

VADA ANNUAL PRESENTATION

PREVIEW OF HOT ISSUES

FOR 2025



Disclaimer

The information provided in this presentation is intended for educational purposes only. It is not intended to be and should not be considered legal advice. Be sure to consult competent legal counsel before taking any action based on the information contained therein.



TODAY WE WILL COVER

- 2025 General Assembly Preview
- Federal and State Enforcement Affecting Dealer Practices
 - ✓ Compliance Triage to protect against an aggressive FTC
- Franchise Issues
- Personnel Developments

2025 GENERAL ASSEMBLY PREVIEW

2025 General Assembly

The 2025 Session of the General Assembly convenes on January 8, 2025. A “short” session, the General Assembly will meet for 45 days.

This Session will just be a backdrop for the elections in November 2025 for Governor, Lt. Governor and Attorney General as well as all 100 seats in the House of Delegates.

Democrats will be looking to reclaim the Executive Branch and hold onto, and even expand, their majority in the House of Delegates. Republicans will be looking to replicate Governor Youngkin’s win in 2021. If Democrats retake the Governor’s mansion and hold onto the House, Virginia will be fully under Democratic control.

2025 General Assembly

Proposed Changes to the Warranty Statute

Determination of Retail Compensation

In 2022, Virginia Code was changed to address the determination of retail compensation. VADA originally proposed removing the term “reasonable” as a qualifier for the retail amounts. We compromised and amended the language of that legislation related to the reasonableness of repairs to still allow a manufacturer to challenge a dealer’s amounts, but to establish a presumption that the manufacturer would have to overcome that the dealer amounts as calculated according to the statute were reasonable. We did not include that it must be overcome by clear and convincing evidence as originally drafted.

However, manufacturers now routinely deny dealers their full retail amounts by simply stating that some other repair facility charges less. This is all the manufacturers offer to overcome the presumption in the statute.

What the bill does: Bringing Virginia in line with other states, the bill removes the “reasonable” qualifier and simply relies on the statutory calculation to determine a retail amount.

2025 General Assembly

Proposed Changes to the Warranty Statute

Parts Pricing Manipulation

Dealers are compensated for warranty and recall repairs both for labor and parts. Manufacturers routinely slash the price of parts in order to pay dealers less for recall repairs.

Additionally, manufacturers often prohibit a dealer from returning parts that a dealer does not use related to a recall or similar repair, leaving the dealer with obsolete inventory. Dealers are then forced to either limit parts on hand to quickly fix their customer's vehicles or risk losing money on parts they can never use or return.

What the bill does: Addresses the problem of parts pricing manipulation by prohibiting manufacturers from arbitrarily reducing the price of a part that will be used in a recall (or recall-like) repair. The bill would establish the price of the part as the highest price in the last 12 months. This has no impact on consumers, as recall repairs are entirely at the expense of the manufacturer. Price manipulation simply allows manufacturers to unfairly shift the cost of their product quality issues to dealers.

This bill would allow dealers to return unused parts.

2025 General Assembly

Proposed Changes to the Warranty Statute

Full Payment for Diagnostic Time

Vehicle technology has changed rapidly in recent years. Dealers have witnessed an uptick in the time dealership techs must spend troubleshooting repairs with manufacturers. An automotive technician cannot simply work on another vehicle while waiting for an answer for a problem.

What the bill does: Guarantees technicians are compensated for time spent waiting and communicating with a manufacturer for technical assistance related to a warranty or recall repair.

2025 General Assembly

Proposed Changes to the Warranty Statute

Payment Time of Rental Reimbursement

Manufacturers sometimes require dealers to provide a rental vehicle for customers to use during a warranty or recall repair. In 2022, the General Assembly passed legislation requiring full reimbursement to dealers for the rental cost. While some manufacturer policies still do not provide full reimbursement, we are not addressing that issue for now.

However, a related problem has arisen given the unusually long delays in parts availability, which prevent dealers from making necessary repairs for weeks, months, and even years. Dealers are not reimbursed for the rental expenses until the repair is complete and the warranty claim is filed. When a customer drives a rental for an extended time before a warranty repair can be completed, the dealer carries a large expense.

What the bill does: Allows a dealer to request reimbursement for rental expenses incurred with 30 days of the dealer having paid those charges for a customer's rental vehicle.

2025 General Assembly

Proposed Changes to the Buyers Order Statute

All Virginia motor vehicle dealers must use a sale contract called a Buyers Order.

VA Code lists items required to be included in the Buyers Order. There are many other terms included in the contract beyond that which are required by statute.

Current code uses terms like purchaser and sale. Dealers often lease vehicles as well. The current statutory terms do not most accurately describe a lease transaction.

Recent federal regulatory and enforcement action has more closely focused on dealer practices, with one area of concern being that consumers clearly understand whether a vehicle transaction is a sale or a lease.

While there has not been an issue with the VA Buyers Order, we want to be proactive in addressing any potential concerns.

This legislation would permit, but not require, dealers to use a separate Buyers Order for a lease transaction.

It does not make any substantive changes to any of the Buyers Order requirements.

2025 General Assembly

Proposed Changes to the Warranty Statute

VADA will have both a House bill and a Senate bill.

The Senate bill patron is Senator Jeremy McPike.

The House bill patron is Delegate Briana Sewell.

