

VADA ANNUAL PRESENTATION

PREVIEW OF HOT ISSUES FOR 2026



Presentation Materials



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.

2025 Election Review

Statewide Offices as of
January 17, 2025

Governor
Abigail Spanberger



Lt. Governor
Ghazala Hashmi



Attorney General
Jay Jones



2025 Election Review

House of Delegates

Democrats now hold at least 64 of 100 seats in the House of Delegates, a gain of 13 seats.

2026 House of Delegates

- 17 members will be freshmen Delegates.
- 25 members will have served two years or less, and an additional 11 will have served four years.
- 49 members will have served four years or fewer.
- 22 members will have 10 – 19 years of service
- 3 will have 20 – 25 years
- 4 will have more than 25 years.

The Speaker of the House Don Scott has served for six years.

2025 Election Review

House of Delegates

House Committee partisan makeup is proportional. Significant changes are expected.

It is expected that each committee of 22 members could have a 15-7 Democratic-Republican ratio. This is a change from the current 12-10 split.

Depending on committee size, subcommittees will have approximately a 4-1 ratio of Democrats to Republicans.

Current House Transportation Committee:

Delaney (Chair), Reid (Vice Chair), Ward, McQuinn, Carr, Watts, Sewell, Glass, McClure, Anthony, Cohen, Feggans, Knight, Austin, Wyatt, Wiley, O'Quinn, Ballard, Williams, Griffin, ~~Milde~~, Zehr

2025 Election Review

General Assembly Transportation Committee Leadership

Senator

Lamont Bagby

Chair, Senate Transportation Committee



Delegate

Karrie Delaney

Chair, House Transportation Committee



2025 Election Review

What does this mean for VA dealers?

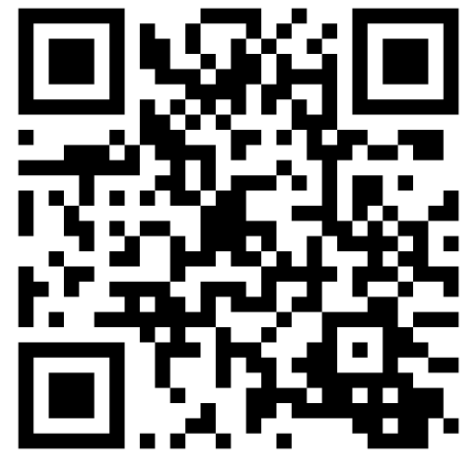


In April, VADA hosted then-candidate Abigail Spanberger, Virginia House of Delegates Speaker Don Scott (right), and 86th District candidate and retail automotive leader Virgil Thornton Sr. (standing next to Hall). At left is Dan Banister of Banister Automotive, who was VADA chair at the time. In addition to Spanberger, Thornton won in his district and Speaker Scott was re-elected.





Marriott Virginia Beach Oceanfront Resort
Historic Cavalier Hotel
Embassy Suites Virginia Beach Oceanfront Resort



TODAY WE WILL COVER

- 2026 General Assembly Preview
- Building a sales and F&I compliance process to counter an increasingly aggressive FTC
- Franchise issues
- Personnel practices

2026 GENERAL ASSEMBLY PREVIEW

2026 General Assembly

The 2026 Session of the General Assembly convenes on January 14, 2026. A “long” session, the General Assembly will meet for 60 days.

Democrats will reclaim the Executive Branch and have a greatly expanded majority in the House of Delegates. The Senate will likely remain under Democratic control, even with a special election to fill the seat of Lt. Governor-elect Ghazala Hashmi.

2026 General Assembly

With a new administration finding its footing and a huge shift in the House of Delegates, the 2026 Session is likely to be challenging.

The General Assembly must craft a new two-year state budget in the face of substantial economic headwinds.

In addition to a new budget, the General Assembly will likely consider many issues that affect business, from workers comp to paid family leave and sick leave.

Having had great success in the last several years on franchise matters, the VADA views this Session, and the 2026 year, as an opportunity to educate new members about the franchise system and the integral role of dealers in Virginia's economy.

2026 General Assembly

Potential Changes to Transportation Taxes

Motor Vehicle Sales and Use Tax (SUT): A study of transit funding has identified an increase in SUT as a potential funding source. Current Rate is 4.15%.

