068709504

HOUSE BILL NO. 344

Offered January 11, 2006

Prefiled January 6, 2006

A BILL to amend and reenact §§ 46.2-100, 46.2-616, 46.2-619, 46.2-623, 46.2-629, 46.2-637, 46.2-638, 46.2-915.1, 46.2-1051, 46.2-1993, 46.2-1993.35, 46.2-1993.39, 46.2-1993.55, 58.1-3503, 58.1-3504, and 58.1-3523 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 6 of Title 46.2 an article numbered 2.1, consisting of sections numbered 46.2-644.1, 46.2-644.2, and 46.2-644.3, and by adding sections numbered 46.2-679.1 and 46.2-679.2, relating to titling of all-terrain vehicles and off-road motorcycles; operation of all-terrain vehicles and off-road motorcycles by certain children; motorcycle dealers; general classification of tangible personal property; classification of household goods and personal property for taxation; and definitions of terms applicable to the Personal Property Tax Relief Act of 1998.

Patron—Sherwood

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-100, 46.2-616, 46.2-619, 46.2-623, 46.2-629, 46.2-637, 46.2-638, 46.2-915.1, 46.2-1051, 46.2-1993, 46.2-1993.35, 46.2-1993.39, 46.2-1993.55, 58.1-3503, 58.1-3504, and 58.1-3523 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 6 of Title 46.2 an article numbered 2.1, consisting of sections numbered 46.2-644.1, 46.2-644.2, and 46.2-644.3, and by adding sections numbered 46.2-679.1 and 46.2-679.2 as follows:

§ 46.2-100. Definitions.

The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

"All-terrain vehicle" means a three-wheeled or four-wheeled motor vehicle powered by a gasoline or diesel engine and generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering that is intended for off-road use by an individual rider on various types of unpaved terrain. The term does not include four-wheeled vehicles, commonly known as "go-carts," that have low centers of gravity and are typically used in racing on relatively level surfaces, nor does the term include any "utility vehicle" as defined in this section or any "farm utility vehicle" as defined in § 46.2-1993. Except as otherwise provided in this title, for purposes of this title, all-terrain vehicles shall be deemed to be motorcycles.

"Antique motor vehicle" means every motor vehicle, as defined in this section, which was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Antique trailer" means every trailer or semitrailer, as defined in this section, that was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Automobile or watercraft transporters" means any tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"Bicycle" means a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, including children's bicycles, except a toy vehicle intended for use by young children. For purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, a bicycle shall be a vehicle while operated on the highway.

"Bicycle lane" means that portion of a roadway designated by signs and/or pavement markings for the preferential use of bicycles, electric power-assisted bicycles, and mopeds.

"Business district" means the territory contiguous to a highway where 75 percent or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

"Camping trailer" means every vehicle that has collapsible sides and contains sleeping quarters but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor vehicle.

"Cancel" or "cancellation" means that the document or privilege cancelled has been annulled or terminated because of some error, defect, or ineligibility, but the cancellation is without prejudice and reapplication may be made at any time after cancellation.

"Chauffeur" means every person employed for the principal purpose of driving a motor vehicle and

every person who drives a motor vehicle while in use as a public or common carrier of persons or property.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Decal" means a device to be attached to a license plate that validates the license plate for a predetermined registration period.

"Department" means the Department of Motor Vehicles of the Commonwealth.

"Disabled parking license plate" means a license plate that displays the international symbol of access in the same size as the numbers and letters on the plate and in a color that contrasts with the background.

"Disabled veteran" means a veteran who (i) has either lost, or lost the use of, a leg, arm, or hand; (ii) is blind; or (iii) is permanently and totally disabled as certified by the U.S. Veterans Administration. A veteran shall be considered blind if he has a permanent impairment of both eyes to the following extent: (i) central visual acuity of 20/200 or less in the better eye, with corrective lenses, or central visual acuity of more than 20/200, if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

"Driver's license" means any license, including a commercial driver's license as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), issued under the laws of the Commonwealth authorizing the operation of a motor vehicle.

"Electric personal assistive mobility device" means a self-balancing two-nontandem-wheeled device that is designed to transport only one person and powered by an electric propulsion system that limits the device's maximum speed to 15 miles per hour or less. For purposes of Chapter 8 of this title, an electric personal assistive mobility device shall be a vehicle when operated on a highway.

"Electric power-assisted bicycle" means a bicycle equipped with an electric motor that reduces the pedal effort required of the rider, but does not eliminate the rider's need to pedal. For the purposes of Chapter 8 of this title, an electric power-assisted bicycle shall be a vehicle when operated on a highway.

"Essential parts" means all integral parts and body parts, the removal, alteration, or substitution of which will tend to conceal the identity of a vehicle.

"Farm tractor" means every motor vehicle designed and used as a farm, agricultural, or horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery and implements including self-propelled mowers designed and used for mowing lawns.

"Farm utility vehicle" means a vehicle that is designed for off-road use and is used as a farm, agricultural, or horticultural service vehicle, generally having a gasoline or diesel engine, four or more wheels, bench seating for the operator and a passenger, a steering wheel for control, and a cargo bed. "Farm utility vehicle" does not include pickup or panel trucks, golf carts, low-speed vehicles, riding lawn mowers, or all-terrain vehicles.