Proposed Changes to the Buyers Order Statute

VADA will have a House bill patroned by Delegate Jackie Glass.

What Can Dealers Do To Help?

Contact Your legislators

- We will soon send you a pre-written letter, on our website, that you can fill out and send to your legislators. The process takes two minutes or less (or longer, if you choose to customize the letter)

Don't let the FTC harm consumers

The Federal Trade Commission has proposed a rule that will drastically **alter the way franchised dealers advertise, sell, and finance** every new or used vehicle, and **impose exceedingly burdensome record-keeping requirements**. As a result, customers **will spend more time to buy a car, not less** (as claimed in the FTC's proposed rule).

VADA has made extensive comments to the FTC ([which you may review here](#)). Now, it's your turn. Please take one minute to send a comment to the FTC warning them that these new rules will create undue burdens for consumers. Here, you will find a pre-written comment, and **we encourage you to personalize it with your role and any personal anecdotes you care to share.**



Contact Information

 First Name (required)

 Last Name (required)

 Email (required)

 Dealership Group/Store

 Remember Me

 I would like to receive email in the future.

Message



Regulatory Comment Form

FTC-2022-0046-0001

[Terms of Participation](#) • [Privacy Notice](#)

Subject: Don't give customers more forms

We use a transparent menu of finance and insurance options for our customers. Every customer has unique needs, and we offer products that make sense for the customer. The requirement for disclosure on products and services where prices vary must include the price range the "typical consumer" will pay instead of the price. This is a vague standard and is confusing. For example, extended service contracts can vary based on whether the car is new or used, the age and type of car as well as any additional equipment of the vehicle. There are many factors that go into underwriting the price of the extended service contract.

VADA Dealer Day at the Capitol

Wednesday
January 29, 2025

Hilton Richmond Downtown
Details TBD



We need dealers, and their service dept employees, to join us to support fair warranty reimbursement.

FEDERAL AND STATE ENFORCEMENT

FEDERAL TRADE COMMISSION

Compliance Triage

- **Advertising** – Understand what the FTC is looking for and avoid those problems
- **Selling practices** – The FTC has been highly critical of dealer selling practices, particularly failure to honor advertised prices
- **Compliance with the Equal Credit Opportunity Act** -- Do you have a Fair Credit Policy? Are you aggressively enforcing it?
- **Sales of Add-on Products** – The Commission has been highly critical of practices used to sell voluntary prevention products. What is your policy on consistent pricing for VPPs?
- **New Safeguards Rule** – New effective date is June 9, 2023 for all elements of the revised Safeguards Rule to be in place. Will you be prepared?
- **Credit Reports** – A critical aspect of protection of customer's identities and non-public, personal information involves care in running credit reports. What is your policy?
- **Used Car Rule** – The Rule itself is nearly four decades old, but it was amended five years ago. The FTC believes that many in the industry are not complying with the revised Rule.

Federal Trade Commission

Advertising

- The FTC has concentrated its authority and increased budget over car dealers under the Dodd Frank Act on advertising
- Train managers with ad responsibility and ad agencies on key issues:
 - 1. Advertising under the Truth in Lending Act and Consumer Leasing Act:** there is really only one area in which cut and dry requirements are fully set out in the law -- advertising credit sales and leases. TILA and CLA prescribe specific rules
 - If you advertise a trigger term you must make the follow-on disclosures
 - A dealer's failure to follow these rules is puzzling for regulators. They see it as a lack of concern about following the law
 - The problem is that when personnel do not give attention to these requirements, the FTC has "gotcha"

Federal Trade Commission **Arizona Consent Order**

- In August 2024, the FTC (joined by Arizona AG) announced a consent order with a Coulter, an Arizona dealer group.
- Unlawful misrepresenting prices to consumers - advertised vehicles at prices that it never intended to sell at and consumers were charged hundreds or thousands of dollars over the advertised price for “market adjustment,” preinstalled add-ons, and miscellaneous fees.
- Unfairly adding on charges for add-ons. Coulter was alleged to have charged consumers for add-ons they had not agreed to purchase, misrepresented that the add-ons were required, and charged consumers twice for the same add-on.
- Unlawfully charging Latino customers from those similarly situated non-Latino White customers for (i) financing at higher interest rates and (ii) costly add-ons. It was also alleged that the Latino consumers were charged more for add-ons (about \$800 more than non-Latino White consumers) that they did not know or authorize.
- Coulter paid \$2.6 million to settle the claims, most of which will refund Coulter’s customers.

Advertising a Credit Sale (TILA)

- In a credit sale advertisement, if a trigger term is used (the amount of a downpayment, the amount of an installment payment, the number of installments (term), or the amount of any finance charge) the following required terms are also disclosed:
 - The amount of the installment payment;
 - The amount or percentage of down payment;
 - The number of installments (term); and
 - The annual percentage rate.
- Interest rate is stated as an annual percentage rate by either abbreviating APR or using the words "annual percentage rate." If the APR is in lieu of a rebate, that fact must be disclosed.
- "No down," "\$0 down" or the equivalent is not used in the advertisement unless, in fact, no payment or trade-in of any kind is required at delivery (not even sales tax, license fees or use of any manufacturer's rebate).

