdivision shall not be construed to permit provision of or access to customer information that is otherwise protected from disclosure by law or by agreement between a dealer and a manufacturer or distributor.

**§ 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. If a manufacturer, factory branch, distributor, or distributor branch conditions the grant of a new franchise to a dealer on the dealer's consent (i) to provide a site control agreement as defined in subdivision 10, (ii) to provide a written agreement containing an option to purchase the franchise of the dealer, provided, however, that agreements pursuant to § 46.2-1569.1 shall be permitted, or (iii) to provide a termination agreement to be held by the manufacturer, factory branch, distributor, or distributor branch for subsequent use, it shall be considered coercion and an act that is unfair and injurious to the dealer; provided, however, that the provisions of § 46.2-1572.3 related to the good faith settlement of disputes shall apply to the agreements described in clauses (i), (ii), and (iii) of this subdivision, mutatis mutandis. This subdivision shall not apply to any agreement the enforcement of which is subject to the jurisdiction of a United States Bankruptcy Court.

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

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

2c. To coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs or other franchisor image elements that replace or substantially alter those improvements, signs, or franchisor image elements completed within the preceding 10 years that were required or approved by the manufacturer, factory branch, distributor, or distributor branch or one of its affiliates. If a manufacturer, factory branch, distributor, or distributor branch offers incentives, or other payments under a program offered after the effective date of this subdivision and available to more than one dealer in the Commonwealth that are premised wholly or in part on dealer facility improvements or installation of franchisor signs or other franchisor image elements, a dealer that constructed improvements or installed signs or other franchisor image elements required by or approved by the manufacturer, factory branch, distributor, or distributor branch and completed within the 10 years preceding the program shall be deemed to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed within that 10-year period. This subdivision shall not apply to a program that provides lump sum payments to assist dealers in making facility improvements or to pay for signs or franchisor image elements when such payments are not dependent on the dealer selling or purchasing specific numbers of new vehicles and shall not apply to a program that is in effect with more than one dealer in the Commonwealth on the effective date of this subdivision, nor to any renewal or modification of such a program.

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.

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. No such objection shall be sufficient unless the failure to approve is reasonable. Notwithstanding the provisions of subsection D of § 46.2-1573, the only grounds that may be considered reasonable for a failure to approve are that an individual who is the applicant or is in control of an entity that is an applicant (i) lacks good moral character, (ii) lacks reasonable motor vehicle dealership management experience and qualifications, (iii) lacks financial ability to be the dealer, or (iv) fails to meet the standards otherwise established by this 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) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, 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.

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.

#### **§ 46.2-1569.1. Manufacturer or distributor right of first refusal**

A. Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new vehicle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer; and

3. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

B. A manufacturer or distributor shall not exercise or enforce a right of first refusal if (i) the proposed sale or transfer is to a dealer licensed in the United States as a dealer holding a franchise from any manufacturer or distributor licensed as a manufacturer or distributor in the Commonwealth unless the manufacturer or distributor has a formal written program to increase the number of minority dealers and a minority dealer will obtain at least 51 percent ownership and control of the dealership's assets after the exercise of the right of first refusal consistent with subdivision 2 of § 46.2-1572 or (ii) the proposed sale or transfer of the dealership's assets involves the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership, limited liability company, corporation, or other entity controlled by such persons.

C. The provisions of clause (i) of subsection B shall not apply to any manufacturer or distributor, together with any of its parents, subsidiaries or affiliates that as of January 1, 2019, (i) produced or distributed at least 1,000 motor vehicles in the immediately preceding 12 months, at least 51 percent of which had a gross vehicle weight rating of at least 16,000 pounds and (ii) was on January 1, 2019 a party, including that party's parents, subsidiaries and affiliates, to federal litigation arising from rights and obligations created by § 46.2-1569.1.

#### **§ 46.2-1570. Discontinuation of distributors**

A. If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to motor vehicle dealers in Virginia by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute motor vehicles of the same line-make or the same motor vehicles of a renamed line-make shall be substituted for the discontinued distributor under the existing motor vehicle dealer franchises and those franchises shall be modified accordingly.

B. If a manufacturer or factory branch (i)(a) discontinues its right to manufacture a line-make of motor vehicles or (b) sells or otherwise transfers its right to manufacture a line-make of motor vehicles to another manufacturer or factory branch that will manufacture motor vehicles of the same line-make and (ii) the acquiring manufacturer or factory branch does not honor the existing franchise agreements of motor vehicle dealers in Virginia of the same line-make, such discontinuation, sale, or transfer shall constitute a termination of the franchise pursuant to subdivisions 5b and 5c of § 46.2-1569 and such motor vehicle dealers shall be entitled to compensation pursuant to those subdivisions.

#### **§ 46.2-1571. Recall, warranty, maintenance and sales incentive obligations**

A. Each motor vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its motor vehicle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, recall, and warranty service on its products and (ii) compensate the dealer for recall or warranty parts, service, and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for recall or warranty parts, service, and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service, and

diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or performed in the dealer's service department, and the determination of compensation in accordance with the provisions of this section shall be deemed reasonable due to the substantial number of repair orders reviewed, unless the manufacturer can show that the amounts are not reasonable. All manufacturer or distributor compensated parts, service, diagnostic work, updates to a vehicle accessory or function, or initialization or repair of a vehicle part, system, accessory, or function performed by the dealer shall be subject to this subsection. Recall or warranty parts compensation shall be stated as a percentage of markup, which shall be an agreed reasonable approximation of retail markup and which shall be uniformly applied to all of the manufacturer's or distributor's parts unless otherwise provided for in this section. If the dealer and manufacturer or distributor cannot agree on the recall or warranty parts compensation markup to be paid to the dealer, the markup shall be determined by an average of the dealer's retail markup on all of the manufacturer's or distributor's parts as described in subdivisions 2 and 3.

2. For purposes of determining recall or warranty parts and service compensation paid to a dealer by the manufacturer or distributor, including body-shop repairs, only retail repair orders, or the retail portion of repair orders containing retail and non-retail operations, shall be considered. For the purposes of this section, "retail" does not include menu-priced parts or services, services and parts used in internal repairs paid by the dealer, group discounts, special event discounts, special event promotions, and insurance-paid repairs.

3. Increases in dealer recall or warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first. If any portion of a retail repair order includes amounts that are not retail, such portion shall be excluded. Compensation for parts shall be stated as a percentage of markup that shall be uniformly applied to all the manufacturer's or distributor's parts.

4. In the case of recall or warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years.

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as recall or warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motor vehicles that constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for recall or warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work.

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for recall or warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for nonvehicular, residential purposes. Recall, warranty, and sales incentive audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for recall, warranty, or sales incentive compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. A dealer's failure to comply with the specific requirements of the manufacturer or distributor for processing the claim shall not constitute grounds for the denial of the claim or reduction of the amount of compensation to the dealer as long as reasonable documentation or other evidence has been presented to substantiate the claim. The manufacturer, factory branch, distributor, or distributor branch shall not deny a claim or reduce the amount of compensation to the dealer for recall or warranty repairs to resolve a condition discovered by the dealer during the course of a separate repair requested by the customer or to resolve a condition on the basis of advice or recommendation by

the dealer. Claims for dealer compensation shall be paid within 30 days of dealer submission or within 30 days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for recall or warranty parts or service compensation and service incentives shall only be for the six-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the six-month period immediately following the date of claim. However, such limitations shall not be effective if a manufacturer, factory branch, distributor, or distributor branch has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent. For purposes of this section, "reasonable cause" means a bona fide belief based upon evidence that the material issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. A dealer shall not be charged back or otherwise liable for sales incentives or charges related to a motor vehicle sold by the dealer to a purchaser other than a licensed, franchised motor vehicle dealer and subsequently exported or resold, unless the manufacturer, factory branch, distributor, or distributor branch can demonstrate by a preponderance of the evidence that the dealer should have known of and did not exercise due diligence in discovering the purchaser's intention to export or resell the motor vehicle.