"Federal safety requirements" means applicable provisions of 49 U.S.C. § 30101 et seq. and all administrative regulations and policies adopted pursuant thereto.

"Financial responsibility" means the ability to respond in damages for liability thereafter incurred arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided for in § 46.2-472.

"Foreign market vehicle" means any motor vehicle originally manufactured outside the United States, which was not manufactured in accordance with 49 U.S.C. § 30101 et seq. and the policies and regulations adopted pursuant to that Act, and for which a Virginia title or registration is sought.

"Foreign vehicle" means every motor vehicle, trailer, or semitrailer that is brought into the Commonwealth otherwise than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in the Commonwealth.

"Golf cart" means a self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as context may require.

"Gross weight" means the aggregate weight of a vehicle or combination of vehicles and the load thereon.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys,

and, for law-enforcement purposes, the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located.

"Intersection" means (i) the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection, in the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk.

"Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of this title or local ordinances authorized by law. For the purposes of access to law-enforcement databases regarding motor vehicle registration and ownership only, this term shall also include city and county commissioners of the revenue and treasurers, together with their duly designated deputies and employees, when such officials are actually engaged in the enforcement of §§ 46.2-752, 46.2-753 and 46.2-754 and local ordinances enacted thereunder.

"License plate" means a device containing letters, numerals, or a combination of both, attached to a motor vehicle, trailer, or semitrailer to indicate that the vehicle is properly registered with the Department.

"Light" means a device for producing illumination or the illumination produced by the device.

"Low-speed vehicle" means any four-wheeled electrically-powered vehicle, except a motor vehicle or low-speed vehicle that is used exclusively for agricultural or horticultural purposes or a golf cart, whose maximum speed is greater than 20 miles per hour but not greater than 25 miles per hour and is manufactured to comply with safety standards contained in Title 49 of the Code of Federal Regulations, § 571.500.

"Manufactured home" means a structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Moped" means a conveyance that is either (i) a bicycle-like device with pedals and a helper motor that is rated at no more than two brake horsepower and that produces speeds up to a maximum of 30 miles per hour or (ii) a motorcycle with an engine displacement of 50 cubic centimeters or less and a maximum speed of less than 30 miles per hour. For purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, a moped shall be a vehicle while operated on a highway.

"Motor home" means every private motor vehicle with a normal seating capacity of not more than 10 persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle" means every vehicle as defined in this section that is self-propelled or designed for self-propulsion except as otherwise provided in this title. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle. For the purposes of this title, any device herein defined as a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped shall be deemed not to be a motor vehicle.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm tractor" or "moped" as defined in this section.

"Nonresident" means every person who is not domiciled in the Commonwealth, except: (i) any foreign corporation that is authorized to do business in the Commonwealth by the State Corporation Commission shall be a resident of the Commonwealth for the purpose of this title; in the case of corporations incorporated in the Commonwealth but doing business outside the Commonwealth, only such principal place of business or branches located within the Commonwealth shall be dealt with as residents of the Commonwealth; (ii) a person who becomes engaged in a gainful occupation in the Commonwealth for a period exceeding 60 days shall be a resident for the purposes of this title except for the purposes of Chapter 3 (§ 46.2-300 et seq.) of this title; (iii) a person, other than a nonresident student as defined in this section, who has actually resided in the Commonwealth for a period of six months, whether employed or not, or who has registered a motor vehicle, listing an address in the Commonwealth in the application for registration shall be deemed a resident for the purposes of this title, except for the purposes of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

"Nonresident student" means every nonresident person who is enrolled as a full-time student in an accredited institution of learning in the Commonwealth and who is not gainfully employed.

"Off-road motorcycle" means every motorcycle designed exclusively for off-road use by an individual rider with not more than two wheels in contact with the ground. Except as otherwise provided in this chapter, for the purposes of this chapter off-road motorcycles shall be deemed to be "motorcycles."

"Operation or use for rent or for hire, for the transportation of passengers, or as a property carrier for compensation," and "business of transporting persons or property" mean any owner or operator of any motor vehicle, trailer, or semitrailer operating over the highways in the Commonwealth who accepts or receives compensation for the service, directly or indirectly; but these terms do not mean a "truck lessor" as defined in this section and do not include persons or businesses that receive compensation for delivering a product that they themselves sell or produce, where a separate charge is made for delivery of the product or the cost of delivery is included in the sale price of the product, but where the person or business does not derive all or a substantial portion of its income from the transportation of persons or property except as part of a sales transaction.

"Operator" or "driver" means every person who either (i) drives or is in actual physical control of a motor vehicle on a highway or (ii) is exercising control over or steering a vehicle being towed by a motor vehicle.

"Owner" means a person who holds the legal title to a vehicle; however, if a vehicle is the subject of an agreement for its conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be the owner for the purpose of this title. In all such instances when the rent paid by the lessee includes charges for services of any nature or when the lease does not provide that title shall pass to the lessee on payment of the rent stipulated, the lessor shall be regarded as the owner of the vehicle, and the vehicle shall be subject to such requirements of this title as are applicable to vehicles operated for compensation. A "truck lessor" as defined in this section shall be regarded as the owner, and his vehicles shall be subject to such requirements of this title as are applicable to vehicles of private carriers.