Advertising a Lease (CLA)

- In a closed-end lease advertisement, if a trigger term is used (the amount of any payment; or the amount of any up-front payment, or that no down payment (e.g., "No down," "Zero drive-off") is required), the following required terms are also disclosed:
 - The fact that the transaction is a lease;
 - The total amount due at lease signing;
 - If a security deposit is required, the amount of the deposit. If no security deposit is required, the statement "No security deposit is required"; and
 - The number, amounts, due dates or periods of scheduled payments.
- If there is any reference to the amount due at lease signing (i.e., "\$0 due at signing"), the total amount due at lease signing must be "equally prominent" (i.e., in the same type size and color and be immediately adjacent to the amount being qualified). This applies to the inclusion of a factory rebate in the offer and if government fees and taxes are required.

Federal Trade Commission

Advertising

2. Do not advertise a price you do not plan to honor.

- For the FTC, offering a product at a price at which the retailer does not intend to sell it is the cardinal sin – bait and switch.
- Once you list the MSRP as the price in the ad, the vehicle must be sold for that (or lower).
- **DO NOT USE A DISCLAIMER....**Some dealers believe that the problem may be solved with a disclaimer that they will not sell the vehicle for the advertised price. That is not a solution. A disclosure is used to explain an advertised term, not to negate it.

Federal Trade Commission

Advertising

3. **Do not reduce a vehicle price with the benefits available under manufacturer programs unless the programs are available and the qualifications are disclosed.**
 - Advertising a price reduced by manufacturer programs and using the disclaimer that “not all buyers will qualify” is a sure-fired way to tempt a regulator to act.
 - The FTC has been emphatic that the requirements a buyer must meet to qualify for program benefits must be disclosed.
 - Also, benefits from programs advertised together must be available together. For example, you cannot have first time buyer program savings combined with customer loyalty program savings to reduce the price of a vehicle.

Advertising

Example of a Compliant Ad

SAMPLE COMPLIANT ADVERTISEMENT



MSRP	\$20,000
Dealer Discount*	\$ 2,500
DEALER'S PRICE**	\$17,500

** DEALER'S PRICE does not include Tax, Tag/Title, **Freight** or **processing fee (\$895)**.

* Dealer Discount is available to everyone

Additional Offers that You May Qualify For:

Military Discount***	\$500
First time Car Buyer****	\$500
College Grad Discount*****	\$500
Federal EV Tax Credit*****	\$7500

Freight should be a hyperlink with the freight charge for each model/make of the franchise

Model 1 Freight = \$1,000
 Model 2 Freight = \$1250
 Model 3 Freight = \$1400

[Freight disclosure should not be a range and customers need to know exact amount]

DISCLOSURES:

***Military Discount is a manufacturer rebate and to qualify you or your spouse must be active duty for at least two (2) years

**** First time Car Buyer is a manufacturer incentive and to qualify you or your spouse must never have purchased a vehicle previously.

*****College Grad Discount is a manufacturer rebate and to qualify you or your spouse must have graduated from an accredited two or four-year college within the last 2 years.

Advertising

Example of a Compliant Ad

Some critical points about the example:

- Dealer price should be available to everyone
- Itemizing deductions from price is not an excuse for advertising prices that are not available.
- Best Practices – conditional incentives should not be in the advertised price but listed as “additional offers”
- Bonus Cash/Customer Cash – available to everyone but need proper disclosure
- Freight - if removed from advertised price – must have exact amount of freight to be charged in advertisement

Advertising

Example of a Compliant Ad

Some more critical points:

- No such thing as Geographic Pricing (i.e., only available to consumers in PMA).
- No such thing as an Internet Price.
- Certain itemized deductions are for offers that cannot be used together – customer loyalty and first time buyer incentives or lease and finance incentives – the resulting net prices are not legal.
- Same principles apply to “savings” ads – customers must understand what they must do to qualify, and total savings cannot include incentives that cannot be used together
- Add-Ons: For equipment added to the vehicle after delivery, advertised price shall include the add-on price

Federal Trade Commission

Advertising

4. Do not add fees not specifically allowed by law to the advertised price of a vehicle.

- Most states allow certain specific fees that may be added to the price of a vehicle, usually a processing or doc fee (in Virginia it is the processing fee) and a pass through of the electronic titling fee.
- Any other fees, including the creative ones that emerge from 20 Group meetings, such as a salesperson commission fee, a dealer reconditioning fee, a record creation fee, or any other fee not specifically allowed by law is simply an invitation to a legal action for charging excessive fees.

Motor Vehicle Dealer Board Advertising

Advertising

The deadline for advertisement compliance across all platforms is **NOVEMBER 22, 2024**. Information on advertising requirements was sent to all dealerships and our Dealer Talk subscribers via SendPulse using the email addresses on record on September 23, 2024. You may click [here](#) to view notification.

Dealers, you are responsible for any and all advertisements for your dealership(s). However, if proof can be provided that your salespeople have been educated and trained regarding Virginia's Motor Vehicle advertising laws, the salesperson may also be held accountable for any advertising violations.



Motor Vehicle Dealer Board

Advertising



MVDB Dealer Advertising Requirements

The MVDB aims to ensure that dealers adhere to Virginia's advertising laws and regulations. In the coming months, dealers are encouraged to conduct a thorough audit to confirm that their advertising aligns with the statutory requirements outlined in Virginia Codes **46.2-1581**, **46.1535**, **46.1581** and Administrative Codes **22VAC22-30-10** through **30**. This review should encompass all third-party advertising agreements in place.

