

# 2026 LEGISLATIVE AND LEGAL UPDATE



**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 HEREIN.**



The information in this document is confidential and may contain information protected by law. This presentation is intended to be reviewed only by members of the Virginia Automobile Dealers Association. If you are not a VADA member, you are hereby notified that any review, dissemination, or copying of this document and its attachments is prohibited.

# LEGISLATIVE UPDATE

- Dealer Related Legislation
- Employer Related Bills
- Consumer Related Bills



# LEGAL UPDATE

- FTC Advertising Compliance
- Federal Compliance Issues
- Franchise Issues



# VADA LEGISLATIVE TEAM



<b>Don Hall</b>	<b>VADA President and Chief Lobbyist</b>
Anne Gambardella, Esq.	VADA EVP and General Counsel
Mimi Perka, Esq.	VADA VP, Legislative Affairs
Barrie Beaty, Esq. Charapp & Weiss	VADA Counsel
Tim Pohanka	VADA Legislative Chair
Roger Keller	VADA Chair
Greg Habeeb, Gentry Locke	VADA Legislative Counsel
Meade Spotts, Spotts Fain	VADA Legislative Counsel
Ralston King, Commonwealth Strategy Group	VADA Outside Lobbyist
Tripp Perrin, Lindt Corp	VADA Outside Lobbyist





# 2025 ELECTION BROUGHT CHANGES

Democrats hold all 3  
statewide offices.

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

## 2026 House of Delegates

- 4 years or less (60 members / 60.00%)
- 5-12 years (24 members / 24.00%)
- 13-20 years (11 members / 11.00%)
- More than 20 years (5 members / 5.00%)



# NEW LEADERSHIP AT DMV AND THE DEALER BOARD



Sandy Jack  
Commissioner  
VA Dept of Motor Vehicles



Kelley Smith  
Executive Director  
VA Motor Vehicle Dealer Board

# 2026 LEGISLATION

## Dealer Related Bills

- **Dealer records**
  - The bill modernizes dealer record-keeping by allowing electronic preservation without prior MVDB approval and removing obsolete requirements.
- **Dealer business-hours filing**
  - This bill corrects the Code to have filing of dealer business-hour changes with the Motor Vehicle Dealer Board and not DMV. (This was an error in the Code from the original creation of the Board in the 1980s!)
- **Dealer plate use expansion**
  - The bill authorizes limited use of dealer license plates for transporting vehicle parts, accessories and small quantities of fuel, as well as trips to automotive supply retailers.

# 2026 LEGISLATION

## Dealer Related Bills

- **Motor Vehicle Transaction Recovery Fund**
  - The bill allows consumers who receive a final court judgment related to a breach of an extended service contract to recover unpaid damages from the Motor Vehicle Transaction Recovery Fund, subject to certain limitations. The dealer bond and the fund will now have identical coverages.
  - Because of concerns raised in the fiscal impact analysis, the bill has been closely scrutinized, and amendments were adopted to protect the fund's long-term solvency.
- **License plate use extensions**
  - These bills allow customers to use their own license plates on dealership loaner vehicles for up to 30 days instead of the current five-day limit, provided a permit is issued.

# 2026 LEGISLATION

## Dealer Related Bills

- **Glass repair and replacement / ADAS disclosure**
  - These bills require glass repair facilities to notify customers when their vehicle includes advanced driver assistance systems and whether the shop can recalibrate those systems following repair.
- **GAP insurance and waivers**
  - While guaranteed asset protection (GAP) insurance has been allowed by the State Corporation Commission, this bill clarifies that Virginia law allows GAP insurance products and GAP waivers to be sold.
- **Modification of Loss Estimates**
  - This bill prohibits public insurance adjusters from modifying estimates of loss unless the revised estimate includes detailed explanations as to why any modification occurred. This will impact dealings between auto body shops, their customers, and insurance providers.