"Passenger car" means every motor vehicle other than a motorcycle designed and used primarily for the transportation of no more than 10 persons including the driver.

"Payment device" means any credit card as defined in 15 U.S.C. § 1602(k) or any "accepted card or other means of access" set forth in 15 U.S.C. § 1693a(1). For the purposes of this title, this definition shall also include a card that enables a person to pay for transactions through the use of value stored on the card itself.

"Pickup or panel truck" means every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less.

"Private road or driveway" means every way in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Reconstructed vehicle" means every vehicle of a type required to be registered under this title materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

"Revoke" or "revocation" means that the document or privilege revoked is not subject to renewal or restoration except through reapplication after the expiration of the period of revocation.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or an unpaved area.

"Safety zone" means the area officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by plainly visible signs.

"School bus" means any motor vehicle, other than a station wagon, automobile, truck, or commercial bus, which is: (i) designed and used primarily for the transportation of pupils to and from public, private or religious schools, or used for the transportation of the mentally or physically handicapped to and from a sheltered workshop; (ii) painted yellow and bears the words "School Bus" in black letters of a specified size on front and rear; and (iii) is equipped with warning devices prescribed in § 46.2-1090. A yellow school bus may have a white roof provided such vehicle is painted in accordance with regulations promulgated by the Department of Education.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a

motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users.

"Shoulder" means that part of a highway between the portion regularly ~~travelled~~ *traveled* by vehicular traffic and the lateral curbline or ditch.

"Sidewalk" means the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

"Snowmobile" means a self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as herein defined.

"Stinger-steered automobile or watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth.

"Suspend" or "suspension" means that the document or privilege suspended has been temporarily withdrawn, but may be reinstated following the period of suspension unless it has expired prior to the end of the period of suspension.

"Towing and recovery operator" means a person engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Traffic infraction" means a violation of law punishable as provided in § 46.2-113, which is neither a felony nor a misdemeanor.

"Traffic lane" or "lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes.

"Truck" means every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"Truck lessor" means a person who holds the legal title to any motor vehicle, trailer, or semitrailer that is the subject of a bona fide written lease for a term of one year or more to another person, provided that: (i) neither the lessor nor the lessee is a common carrier by motor vehicle or restricted common carrier by motor vehicle or contract carrier by motor vehicle as defined in § 46.2-2000; (ii) the leased motor vehicle, trailer, or semitrailer is used exclusively for the transportation of property of the lessee; (iii) the lessor is not employed in any capacity by the lessee; (iv) the operator of the leased motor vehicle is a bona fide employee of the lessee and is not employed in any capacity by the lessor; and (v) a true copy of the lease, verified by affidavit of the lessor, is filed with the Commissioner.

"Utility vehicle" means a motor vehicle that is (i) designed for off-road use, (ii) powered by an engine of no more than 25 horsepower, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include all-terrain vehicles as defined in ~~§ 46.2-915.1~~ *this section*, riding lawn mowers, or any other vehicle whose definition is included in this section.

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

"Wheel chair or wheel chair conveyance" means a chair or seat equipped with wheels, typically used to provide mobility for persons who, by reason of physical disability, are otherwise unable to move about as pedestrians. The term includes both three-wheeled and four-wheeled devices. So long as it is operated only as provided in § 46.2-677, a self-propelled wheel chair or self-propelled wheel chair conveyance shall not be considered a motor vehicle.

§ 46.2-616. Acquiring vehicle from vendor who does not have certificate of title.

Except as otherwise provided in this title, no person shall purchase, trade, exchange, or barter for a motor vehicle, trailer, or semitrailer in the Commonwealth, knowing or having reason to believe that its seller has not secured a certificate of title, or knowing or having reason to believe that its seller does not legally have in his possession a certificate of title to the vehicle issued to its owner. *Except as otherwise provided in this title, for the purposes of this article, off-road motorcycles and all-terrain vehicles shall be deemed motor vehicles.*

§ 46.2-619. New indicia of title; procedure as to leased vehicles.

When the Department receives a certificate of title properly assigned and acknowledged, accompanied by an application for registration, it shall register the motor vehicle, trailer, or semitrailer described in the application and shall issue to the person entitled to it by reason of the transfer a new registration card, license plate, or plates and certificate of title in the manner and form and for the fees provided in this chapter for original registration. For leased vehicles, such application shall include, when available, the name and address of the lessee and the name of the locality in which the leased vehicle will be principally garaged or parked. The Department shall also make this information available to the commissioner of the revenue or other assessing officer of the locality in which the leased vehicle is to be principally garaged or parked. *Nothing in this section shall require the registration of all-terrain vehicles or off-road motorcycles titled pursuant to this title.*

§ 46.2-623. Statements in application.

A. Every application for a certificate of title shall contain (i) a statement of the applicant's title and of all liens or encumbrances on the vehicle and the names and addresses of all persons having any interest in the vehicle and the nature of every interest in the vehicle; (ii) the Social Security number, if any, of the owner and, if the application is in the name of an employer for a business vehicle, the employer's identification number assigned by the United States Internal Revenue Service; and (iii) a brief description of the vehicle to be *titled or* registered, including the name of the maker, the vehicle identification or serial number and, when *titling or* registering a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.