Most common items omitted in advertisements include:

- The name of the dealership or VADLR are not clearly stated in ads.
 - **46.2-1535** – Advertisements.
- Phone numbers listed for dealerships are not registered with the MVDB in their dealer profile.
 - **46.2-1575.7** - Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification.
- Processing fees are not listed as a specific dollar amount.
 - **46.2-1581.8** - Regulated advertising practices

Regardless of the advertisement's platform, dealers must adhere to all Truth in Lending requirements concerning typical ads that present pricing or monthly payment options. Be vigilant for trigger terms (payment amount, number of payments, period of payments, etc.) that necessitate additional disclosures as outlined in **24VAC22-30-20** & **24VAC22-30-30**. When advertising a price of a vehicle (including on the Dealer's website) the advertised price must be based on rebates/incentives that are available to ALL purchasers, or it must be clear and conspicuous to the reader which rebates, incentives and discounts would apply in their purchase. No matter the platform used for advertising, all terms, conditions, disclaimers, and required disclosures must be clearly and conspicuously displayed.

Dealers are responsible for all advertising disseminated by their employed sales personnel, third-party advertisers, and marketing agencies. On platforms that list dealer/dealerships or owner options, please ensure your advertisements are listed under the dealer/dealership category.

As we strive for compliance, the Board advises dealers to review all advertising content across the various platforms they utilize.

Ensure that your email address is current and valid in your MVDB dealer profile, as this is a requirement. It is important to note that the MVDB will monitor advertising practices and will send warning emails to dealers following **NOVEMBER 22, 2024**.




Federal Trade Commission

Advertising

Advertising on 3rd Party Sites (i.e., Cars.com, Cargurus.com)

- Price should be the same across all platforms.
 - Must consider discounts of price
 - Freight must be provided to customer if excluded from price
 - Processing fee must be disclosed
- Disclosures cannot be provided like your website –make sure you have you TILA/CLA requirements met.
- Cannot control 3rd party platforms so must ensure compliance.
- Disclaimer should be the same as your website.
- What phone number and web address is on the 3rd party site?

Dealer Processing Fees and Electronic Titling Fees are the Only Fees Authorized

- Processing fees have been a lightning rod for complaints for years.
 - Virginia dealers have the privilege of charging processing fees based on the business decision of each dealer.
 - The processing fee is a privilege that **should not be abused**.
 - The only other fee that MUST be charged is the electronic titling fee..
 - Other than those two fees and pass-throughs, NO other fees are permitted.
-  Used vehicle preparation and reconditioning fees
 -  Sales compensation fee
 -  Transportation fees on used vehicles, although under an upcoming MVDB bulletin a fee from transferring a specific used vehicle from one location of the dealer to another location of the dealer may be permitted under limited circumstances

Federal Trade Commission

Advertising

- FTC published its final version of the “Guides Concerning Use of Endorsements and Testimonials in Advertising”
- Key Rules for Testimonials:
 - Bona fide purchasers
 - Real reviews
 - Disclose any material connections (i.e., if the customer is incentivized, it has to be disclosed)
 - Do not distort any reviews by customers

Use a Fair Credit Policy and ENFORCE IT

- Discrimination in sales of financing and leasing is high on the list of dealer practices the FTC wishes to act against
- The best Fair Credit Policy is one developed by NADA
 - The dealer chooses its own addition to buy rate to start each deal
 - Downward deviations for non-discriminatory reasons
 - Maintain documentation of reason for rate
- **Implement the NADA policy on Fair Credit to protect your dealership**
- **ENFORCE IT!** The failure to enforce it was the reason cited by the FTC in the reason complaint and consent order against the dealer group in Virginia and Maryland

Use a Fair Credit Policy and ENFORCE IT

Appendix D

Dealer Participation Certification Form

Buyer(s) Name(s) _____ Date _____

Assignee _____ VIN _____

Standard Dealer Participation Rate ____% Final Dealer Participation Rate ____%

If the Final Dealer Participation Rate does not equal the Standard Dealer Participation Rate, check the allowable deviation box below and fill in the corresponding blanks.

- Dealer participation limited by finance source
- Customer stated monthly payment constraint of \$_____ per month
- Customer stated competing offer by _____ (name) of ____%
- Customer qualified for Dealership Promotional Financing Campaign
- Customer qualified for subvented interest rate of ____% from _____ (name)
- Customer qualified for Dealership Employee Incentive Program
- Customer purchased a vehicle that satisfies the Dealership's predetermined inventory reduction criteria (describe how vehicle satisfies the criteria)

I certify that the information above is true and correct to the best of my knowledge and that any deviation from the Standard Dealer Participation Rate was made in good faith and in a manner that is consistent with the requirements of the [Name of Dealership] Fair Credit Compliance Program.