B. It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its recall or warranty obligations, including tires, with respect to a motor vehicle;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;
4. Fail to compensate any of the motor vehicle dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;
5. Fail to fully compensate its motor vehicle dealers licensed in the Commonwealth for recall or warranty parts, work, and service pursuant to subsection A either by reduction in the amount due to the dealer or by separate charge, surcharge, or other imposition by which the motor vehicle manufacturer, factory branch, distributor, or distributor branch seeks to recover its costs of complying with subsection A, or for legal costs and expenses incurred by such dealers in connection with recall or warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer. Failure to fully reimburse a dealer for the cost to the dealer of a rental vehicle provided to a customer as required, offered, advertised as available, or agreed to by the manufacturer or distributor shall be considered a violation of this subsection. Failure to provide compensation consistent with this section to a dealer for assistance requested by a customer whose vehicle was subjected to an over the air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor and performed at the dealership to satisfy the customer shall be considered a violation of this subsection;
6. Misrepresent in any way to purchasers of motor vehicles that warranties with respect to the manufacture, performance, or design of the vehicle are made by the dealer, either as warrantor or co-warrantor;
7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the vehicle;
8. Shift or attempt to shift to the motor vehicle dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer;
9. Deny any dealer the right to return any part or accessory that the dealer has not sold within 12 months where the part or accessory was not obtained through a specific order initiated by the dealer but instead was specified for, sold to and shipped to the dealer pursuant to an automated ordering system, provided that such part or accessory is in the condition required for return to the manufacturer, factory branch, distributor, or distributor branch, and the dealer returns the part within 30 days of it becoming eligible under this subdivision. For purposes of this subdivision, an "automated ordering system" shall be a computerized system that automatically

specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory being returned under this subdivision. This subdivision shall not apply if the manufacturer, factory branch, distributor, or distributor branch has available to the dealer an alternate system for ordering parts and accessories that provides for shipment of ordered parts and accessories to the dealer within the same time frame as the dealer would receive them when ordered through the automated ordering system; or

10. When providing a new motor vehicle to a dealer for offer or sale to the public, fail to provide to such dealer a written disclosure that may be provided to a potential buyer of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the customer for such initiation, update, change, or maintenance. A manufacturer or distributor may comply with this subdivision by notifying the dealer that such information is available on a website or by other digital means.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its motor vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of motor vehicles, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the vehicle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that come within this subsection whenever reasonably practicable to do so. Every motor vehicle dealer franchise issued to, amended, or renewed for motor vehicle dealers in Virginia shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new motor vehicle, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231 -1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new motor vehicle is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a motor vehicle is otherwise damaged prior to delivery to the new motor vehicle dealer, the new motor vehicle dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new motor vehicle to the new motor vehicle dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the vehicle exceeds the three percent rule, in which case the dealer may reject the vehicle within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within 10 days after receipt of notification, or if the dealer rejects the vehicle because damage exceeds the three percent rule, ownership of the new motor vehicle shall revert to the manufacturer or distributor, and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to such motor vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgement by the buyer is required. If there is less than three percent damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new motor vehicle in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within 30 days of purchase, the motor vehicle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the vehicle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as

defined in § 59.1-207.11. Nothing in this section shall be construed to exempt from the provisions of this section damage to a new motor vehicle that occurs following delivery of the vehicle to the dealer.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty. A manufacturer, factory branch, distributor, or distributor branch may not collect chargebacks, fully or in part, either through direct payment or by charge to the dealer's account, for recall or warranty parts or service compensation, including service incentives, sales incentives, other sales compensation, surcharges, fees, penalties, or any financial imposition of any type arising from an alleged failure of the dealer to comply with a policy of, directive from, or agreement with the manufacturer, factory branch, distributor, or distributor branch until 40 days following final notice of the amount charged to the dealer following all internal processes of the manufacturer, factory, factory branch, distributor, or distributor branch. Within 30 days following receipt of such final notice, the dealer may petition the Commissioner, in writing, for a hearing. If a dealer requests such a hearing, the manufacturer, factory branch, distributor, or distributor branch may not collect the chargeback, fully or in part, either through direct payment or by charge to the dealer's account, until the completion of the hearing and a final decision of the Commissioner concerning the validity of the chargeback.

#### **§ 46.2-1572. Operation of dealership by manufacturer**

It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any motor vehicle dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership;

3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through the dealership for a continuous period of three years prior to July 1, 1972, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community to own and operate the franchise in a manner consistent with the public interest;

4. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest;

5. The ownership, operation, or control of a dealership dealing exclusively with school buses by a school bus manufacturer or school bus parts manufacturer or a person who assembles school buses; or

6. The ownership, operation, or control of a dealership dealing exclusively with refined fuels truck tanks by a manufacturer of refined fuels truck tanks or by a person who assembles refined fuels truck tanks.

Notwithstanding any contrary provision of this chapter, any manufacturer of fire-fighting equipment who, on or before December 31, 2004, had requested a hearing before the Department or the Commissioner in accordance with subdivision 4 for licensure as a dealer in fire-fighting equipment and/or ambulances may be licensed as a dealer in fire-fighting equipment and/or ambulances.

### **§ 46.2-1572.1. Ownership of service facilities**

A. It shall be unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control, either directly or indirectly, any motor vehicle warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, from owning, operating, or controlling any warranty or service facility for warranty or service of motor vehicles owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a motor vehicle manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

B. Subsection A shall not apply to the following:

1. Manufacturers of refined fuels truck tanks, persons who assemble refined fuels truck tanks, or persons who exclusively manufacture or assemble school buses or school bus parts; or

2. Manufacturers of engines for trucks having a gross vehicle weight rating of more than 7,500 pounds that owned, operated, or controlled a warranty or service facility in the Commonwealth as of January 1, 2016, provided that the manufacturer:

a. Does not own, operate, or control more than five such facilities in the Commonwealth;

b. Does not otherwise manufacture, distribute, or sell motor vehicles, as defined in § 46.2-1500; and

c. Provides to dealers on substantially equal terms access to all support for completing repairs, including parts and assemblies, training, and technical service bulletins and other information concerning repairs, that the manufacturer provides to facilities owned, operated, or controlled by the manufacturer.

### **§ 46.2-1572.2. Mediation of disputes**

At any time before a hearing under this article is commenced before the Commissioner, either party to a franchise agreement for the sale or service of passenger cars, pickup trucks or trucks may demand that a dispute be submitted to nonbinding mediation as a condition precedent to the right to a hearing before the Commissioner.

A demand for mediation may be served on the other party and shall be filed with the Commissioner at any time before a hearing is commenced by the Commissioner. The service of the demand for mediation shall, of itself, toll the time required to file requests for hearings and for the time for commencing and completing hearings under this article until mediation is concluded.

A demand for mediation shall be in writing and shall be served upon the other party by certified mail at an address designated in the franchise agreement or in the records of the Department. The demand for mediation shall contain a brief statement of the dispute and the relief sought by the party filing the demand.