Sales Tax on Services: The House Finance Committee has been considering more wide-ranging tax changes (they call it reform) including a tax on some services like vehicle repairs that are currently exempt from tax. Current Rate is 5.3% - 7% depending on locality.

Other Transportation Taxes: The same transit study identified highway use fee, registration fee, etc. as sources of funding.

VADA will be involved in these issues to ensure our dealers, and their customers, are treated fairly and not singled out.

2026 General Assembly

Proposed Changes to Tax on Leases – a Multi-Year Strategy

Tax on Leases

Virginia Code imposes motor vehicle sales and use tax (SUT) on sales and leases in the same manner – a 4.15% tax is imposed on the entire purchase/lease price (cap cost) of the vehicle. The Code provides an exemption from SUT when the lessee purchases the vehicle at the end of the lease since the tax is paid at lease inception.

Lessees who do not purchase the vehicle at lease end have essentially paid tax on the entire purchase price while only using the vehicle for the term of the lease.

What the bill does: The legislation would instead tax the payments under a lease and remove the exemption for lease end purchases.

2026 General Assembly

Proposed Changes to Tax on Leases – a Multi-Year Strategy

VADA will have both a House bill and a Senate bill. The Senate bill patron is Senator Lamont Bagby. The House bill patron is Delegate Kathy Tran.

We want this issue to be discussed this year so it can be part of the conversation if an increase in the SUT is proposed.

Otherwise we will continue our efforts over the next year



Virginia Automobile Dealers Association

DEALER DAY 2026

JANUARY 28
VIRGINIA STATE CAPITOL

Hilton Richmond Downtown
11:00 AM – Briefing and Lunch
12:45 PM – General Assembly Visits



We need dealers, and their staff, to join us.

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** – Are you complying with all the requirements?
- **Used Car Rule** – The Rule itself is nearly four decades old, but it was amended in 2017. We still see confusion about this rule among dealers.

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"

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 **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.

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.

SAMPLE COMPLIANT ADVERTISEMENT



Advertising

Example of a Compliant Ad

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.

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?

Federal Trade Commission **Advertising**

Get your free, confidential advertising audit

COMPLYAUTO ✓



Are your Vehicle Display Pages (VDPs) compliant? State regulators are cracking down on advertising, and ComplyAuto is offering a complimentary and confidential VDP audit to help you reduce your risk. [Sign Up for Your Free Audit.](#)



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 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.

The processing fee is a privilege that should not be abused.

Dealer Processing Fees - California Dealers

In 2019, CNCDA commissioned JD Power to "analyze the costs incurred by dealers to properly prepare and process the sales contracts and other paperwork required for vehicle sales or lease transactions."

- JD Power collected data from 6 California dealerships for its study, each varying in size and locality.
- The dealerships were asked to provide a sampling of transactions with varying degrees of complexity and monthly hard costs.
- JD Power concluded that the average per transaction documentation expense was \$447 between the 6 dealerships.

In 2025, CA dealers recently sought an increase in their \$85 processing fee to 1 % of the total price of the vehicle, up to \$260.

Governor vetoed the bill.

CA processing fee cap is \$85.

Dealer Processing Fees

Take the Time to Justify Your Fees

Cost 1: Fully burdened cost
\$447 per transaction

This includes only the component of costs associated with documentation functions of sales and back-office payroll.

Dlr #	Dealership Details						Average
	1	2	3	4	5	6	
Services	\$9,143	\$1,561	\$13,018	\$21,047	\$28,965	\$3,227	\$12,827
Payroll	\$45,481	\$53,098	\$33,792	\$270,947	\$209,973	\$17,125	\$105,069
Forms/Supplies	\$1,783	\$1,074	\$377	\$7,764	\$2,561	\$160	\$2,286
Payroll - % of Expenses	80.6%	95.3%	71.6%	90.4%	86.9%	83.5%	84.7%
Total Exp.	\$56,406	\$55,733	\$47,187	\$299,758	\$241,499	\$20,512	\$120,182
Avg Per Transaction Documentation Expense	\$371	\$206	\$590	\$389	\$541	\$586	\$447
							Total
Forms reviewed	276	253	404	360	318	273	1884
Pages	565	534	945	794	756	409	4003

This is the example from the California Study.

Have you done something similar?

VADA Resources point out items to consider including the increasingly large costs of data protection.

Dealer Processing Fees - Use Your VADA Resources

What are Processing Fees?