B. Not later than July 15, 1998, the lessor of a qualifying vehicle, as defined in § 58.1-3523, shall send a report to the Department for each such qualifying vehicle it was leasing as of July 1, 1998, and has leased between January 1, 1998, and June 30, 1998, containing (i) the name and address of the lessee as it appears in the lease contract; (ii) the social security number of the lessee; and (iii) the registration number of the vehicle as described under Article 1 (§ 46.2-600 et seq.) of Chapter 6 of Title 46.2.

C. Beginning with August 1998, such lessor shall send a monthly report to the Department, by the fifteenth day of the month or such later day as may be prescribed in the guidelines promulgated under § 58.1-3532, listing any changes, additions or deletions to the information provided under subsection B as of the last day of the preceding month.

D. The application shall contain such additional information as may be required by the Department.

E. The Department may require that an applicant present proof reasonably acceptable to the Department of the accuracy of information provided on the application, and may refuse to issue a certificate of title until such proof has been provided.

§ 46.2-629. Odometer reading to be reported on certificate of title, application, or power of attorney.

A. Every owner or transferor of any motor vehicle, including a dealer, shall, at the time of transfer of ownership of any motor vehicle by him, record on the certificate of title, if one is currently issued on the vehicle in the Commonwealth, and on any application for certificate of title the reading on the odometer or similar device plus any known additional distance traveled not shown by the odometer or similar device of the motor vehicle at the time of transfer. If, however, a transferor gives his power of attorney to a dealer or other person for the purpose of assigning the transferor's interest in a motor vehicle, the transferor shall conspicuously record on the power of attorney the reading on the odometer or similar device at the time of the assignment.

B. The Department shall not issue to any transferee any new certificate of title to a motor vehicle unless subsection A of this section has been complied with.

C. It shall be unlawful for any person knowingly to record an incorrect odometer or similar device reading plus any known additional distance not shown by the odometer or similar device on any certificate of title or application for a title, or on any power of attorney as described in subsection A of this section.

D. Notwithstanding other provisions of this section, an owner or transferor, including a dealer, of a motor vehicle having a gross vehicle weight rating of more than 16,000 pounds, need not disclose the vehicle's odometer reading.

E. Violation of this section shall constitute a Class 1 misdemeanor.

F. The provisions of subsections A and B of this section shall not apply to transfers under § 46.2-633.

G. This section shall not apply to transfers or application for certificates of title of all-terrain

vehicles or off-road motorcycles as defined in § 46.2-100.

§ 46.2-637. Security interests subsequently created.

Security interests, other than those in inventory held for sale, in motor vehicles, trailers, or semitrailers created by the voluntary act of the owner after the original issue of a certificate of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Department on a form furnished for that purpose, setting forth the security interests and whatever additional information the Department may deem necessary. If satisfied that it is proper for the security interest to be recorded, when the certificate of title covering the motor vehicle, trailer, or semitrailer, is surrendered, the Department shall issue a new certificate of title, showing security interests in the order of their priority according to the date of the filing of the application. For the purpose of recording a subsequent security interest, the Commissioner may require any secured party to deliver to him the certificate of title. The new certificate shall be sent or delivered to the secured party from whom the prior certificate was obtained. Notwithstanding any other provision of law, a security interest in a motor vehicle, trailer, or semitrailer which is inventory held for sale shall be perfected only as provided in §§ ~~8.9A-401~~ *8.9A-301* through 8.9A-527.

§ 46.2-638. Certificate as notice of security interest.

A certificate of title, when issued by the Department showing a security interest, shall be adequate notice to the Commonwealth, creditors, and purchasers that a security interest in the motor vehicle exists and the recording or filing of such creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required. Motor vehicles, trailers or semitrailers, other than those which are inventory held for sale, registered or for which a certificate of title shall have been issued under this title shall not be subjected to, but shall be exempt from the provisions of §§ ~~8.9A-401~~ *8.9A-301* through 8.9A-527 and § 55-96 whether or not inventory held for sale shall be exempt from the provisions of § 55-152, nor shall recordation or filing of such security interest, except a security interest in inventory held for sale in any other place for any other purpose, be required or have any effect.

Article 2.1.

All-Terrain Vehicle and Off-Road Motorcycle Certificates of Title.

§ 46.2-644.1. Titling of all-terrain vehicles and off-road motorcycles.

A. Every owner, except a dealer licensed under § 46.2-1993.6, of any all-terrain vehicle or off-road motorcycle powered by a gasoline or diesel engine displacing more than 50 cubic centimeters and purchased as new on or after July 1, 2006, shall apply to the Department for a certificate of title in the name of the owner before the all-terrain vehicle or off-road motorcycle is operated anywhere in the Commonwealth.

B. Any owner of an all-terrain vehicle or off-road motorcycle not required to be titled under this section and not titled elsewhere, may apply to the Department for a certificate of title. The Department shall issue the certificate upon reasonable evidence of ownership, such as a bill of sale or other document satisfactory to the Department.

C. On and after January 1, 2009, in order to purchase or otherwise acquire an all-terrain vehicle or off-road motorcycle, any purchaser or transferee other than a licensed dealer shall obtain a certificate of title for it in his name.

D. Except as otherwise provided in this title, all-terrain vehicles and off-road motorcycles shall comply with the titling requirements of motor vehicles pursuant to Article 2 (§ 46.2-616 et seq.) of this chapter.