Within ten days after the date on which the demand for mediation is served, the Commissioner shall select one mediator from his approved list of mediators or from the lists of hearing officers as set forth in § 2.2-4024. Within twenty-five days of the date of demand, the parties shall meet with the mediator for the purpose of attempting to resolve the dispute. The meeting place shall be within the Commonwealth at a location selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or upon the stipulation of both parties.

### **§ 46.2-1572.3. Waiver prohibited**

No motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall obtain from a motor vehicle dealer a waiver of the dealer's rights by threatening to impose a detriment upon the dealer's business or threatening to withhold from the dealer any entitlement, benefit, or service to which the dealer is entitled by virtue of any franchise agreement, contract, statute, regulation, or law of any kind or which has been granted to more than one other franchisee of the manufacturer, factory branch, distributor, or distributor branch in the Commonwealth. This section shall not apply to good faith settlement of disputes, including disputes pertaining to contract negotiations, in which a waiver is granted in exchange for fair consideration in the form of a benefit conferred upon the dealer; however, this section shall apply to a dispute as to whether a waiver of such rights by a motor vehicle dealer has been obtained in violation of this section.

#### **§ 46.2-1572.4. Manufacturer or distributor use of performance standards**

A. Any performance standard or program that is used by a manufacturer or distributor for measuring dealership performance and may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable and equitable, and if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

B. A manufacturer or distributor shall not use any data, calculations, or statistical determinations of the sales performance of a dealer for any purpose, including (i) loss of incentive payments or other benefits, (ii) claim of breach or threats thereof, or (iii) notice of termination or threats thereof for the period of time the manufacturer, factory branch, distributor, or distributor branch has established an agreement, program, incentive program, or provision for loss of incentive payments or other benefits that causes a dealer to refrain from selling any used motor vehicle subject to (a) recall, (b) stop sale directive, (c) technical service bulletin, or (d) other manufacturer, factory branch, distributor, or distributor branch notification to perform work on a dealer's used motor vehicles in its inventory when there is no remedy or there are no parts to remediate each such affected used motor vehicle from the manufacturer, factory branch, distributor, or distributor branch and for 90 days after the termination of such agreement, program, incentive program, or provision for loss of incentive payments or other benefits.

The data on which the manufacturer or distributor seeks to rely under this subsection shall only be for a period or periods not excluded under this subsection. For any performance standard or program that is used by a manufacturer or distributor for measuring dealership performance during the period or periods excluded under this subsection, a dealer shall be deemed in compliance with any such program requirements related to sales performance or sales or service customer satisfaction performance of a dealer.

This subsection 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; (3) paying incentives for performing recall repairs on a vehicle in the dealer's inventory; or (4) 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.

C. A dealer may apply to the manufacturer, factory branch, distributor, or distributor branch for adjustment to data, calculations, or statistical determinations of sales performance or sales and service customer satisfaction performance for any period of time that such dealer has at least five percent of its new motor vehicle inventory subject to a recall or stop sale directive and for 90 days after the end of such period of time. Within 30 days of application for adjustment, the manufacturer, factory branch, distributor, or distributor branch shall use reasonable efforts to review and adjust the data, calculations, or other statistical determinations back to the date that the dealer was prevented from selling the new motor vehicles. A dealer applying for adjustment shall have the burden of showing that the prevention of sale had a material, adverse impact on such dealer's new vehicle sales performance or sales and service customer satisfaction performance, and the adjustments by the manufacturer, factory branch, distributor, or distributor branch shall use reasonable efforts to remediate the effect of the impact shown on the data, calculations, or statistical determinations of sales performance or sales and service customer satisfaction performance.

The manufacturer shall take into consideration any adjustments to a dealer's new vehicle sales performance or sales and service customer satisfaction performance made by the manufacturer under this subsection in determining a dealer's compliance with a manufacturer performance standard or program.

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

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. In every case of a hearing before the Commissioner authorized under this article based on a request or petition of a motor vehicle dealer, the manufacturer, factory branch, distributor, or distributor

branch shall have the burden of proving by a preponderance of the evidence that the manufacturer, factory branch, distributor, or distributor branch has good cause to take the action or actions for which the dealer has filed the petition for a hearing or that such actions are reasonable if required under the relevant provision.

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

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information by the Motor Vehicle Dealer Board or any other person indicating a possible violation of any provision of this article. The Commissioner shall issue a response to the Motor Vehicle Dealer Board or person reporting the alleged violation and any other party to the investigation providing an explanation of action taken under this section and the reason for such action.

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

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

E. An interested party in a hearing held pursuant to subsection A shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A. If, after notice to such interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of noncompliance. Civil penalties collected under this subsection shall be deposited into the Commonwealth Transportation Fund established pursuant to § 33.2-1524.

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

**§ 46.2-1573.01. Recovery of attorney's fees**

Any party to a proceeding under § 46.2-1573 who is found to have violated any provision of this article may be ordered by the circuit court before which an application therefor is pending to pay the reasonable attorney's fees and costs incurred by the complaining party, including those attorney's fees and costs incurred as a result of any appeal. Following issuance of the Commissioner's case decision finding that such violation has occurred, the complaining party may make application to an appropriate circuit court for entry of an order awarding it reasonable attorney's fees and costs. Notice of an initial application for entry of such order shall be served in the manner provided by law for the service of a summons in an action. The court shall take such evidence thereon as it deems necessary. Entry of a judgment in conformity with any order awarding such fees and costs shall be stayed pending any appeal of such order or pending any appeal of the Commissioner's underlying decision on the merits. Such application shall be made within sixty days following the date of the Commissioner's order. Venue for the application shall be the circuit court before which any appeal of the Commissioner's decision is pending, and the application may be considered concurrently with consideration of the appeal; otherwise, venue shall be as provided in § 2.2-4003.

**§ 46.2-1573.02. Limited right of dealers to sell new motor vehicles following termination of franchise**

Notwithstanding any provision of this title to the contrary, a motor vehicle dealer shall have the right, for 180 days following the termination of its franchise, to continue to sell and advertise as new any existing new motor vehicle inventory of the line-make of the terminated franchise, under the following circumstances:

1. The vehicle was acquired in the ordinary course of business as a new vehicle by a dealer franchised to sell that vehicle;
2. The franchise agreement of the dealer is terminated, canceled, or rejected by the manufacturer, factory branch, distributor, or distributor branch and the termination, cancellation, or rejection is not a result of the revocation of the dealer's license to operate as a dealer or the dealer's conviction of a crime; and
3. The vehicle was held in the inventory of the dealer on the date of the franchise agreement's termination.

This provision does not entitle a dealer whose franchise agreement has been terminated, canceled, or rejected to continue to perform warranty service repairs or continue to be eligible to offer or receive consumer or dealer incentives offered by the manufacturer, factory branch, distributor, or distributor branch, except as earned by the dealer prior to termination of the franchise agreement.

## **Article 7.1. Late Model and Factory Repurchase Franchises**

**§ 46.2-1573.1. Late model and factory repurchase franchises**

Franchised late model or factory repurchase motor vehicle dealers shall have the same rights and obligations as provided for franchised new motor vehicle dealers in Article 7 (§ 46.2-1566 et seq.) of this chapter, mutatis mutandis.