# 2026 LEGISLATION

## Employer Related Bills

- **Increasing the minimum wage**

- Virginia's minimum wage will increase to \$15 per hour by Jan. 1, 2028, with annual adjustments tied to the Consumer Price Index thereafter.
- \$12.77 per hour current as of January 1, 2026.
- \$13.75 per hour effective January 1, 2027.
- \$15.00 per hour effective January 1, 2028.

# 2026 LEGISLATION

## Employer Related Bills

- **Wage or salary history of prospective employees**
  - **Effective July 1, 2026.**
  - Employers are required to disclose in internal and public job postings the good-faith wage, salary or compensation range for any job, promotion, transfer, or other employment opportunity. For claims related to posting requirements, applicants and employees must first notify the employer and allow a 15-day cure period before filing suit.
  - Employers are prohibited from seeking or relying on a prospective employee's wage or salary history when making hiring or compensation decisions. The law provides an exception when prospective employees voluntarily disclose their wage or salary history. Under these circumstances, the employer can confirm the prospective employee's wage or salary information and use this information to offer a higher wage or salary.

# 2026 LEGISLATION

## Employer Related Bills

- **Wage or salary history of prospective employees – SESCO Recommendations**
  - The application of this wage transparency is if a position is externally or internally posted. Is the employer “advertising” for applicants or employees to apply for an open position? If so, the posting must include as noted above the current and credible wage/salary scale.
  - Conduct an audit of all screening and hiring practices to include interviewing questions, forms and processes to ensure compliance. This would include an immediate review of your **application form**, to remove any questions that refer to previous positions and subsequent wage and salary history.
  - **SESCO has revised its current application form to comply with this new ban.**
  - Train all those who conduct interviews so that inappropriate questions to include this ban are not asked.
  - Where appropriate, such as on websites or other screening and hiring documents, include a disclaimer, in effect, summarizing the ban and the employer’s compliance thereto.

# 2026 LEGISLATION

## Employer Related Bills

- **Definition of Wages**
  - **Effective July 1, 2026.**
  - Under the new definition, wages includes any remuneration an employer owes to an employee, including hourly wages, minimum wages, piece rate wages, day rates, salaries, overtime wages, legally required prevailing wages, **commissions, tips and bonuses.**
  - The most important requirement is that in Virginia, once a commission is earned, it must be paid regardless of policies such as claw backs, employment standing, employed when the commission is paid, etc.

# 2026 LEGISLATION

## Employer Related Bills

- **Definition of Wages – SESCO Recommendations**

- Pay plans and practices need to be audited for wage and hour compliance, both federal DOL as well as Virginia wage laws. Pay plans, especially within retail organizations that pay commissions and bonuses such as auto dealerships, need to ensure that their individual pay plans are reduced to writing and signed and dated.
- Ensure that overtime is calculated on all non-discretionary bonuses, commissions and incentives. You can contact SESCO to ensure compliance, but this issue is the number one FLSA wage-hour compliance matter for all employers across the United States. Commissions, bonuses and incentives are wages earned for the purposes of overtime and please know that **payroll providers do not ensure compliance with this requirement.**

# 2026 LEGISLATION

## Employer Related Bills

- **Non-competes**

- New restrictions will apply to non-compete agreements entered into, amended, or renewed on or after July 1, 2026.
- Virginia currently prohibits employers from entering into or enforcing a post-employment “covenant not to compete” with “low-wage workers,” i.e., those earning less than \$1,507.01 per week or any other non-exempt employee under the FLSA (irrespective of their earnings).
- As of July 1, 2026, employers are prohibited from enforcing a non-compete against any employee who was discharged without a severance offer.

# 2026 LEGISLATION

## Employer Related Bills

- **Non-competes – SESCO Recommendations**
  - Have SESCO audit current non-competes for compliance or have SESCO revise and/or prepare new non-competes to ensure compliance. This new statute does not affect a non-disclosure/confidentiality or non-solicitation agreement which SESCO prepares and widely recommends for various organizations and positions.
  - Severance Agreements and Releases will need to be revised to comply with this new regulation. SESCO prepares and initiates compliant Severance Agreement and Releases for our clients.