Signature _____

Date _____

Printed Name _____

Title _____

Reviewer Certification

I have reviewed the above information and supporting documentation and:

- certify that the Final Dealer Participation Rate complies with the [Name of Dealership] Fair Credit Compliance Program, or
- certify that I have initiated the corrective action noted below.
 - Reduced the customer's interest rate to ____% or provided a refund to the customer in the amount of \$_____.
 - Taken the following employee corrective action (describe):

 - Other (describe):

Signature _____

Date _____

Printed Name _____

Title _____

Establish a Policy for the Sale of VPPs and ENFORCE IT

- Under fair lending laws, regulators claim that one must analyze the overall costs of credit
- To many regulators, that includes pricing of Voluntary Protection Products
- Prior to the pandemic, pricing differences of VPPs were coming under scrutiny
- With attention to social justice issues, that scrutiny will return
- Use the NADA program on VPPs to ensure uniformity of pricing and to limit exposure to claims of discrimination in VPP pricing

Federal Trade Commission
Add Ons and VPPs

- Price of the vehicle is NOT tied to financing or optional product purchases.
- Use a menu of products – prices for each product displayed and disclosed.
- Add-Ons/Products should be beneficial to consumer.
- Do not mispresent material facts to induce signing menu or buy products that they don't want to purchase (i.e., required for financing, can refinance later, lender requires).

Refunds for Cancellations

- A provider of VPP products should not expect to keep the money if a VPP is cancelled. A VPP certificate generally addresses the responsibility for refunds on cancellation of the VPP agreements
- If a customer trades a vehicle previously sold by the dealership before the end of the finance or lease period, the dealer should have in place a policy to process the VPP refunds which may even include a process whereby the customer is given credit for the refund in the new deal
- If a finance or lease source notifies that a customer's finance or lease obligation has been terminated, the dealership should check to determine what VPPs may be outstanding and process any necessary refunds
- When notification by some other means comes to the dealership of the termination of the finance or lease obligation, have a process to determine whether there are VPPs in effect and process the refunds
- In the event of threatened chargebacks to the dealership for cancellations where the dealership says that it never knew of the termination of the finance or lease obligations, the dealer should marshal its facts and challenge the finance source

Federal Trade Commission
CARS Rule / Vehicle Shopping Rule
Status Update

- Issued on December 12, 2023.
- Originally set to go into effect on July 30, 2024, but currently stayed.
- The National Auto Dealers Association (NADA) and the Texas Auto Dealers Association (TADA) filed a Petition for Review in the United States Court of Appeals for the Fifth Circuit.
- The FTC stayed the effective date of the Rule on January 18, 2024 pending resolution of the court matter.

Federal Trade Commission
CARS Rule / Vehicle Shopping Rule

- An attempt by the FTC to micromanage dealers' business
- Offering Price
 - “full cash price for which a Dealer will sell or finance the Vehicle to any consumer, provided that the Dealer may exclude only required Government Charges.”
- Requires processing fee to be in the price
- 16 Misrepresentations

Federal Trade Commission
CARS Rule / Vehicle Shopping Rule

- **Mandatory Disclosures**
 - Express, Informed Consent
 - Offering Price and availability in First Communication
 - Unavoidable in Advertisements
 - Add-on disclosures and Beneficial Add-Ons
 - Total amount the consumer will pay over course of a loan
 - Monthly comparison payments – must disclose that lower payment means total will be more paid by consumer
- **Extensive Records Retention**

FEDERAL TRADE COMMISSION

Accessing Customer Credit Reports

- **Run credit reports only when authorized**
- While the law does not require that a customer sign an authorization, a signed authorization for access to a credit report is the best way to show compliance. According to long-standing FTC policy, a dealer may access a consumer's credit report if express authorization is given regardless of any other reason for running it
- Run no credit report without a signed or secure internet authorization
- Keep every authorization for five years, even for deals not completed

Revised Safeguards Rule New Requirements

A Written Information Security Program Including Specific Requirements

- Designate a qualified individual responsible for overseeing and implementing the information security program.
- Perform a written risk assessment with specific evaluation and assessment criteria that identifies reasonably foreseeable internal and external risks.
- Periodically perform additional risk assessments that reexamine the reasonably foreseeable internal and external risks.
- Design and implement safeguards to control the risks identified in the risk assessment, including limiting access to data only to those with a need to know, encryption, multi-factor authentication, a log for users, and a 2 year maintenance requirement with safe disposal of customer data unless an exception applies.

Revised Safeguards Rule Other Requirements

- **Testing.** Regularly test or otherwise monitor the effectiveness of the critical controls, systems, and procedures.
- **Continuous Monitoring.** For information systems, monitoring and testing shall include continuous monitoring or periodic penetration testing and vulnerability assessments.
- **Awareness and Training.** Implement policies and procedures to ensure that personnel can properly use the information security program.
- **Regular Updates.** Continually evaluate and adjust the security program to address changes.
- **Service Providers.** Oversee service providers to ensure their compliance with Safeguards requirements.
- **Incident Response Plan.** Establish a written incident response plan.
- **Regular Reports.** Require the Qualified Individual to report in writing, regularly and at least annually, to the board of directors or equivalent governing body.

Safeguards Rule

Data Breach Reporting

- Breach of customer information of at least 500 customers requires notice to the FTC of the Breach
- Notice must be filed within 30 days of the discovery of the breach
- Notice must contain:
 - the name and contact information of the reporting dealership;
 - a description of the types of information that were involved in the breach;
 - if the information is possible to determine, the date or date range of the breach;
 - the number of customers affected;
 - a general description of the breach; and
 - if applicable, whether any law enforcement official has provided the dealership with a written determination that notifying the public of the breach would impede a criminal investigation or cause damage to national security, and a way for the FTC to contact the law enforcement official.