## **Article 7.2. Recreational Vehicle Franchises**

**§ 46.2-1573.2. Filing of franchises**

Each recreational vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall file with the Commissioner a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer that affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a recreational vehicle dealer or prospective recreational vehicle dealer in the Commonwealth no later than 60 days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a recreational vehicle dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer,

factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

**§ 46.2-1573.3. Exemption of franchises from Retail Franchising Act**

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

**§ 46.2-1573.4. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts prohibited; penalty**

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail recreational vehicle dealer or prospective retail recreational vehicle dealer in the Commonwealth to sell, assign, or transfer any retail installment sales contract, obtained by the dealer in connection with the sale by him in the Commonwealth of recreational vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies or to any other specified persons by any of the following:

1. Any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is expressed or implied or made directly or indirectly.

2. Any act that will benefit or injure the dealer.

3. Any contract, or any expressed or implied offer of contract, made directly or indirectly to the dealer, for handling the recreational vehicle on the condition that the dealer sell, assign, or transfer his retail installment sales contract on the recreational vehicle, in the Commonwealth, to a specified finance company or class of finance companies or to any other specified person.

4. Any expressed or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign, or transfer any of his retail sales contracts in the Commonwealth on recreational vehicles manufactured or sold by the manufacturer or distributor to a finance company, class of finance companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies or the specified person.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

**§ 46.2-1573.5. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of recreational vehicles, parts, and accessories**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any recreational vehicle or recreational vehicles, parts or accessories therefor, or any other commodities that 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, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.

3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.

4. 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 at least 30 days prior to the proposed effective date of the transfer, sale, assignment, or change. 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 (i) 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 and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.

5. To grant an additional franchise for a particular line-make of recreational 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 there is reasonable evidence that after the grant of the new franchise, the market 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. 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 recreational vehicle dealer within two miles of the existing site of the relocating dealer.

6. 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 and, after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise. 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. 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 recreational vehicle dealer or filing of any petition by or against the franchised recreational vehicle dealer, under any bankruptcy or receivership law, leading to liquidation or that is intended to lead to liquidation of the franchisee's business;

b. Failure of the franchised recreational 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 recreational vehicle dealer;

c. Revocation of any license that the franchised recreational vehicle dealer is required to have to operate a dealership; or

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 different manufacturer or distributor, may be considered to be a franchise termination, cancellation, or nonrenewal.

7. To fail to provide continued parts and service support to a dealer that holds a franchise in a discontinued line-make for at least five years from the date of such discontinuance.

8. 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. 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 previously designated by the dealer as his 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.

9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new recreational vehicles of each make, series, and model needed by the dealer to receive a percentage of total new recreational vehicle sales of each make, series, and model equitably related to the total new recreational vehicle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. 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 recreational vehicles are allocated, scheduled, and delivered to the dealers of the same line-make. If 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 recreational vehicles to the same line-make dealers who compete with the dealer requesting the hearing.

10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

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

12. To require under any franchise agreement a recreational vehicle dealer to pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this article.

13. To fail to include in any franchise with a recreational 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.

#### **§ 46.2-1573.6. Manufacturer or distributor right of first refusal**

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new recreational vehicle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons; and

4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney fees shall be

required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

#### **§ 46.2-1573.7. Discontinuation of distributors**

If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to recreational vehicle dealers in the Commonwealth by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute recreational vehicles of the same line-make or the same recreational vehicles of a renamed line-make shall be substituted for the discontinued distributor under the existing recreational vehicle dealer franchises, and those franchises shall be modified accordingly.

#### **§ 46.2-1573.8. Warranty obligations**

A. Each recreational vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its recreational vehicle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service, and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service, and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service, and diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable;

2. For purposes of determining warranty parts and service compensation, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers;

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first, and, in the case of parts, shall be stated as a percentage of markup that shall be uniformly applied to all the manufacturer's or distributor's parts;

4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years;

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production recreational vehicles that constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work; or

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for nonvehicular, residential purposes. Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within 30 days of dealer submission or

within 30 days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the 12-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the 18-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims.

B. It shall be unlawful for any recreational vehicle manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a recreational vehicle;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to recreational vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;
4. Fail to compensate any of the recreational vehicle dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;
5. Fail to compensate its recreational vehicle dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or that the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;
6. Misrepresent in any way to purchasers of recreational vehicles that warranties with respect to the manufacture, performance, or design of the recreational vehicle are made by the dealer, either as warrantor or co-warrantor;
7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the recreational vehicle; or
8. Shift or attempt to shift to the recreational vehicle dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor, or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any recreational vehicle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its recreational vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of recreational vehicles, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the recreational vehicle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that come within this subsection whenever reasonably practicable to do so. Every recreational vehicle dealer franchise issued to, amended, or renewed for recreational vehicle dealers in the Commonwealth shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new recreational vehicle, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new recreational vehicle is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a recreational vehicle is otherwise damaged prior to delivery to the new recreational vehicle dealer, the new recreational vehicle dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new recreational vehicle to the new recreational vehicle dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the recreational vehicle exceeds the three percent rule, in which case the dealer may reject the vehicle within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within 10 days after receipt of notification, or if the dealer rejects the recreational vehicle because damage exceeds the three percent rule, ownership of the new recreational vehicle shall revert to the manufacturer or distributor, and the new recreational vehicle dealer shall have no obligation, financial or otherwise, with respect to such recreational vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgment by the buyer is required. If there is less than three percent damage, no disclosure is required, provided that the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new recreational vehicle in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within 30 days of purchase, the recreational vehicle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the recreational vehicle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

#### **§ 46.2-1573.9. Operation of dealership by manufacturer**

It shall be unlawful for any recreational vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to own, operate, or control any recreational vehicle dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership;

3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest;

4. The ownership, operation, or control of a dealership dealing exclusively with school buses by a school bus manufacturer or school bus parts manufacturer or a person who assembles school buses; or

5. The ownership, operation, or control of a dealership dealing exclusively with refined fuels truck tanks by a manufacturer of refined fuels truck tanks or by a person who assembles refined fuels truck tanks.

#### **§ 46.2-1573.10. Ownership of service facilities**

It shall be unlawful for any recreational vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to own, operate, or control, either directly or indirectly, any recreational vehicle warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any recreational vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof from owning, operating, or controlling any warranty or service facility for warranty or service of recreational vehicles owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing

contained in this section shall prohibit a recreational vehicle manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

The preceding provisions of this section shall not apply to manufacturers of refined fuels truck tanks or to persons who assemble refined fuels truck tanks or to persons who exclusively manufacture or assemble school buses or school bus parts.

#### **§ 46.2-1573.11. Hearings and other remedies; civil penalties**

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.).

B. Hearings before the Commissioner under this article shall commence within 90 days of the request for a hearing, and the Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within 90 days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6, and 9 of § 46.2-1573.5 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;
2. The nature and extent of the dealer's investment in its business;
3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
4. The effect of the proposed action on the community;
5. The extent and quality of the dealer's service under recreational vehicle warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

With respect to subdivision 6, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

E. An interested party in a hearing held pursuant to subsection A shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A. If, after notice to such interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of noncompliance. Civil penalties collected under this subsection shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

#### **§ 46.2-1573.12. Late model and factory repurchase franchises**

Franchised late model or factory repurchase recreational vehicle dealers shall have the same rights and obligations as provided for franchised new recreational vehicle dealers in this article, mutatis mutandis.

## Article 7.3. Trailer Franchises

### § 46.2-1573.13. Watercraft trailer dealers and watercraft trailers

For the purposes of this article:

"Dealer" and "trailer dealer" includes watercraft trailer dealers.

"Trailer" includes watercraft trailers.