§ 46.2-644.2. Department's records; fees; exemption.

The Department shall maintain a record of any certificate of title it issued under this article. Fees to be paid to the Department for issuance of such certificates of title shall be the same as those imposed for the titling of motor vehicles pursuant to § 46.2-627.

Any all-terrain vehicle or off-road motorcycle purchased and used by a nonprofit volunteer rescue squad shall be exempt from fees imposed under this section.

§ 46.2-644.3. Acquisition of all-terrain vehicle or off-road motorcycle by dealer.

Any dealer licensed under § 46.2-1993.6 who acquires an all-terrain vehicle or off-road motorcycle for resale shall be exempt from the titling requirements of this title.

Any dealer transferring an all-terrain vehicle or off-road motorcycle titled under this title shall assign the title to the new owner or, in the case of a new all-terrain vehicle or off-road motorcycle, assign the certificate of origin.

§ 46.2-679.1. All-terrain vehicles.

No person shall be required to obtain the registration certificate, license plate and decals, or pay a registration fee for any all-terrain vehicle.

§ 46.2-679.2. Off-road motorcycles.

No person shall be required to obtain the registration certificate, license plate and decals, or pay a

INTRODUCED

registration fee for any off-road motorcycle.

§ 46.2-915.1. All-terrain vehicles and off-road motorcycles; penalty.

A. No all-terrain vehicle *or off-road motorcycle* shall be operated:

1. On any public highway, or other public property, except (i) as authorized by proper authorities (ii) to the extent necessary to cross a public highway by the most direct route, or (iii) by law-enforcement officers, firefighters, or rescue squad personnel responding to emergencies;

2. By any person under the age of 16, except that *(i)* children between the ages of 12 and 16 may operate all-terrain vehicles *and off-road motorcycles* powered by engines of no ~~less than 70 nor~~ more than 90 cubic centimeters displacement *and (ii) children less than 12 years old may operate all-terrain vehicles and off-road motorcycles powered by engines of no more than 50 cubic centimeters displacement*;

3. By any person unless he is wearing a protective helmet of a type approved by the Superintendent of State Police for use by motorcycle operators;

4. On another person's property without the written consent of the owner of the property or as explicitly authorized by law; or

5. With a passenger at any time, unless such all-terrain vehicle is designed and equipped to be operated with more than one rider.

B. Notwithstanding subsection A, all-terrain vehicles may be operated on the highways in Buchanan County if the following conditions are met:

1. Such operation is approved by action of the Buchanan County Board of Supervisors for operation along the Pocahontas Trail on Bill Young Mountain and across Virginia Route 635 in Buchanan County;

2. Signs, whose design, number, and location are approved by the Virginia Department of Transportation, have been posted warning motorists that all-terrain vehicles may be operating on the highway;

3. Such all-terrain vehicles are operated during daylight hours on the highway for no more than one mile between one off-road trail and another;

4. Signs required by this subsection are purchased and installed by the person or club requesting the Board of Supervisors' approval for such over-the-road operation of all-terrain vehicles;

5. All-terrain vehicles operators shall, when operating on the highway, obey all rules of the road applicable to other motor vehicles;

6. Riders of such all-terrain vehicles shall wear approved helmets; and

7. Such all-terrain vehicles shall operate at speeds of no more than 25 miles per hour.

No provision of this subsection shall be construed to require all-terrain vehicles operated on a highway as provided in this subsection to comply with lighting requirements contained in this title.

C. Any retailer selling any all-terrain vehicle *or off-road motorcycle* shall affix thereto, or verify that there is affixed thereto, a decal or sticker, approved by the Superintendent of State Police, which clearly and completely states the prohibition contained in subsection A of this section.

D. A violation of this section shall not constitute negligence, be considered in mitigation of damages of whatever nature, be admissible in evidence or be the subject of comment by counsel in any action for the recovery of damages arising out of the operation, ownership, or maintenance of an all-terrain vehicle *or off-road motorcycle,* nor shall anything in this section change any existing law, rule, or procedure pertaining to any such civil action, nor shall this section bar any claim which otherwise exists.

E. Violation of any provision of this section shall be punishable by a civil penalty of not more than $500.

F. The provisions of this section shall not apply:

1. To any all-terrain vehicle being used in conjunction with farming activities; or

2. To members of the household or employees of the owner or lessee of private property on which the all-terrain vehicle is operated.

G. For the purposes of this section, "all-terrain vehicle" shall ~~mean a three-wheeled or four-wheeled motor vehicle, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering, which is intended for off-road use by an individual rider on various types of nonpaved terrain. The term does not include four-wheeled vehicles which have low centers of gravity and are typically used in racing and on relatively level surfaces, commonly known as "go-carts."~~*have the meaning ascribed in § 46.2-100.*

§ 46.2-1051. Certain local governments may impose restrictions on operations of certain mopeds, mini-bikes, trail-bikes, all-terrain vehicles, off-road motorcycles, and go-carts.