When you buy a new car or truck, there are many steps that go into the final sale. **The processing fee is a charge to help cover the complex services and time required to ensure a seamless transaction for you and the dealer.** This fee is allowed and outlined in state law and is a key part of the dealership's goal to provide comprehensive, transparent services to all citizens of the Commonwealth.

What's in the fee?

There are a range of essential and required services that go beyond simply selling the vehicle. These services are designed to protect you, save you time, and ensure your transaction is handled properly. They can include:

Streamlined Trade-In Process: Handling the complex details of securing titles for your vehicle, including tracking lost or faulty titles and obtaining out-of-state lienholder-held titles.

Assistance with Paperwork and Titling: Covers necessary paperwork, notary services, and advice on titling options to make sure your vehicle is legally registered.

Hassle-free Loan Payoffs: Ensures prompt verification and payoff of any outstanding loan or lease balances on your trade-in vehicle, reviews of vehicle history, and assistance in applying for refunds and entitlements due from traded or newly purchased vehicles.

Working with Insurance: Assistance with notifying your insurance company of your new vehicle purchase, which saves you a step in the process (you are responsible for obtaining necessary insurance).

Data Security and Fraud Protection: Covers the dealership's continuous vigilance over your personal information to protect against data breaches and prevent fraudulent transactions in your name.

Payment Plan Consultation: Help in developing and reviewing alternative payment methods, including various lease options, cash, and finance combinations, to find the best fit.

Simplified Documentation: Covers creation and review of transaction documentation and customer records to ensure proper, clear handling of the sale.

Ongoing Support and Information: Providing access to information so that customers can receive and understand manufacturer requirements and can obtain warranty, maintenance, and repair services.

Not all of these transactions will be performed in every sale or by every dealer. These are just examples, and there are many more not included on this list.

A dealer processing fee is no different from other professional services.

Processing fees are not unique to the auto industry. Many other businesses, such as retailers, attorneys, and accountants, charge fees to perform services for their customers. **However, there are two key distinctions:**



TRANSPARENT

Virginia dealers are required by state law to disclose the fee they charge both in all advertising and on the walls of their physical business location(s). Additionally, the fee is featured in the Buyer's Order that accompanies every transaction.



VOLUNTARY

The processing fee is 100% voluntary for both the dealer and consumer. Each dealer can decide to charge a fee and how much it will be. Customers can negotiate the fee, compare pricing with other dealerships, or take other steps to ensure the services and fees align with your needs.

What's a Buyer's Order?

The buyer's order serves as the official sales contract for the vehicle. It provides a comprehensive list of all associated costs, including the sale price and any added accessories. Virginia law requires that all charges, including any processing fee, are clearly listed as a separate line item on this form. This ensures you have full transparency about what you are paying for and that the dealership is meeting its licensing requirements with the Motor Vehicle Dealer Board.

INFORMATION PROVIDED BY THE
VIRGINIA AUTOMOBILE DEALERS ASSOCIATION
VADA.COM

MOTOR VEHICLE DEALER PROCESSING FEES FULLY TRANSPARENT & VOLUNTARY

In Virginia, laws and regulations are in place to ensure you are fully informed about processing fees. **No professional service consumer is better informed of fees than a motor vehicle buyer.**

Dealers must disclose the fee in several ways to protect you from any surprise:

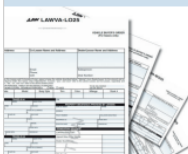


In Advertising

The processing fee must be disclosed in all vehicle sale advertisements in 8-point bold font. The Motor Vehicle Dealer Board actively enforces this rule for print, TV, radio, and online advertising.

At the Dealership

The fee must be posted on a sign in a conspicuous location within the dealership showroom.



On the Buyer's Order

The fee must be shown as a separate disclosure on the buyer's order, which is the sales contract for the vehicle. This form must be filed with the Motor Vehicle Dealer Board as part of the dealer's licensing requirements.

The motor vehicle dealers of Virginia have worked hard over the years to establish a system for processing fees that is fully voluntary and transparent, with significant benefits for all citizens of the Commonwealth.



This document is provided for informational purposes only and is not a substitute for Virginia law or regulation. All laws and regulations are subject to change.



Spot Deliveries – A Quick Review

Buyer RISC Financing Notice. 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.