### § 46.2-1573.14. Trailer dealers filing of franchises

Each trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall file with the Commissioner a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer that affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a trailer dealer or prospective trailer dealer in the Commonwealth no later than 60 days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a trailer dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

### § 46.2-1573.15. Exemption of franchises from Retail Franchising Act

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

### § 46.2-1573.16. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts prohibited; penalty

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail trailer dealer or prospective retail trailer dealer in the Commonwealth to sell, assign, or transfer any retail installment sales contract obtained by the dealer in connection with the sale by him in the Commonwealth of trailers manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies or to any other specified persons by any of the following:

1. Any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is expressed or implied or made directly or indirectly.

2. Any act that will benefit or injure the dealer.

3. Any contract, or any expressed or implied offer of contract, made directly or indirectly to the dealer, for handling the trailer on the condition that the dealer sell, assign, or transfer his retail installment sales contract on the trailer, in the Commonwealth, to a specified finance company or class of finance companies or to any other specified person.

4. Any expressed or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign, or transfer any of his retail sales contracts in the Commonwealth on trailers manufactured or sold by the manufacturer or distributor to a finance company, or class of finance companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies or the specified person.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

**§ 46.2-1573.17. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of trailers, parts, and accessories**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any trailer or trailers, parts or accessories therefor, or any other commodities that 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, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.
3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.
4. 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 at least 30 days prior to the proposed effective date of the transfer, sale, assignment, or change. 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 (i) 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 and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.
5. To grant an additional franchise for a particular line-make of trailer 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 there is reasonable evidence that after the grant of the new franchise, the market 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. 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 trailer dealer within two miles of the existing site of the relocating dealer.
6. 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, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise. 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. 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 trailer dealer or filing of any petition by or against the franchised trailer dealer, under any bankruptcy or receivership law, leading to liquidation or that is intended to lead to liquidation of the franchisee's business;
  - b. Failure of the franchised trailer 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 trailer dealer;
  - c. Revocation of any license that the franchised trailer dealer is required to have to operate a dealership;
- or
- 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 different manufacturer or distributor, may be considered to be a franchise termination, cancellation, or nonrenewal.

7. To fail to provide continued parts and service support to a dealer that holds a franchise in a discontinued line-make for at least five years from the date of such discontinuance.

8. 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. 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 previously designated by the dealer as his 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.

9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new trailers of each make, series, and model needed by the dealer to receive a percentage of total new trailer sales of each make, series, and model equitably related to the total new trailer production or importation currently being achieved nationally by each make, series, and model covered under the franchise. 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 trailers are allocated, scheduled, and delivered to the dealers of the same line-make. If 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 trailers to the same line-make dealers who compete with the dealer requesting the hearing.

10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

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

12. To require under any franchise agreement a trailer dealer to pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this article.

13. To fail to include in any franchise with a trailer 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.

#### **§ 46.2-1573.18. Manufacturer or distributor right of first refusal**

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new trailer dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;
2. The exercise of the right of first refusal will result in the dealer's and dealer owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;
3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons; and
4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

#### **§ 46.2-1573.19. Discontinuation of distributors**

If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to trailer dealers in the Commonwealth by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute trailers of the same line-make or the same trailers of a renamed line-make shall be substituted for the discontinued distributor under the existing trailer dealer franchises, and those franchises shall be modified accordingly.

#### **§ 46.2-1573.20. Warranty obligations**

A. Each trailer manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its trailer dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service, and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service, and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service, and diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable;
2. For purposes of determining warranty parts and service compensation, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers;
3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first, and, in the case of parts, shall be stated as a percentage of markup that shall be uniformly applied to all the manufacturer's or distributor's parts;
4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years;

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules; or

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for nonvehicular, residential purposes. Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within 30 days of dealer submission or within 30 days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the 12-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the 18-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims.

B. It shall be unlawful for any trailer manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a trailer;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to trailer owners and dealers the expected date by

which necessary parts and equipment will be available to dealers for the correction of defects;

4. Fail to compensate any of the trailer dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;

5. Fail to compensate its trailer dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or that the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;

6. Misrepresent in any way to purchasers of trailers that warranties with respect to the manufacture, performance, or design of the trailer are made by the dealer, either as warrantor or co-warrantor;

7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the trailer; or

8. Shift or attempt to shift to the trailer dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor, or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any trailer manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its trailer dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of trailers, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the trailer or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that come within this subsection whenever reasonably practicable to do so. Every trailer dealer franchise issued to, amended, or renewed for trailer dealers in the Commonwealth shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new trailer, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new trailer is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a trailer is otherwise damaged prior to delivery to the new trailer dealer, the new trailer dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new trailer to the new trailer dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the trailer exceeds the three percent rule, in which case the dealer may reject the trailer within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within 10 days after receipt of notification, or if the dealer rejects the trailer because damage exceeds the three percent rule, ownership of the new trailer shall revert to the manufacturer or distributor, and the new trailer dealer shall have no obligation, financial or otherwise, with respect to such trailer. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgment by the buyer is required. If there is less than three percent damage, no disclosure is required, provided that the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new trailer in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within 30 days of purchase, the trailer is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the trailer and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the trailer as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

#### **§ 46.2-1573.21. Operation of dealership by manufacturer**

It shall be unlawful for any trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to own, operate, or control any trailer dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or

3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.

**§ 46.2-1573.22. Ownership of service facilities**

It shall be unlawful for any trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to own, operate, or control, either directly or indirectly, any trailer warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof from owning, operating, or controlling any warranty or service facility for warranty or service of trailers owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a trailer manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

**§ 46.2-1573.23. Hearings and other remedies; civil penalties**

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.).

B. Hearings before the Commissioner under this article shall commence within 90 days of the request for a hearing, and the Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within 90 days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6, and 9 of § 46.2-1573.16 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;
2. The nature and extent of the dealer's investment in its business;
3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
4. The effect of the proposed action on the community;
5. The extent and quality of the dealer's service under trailer warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

With respect to subdivision 6, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

E. An interested party in a hearing held pursuant to subsection A shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A. If, after notice to such interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of noncompliance. Civil penalties collected under this subsection shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

#### **§ 46.2-1573.24. Late model and factory repurchase franchises**

Franchised late model or factory repurchase trailer dealers shall have the same rights and obligations as provided for franchised new trailer dealers in this article, mutatis mutandis.

### **Article 7.4. Motorcycle Franchises**

#### **§ 46.2-1573.25. Motorcycle dealers filing of franchises**

Except as otherwise provided in this section, each motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall file with the Commissioner a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer that affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a motorcycle dealer or prospective motorcycle dealer in the Commonwealth no later than 60 days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a motorcycle dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

The provisions of this article shall not apply to a manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative engaged in the manufacture or distribution of all-terrain vehicles or off-road motorcycles that does not also manufacture or does not also distribute in the Commonwealth any motorcycle designed for lawful use on the public highways.

#### **§ 46.2-1573.26. Exemption of franchises from Retail Franchising Act**

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ [13.1-557](#) et seq.) of Title 13.1.

#### **§ 46.2-1573.27. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts and extended warranties prohibited; penalty**

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail motorcycle dealer or prospective retail motorcycle dealer in the Commonwealth to sell or offer to sell extended warranties or to sell, assign, or transfer any retail installment sales contract obtained by the dealer in connection with the sale by him in the Commonwealth of motorcycles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies or to any other specified persons by any of the following:

1. Any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is expressed or implied or made directly or indirectly.

2. Any act that will benefit or injure the dealer.

3. Any contract, or any expressed or implied offer of contract, made directly or indirectly to the dealer, for handling the motorcycle on the condition that the dealer sell, assign, or transfer his retail installment sales contract on the motorcycle, in the Commonwealth, to a specified finance company or class of finance companies or to any other specified person.