Used Car Rule Compliance

- The original Used Car Rule was promulgated by the Federal Trade Commission in 1985.
- In 2017 the Rule was revised, and the buyers guide was redesigned.
- Know:
 - What vehicles must have a buyers guide?
 - How should the form be completed for each vehicle?
 - Is the customer given the form upon delivery?
 - Do you keep a signed copy of the form?

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE MODEL YEAR VEHICLE IDENTIFICATION NUMBER (VIN)

WARRANTIES FOR THIS VEHICLE:

AS IS - NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.

DEALER WARRANTY

- FULL WARRANTY.
- LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED:

DURATION:

NON-DEALER WARRANTIES FOR THIS VEHICLE:

- MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.
- MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.
- OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

- SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT.

OBTAIN A VEHICLE HISTORY REPORT AND CHECK FOR OPEN SAFETY RECALLS. For information on how to obtain a vehicle history report, visit ftc.gov/usedcars. To check for open safety recalls, visit safercar.gov. You will need the vehicle identification number (VIN) shown above to make the best use of the resources on these sites.

SEE OTHER SIDE for important additional information, including a list of major defects that may occur in used motor vehicles.

Si el concesionario gestiona la venta en español, pídale una copia de la Guía del Comprador en español.

Federal Trade Commission

Used Car Rule Requirements

- When a dealership sells a used vehicle with a dealer warranty, the FTC buyer's guide may **not** serve as the warranty document that the customer must receive
- In fact, a customer who buys a used car with the dealer warranty must also receive a separate warranty document
- The federal Magnuson Moss Warranty Act requires that a warranty must be a written description of a consumer's rights in a clearly worded, single document. There is a simple answer why the buyer's guide cannot be the warranty document – the buyer's guide itself says that it isn't. The form buyer's guide states: "Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations"
- Provide a separate warranty document to the buyer of a used car with an express warranty
- In Virginia, the Buyers Guide must be signed and dated by the Buyer.

Corporate Transparency Act

- Beneficial Ownership Reports must be filed by December 31, 2024 at <https://www.fincen.gov/boi-faqs>.
- Most Dealership Entities (Entity that owns the dealership) are exempt because:
 - employ more than 20 full-time employees
 - operate at a physical office in the United States, and
 - file federal tax returns demonstrating more than \$5 million in gross receipts or sales.
 - Also exempt if entity is a wholly owned subsidiary of an exempt business.
- If entity is not exempt, you need to file a beneficial ownership report
 - Real Estate holding company
 - Management company
- CTA can lead to civil and criminal penalties, including maximum civil penalty of \$500 per day, up to \$10,000, and imprisonment for up to 2 years

FRANCHISE ISSUES

Franchise Laws

Separate Channels for EVs

- OEMs see the historic price rise in Tesla's stock (prior to recent downturn) and want a taste
- They believe creating EVs as a separate channel will allow them to fool Wall Street into higher valuations
- They are using the present waiting lists for certain SUVs to require changes they have always wanted to implement

Franchise Laws

Separate Channels for EVs

Remember 2023 VA Legislation

Under the law passed in 2023 a manufacturer CAN NOT:

- Negotiate the sale or lease of a vehicle directly with consumers.
- Retain ownership of vehicles until they are sold or leased instead of selling vehicles to dealers for dealer inventory.
- Consign vehicles to dealers instead of selling vehicles to dealers for dealer inventory.
- Negotiate directly with consumers the sale of products like service contracts, guaranteed asset protection (GAP) agreement or waiver, or any other vehicle-related products and services.
- Alter a franchise agreement to make dealers delivery agents.

Franchise Laws

KNOW YOUR RIGHTS

YOU ARE ENTITLED TO A FAIR SHARE OF ALL MODELS OF YOUR LINE-MAKE

- Virginia Code 46.2-1569(7a) states that dealers are entitled to “all models manufactured for the line-make” [and may not] “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”
- Virginia Code 46.2-1569(7) states that dealers are entitled to order and receive in reasonable quantities and within a reasonable time new vehicles of each series and model sold or distributed by the franchisor as covered by the franchise and which are publicly advertised in the Commonwealth to be available for immediate delivery.

Franchise Laws

KNOW YOUR RIGHTS

YOU ARE ENTITLED TO REJECT VEHICLES YOU DID NOT ORDER

- Virginia Code 46.2-1569(1) states that dealers are can refuse “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.”

Franchise Issues

KNOW YOUR RIGHTS TO PROTECT YOUR RIGHTS

- OEM compliance with Virginia laws will not be automatic
 - Dealers will have to fight for their rights under state law no matter which way the market goes.

 - Challenge to refusal to deliver or limiting delivery of EVs.
- OR
- Challenge delivery of too many EVs that are not selling.

Franchise Issues

IRS PORTAL FOR EV SALES

- IRS ECO Tool 11/25/2024 – 12/10/2024
- Dealers can temporarily submit time of sale reports for any prior unsubmitted calendar year 2024 transactions
- Tax credits are available based on buyer qualifications and vehicle eligibility
- Eligible vehicles can be verified at <https://fueleconomy.gov/feg/tax2023.shtml>.
- Buyer qualifications are based on Buyer's Adjusted Gross Income.