The governing body of any county, city, or town which is located within the Northern Virginia Planning District may provide by ordinance that no person shall operate and no owner shall permit the operation of, either on a highway or on public or private property within 500 feet of any residential district, any motorcycle, moped, electric power-assisted bicycle, motorcycle-like device commonly known as a trail-bike or mini-bike, *all-terrain vehicle, off-road motorcycle,* or motorized cart commonly known as a go-cart unless it is equipped with an exhaust system of a type installed as standard

equipment, or comparable to that designed for use on that particular vehicle or device as standard factory equipment, in good working order and in constant operation to prevent excessive noise.

§ 46.2-1993. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"All-terrain vehicle" ~~means a three-wheeled or four-wheeled motor vehicle powered by a gasoline or diesel engine and generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering, that is intended for off-road use by an individual rider on various types of unpaved terrain. The term does not include four-wheeled vehicles that have low centers of gravity and are typically used in racing and on relatively level surfaces, commonly known as "go-carts," nor does the term include any "farm utility vehicle" as defined in this section. Except as otherwise provided in this chapter, for the purposes of this chapter, all-terrain vehicles shall be deemed to be motorcycles~~ *shall have the meaning ascribed in § 46.2-100*.

"Certificate of origin" means the document provided by the manufacturer of a new motorcycle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motorcycle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who sells or distributes new motorcycles pursuant to a written agreement with the manufacturer, to franchised motorcycle dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of motorcycles to motorcycle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motorcycles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motorcycles to distributors or for the sale of motorcycles to motorcycle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed by a person who manufactures or assembles motorcycles, or by a factory branch for the purpose of making or promoting the sale of its motorcycles, or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motorcycle" means a motorcycle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motorcycle will be resold or otherwise retransferred only to the manufacturer or distributor of the motorcycle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner, or (ii) has been employed continuously by the dealer for at least five years.

"Farm utility vehicle" ~~means a vehicle that is designed for off-road use and is used as a farm, agricultural, or horticultural service vehicle, generally having a gasoline or diesel engine, four or more wheels, bench seating for the operator and a passenger, a steering wheel for control, and a cargo bed. "Farm utility vehicle" does not include pickup or panel trucks, golf carts, low-speed vehicles, riding lawn mowers, or all-terrain vehicles~~ *shall have the meaning ascribed in § 46.2-100*.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motorcycles of a particular line-make or late model or factory repurchase motorcycles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motorcycle or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase motorcycle dealer" means a dealer in late model or factory repurchase motorcycles, including a franchised new motorcycle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase motorcycles.

"Franchised motorcycle dealer" or "franchised dealer" means a dealer in new motorcycles that has a franchise agreement with a manufacturer or distributor of new motorcycles.

"Independent motorcycle dealer" means a dealer in used motorcycles.

"Late model motorcycle" means a motorcycle of the current model year and the immediately

preceding model year.

"Line-make" means the name of the motorcycle manufacturer or distributor and a brand or name plate marketed by the manufacturer or distributor. For the purposes of this chapter, the "line-make" of a motorcycle manufacturer, factory branch, distributor, or distributor branch shall include every brand of all-terrain vehicle and off-road motorcycle manufactured or distributed bearing the name of the motorcycle manufacturer or distributor.

"Manufacturer" means a person engaged in the business of constructing or assembling new motorcycles.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in § 46.2-100. Except as otherwise provided in this chapter, for the purposes of this chapter "all-terrain vehicles" and "off-road motorcycles" shall be deemed to be "motorcycles."

"Motorcycle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motorcycles, new and used motorcycles, or used motorcycles alone, whether or not the motorcycles are owned by him;

2. Is wholly or partly engaged in the business of selling new motorcycles, new and used motorcycles, or used motorcycles only, whether or not the motorcycles are owned by him; or

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motorcycles within any 12 consecutive months.

The term "motorcycle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.

2. Public officers, their deputies, assistants, or employees, while performing their official duties.

3. Persons other than business entities primarily engaged in the leasing or renting of motorcycles to others when selling or offering such motorcycles for sale at retail, disposing of motorcycles acquired for their own use and actually so used, when the motorcycles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.

4. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motorcycle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the motorcycle.

5. An employee of an organization arranging for the purchase or lease by the organization of motorcycles for use in the organization's business.

6. Any person who permits the operation of a motorcycle show or permits the display of motorcycles for sale by any motorcycle dealer licensed under this chapter.

7. An insurance company authorized to do business in the Commonwealth that sells or disposes of motorcycles under a contract with its insured in the regular course of business.

8. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motorcycles owned by others.

9. ~~Any person dealing solely in the sale or lease of either (i) motorcycles designed exclusively for off-road use or (ii) all-terrain vehicles manufactured or distributed in Virginia by a manufacturer, factory branch, distributor, distributor branch or factory or distributor representative that does not also manufacture or does not also distribute in Virginia any motorcycle designed for lawful use on the public highways.~~

~~10.~~ Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motorcycle dealer.

"Motorcycle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a motorcycle dealer to sell or exchange motorcycles.

"Motorcycle show" means a display of motorcycles to the general public at a location other than a dealer's location licensed under this chapter where the motorcycles are not being offered for sale or exchange during or as part of the display.

"New motorcycle" means any motorcycle which (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration motorcycle, or for the personal and business transportation of the manufacturer, distributor, dealer, or any of his employees, (iii) has not been used except for limited use necessary in moving or road testing the motorcycle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has the manufacturer's certification that it conforms to all applicable federal motorcycle safety and emission standards. Notwithstanding provisions (i) and (iii), a motorcycle that has been previously sold but not

titled shall be deemed a new motorcycle if it meets the requirements of provisions (ii), (iv), and (v).