4. Any expressed or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign, or transfer any of his retail sales contracts in the Commonwealth on motorcycles manufactured or sold by the manufacturer or distributor to a finance company, or class of finance companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies or the specified person.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. Any person violating any of the provisions of this section is guilty of a Class 1 misdemeanor.

**§ 46.2-1573.28. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of motorcycles, parts, and accessories**

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any motorcycle or motorcycles, parts or accessories therefor, or any other commodities that 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, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.
3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.
4. 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 at least 30 days prior to the proposed effective date of the transfer, sale, assignment, or change. 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 (i) 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 and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.
5. To grant an additional franchise for a particular line-make of motorcycle 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, by certified mail, return receipt requested, 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 there is reasonable evidence that after the grant of the new franchise, the market 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. 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 motorcycle dealer within two miles of the existing site of the relocating dealer.
6. 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, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise. 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. 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 motorcycle dealer or filing of any petition by or against the franchised motorcycle dealer, under any bankruptcy or receivership law, leading to liquidation or that is intended to lead to liquidation of the franchisee's business;
- b. Failure of the franchised motorcycle 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 motorcycle dealer;
- c. Revocation of any license that the franchised motorcycle dealer is required to have to operate a dealership; or
- 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 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.

7. To fail to provide continued parts and service support to a dealer that 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 that was discontinued prior to January 1, 1989.

8. 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. 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 previously designated by the dealer as his 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.

9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new motorcycles of each make, series, and model needed by the dealer to receive a percentage of total new motorcycle sales of each make, series, and model equitably related to the total new motorcycle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. 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 motorcycles are allocated, scheduled, and delivered to the dealers of the same line-make. If 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 motorcycles to the same line-make dealers who compete with the dealer requesting the hearing.

10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

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

12. To require under any franchise agreement a motorcycle dealer to pay the attorney fees of the manufacturer or distributor related to hearings and appeals brought under this article.

13. To fail to include in any franchise with a motorcycle 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.

14. To include in any franchise agreement with a motorcycle dealer terms that prohibit a motorcycle dealer from exercising his right to a trial by jury in any action where such right otherwise exists.

**§ 46.2-1573.29. When discontinuation, cancellation, or nonrenewal of franchise unfair**

A discontinuation, cancellation, or nonrenewal of a franchise agreement is unfair if it is not clearly permitted by the franchise agreement, is not undertaken in good faith, is not undertaken for good cause, or is based on an alleged breach of the franchise agreement that is not in fact a material and substantial breach.

**§ 46.2-1573.30. Repurchase of vehicles, parts, and equipment in the event of involuntary discontinuation, cancellation, or nonrenewal of franchise agreement**

A. In the event of any involuntary discontinuation, cancellation, or nonrenewal of a franchise agreement, the manufacturer or distributor shall, within 60 days from the effective date of the discontinuation, cancellation, or nonrenewal of a franchise agreement, repurchase at the price equal to the amount paid therefor by the motorcycle dealer, less all incentives and allowances received by the dealer, (i) all new, unused, undamaged, and unaltered motorcycles, all-terrain vehicles, or off-road motorcycles of the current or previous model year that the manufacturer or distributor sold to the dealer and (ii) any other such motorcycle, all-terrain vehicle, or off-road motorcycle that it sold to the dealer not more than 180 days prior to the notice of termination. The foregoing provisions of this subsection shall apply only if the dealer transfers to the manufacturer or distributor full right and legal title to the motorcycles, all-terrain vehicles, and off-road motorcycles prior to their repurchase.

B. In the event of any involuntary discontinuation, cancellation, or nonrenewal of a franchise agreement, the manufacturer or distributor shall, if so requested by the dealer within the same 60-day period, also repurchase all genuine new and unused motorcycle, all-terrain vehicle, and off-road motorcycle parts and accessories that the manufacturer or distributor sold to the dealer so long as such parts and accessories are undamaged, in their original packaging, and listed in the current parts and accessories price list of the manufacturer or distributor. Such parts and accessories shall be repurchased at a price equal to the wholesale price stated in the current parts and accessories price list of the manufacturer or distributor, less all incentives and allowances received by the dealer and without reduction for such repurchase or for processing or handling the repurchase. The foregoing provisions of this subsection shall apply only if the dealer transfers to the manufacturer or distributor full right and legal title to the parts and accessories prior to their repurchase.

C. In the event of any involuntary discontinuation, cancellation, or nonrenewal of a franchise agreement, the manufacturer or distributor shall, if so requested by the dealer within the same 60-day period, repurchase the new and used equipment that the manufacturer or distributor sold to the dealer at its then fair market value, including signs, special tools, and manuals that the manufacturer or distributor required the dealer to purchase. The foregoing provisions of this subsection shall apply only if the dealer transfers to the manufacturer or distributor full right and legal title to the equipment prior to its repurchase.

**§ 46.2-1573.31. Manufacturer or distributor right of first refusal**

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new motorcycle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within 45 days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons; and

4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney fees that do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within 30 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

#### **§ 46.2-1573.32. Discontinuation of distributors**

If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to motorcycle dealers in the Commonwealth by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute motorcycles of the same line-make or the same motorcycles of a renamed line-make shall be substituted for the discontinued distributor under the existing motorcycle dealer franchises, and those franchises shall be modified accordingly.

#### **§ 46.2-1573.33. Warranty obligations**

A. Each motorcycle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its motorcycle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service, and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service, and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service, and diagnostic work to retail customers for nonwarranty service, parts, and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable;

2. For purposes of determining warranty parts and service compensation, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers;

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a 90-day period, whichever occurs first, and, in the case of parts, shall be stated as a percentage of markup that shall be uniformly applied to all the manufacturer's or distributor's parts;

4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years;

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motorcycles that constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work; or

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within 30 days of dealer submission or within 30 days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the 12-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the 18-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims.

B. It shall be unlawful for any motorcycle manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a motorcycle;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to motorcycle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;
4. Fail to compensate any of the motorcycle dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;
5. Fail to compensate its motorcycle dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or that the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;
6. Misrepresent in any way to purchasers of motorcycles that warranties with respect to the manufacture, performance, or design of the motorcycle are made by the dealer, either as warrantor or co-warrantor;
7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the motorcycle; or
8. Shift or attempt to shift to the motorcycle dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor, or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any motorcycle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its motorcycle dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of motorcycles, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the motorcycle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made that come within this subsection whenever reasonably practicable to do so. Every motorcycle dealer franchise issued to, amended, or renewed for motorcycle dealers in the Commonwealth shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new motorcycle, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to tires are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new motorcycle is damaged in transit, when the carrier or

means of transportation is determined by the manufacturer or distributor, or whenever a motorcycle is otherwise damaged prior to delivery to the new motorcycle dealer, the new motorcycle dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new motorcycle to the new motorcycle dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the motorcycle exceeds the three percent rule, in which case the dealer may reject the motorcycle within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within 10 days after receipt of notification, or if the dealer rejects the motorcycle because damage exceeds the three percent rule, ownership of the new motorcycle shall revert to the manufacturer or distributor, and the new motorcycle dealer shall have no obligation, financial or otherwise, with respect to such motorcycle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgment by the buyer is required. If there is less than three percent damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new motorcycle in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within 30 days of purchase, the motorcycle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the motorcycle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the motorcycle as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

#### **§ 46.2-1573.34. Operation of dealership by manufacturer**

It shall be unlawful for any motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to own, operate, or control any motorcycle dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership; or

3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.