Spot Deliveries – A Quick Review

- Make sure that your paperwork is clear and in compliance with state law. Virginia law requires specific language in the buyer's order concerning the dealer's right to rescind a transaction. That provision should be clear, conspicuous, and exactly as the Virginia Code provides.
- Document why the spot delivery decision was appropriate. When a customer charges that your dealership engaged in abusive spot delivery tactics, you must be prepared to defend by showing the reasons justifying the delivery.
- Document attempts to obtain approval. Make sure that the attempts to submit the deal and rehash the deal, where appropriate, are adequately documented in the deal file.
- Document the deal revisions necessary for a replacement contract.
- Be clear that the replacement contract is voluntary. Have a script clearly explaining the customer's choices and the benefits of working with the dealer on the alternate deal terms.
- Follow the terms of the rescission. If a deal is not approved by a potential assignee, follow the terms of the rescission provision in the buyer's order carefully.
- If you must retake a vehicle involuntarily, do so in compliance with the law. Virginia law requires that any repossession activity must take place without a breach of the peace. Repossession agents know the lines. Emphasize to them that you do not want them crossing those lines.
- Return the trade and the downpayment. You must give back the trade and any downpayment. If you do not do that, or you cannot do that, then you cannot demand the customer return the vehicle.
- Do not charge for use or for mileage.

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. *(Dealer needs to confirm that the bank will work with them on using the credit 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

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.
- **FTC Guidance Released in June 2025.** <https://www.ftc.gov/business-guidance/resources/automobile-dealers-ftcs-safeguards-rule-frequently-asked-questions>

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.

Virginia Law

Data Breach Reporting

- Under Virginia law, the obligation to provide notice has two very important provisions for dealers to consider. Pursuant to Va. Code § 18.2-186.6 (C) and (G)
 1. A business must disclose a breach if encrypted info is accessed and acquired in an unencrypted form OR the breach involves a person with access to the encryption key and the individual/business reasonably believes such a breach has or will cause identity theft or other fraud to Virginia residents. *(You should be sure to ask your vendor if the data was encrypted and whether the encryption key was breached as that is what trigger a notice requirement.)*
 2. An entity that is subject to Title V of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and maintains procedures for notification of a breach of the security of the system in accordance with the provision of that Act and any rules, regulations, or guidelines promulgated thereto shall be deemed to be in compliance with this section. *(Dealers are subject to GLB under the Safeguards Rule and the requirement to notify the FTC of a breach (handled by vendors in some cases). This provide safe harbors from the notice requirements under Virginia law so long as the GLB requirements are met, and a separate notice by the dealer to customers would not be required.)*

Safeguards Rule

COMPLYAUTO
PRIVACY

The Only Fully Compliant Solution

Your one-stop shop for 100% compliance with state and federal privacy laws and cybersecurity regulations, including the revised FTC Safeguards Rule - all automated

~10,000

Active Dealers

+42

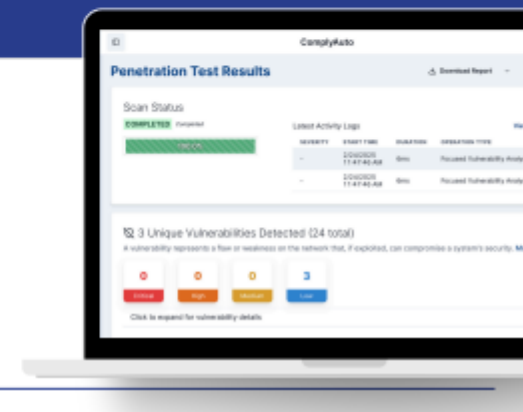
State Dealer Association
Endorsements

\$1M

Guarantee*

50 State Legal Compliance with the Industry's Only Compliance Guarantee

If you're using our platform and you receive a penalty or fine for privacy or cybersecurity issues from a government agency, we'll pay the fine or penalty up to \$100,000. *Additional terms apply.



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.

FRANCHISE ISSUES

Franchise Laws

FRANCHISORS ARE BOLDER AND MORE AGGRESSIVE; WHAT ABOUT YOU?

- The Alliance for Automotive Innovation sent a letter in May to the Justice Department requesting that it examine franchise laws.
- Scout, a wholly owned subsidiary of Volkswagen that is no different than Audi, sent a letter requesting that the federal government intervene to get rid of state laws that ban direct to consumer sales.
- These letters shared a common theme, that state franchise laws are archaic, unnecessary, and anti-competitive.

WE HAVE NOT SEEN THE END OF THIS FIGHT!

