

Dealers in Virginia have been receiving phone calls from manufacturers about HB 1696 and SB 1191, the franchise legislation making its way through the General Assembly. One of the main subjects of the call is a provision that adds section 2c of Virginia Code 46.2-1569 providing that a manufacturer cannot coerce a dealer to “replace or substantially alter” improvements previously required or approved by the manufacturer and built in the last ten years.

Unfortunately, based on the calls we are receiving from dealers, it is clear that the manufacturers either do not understand the section or have chosen not to understand the section for their own reasons. Here are some questions about manufacturer claims that we are receiving and the true story.

- **If this law is enacted, will it affect programs that have already been put in place by a manufacturer?**

The True Story: No. The complaints that the bills will require a manufacturer to take away programs that are already in place are answered by plain language in the bills. It applies only to programs “offered after the effective date of this subdivision and available to more than one dealer in the Commonwealth.”

- **My manufacturer tells me they can’t provide facility assistance for future projects if the bills pass? Is that true?**

The True Story: No. The bills only apply to programs where manufacturers coerce dealers into doing unnecessary facility improvements by withholding per car incentives.

- **My manufacturer told me that bills allow a dealer to claim program money for any work done within ten years no matter how minor, even painting a room. Is that correct?**

The True Story: No. The bills require that to obtain the protection for the work done in the past ten years it must have been done after approval or requirement by the manufacturer. That process only involves major renovations, not room painting or new curtains or other small projects which the dealer may do from time to time without the manufacturer involved in requiring or approving the work.

- **My manufacturer tells me that the bills are unfair because I will automatically qualify for programs simply because I’ve done facility improvements within the past ten years. Is that right?**

The True Story: No. Most incentive programs offered by manufacturers that include facility upgrade requirements normally have many qualifiers including sales effectiveness, purchases of vehicles and/or parts, customer satisfaction, or other benchmarks. The proposed new section only impacts the facility improvement provision of an incentive program. You must still meet any other requirements of the incentive programs.

- **So if I've done any facility improvements required or approved by the manufacturer within the last ten years, I don't have to do facility improvements again to qualify for a new incentive program?**

The True Story: Not necessarily. The new section only applies to work that will replace or substantially alter improvements approved or required by the manufacturer and done within the past ten years. If the new program requires work to areas of the dealership that have not been improved within ten years, then you must still do those facility improvements in those areas of the dealership to qualify for the new program.

We have made significant concessions from our original language to accommodate the manufacturers in this section. Most importantly, we agreed to an amendment to reduce for 15 years to 10 years the time in which a dealer is protected. We feel that this is a fair statute, carefully and narrowly drawn to protect dealers from troubling coercion by manufacturers to replace facility improvements that the dealer made in response to manufacturer demands within the last ten years.