#### **§ 46.2-1573.35. Ownership of service facilities**

It shall be unlawful for any motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof to own, operate, or control, either directly or indirectly, any motorcycle warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof from owning, operating, or controlling any warranty or service facility for warranty or service of motorcycles owned or operated by the manufacturer,

factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a motorcycle manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

**§ 46.2-1573.36. Hearings and other remedies; civil penalties**

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

B. Hearings before the Commissioner under this article shall commence within 90 days of the request for a hearing, and the Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within 90 days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6, and 9 of § 46.2-1573.28 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;
2. The nature and extent of the dealer's investment in its business;
3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
4. The effect of the proposed action on the community;
5. The extent and quality of the dealer's service under motorcycle warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

With respect to subdivision 6, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

E. An interested party in a hearing held pursuant to subsection A shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A. If, after notice to such interested party and an opportunity to comment, the Commissioner finds an interested party has not complied with his decision by the designated date of compliance, unless a stay or extension of such date has been granted by the Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner may assess such interested party a civil penalty not to exceed \$1,000 per day of noncompliance. Civil penalties collected under this subsection shall be deposited into the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530.

**§ 46.2-1573.37. Late model and factory repurchase franchises**

Franchised late model or factory repurchase motorcycle dealers shall have the same rights and obligations as provided for franchised new motorcycle dealers in this article, mutatis mutandis.

## **Article 8. Denial, Suspension, and Revocation of Dealer Licenses**

**§ 46.2-1574. Acts of officers, directors, partners, and salespersons**

If a licensee or registrant is a partnership or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license or certificate of dealer registration that any officer, director, or trustee of the partnership or corporation, or any member in the case of a partnership or the dealer-operator, has committed any act or omitted any duty which would be cause for refusing, suspending, or revoking a license or certificate of dealer registration issued to him as an individual under this chapter. Each licensee or registrant shall be responsible for the acts of any of his salespersons while acting as his agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and after such knowledge retained the benefit, proceeds, profits, or advantages accruing from those acts or otherwise ratified those acts.

**§ 46.2-1575. Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification**

A license or certificate of dealer registration or qualification issued under this subtitle may be denied, suspended, or revoked on any one or more of the following grounds:

1. Material misstatement or omission in application for license, dealer's license plates, certificate of dealer registration, certificate of qualification, or certificate of title;
2. Failure to comply subsequent to receipt of a written warning from the Department or the Board or any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner or the Board under this chapter;
3. Failure to have an established place of business as defined in § 46.2-1510 or failure to have as the dealer-operator an individual who holds a valid certificate of qualification;
4. Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business;
5. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth with respect to the retaking of vehicles under retail installment contracts and the redemption and resale of those vehicles;
6. Having used deceptive acts or practices;
7. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered or for which a license or registration is sought;
8. Having been convicted of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud;
9. Having been convicted of any criminal act involving the business of selling vehicles;
10. Willfully retaining in his possession title to a motor vehicle that has not been completely and legally assigned to him;
11. Failure to comply with any provision of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 or any regulation promulgated pursuant to that chapter;
12. Leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by persons not specifically authorized under this title;
13. Having been convicted of a felony;
14. Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collected for the Department on behalf of a buyer;
15. Having been convicted of larceny of a vehicle or receipt or sale of a stolen vehicle;
16. Having been convicted of odometer tampering or any related violation;
17. If a salvage dealer, salvage pool, or rebuilder, failing to comply with any provision of Chapter 16 (§ 46.2-1600 et seq.) of this title or any regulation promulgated by the Commissioner under that chapter;

18. Failing to maintain automobile liability insurance, issued by a company licensed to do business in the Commonwealth, or a certificate of self-insurance as defined in § 46.2-368, with respect to each dealer's license plate issued to the dealer by the Department; or

19. Failing or refusing to pay civil penalties imposed by the Board pursuant to § 46.2-1507.

**§ 46.2-1576. Suspension, revocation, and refusal to renew licenses or certificates of dealer registration or qualification; notice and hearing**

A. Except as provided in § 46.2-1527.7 and subsections B and C of this section, no license or certificate of dealer registration or qualification issued under this subtitle shall be suspended or revoked, or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee, registrant, or qualifier against whom the same is directed and a public hearing thereon has been had before a hearing officer designated by the Board. At least ten days' written notice of the time and place of the hearing shall be given to the licensee, registrant, or qualifier by registered mail addressed to his last known post office address or as shown on his license or certificate or other record of information in possession of the Board. At the hearing the licensee, registrant, or qualifier shall have the right to be heard personally or by counsel. The hearing officer shall provide recommendations to the Board within ninety days of the conclusion of the hearing. After receiving the recommendations from the hearing officer, the Board may suspend, revoke, or refuse to renew the license or certificate in question. A Board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any Board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the Board shall determine whether the individual should be disqualified. Immediate notice of any suspension, revocation, or refusal shall be given to the licensee, registrant, or qualifier in the manner provided in this section in the case of notices of hearing.

B. Should a dealer fail to maintain an established place of business, the Board may cancel the license of the dealer without a hearing after notification of the intent to cancel has been sent, by return receipt mail, to the dealer at the dealer's residence and business addresses, and the notices are returned undelivered or the dealer does not respond within twenty days from the date the notices were sent. Any subsequent application for a dealer's license shall be treated as an original application.

C. Should a dealer fail or refuse to pay civil penalties imposed by the Board pursuant to § 46.2-1507, the Board may deny, revoke, or suspend the dealer's license without a hearing after notice of imposition of civil penalties has been sent, by certified mail, return receipt requested, to the dealer at the dealer's business address and such civil penalty is not paid in full within thirty days after receipt of the notice.

**§ 46.2-1577. Appeals from actions of the Board**

Any person aggrieved by the action of the Board in refusing to grant or renew a license or certificate of dealer registration or qualification issued under this chapter, or by any other action of the Board which is alleged to be improper, unreasonable, or unlawful under the provisions of this chapter is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 46.2-1578. Appeals to Court of Appeals; bond**

Either party may appeal from the decision of the court under § 46.2-1577 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

**§ 46.2-1579. Equitable remedies not impaired**

The remedy at law provided by §§ 46.2-1577 and 46.2-1578 shall not in any manner impair the right to applicable equitable relief. That right to equitable relief is hereby preserved, notwithstanding the provisions of §§ 46.2-1577 and 46.2-1578.

## Article 9. Motor Vehicle Dealer Advertising

### §§ 46.2-1580 . Repealed

Repealed by Acts 2020, c. 706, cl. 2.

### § 46.2-1581. Regulated advertising practices

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

1. A vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the requirements of § 46.2-1500.

2. When advertising any vehicle which does not conform to the definition of "new" as provided in § 46.2-1500, the fact that it is used shall be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. By way of example but not by limitation, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased vehicles" used alone clearly express that the vehicles are used for advertising purposes.

3. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

4. Terms, conditions, and disclaimers shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but shall not be used as a means of contradicting or changing the meaning of an advertised statement.

5. The expiration date of an advertised sale shall be clearly and conspicuously disclosed.

6. The term "list price," "sticker price," or "suggested retail price" and similar terms, shall be used only in reference to the manufacturer's suggested retail price for new vehicles or the dealer's own usual and customary price for used vehicles.

7. Terms such as "at cost," "below cost," "\$off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price," "\$over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice or a bona fide bill of sale and the invoice or bill of sale is available for customer inspection.

"Manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges.