Franchise Laws

Understand the Purpose

- It is a misconception that franchise laws exist principally to protect franchisees.
- Franchise laws exist to protect healthy competition, consumers, and the public at large.
- Vehicles are the largest consumer product purchase for most Americans, and franchise laws protect intrabrand and interbrand competition.
- They ensure that new vehicles are available at the best prices and with the best service.
- **Support VADA! It is more important than ever.**

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.

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

WARRANTY REIMBURSEMENT – July, 1 2025 Changes

- Removes the “reasonable” qualifier and simply relies on the statutory calculation to determine a retail amount. Manufacturers can no longer claim your rate is not reasonable because another dealer has a lower rate.
- Guarantees technicians are compensated for time spent waiting and communicating with a manufacturer for technical assistance related to a warranty or recall repair.
- 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 similar repair. The bill would establish the price of the part as the highest price in the last 12 months.

Franchise Issues

WARRANTY REIMBURESEMENT – July, 1 2025 Changes

- Allows a dealer to request reimbursement for rental expenses incurred within 30 days of the dealer having paid those charges for a customer's rental vehicle without having to wait until the warranty claim is paid.
- Clarifies that the manufacturer must reimburse the dealer when it requires the dealer to provide a rental, without exceptions for the kind of vehicle.
- Allows dealers to return unused recall parts.

Franchise Issues

WARRANTY REIMBURSEMENT – July, 1 2025 Changes

Questions from your technicians?

- VA Code ensures that dealers are paid by the manufacturers for dealers' retail amounts for warranty and recall repairs and lays out a process for determining those amounts.
- VA Code does not dictate a specific manual or other method of establishing the labor hours assigned to different repairs.
- These provisions are not self-enforcing. Dealers will have to avail themselves of the statutory processes – including the hearing process at DMV and subsequent appeals – to ensure they are receiving appropriate reimbursement under the statute. Each dealer will make individual decisions about whether and how to pursue increased reimbursement by the manufacturers.
- The franchise laws do not regulate the relationship between dealers and their technician employees. These statutory changes do not provide how technicians shall be paid by dealers.
- Giving dealers the tools to seek fair compensation for warranty work can indirectly benefit technicians doing that work. But it is not an automatic process.

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

- 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 chain 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 lung cancer 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.

Franchise Issues

Right of First Refusal

- Manufacturers will tell a selling dealer they may exercise a ROFR.
- VA law prohibits a manufacturer from exercising a ROFR when:
 1. the proposed sale or transfer is to a franchised dealer with an exception for a minority dealer program and the minority dealer will obtain at least 51 percent ownership and control of the dealership's
 2. the proposed sale or transfer of the dealership's assets involves the transfer or sale to a family member (includes manager of 5 years or more).
- This is a very broad limit on ROFR.

PERSONNEL PRACTICES

Personnel Practices

Review Your Employee Arbitration Agreements

- Congress passed The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, which President Biden signed into law on March 3, 2022
- The Act amends the Federal Arbitrations Act so that “at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representation of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal or State law and relates to the sexual assault dispute or the sexual harassment dispute.”
- Review your employment arbitration agreements to be sure they do not cover any sexual harassment or sexual assault claims brought against your dealership by an employee after March 3, 2022

Personnel Practices

I-9 Compliance

The Immigration Reform and Control Act (IRCA) mandates that employers verify the employment eligibility of all employees hired after November 6, 1986. This requires employers to complete Form I-9 for each employee, verifying their identity and authorization to work in the United States. **Key points on I-9s:**

- Make sure that you are using the current I-9 form (<https://www.uscis.gov/i-9>)
- The dealership must complete a Form I-9 for every person hired within three business days of the hire.
- The employee must complete section 1 of the I-9. Dealers are responsible to ensure that the employee fully and properly completes section 1.
- Section 1 must be completed no later than the first day of employment.

Personnel Practices

I-9 Compliance

Key points on I-9s (cont.):

- Employees have the right to choose the document or documents to be provided to prove their identity and the right to work.
- If an employee is unable to present the required document or documents within three business days of the date of employment because the employee has applied for the appropriate documents, then the employee must present a receipt for the application within three business days.
- Retain completed I-9 forms for three years after the person's employment begins or one year after the employment is terminated, whichever is later.
- Routine internal audits of your Form I-9 records can help identify and rectify any discrepancies.

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.