"Off-road motorcycle" ~~means every motorcycle designed exclusively for off-road use by an individual rider with not more than two wheels in contact with the ground. Except as otherwise provided in this chapter, for the purposes of this chapter off-road motorcycles shall be deemed to be "motorcycles."~~ *shall have the meaning ascribed in § 46.2-100.*

"Original license" means a motorcycle dealer license issued to an applicant who has never been licensed as a motorcycle dealer in Virginia or whose Virginia motorcycle dealer license has been expired for more than 30 days.

"Relevant market area" means as follows:

1. In metropolitan localities with populations of 250,000 or more, the relevant market area shall be a circular area around an existing franchised dealer not to exceed a radius of 10 miles.

2. If the population in an area within a radius of 10 miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of 15 miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the 15-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of 20 miles around an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement is silent as to area responsibility, the relevant market area shall be the greater of an area within a radius of 20 miles around an existing franchised dealer or that area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales efforts.

In determining population for this definition, the most recent census by the U.S. Bureau of the Census or the most recent population update, either from the National Planning Data Corporation or other similar recognized source, shall be accumulated for all census tracts either wholly or partially within the relevant market area.

"Retail installment sale" means every sale of one or more motorcycles to a buyer for his use and not for resale, in which the price of the motorcycle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motorcycle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motorcycle dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"Used motorcycle" means any motorcycle other than a new motorcycle as defined in this section.

"Wholesale auction" means an auction of motorcycles restricted to sales at wholesale.

§ 46.2-1993.35. Temporary certificates of ownership.

A. Notwithstanding §§ 46.2-617 and 46.2-628, whenever a dealer licensed by the Department sells and delivers to a purchaser a vehicle and is unable at the time of the sale to deliver to the purchaser the certificate of title or certificate of origin for the vehicle because the certificate of title or certificate of origin is lost or is being detained by another in possession or for any other reason beyond the dealer's control, the dealer shall execute, on forms provided by the Commissioner, a temporary certificate of ownership. The certificate shall bear its date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, the name and address of the person from whom the dealer acquired the vehicle, and whatever other information may be required by the Commissioner. A copy of the temporary certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle. One copy of the certificate shall be retained by the dealer and shall be subject to inspection at any time by the Department's agents. The original of the certificate shall be forwarded by the dealer to the Department directly on issuance to the purchaser if the vehicle is to be titled outside the Commonwealth, along with application for title. The issuance of a temporary certificate of ownership to a purchaser pursuant to this section shall have the effect of vesting ownership of the motorcycle in the purchaser for the period that the certificate remains effective.

B. A temporary certificate of ownership issued by a dealer to a purchaser pursuant to this section shall expire on receipt by the purchaser of a certificate of title to the vehicle issued by the Department in the name of the purchaser, but in no event shall any temporary certificate of ownership issued under this section be effective for more than thirty days from the date of its issuance. In the event that the dealer fails to produce the old certificate of title or certificate of origin to the vehicle or fails to apply for a replacement certificate of title pursuant to § 46.2-632, thereby preventing delivery to the Department or purchaser before the expiration of the temporary certificate of ownership, the purchaser's ownership of the vehicle may terminate and the purchaser shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any

damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes.

C. Notwithstanding subsection B of this section, if the dealer fails to deliver the certificate of title or certificate of origin to the purchaser within thirty days, a second temporary certificate of ownership may be issued. However, the dealer shall, not later than the expiration of the first temporary certificate, deliver to the Department an application for title, copy of the bill of sale, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of title or certificate of origin to the vehicle. On receipt of the title application with attachments as described herein, the Department shall record the purchaser's ownership of the vehicle and may authorize the dealer to issue a second thirty-day temporary certificate of ownership. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the second temporary certificate, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

D. If the dealer is unable to produce the certificate of title or certificate of origin to the vehicle within the sixty-day period from the date of issuance of the first temporary certificate, the Department may extend temporary ownership for an additional period of up to ninety days, provided the dealer makes application in the format required by the Department. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the additional ninety-day period, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the motorcycle as provided in subsection B of this section.

E. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may, after a hearing, suspend the right of the dealer to issue temporary certificates of ownership.

F. The provisions of this section shall not apply to all-terrain vehicles and off-road motorcycles.

§ 46.2-1993.39. Registration of dealers; fees; exemptions.

Every manufacturer, distributor, or dealer, before he commences to operate motorcycles in his inventory for sale or resale, shall apply to the Commissioner for a dealer's certificate of vehicle registration and license plates. For the purposes of this article, a motorcycle is in inventory when it is owned by, or assigned to, a dealer and is offered and available for sale or resale. All dealer's certificates of vehicle registration and license plates issued under this section may, at the discretion of the Commissioner, be placed in a system of staggered issue to distribute the work of issuing vehicle registration certificates and license plates as uniformly as practicable throughout the year. Dealerships which sold fewer than twenty-five motorcycles during the last twelve months of the preceding license year shall be eligible to receive no more than two dealer's license plates; dealerships which sold at least twenty-five but fewer than fifty motorcycles during the last twelve months of the preceding license year shall be eligible to receive no more than four dealer's license plates. However, dealerships which sold fifty or more motorcycles during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership. Dealerships which sold fifty or more motorcycles during the last twelve months of the preceding license year shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. A new applicant for a dealership shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. For the purposes of this article, a salesperson or employee shall be considered to be employed only if he (i) works for the dealership at least twenty-five hours each week on a regular basis and (ii) is compensated for this work. All salespersons' or employees' employment records shall be retained in accordance with the provisions of § 46.2-1993.22. A salesperson shall not be considered employed, within the meaning of this section, if he is an independent contractor as defined by the United States Internal Revenue Code. The fee for the issuance of motorcycle dealer's license plates shall be nine dollars per year for each dealer's license plate.