# 2026 LEGISLATION

## Employer Related Bills

- **Heat Safety Standard**
  - Virginia Safety and Health Codes Board is required to develop and adopt heat illness regulations by **May 1, 2028**.
  - Applies to employees working indoors and outdoors.
  - The regulations must include requirements for employers to: **provide water, access to shade or climate-controlled environments when practicable, rest periods, acclimatization to working in heat, and effective training regarding heat illness prevention; implement high-heat procedures when the temperature equals or exceeds 80 degrees Fahrenheit; and establish effective emergency response procedures.**
  - Exemptions for: heat exposure during the provision of emergency services that involve emergency law enforcement, emergency medical services, firefighting services, rescue and evacuation operations, or emergency restoration of essential utilities, including electric and telecommunication utilities; and heat exposure lasting no longer than 15 consecutive minutes.

# 2026 LEGISLATION

## Employer Related Bills

- **Paid family medical leave program**

- A state-administered paid family and medical leave (PFML) insurance program.
- Covered employees receive payment from the state (Virginia Employment Commission) – not their employer.
- Funded by payroll premiums shared by both employers and employees. Employers may deduct up to 50% of the required contributions from employee pay. **Contributions will begin on April 1, 2028. The employer contribution rate is expected to be fixed by October 1, 2027.**
- **Employees may receive benefits as of December 1, 2028.**
- Up to 12 weeks of paid leave in a benefit year can be used for an employee's serious health condition, to care for a family member with a serious health condition, or to care for a new child.
- Paid leave benefits will equal to 80% of the average weekly wage, subject to a cap of 100% of the statewide average weekly wage.
- Employees can receive paid family and medical leave benefits on an intermittent or reduced schedule.
- Employees are entitled to be restored to the same or equivalent position at the conclusion of the leave and employers are required to maintain an employee's health care benefits during the leave.

# 2026 LEGISLATION

## Employer Related Bills

- **Paid Sick Leave**

- Expands legal requirements that currently require one hour of paid sick leave for every 30 hours worked for home health workers to cover all employees of private employers and state and local governments.
- Employees will begin accruing sick leave at the time of hire and employers may elect to front load an employee's annual sick and safe leave.
- Employers must permit employees to carry over at least 40 hours of accrued but unused sick and safe leave to the following year.
- Employers are not required to pay out accrued but unused sick and safe leave at termination.
  
- July 1, 2027 - effective for employers of at least 50 employees
- January 1, 2028 - effective for employer of at least 25 employees
- January 1, 2029 - effective for all employers

# 2026 LEGISLATION

## Employer Related Bills

- **Child Care Assistance Program**

- The bills provide matching funds in order to incentivize employers to contribute to the child care costs of their employees. The Program shall be administered by the Virginia Early Childhood Foundation.
- To participate in the Program, an employer shall agree to make child care contributions to the eligible mixed delivery provider on behalf of the employee or to a third-party administrator, as defined by the bill, and shall provide any other information deemed necessary by the Foundation.
- Program funds shall be awarded on a first-come, first-served basis; however, the bill clarifies that the Foundation is encouraged to prioritize awards to proposals involving contributions from small businesses.

# 2026 LEGISLATION

## Consumer Related Bills

- **Class Actions – NOT YET**

- These bills establish procedures for class action claims in Virginia courts. Currently, Virginia and Mississippi are the only two states without state-level class actions. Virginia's business community remains focused on conforming the procedures set forth to match federal class action procedures – which would include an amendment for meaningful summary judgment in Virginia.

- **VETOED BY THE GOVERNOR**

THE VIRGINIA AUTOMOBILE DEALERS ASSOCIATION PRESENTS

# *DRIVE TO 250*



HONORING 250 YEARS OF VIRGINIA IN AMERICA.  
AND TO 250 MORE.

VADAPAC.COM



Honoring 250 years of Virginia in  
America.