8. When the price or credit terms of a vehicle are advertised, the vehicle shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and not line-make marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller, except buyer-selected options, state and local fees and taxes, and manufacturer's or distributor's freight or destination charges, and a processing fee, if any. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be (i) clearly and conspicuously disclosed in not less than eight-point boldface type or (ii) not smaller than the largest typeface within the advertisement. If the processing fee is not included in the advertised price, the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than eight-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk or other such notation to refer the reader to the listing of the fees.

9. Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable.

10. Advertisements of "dealer rebates" shall not be used. This does not affect advertisement of manufacturer rebates.

11. "Free," "at no cost," or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. This provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups.

12. "Bait" advertising, in which an advertiser may have no intention to sell at the price or terms advertised, shall not be used. By way of example, but not by limitation:

a. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles, and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. For purposes of this subdivision, the listing of a vehicle by stock number or vehicle identification number in the advertisement is one means of satisfactorily disclosing a limitation of availability.

b. Advertising a vehicle at a certain price, including "as low as" statements, but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price, above the advertised price, shall also be considered "bait" advertising.

c. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

13. The term "repossessed" shall be used only to describe vehicles that have been sold, registered, titled and then taken back from a purchaser and not yet resold to an ultimate user. Advertisers offering repossessed vehicles for sale shall provide proof of repossession upon request.

14. Words such as "finance" or "loan" shall not be used in a motor vehicle advertiser's firm name or trade name, unless that person is actually engaged in the financing of motor vehicles.

15. Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used.

#### **§ 46.2-1582. Enforcement; regulations**

A. The Board may promulgate regulations reasonably necessary for enforcement of this article.

B. In addition to any other sanctions or remedies available to the Board under this chapter, the Board may assess a civil penalty not to exceed \$1,000 for any single violation of this article. Each day that a violation continues shall constitute a separate violation.

C. The authority granted in this article shall be in addition to and not a substitute for the powers and authority granted pursuant to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

## **Article 10. Independent Dealer-Operator Recertification**

#### **§ 46.2-1583. Definitions**

As used in this article, unless the context requires a different meaning:

"Certificate of qualification" means a designation issued by the Board acknowledging that the individual has been certified by the Board as an independent dealer-operator pursuant to § 46.2-1511.

"Course" means a course of study leading to recertification for independent dealer-operators offered by correspondence, electronically, or in person.

"Course provider" or "provider" means any person or entity presenting or offering one or more recertification education courses.

"Exam" or "examination" means a test administered by the Board.

"Executive Director" means the Executive Director of the Board.

"Independent dealer-operator" means the individual who works at the established place of business of an independent motor vehicle dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Independent motor vehicle dealer" or "independent dealer" means a dealer in used motor vehicles that is not also licensed as a franchised motor vehicle dealer.

"Original application" means an application for an independent dealer-operator certificate of qualification from an applicant who has never been issued an independent dealer-operator certificate of qualification in Virginia or whose Virginia independent dealer-operator certificate of qualification has been expired for more than 60 days.

"Recertification" means completing the requirements of this article to recertify an independent dealer-operator certificate of qualification.

#### **§ 46.2-1584. Recertification Notice**

A. The Board shall transmit a recertification notice to the home address, email address of record, or digitally to an independent dealer-operator at least 90 days prior to the expiration date of his certificate of

qualification. Failure to receive a recertification notice does not absolve the independent dealer-operator from the recertification requirements.

B. Independent dealer-operators shall maintain the original copy of the proof of completion of a recertification course or exam for a period of five years.

C. Continuing education or a course required by a disciplinary order may not be used to satisfy recertification requirements.

#### **§ 46.2-1585. Recertification schedule**

A. Independent dealer-operator certificates of qualification are valid for 24 months and shall expire on the last day of the twenty-fourth month. Certificates of qualification shall be deemed not to have expired if the recertification is completed within 60 days of the expiration date.

B. Independent dealer-operators may complete the recertification requirement up to six months prior to the expiration date of their certificate of qualification.

C. The Executive Director may for good cause grant an extension for the completion of the recertification requirements, provided that a written request from the independent dealer-operator is received by the Executive Director at least 15 days prior to the expiration date. Such extension shall not relieve the licensee of the recertification requirement.

D. Any application received from an applicant whose certificate has expired shall be considered an original application.

E. For independent dealer-operators who have served outside of the United States in the United States Armed Services, the certification shall be deemed not to have expired if the recertification requirement has been completed not more than 90 days from the date they are no longer serving outside of the United States in the United States Armed Services.

#### **§ 46.2-1586. Recertification requirements**

A. To become recertified, an independent dealer-operator shall (i) complete one live instructor-led course certified by the Board with at least four hours of instruction and (ii) pass an examination that may be administered in person or virtually. Such course may be attended in person or virtually, provided that any virtual participation shall require the participant to view the instructor and be viewed by the instructor throughout the course. The Board shall ensure that any such course is available at least monthly.

B. The provisions of this section shall not apply to any independent dealer-operator who completes a training program approved by the Executive Director and administered by a dealer that employs at least 50 licensed salespersons in the Commonwealth. Any such training program shall not be subject to the requirements of §§ 46.2-1587 and 46.2-1588.

#### **§ 46.2-1587. Course provider approval**

A. The Board may approve a course provider, provided that:

1. The course provider has submitted an application to the Board prior to offering the course;

2. The submitted application includes at a minimum the following information:

a. Name of provider;

b. Proposed course schedule, including locations (as applicable);

c. Charges to participants;

d. Description of the provider's course curriculum and objectives;

e. Credentials of faculty members;

f. Method of delivery;

g. Evaluation procedure;

h. Mechanism for recordkeeping; and

i. Any such information as the Board deems necessary to assure quality and compliance;

3. The course provider's course curriculum includes the following:

a. Ethical practice;

b. Recordkeeping;

c. Recent state and federal laws and regulations;

- d. Review of relevant federal regulations;
- e. Titling and registration requirements, including use of dealer-related license plates;
- f. Offsite sales;
- g. Financing;
- h. Dealer practices;
- i. Salespersons licenses; and
- j. Advertising; and

4. A course containing content that promotes, sells, or offers goods, products, or services shall not be approved. However, the course provider may promote goods, products, or services at the conclusion of a course, provided that it is made clear to participants that the course has concluded and that attendance at any additional presentations is optional.

B. The Board shall notify the course provider within 60 days following the receipt of a completed application of approval or disapproval of a course.

C. The Board shall periodically review and monitor course providers and courses.

D. Any changes in the information previously provided about an approved course or course provider shall be submitted to the Board. The Board may withdraw its approval of the course provider or course for a failure to do so.

E. The Executive Director has the authority to suspend the approval of any course or course provider and the Board may withdraw approval for good cause.

#### **§ 46.2-1588. Course provider responsibilities**

Approved course providers shall:

1. Provide to each participant who successfully completes the required recertification course a certificate providing, at a minimum, (i) the name of the provider, (ii) name of the participant, and (iii) the date of completion;

2. Maintain all records on courses and participants for a period of five years and make those records available to the Board upon request;

3. Enter the names of participants completing the course into a database as directed by the Board within five days of the participant's completion of the course; and

4. Collect the recertification application fee from applicants and transmit such fee to the Board as directed by the Board within 15 days of receiving the fee from the applicant.

#### **§ 46.2-1589. Fees**

A. The recertification application fee shall be \$50 for taking the course and shall be paid directly to the course provider.

B. The fee for returned checks shall be \$35.

C. In addition to the recertification application fee, course providers may charge applicants a course fee of no more than \$300.

D. The recertification application fee for taking the exam shall be \$50 and shall be paid at the time the exam is administered.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.