



## **Virginia Automobile Dealers Association SUPPORT YOUR HOMETOWN AUTO DEALERS**

**HB 1696 – Athey  
SB 1191 - Norment**

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**Fair Vehicle Allocations:** This change will amend the statute concerning vehicle allocations in response to a recent Virginia Supreme Court decision. These changes will address the Court's concern that the current statute was vague and did not give the manufacturer sufficient notice as to what allocation was required by the statute. The amended language in §46.2-1569(7) clarifies that a dealer is entitled to a reasonable supply delivered within a reasonable time of all models of vehicles that are advertised by the manufacturer as available for delivery to customers in the Commonwealth. An overwhelming number of states use similar language in their laws. The amendment goes further, however, to provide even more clarity by noting that each dealer must have the right to receive roughly the same proportion of vehicles compared to its sales objectives set by the manufacturer that other same line-make dealers have a right to receive compared to their sales objectives. The proposed change provides that each dealer will have roughly equivalent rights to vehicles to meet the sales objectives set by the manufacturer.

**Buy Virginia Provisions:** Manufacturers require that dealers make a wide variety of purchases from designated vendors for such things as materials for facilities improvements (literally down to floor tiles in some cases), dealership furniture and signs just to name a few. These changes will protect a dealer's ability to buy from local Virginia merchants by adding several new Code sections:

1. The first new section requires that a manufacturer allow a dealer to obtain from its preferred local vendor goods and/or services of like kind and quality as those from the manufacturer's designated vendor. (§46.2-1569(7c))
2. The second new section requires the manufacturer to notify the dealers of the right to obtain goods and/or services of like kind and quality as those from the manufacturer's designated vendor. This mirrors language in the insurance Code that requires insurers to notify policy holders of their rights to use a repair facility of their choice. (§46.2-1569(7d))
3. The third new section requires that when a manufacturer claims a vendor chosen by the dealer cannot supply goods and/or services of like kind and quality, it must disclose if it or any of its executives has any relationship and/or receives any compensation from the vendor it has designated. This will allow a dealer to evaluate whether the manufacturer's claim that the dealer's preferred vendor cannot provide replacements of a like kind and quality is arms length, and if not the dealer may choose to challenge the manufacturer's self-interested decision.. (§46.2-1569(7e))
4. The last new section deals with required signs and image elements. It provides that a dealer should have the right to buy the sign or image element instead of having to lease it from the manufacturer. (§46.2-1569(7f))

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**Respecting Dealers' Business Judgment:** Manufacturers often switch marketing programs because of a new management regime, to seek to improve business, or to simply make a change. Unfortunately for dealers, sometimes these changes include demands on dealers to change the "look" of their dealerships, even on those dealers who may recently have made expensive facility changes for a previous marketing program. Manufacturers enforce these demands through incentive programs that make dealers who do not comply with these demands uncompetitive against those who do. Proposed new §46.2-1569(2c) protects dealers against having to make additional investments in facilities, signs or manufacturer image elements where the dealer has already made manufacturer required or approved changes within the last 15 years. This change is a measured approach and is limited in a couple of important ways: it only protects dealers who have made investments in their businesses at the request of the manufacturer and it simply provides that any dealer who has made a change will be deemed to have complied with the facilities portion of any incentive program, not all the other requirements such a program may have. The amendment simply recognizes that dealers who use their business judgment to invest to comply with a manufacturer's marketing program should not be penalized if they fail to make costly investments in their facilities each new time a manufacturer seeks to establish a new marketing image. This is a balanced approach that protects dealer investments while recognizing the manufacturer's interest in having modern and attractive dealership facilities.

**Family Successorship:** The first sentence of §46.2-1569(6) states clearly that a dealer can designate a family member as a successor at any time. This change will make clear the designation of a family member as a successor to the dealership can be made even after death or incapacity by an executor or other representative. This issue was raised where a dealer did not designate a successor during his life but did so in his will. This will clarify that in the future such a designation is protected under the statute.

**Anti-End Run Provisions:** Manufacturers are using new tactics to circumvent dealer rights against improper termination under Virginia law. Manufacturers would prefer to avoid the hearing process developed by the General Assembly in which the Commissioner of Motor Vehicles determines whether a manufacturer has good cause to terminate a dealer. So some manufacturers are using agreements in addition to the dealers' franchise agreements such as a site control agreement under which the manufacturer controls the dealer's real estate, an agreement giving the manufacturer the option to purchase the franchise if it is dissatisfied with the dealer, or a delayed termination agreement to be used if the manufacturer claims that the dealer is not performing as it wants. The proposed amendment to §46.2-1569(2) makes it improper coercion to condition the grant of a new franchise on the dealer's consent to one of these tactics. And the proposed amendment to §46.2-1569(5) provides that a manufacturer's use of such a supplemental agreement with the effect of terminating a dealer should be subject to review by the DMV Commissioner at the request of a dealer just like any other termination. (There is also a technical change to make clear when a dealer must respond to a notice of termination from a manufacturer.)

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