Franchise Issues

NOW MORE THAN EVER – UNDERSTAND WHAT THE FACTORY ASKS THAT YOU SIGN

- Are required expenditures reasonable?
- Is the payout worth the investment?
- Are practices mandated that have long been on the OEM's wish list?
- If you are agreeing to construction, is the timetable reasonable?
- What rights are you giving up?
- Use the franchise agreement checklist.

Franchise Issues

OTA UPGRADES

- § 46.2-1571(10) permits an OEM to sell certain OTA upgrades directly to customers provided it gives to a dealer a written disclosure that may be provided to a potential buyer 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
- If a customer requires assistance at the dealership on an OTA upgrade or repair, the dealer is entitled to compensation at its retail labor rate

Franchise Issues

FACILITY UPGRADES / DE-DUALING

- Age of the facility?
- What is the Manufacturer threatening?
- Is the Manufacturer offering any incentives other than program compliance? Monies?
- State Franchise Law Protections: What rights do dealers have?
- *Buy/Sells*: Franchisors who, more often than ever before, try to improperly/unlawfully use transfer approval power during buy/sells to coerce facility upgrades, de-dualing or relocation.

Franchise Issues

FACILITY UPGRADES / DE-DUALING

- VA law protects dealers from having to make changes to their facilities that will replace or substantially alter improvements approved or required by the manufacturer and done within the past ten years. Dealers who are protected under this statute are deemed qualified for any facility upgrade requirements in a manufacturer incentive program.
- Virginia was the first with the 10-year rule, and first with the automatic qualification with the improvement requirements to back it.

Franchise Issues

FACILITY UPGRADES / DE-DUALING

- This statute offers significant protections to VA dealers from having to undertake duplicative improvements and renovations on their facilities or risk losing incentives monies.
- If Dealers are being asked to redo any part of your facilities built or renovated in the last 10 years under a program that provides an incentive, Dealers are eligible for the incentives without additional investments in your facilities.
- Dealers are protected under Virginia law from de-dualing requirements of a manufacturer (Va. Code Ann. § 46.2-1569(7b)).
- *Buy/Sells*: In Virginia, Buyer steps into the shoes of the Seller and cannot be required to do facility upgrades/de-dualing that the manufacturer cannot require of the Seller.

Franchise Issues

CHANGES IN OWNERSHIP

- More than ever, it is important that your dealer documents accurately reflect the ownership of your dealer. You do not want to give your OEM an excuse to deem you in default and demand that you do as it says to avoid termination
- Some dealers believe that as long as a change in control of the dealership is not involved, they may make minor ownership changes and notify manufacturers later. Examples include:
 - Gifts of small ownership interests to children;
 - Sale of minority interests to managers; and
 - Transfer of ownership to a trust controlled by the existing owner
- Under most dealer sales and service agreements, **any** ownership change must be approved by the franchisor.

Franchise Issues

Performance Threats - Challenges

Performance measurements are no longer just important in terminations because of potential disqualification for new deals and losses of incentives. When receiving performance threats be prepared to challenge them

Sales Effectiveness

- ✓ Allocations – a dealer cannot sell cars it cannot get, and inventories have been especially tight in the pandemic and as a result of supply change disruptions
- ✓ PMA – Hard to penetrate markets where the dealer does not have an advantage. A PMA that is too large or with census tracts of residents resistant to buy dealer's vehicles will negatively affect the performance results.

CSI

- ✓ CSI measures are notoriously subject to challenge for statistical insufficiency

Franchise Issues

CHALLENGING PMA

- VA Code 46.2-1572.4 requires that a performance standard by which a manufacturer measures the performance of a dealer “shall be fair, reasonable and equitable”
- A dealer that feels its assigned PMA is misdefined may request a hearing under this statute before the Department of Motor Vehicles
- The dealer will argue that a PMA including areas where the dealer does not have a sales advantage because of distance, time of travel, geographical issues, demographics, or vehicle choice biases will distort the dealer’s performance in violation of the Code
- Expert opinion backing the dealer’s opinions of the census tracts or zip codes in the PMA will usually be necessary

Franchise Issues Indemnification

- The indemnification provisions of your DSSA are important.
- If you are sued based on a product problem, you will want the OEM to foot the bills for defense, and today some dealers are seeing mesothelioma claims going back decades.
- Understand the procedures for seeking indemnification.
- Write to your OEM to request indemnification as soon as you are made aware of a claim.
- If you sell your dealership, and your franchisor wants a release, make sure that you do NOT release the franchisor from its indemnification obligations.

Franchise Issues

Succession

- Franchisors are increasingly concerned about future control of dealerships.
- In the past, succession planning was something that dealer lawyers and their accountants worried about.
- Today, the franchisors are becoming much more active to require that succession plans be in place:
 - ✓ They want to prevent control fights and paralysis of the dealership.
 - ✓ They want to control as much as possible who will be operating their franchisees.
 - ✓ They want to ensure that dealerships are run by those with adequate training and experience.
- Having a succession plan in place is now a critical franchise issue, especially nominating a successor.