Virginia Automobile Dealers Association

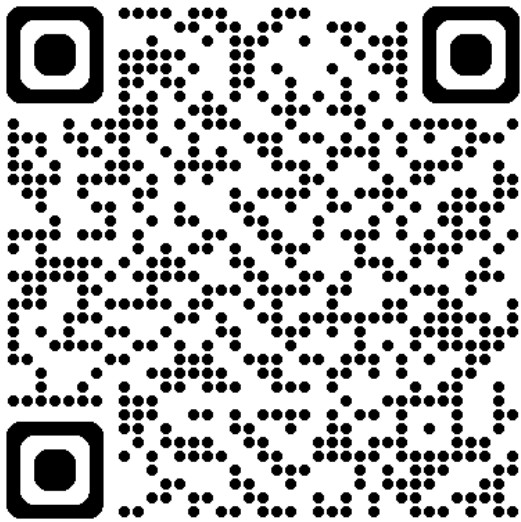
**Contribute TODAY!!**

<https://vadapac.com/>



# FTC ADVERTISING ENFORCEMENT AND OTHER FEDERAL ISSUES

# FTC FIRES WARNING SHOT THROUGHOUT RETAIL AUTOMOTIVE INDUSTRY

A graphic banner with a background of a sun rising over a road. The text 'FEDERAL TRADE COMMISSION' is in blue, 'TOTAL PRICE ENFORCEMENT' is in large red letters, and the FTC seal is on the right. A blue bar at the bottom contains the VADA logo and the text 'UPDATES AND ACTIONS FOR DEALERS' in white.

FEDERAL TRADE COMMISSION  
**TOTAL PRICE  
ENFORCEMENT**



**VADA** UPDATES AND ACTIONS FOR DEALERS

## FTC ADVERTISING

**The most prominent total price advertised must include all fees but government fees and be available to everyone.**

If you are a dealer who has not changed your advertising to total price that includes your processing fee, its time to do so. Total price advertising should be your first step.

# FTC ADVERTISING

## Sample Compliant Ad



MSRP	\$20,000
Dealer Discount*	- \$ 2,500
Dealer's Processing fee	+ \$ 895

(Not required by law)

**DEALER'S TOTAL PRICE\*\* \$18,395**

\*\* DEALER'S TOTAL PRICE ~~does not include~~ governmental fees such as Tax, Tag/Title, and Electronic Titling Fee.

Additional Offers that You May Qualify For:

Military Discount***	\$500
First time Car Buyer****	\$500
College Grad Discount*****	\$500

### DISCLOSURES:

MSRP is the Manufacturer's Suggested Retail Price (MSRP) and is for information purposes only. MSRP is not the dealer's advertised or asking price.

Dealer's Total Price expires at the end of each business day.

\*\*\*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.

\* Dealer Discount is available to everyone; if its not, it should not be included in the math box.

\*\* Freight and the Processing fee should be included in the Dealer's Total Price.

# FTC ADVERTISING

## The Basics

- The FTC has spoken and processing fees/charges need to be in the advertised price
- Freight is not a governmental fee and needs to be in the advertised price.
- **Rebates that are conditional** and not available to everyone can be advertised with a disclosure but they **cannot be subtracted from the most prominent total price advertised**. Your disclosures and disclaimers should be changed. Disclosures for any conditional rebates should be accurate but not included in the total price.
- **MSRP can be advertised, but the processing fee should be included** so that the dealer has a total price. If only MSRP is advertised, the FTC will view this as a ceiling rather than a floor. The FTC clarified to dealers that if you list MSRP as the vehicle's price that you either (i) sell at MSRP, and thus are not able to charge the processing fee, or (ii) advertise the vehicle correctly with a total price that includes the MSRP plus the processing fee.

