



I am writing on behalf of the Virginia Automobile Dealers Association. Our over 450 franchised motor vehicle dealer members serve their customers in communities all around the Commonwealth, and have been doing so for generations.

Like many others in our industry, we were very frustrated with the recent roundtables held by the Federal Trade Commission to examine our industry, specifically the franchise system. The panels were populated heavily by new entrants and observers of the industry, instead of participants who have been involved in development the model built over more than a century to benefit manufacturers, dealers, consumers and the public interest. I was particularly dismayed as I had discussed participating in the workshops with the FTC staff but had the opportunity to offer my observations taken from me. The very academic discussion hosted by the FTC did not do much to provide real life examples of how the franchise system works for consumers. One can build panels of academics and theoreticians if one is interested in hearing how the system works in theory; having participants who have worked in the industry would have provided a much need perspective that was conspicuously missing from the panels.

As this appears to be our opportunity to weigh in with some specific examples of how franchise laws actually work in the real world, here is a small list of examples of how franchise laws have worked just for Virginia dealers for your consideration.

- VA Code includes a series of provisions aimed at ensuring dealers can buy manufacturer required materials from vendors of their choice. A Virginia General Motors dealer used the provisions to purchase a stone panel product for the façade of the dealership as required by General Motors at a substantially reduced price. The dealer used VA law to price the panels from a supplier different than the one required by GM. When the dealer's chosen supplier price was substantially cheaper for panels from the same quarry, GM decided that perhaps its designated supplier should match the price. The money saved by the dealer allowed it to be more competitive in its pricing to customers.
- In response to the acceleration issues it has with some of its vehicles, Toyota offered customers a maintenance plan program for the affected vehicles. Toyota made statements to their dealers that no sales tax should be due under the program. VA tax laws appeared to differ from the manufacturer claim, and resulted in dealers being penalized by deficient reimbursement for work done. VADA raised concerns about the taxability of the repairs under the program, indicating that dealers could be at risk of audits and assessments for taxes Toyota should be paying for services under the program. Toyota dismissed our concerns.
- When Honda first encountered the problems with airbags in its vehicles, it instituted a policy for reimbursement of dealers for replacing airbags. Unexploded airbags must be disposed of as hazardous materials. When dealers sought to be reimbursed for the fees associated with the hazardous materials disposal, Honda refused to pay until several requests from the VADA, because of VA law that required manufacturers to pay properly for warranty repairs, including full costs for proper disposal to protect the environment and the public interest.
- Subaru had vehicles that suffered hail damage before being shipped to VA dealers. It announced it was sending the vehicles to dealers without disclosing the extent of the damage and the costs to repair it. VA Code requires dealers to disclose to consumers when new vehicles are damaged. Dealers can reject vehicles that are damaged under that same Code section. Subaru threatened

dealers that they would not receive more vehicles unless they accepted the damaged ones. VADA asked that Subaru provide dealers the necessary information about the extent of damage so they could comply with VA Code requirements on consumer disclosure to protect the interests of buyers of new Subaru vehicles.

- Many manufacturers require dealers to share significant amounts of personal information on their customers. That is permissible for buyers of Chrysler new vehicles. However, Chrysler demanded information on other vehicle buyers and prospects to which it is not entitled. VADA raised concerns about the dealers' obligations to protect customer information under federal law. Chrysler made clear that dealers should either change their compliance to allow greater sharing of customer information or ignore their obligations to customers. VADA sought changes to the franchise laws to ensure dealers could continue to more robustly protect their customers' information.
- Several manufacturers have put in place onerous procedures for dealers who seek to reject new vehicles damaged in transit rather than selling them to consumers. Nissan required dealers to hold onto damaged new vehicles for significant periods of time before the manufacturer would take back the vehicles, during which times the dealers incurred interest charges for the affected vehicles. VADA had to pressure Nissan to reimburse dealers for those expenses.
- Many manufacturers imposed penalties when a vehicle sold by a dealer is subsequently exported. VA Code protects dealers from the imposition of penalties when the dealer exercised due diligence in determining whether the vehicle would be exported.

All these are examples of where the franchise laws prevent the manufacturer from shifting costs and penalties onto dealers for responsibilities of the manufacturer or from avoiding disclosures required by law. If dealers were not there, do you think the manufacturer would just do the right thing and pay these expenses or make the disclosures? Or do you think consumers would suffer?

Our dealers know the answer to this question.

Thank you for your consideration of our comments.

Sincerely,

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Donald L. Hall

President