PERSONNEL PRACTICES

Personnel Practices

Employee Severance Agreements

- In a February 21, 2023 decision, *McLaren Macomb, et al.*, Case 07-CA-263041, the National Labor Relations Board (“NLRB”) overturned a Trump-era decision that gave employers latitude in drafting and executing severance agreements with their employees, and it found the language of the confidentiality and non-disparagement clauses in the agreement in the McLaren case improperly required employees to broadly give up their rights under the National Labor Relations Act (“NLRA”).
- The McLaren decision has caused confusion as to all severance agreements with employees involving confidentiality and non-disparagement provision.
- On March 22, 2023, the NLRB General Counsel issued a memorandum attempted to clarify the Board’s position of the Board on several important issues.

Personnel Practices

Employee Severance Agreements

- This is important because under the Obama administration several NLRB decisions affecting personnel handbook provisions stated that the Act is not limited to employers of unionized employees. The portion of the NLRA at issue, section 7, protects the rights of workers whether unionized or not to engage in concerted activities “for the purpose of collective bargaining or other mutual aid or protection.” As the NLRB did when it was invalidating handbook provisions, it will protect the rights of workers to communicate about working conditions and other related matters for their protection.
- The Board’s position applies only to employee severance agreements, not those involving managers or supervisors (with the limited exception of activity by a supervisor that can be construed to further employee concerted activities). Obviously, the NLRB will be restrictive in its determination of who is a manager or supervisor, and job titles will not be determinative.

Personnel Practices

Employee Severance Agreements

- The NLRB memo made clear that the severance agreement in McLaren contained overly broad non-disparagement and confidentiality clauses that potentially interfered with employees' exercise of their Section 7 rights under the NLRA.
- According to the memo, narrowly tailored confidentiality and non-disparagement provisions are allowable **provided they do have a chilling effect that precludes employees from assisting others about workplace issues and/or communicating with the [Board]**, a union, legal forums, the media or other third parties are unlawful.
- The memo failed to define what is “narrowly tailored language” but gave limited examples. For confidentiality requirements, provisions that **“restrict the dissemination of proprietary or trade secrets for a period of time based on legitimate business justifications”** may still be lawful. For non-disparagement requirements, a provision that is **“limited to employee statements about the employer that meet the definition of defamation... may be found lawful.”**

Personnel Practices
Employee Severance Agreements

CONCLUSION

Any severance agreement which the dealership enters with departing workers will be subject to this NLRB policy.

- Unfortunately, the memo suggests that the NLRB position is retroactive, allowing it to review and rule on severance agreement provisions used in agreements before the McLaren decision and that the NLRA on confidentiality and non-disparagement provisions may not be limited to severance agreements.

Personnel Practices
**Administrative, Executive, Professional
Overtime Exemption**

- Effective on July 1, 2024, the annual salary threshold for employees who are exempt from overtime pay due to administrative, executive, professional, and outside sales professional exemptions increases from from \$35,568 to \$43,888.
- Effective on July 1, 2024, threshold for “highly compensated employee” increases from \$107,432 to \$132,964 per year
- Threshold salary requirement was set to increase on January 1 to \$58,656.00 for executive, professional, and outside sales professional exempt and for “highly compensated employee” it was supposed to increase to \$151,164 per year, BUT Texas federal judge ruled DOL did not have the power to make such increases on November 15, 2024 and thus additional increases will not be going into effect.
- **Does not affect other dealership exemptions (i.e., service advisors, salesman, mechanics)**

Personnel Practices

Bans on Non-Competes

- Virginia had a ban on non-competes for lower-level employees
- Late in 2024, FTC promulgated a rule banning employers from entering into non-competes with all employees – but did not go into effect because of a federal court in Texas
- Even though FTC's ban is not in effect, NLRB views noncompetes as restraint on employees - need to be extremely narrowly tailored
- NLRB's view on any employment agreements - Non-disclosure agreements, non-solicitation, and training repayment agreements – need to be narrowly tailored
- Dealers - Agreements for employees to repay training costs shall be carefully drafted so that the recoupment of costs from the employee are what you actually paid for the employee's training.

Personnel Practices

RetirePath VA

RetirePath was created by Virginia state law to expand access to retirement savings. It's designed for businesses that don't have the time, money or resources to offer their own employer-sponsored retirement plan.

State law requires Virginia employers to register and facilitate RetirePath if the following criteria apply:

- ✓ 25 or more eligible employees (18 or older, receiving wages, and employed at least 30 hours for any portion of a week in the preceding 12 months.)
- ✓ Operating for two or more years, and
- ✓ Does not offer a qualified, employer-sponsored retirement plan

RetirePath sends a series of notifications to eligible employers when it's time to register. Non-compliant employers are subject to enforcement action, which may include financial penalties.

Personnel Practices

RetirePath VA

<https://www.retirepathva.com/employers>

Employer's role in three steps

Running your business is your top priority. That's why RetirePath makes it as simple as possible to register and facilitate the program. Follow these three steps.



Register

Eligible employers are notified when registration is available. You'll need your Employer Identification Number (EIN) and unique RetirePath Access Code.



Set up payroll

Upload payroll information and submit your employees' contributions. You can invite a payroll representative to help facilitate this process.



Update

Keep your employee records up to date. Submit payroll details each pay period.

Note: Employers are not responsible for answering questions about the program, managing investments, processing distributions, or giving advice. Employees maintain their account through RetirePath.

Questions



Presentation is
available here.