# FTC ADVERTISING

## The Basics

- When advertising lease amounts, the due at signing amount should be advertised to include the processing fee as well as acquisition fee.
- For an In-Transit Vehicle the advertisement must clearly convey to the customer that the vehicle is not on the dealership property. The FTC offered guidance that to err on the side of caution, only vehicles that are in-transit for a few days should be advertised. We understand that this is an issue with many manufacturers because the manufacturers push the in-transits to the dealer's website when the vehicles are allocated to the dealer during building process.
- **Train your employees on proper advertising and sales practices.**

# FTC ADVERTISING

## Pitfalls of Add-ons

- Get any add-ons that are not optional into the advertised price.
- Make sure customers are not misled about add-ons. They are optional and not required to complete the purchase or to obtain financing. Dealers should reconsider pre-installing add-ons to vehicles prior to purchase.
- Consumers should know what products are being purchased and at what cost. Dealers should use menus for voluntary protection products (VPPs) and add-ons with customers signing the menus and choosing the products with proper disclosures.
- Dealers need to ensure their staff are properly trained on add-ons as well as are adhering to the sales processes that you have in your dealership on add-ons. The dealer and senior managers of the dealership must emphasize their commitment to legal and ethical conduct and inform dealer personnel how they wish for them to carry out the functions of their jobs.
- Adopt a process to regularly audit the dealership's practices and transactions to ensure that its practices don't run afoul of state and federal laws.

# FTC ADVERTISING

Have you looked at your.....

- **Truth-in-Lending and Truth-in-Leasing disclosures**
  - This is an easy way for the FTC to get its foot in your door. Violations are evident in the very text of your ads.
- **Your social media policy**
  - Social media postings can be a major hole in your compliance program. Here are some quick points to consider as it relates to advertising:
  - Social media posts with offers are advertising. If a salesperson's posts violate federal or state laws applicable to advertising, your dealership could be liable in a government regulatory action.
  - Employees must make sure they identify themselves. If the post relates to the dealership, the poster should identify himself or herself and his or her role at the dealership. When the person is speaking personally and not for the dealership, that should be clear.
  - When employees use their own social media accounts, you have no control — but the dealership will be held responsible for those posts. Your policy should clarify that any postings having anything to do with the dealership should be through dealership hosted or subscribed media platforms.
- **All your third-party sites and listings**
  - The total price should match all websites and mediums in which the dealer advertises (i.e., third party sites should not differ from your dealership's website).

# FTC ADVERTISING

## Practical Actions for Dealers

- **For new cars on your lot**
  - Dealers must have addendum stickers to display the vehicle's price with the processing fee/charge, and they need to be accurate, display the total price of the vehicle, and match the advertised price. Otherwise, the FTC's view is that the MSRP is your price — and you are unable to charge the processing fee.
- **On your buyer's order**
  - Buyer's orders have a preprinted line for the processing fee, which is required to be listed separately. As such, the line for "Price of Vehicle (including Freight, Handling & Delivery)" should not include a price that is the same as the advertised price, but it should be less than the advertised price because the processing fees/charge (which was included in the advertised price) will be separately stated on the order on the "\*Processing Fee (for consumer services)" line. **Stated clearly: Price of vehicle on buyer's order + Your processing fee = Advertised price.** Staff should be properly trained on this.
- **When talking price to customers**
  - Dealers need to train new and used salespeople on sales practices, specifically what is included in the price of vehicles and how to convey that price accurately to consumers. For example, when a consumer calls the dealership and asks what the out the door price will be, the salesperson must provide the total price, which needs to include the processing fee/charge and freight (if your dealership formerly removed it from the advertised price).

# FTC FAQs



- My manufacturer does not allow dealers to advertise a price higher than MSRP. What should I do to comply with the FTC's position on advertising price?

Dealers should advertise the total selling price, including all mandatory fees, that consumers will be required to pay even if it violates manufacturer rules. If a manufacturer attempts to withhold ad money, then the issue can be taken to the DMV Commissioner.

There will be many issues to work through with manufacturers. This is one of them.

Dealers should be permitted by the manufacturer to advertise a price that is MSRP + processing fee. A manufacturer should not be able to prevent that. A manufacturer should be able to prevent a dealer from advertising a "market adjustment" or other similar addition to MSRP.



- My manufacturer offers incentives that require the customer to finance with the manufacturer's captive finance company. Can I reduce the price of the vehicle by those types of incentives?

No. Under our reading of the FTC position, any conditional incentives should not be used to reduce an advertised price. This incentive is conditional on captive financing, and therefore not available to cash buyers or those who arranged their own financing. . Conditional incentives can be advertised as additional possible reductions, (i.e., "Additional Offers that You May Qualify For") but the amount should not be used to reduce the price advertised.

# FTC FAQs



**What about all the myriad of incentives our mfrs provide like the following: National (same for all), Regional (Each Region has a different Rebate), Tied to Finance with the OEM, in Lieu of Financing at the OEM special Rate, etc.?**

This is really simple from the perspective of the FTC but really complicated in execution. If the rebate/customer cash/other offer is conditional in any way, it cannot be included in the price. All those conditional offers can be listed but it will be complicated.

For example, over the years manufacturers sometimes offer incentives based on the customer's zip code. That could mean that dealers cannot include even those incentives from their RMA because they may have customers from outside their RMA.

It is this complicated mess of incentives that in part invited the FTC scrutiny and will take the cooperation of the manufacturers to solve.



**Can we still use “Call for price” when advertising vehicles?**

A dealer can still have customers call for the price of the vehicle. However, if the MSRP is listed and the advertisement then says call for price, MSRP is the most the dealer can charge.

If a vehicle is solely advertised as call for price, it's a training and practical issue. The person answering those calls needs to be trained on the actual price that is to be provided. The price quoted still needs to include the processing fee, freight. The practice of “call for price” leaves a lot of issues and errors that can occur with communications by dealership staff. Training and supervision is critical.

# FTC FAQs



**If an incentive is available to all customers, do I have to separately list it or can I add it to my dealer discount?**

There is no issue with including incentives in your dealer discount so long as they are available to all customers.



**Some of our third-party advertising sites do not let us “show the math” on our all-in price. Is it okay to state our total price only without separately showing the items making up the price like MSRP, dealer discount, processing fee, etc.?**

There is no issue with stating your total price in the ad without further information if that is the price the customer can pay. Keep in mind you will have to separately list your processing fee on the Buyers Order.

COMPLYAUTO  
GUARDIAN

★ Promotional Pricing Ends June 10th

## Automated Ad Compliance. Built for the New Standard.

[ComplyAuto's Guardian](#) advertising compliance software is the most powerful tool available to dealers. Since the FTC's March letters, we have been proud to offer Guardian at an unbelievable promotional price.

But that **offer is coming to a close on June 10, 2026**. [Contact us today to lock in promotional pricing](#) before this offer expires.

★ SPECIAL OFFER ★

### Guardian 2.0

LIMITED TIME

**\$75** /mo per rooftop\*

Lock in pricing today



COMPLYAUTO ✓

**VADA**  
**PROGRAM  
PARTNER**

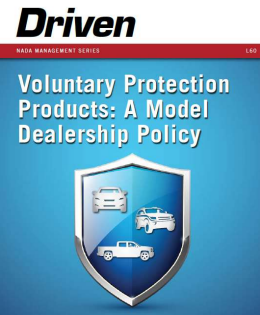
# OTHER FEDERAL ISSUES

## Fair Lending



Use the NADA Fair Credit Policy and enforce it.

## VPPs



Use the NADA Policy and enforce it.



## Safeguards Rule Compliance



**COMPLYAUTO**  
PRIVACY

COMPLETE PRIVACY, SAFEGUARDS & CYBER PLATFORM

### The Only Fully Compliant Solution Backed by a \$1M Guarantee.

The only truly compliant solution for state privacy laws across all 50 states. We auto-update your online privacy policies in real-time, while automating GLBA risk assessments, cybersecurity defenses, and FTC Safeguards compliance.



# FRANCHISE ISSUES

# FRANCHISE LAWS

## Franchisors Are Bolder and More Aggressive; What About You?

- The Alliance for Automotive Innovation sent a letter 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

What are you signing?

## **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 Reimbursement – July 1, 2025 Changes

- 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 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

## 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

## Performance Threats

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 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

## 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.

# QUESTIONS