Nothing in this article shall apply to all-terrain vehicles or off-road motorcycles.

§ 46.2-1993.55. Issuance of temporary license plates to dealers and vehicle owners.

The Department may, subject to the limitations and conditions set forth in this article, deliver temporary license plates designed by the Department to any dealer licensed under this chapter who applies for at least ten sets of plates and who encloses with his application a fee of two dollars for each set applied for. The application shall be made on a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions set forth in this article, may issue temporary license plates to owners of vehicles. The owners shall comply with the provisions of this article and §§ 46.2-705, 46.2-706 and 46.2-707. Dealers issuing temporary license plates may do so free of charge, but if they charge a fee for issuing temporary plates, the fee shall be no more than the fee charged the dealer by the Department under this section.

Display of a temporary license plate or plates on a vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

Nothing in this article shall apply to all-terrain vehicles or off-road motorcycles.

§ 58.1-3503. General classification of tangible personal property.

A. Tangible personal property is classified for valuation purposes according to the following separate categories which are not to be considered separate classes for rate purposes:

1. Farm animals, except as exempted under § 58.1-3505.

2. Farm machinery, except as exempted under § 58.1-3505.

3. Automobiles, except those described in subdivisions 7, 8 and 9 of this subsection and in subdivision A 8 of § 58.1-3504, which shall be valued by means of a recognized pricing guide or if the model and year of the individual automobile are not listed in the recognized pricing guide, the individual vehicle may be valued on the basis of percentage or percentages of original cost. In using a recognized pricing guide, the commissioner shall use either of the following two methods. The commissioner may use all applicable adjustments in such guide to determine the value of each individual automobile, or alternatively, if the commissioner does not utilize all applicable adjustments in valuing each automobile, he shall use the base value specified in such guide which may be either average retail, wholesale, or loan value, so long as uniformly applied within classifications of property. If the model and year of the individual automobile are not listed in the recognized pricing guide, the taxpayer may present to the commissioner proof of the original cost, and the basis of the tax for purposes of the motor vehicle sales and use tax as described in § 58.1-2405 shall constitute proof of original cost. If such percentage or percentages of original cost do not accurately reflect fair market value, or if the taxpayer does not supply proof of original cost, then the commissioner may select another method which establishes fair market value.

4. Trucks of less than two tons, which may be valued by means of a recognized pricing guide or, if the model and year of the individual truck are not listed in the recognized pricing guide, on the basis of a percentage or percentages of original cost.

5. Trucks and other vehicles, as defined in § 46.2-100, except those described in subdivisions 4, and 6 through 10 of this subsection, which shall be valued by means of either a recognized pricing guide using the lowest value specified in such guide or a percentage or percentages of original cost.

6. Manufactured homes, as defined in § 36-85.3, which may be valued on the basis of square footage of living space.

7. Antique motor vehicles, as defined in § 46.2-100, which may be used for general transportation purposes as provided in subsection C of § 46.2-730.

8. Taxicabs.

9. Motor vehicles with specially designed equipment for use by the handicapped, which shall not be valued in relation to their initial cost, but by determining their actual market value if offered for sale on the open market.

10. Motorcycles, *all-terrain vehicles and off-road motorcycles as defined in § 46.2-100,* campers and other recreational vehicles, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

11. Boats weighing under five tons and boat trailers, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

12. Boats or watercraft weighing five tons or more, which shall be valued by means of a percentage or percentages of original cost.

13. Aircraft, which shall be valued by means of a recognized pricing guide or a percentage or percentages of original cost.

14. Household goods and personal effects, except as exempted under § 58.1-3504.

15. Tangible personal property used in a research and development business, which shall be valued by means of a percentage or percentages of original cost.

16. Programmable computer equipment and peripherals used in business which shall be valued by means of a percentage or percentages of original cost to the taxpayer, or by such other method as may reasonably be expected to determine the actual fair market value.

17. All tangible personal property employed in a trade or business other than that described in subdivisions 1 through 16 of this subsection, which shall be valued by means of a percentage or percentages of original cost.

18. All other tangible personal property.

B. Methods of valuing property may differ among the separate categories, so long as each method used is uniform within each category, is consistent with requirements of this section and may reasonably be expected to determine actual fair market value as determined by the commissioner of revenue or other assessing official; however, assessment ratios shall only be used with the concurrence of the local governing body. A commissioner of revenue shall upon request take into account the condition of the

property. The term "condition of the property" includes, but is not limited to, technological obsolescence of property where technological obsolescence is an appropriate factor for valuing such property. The commissioner of revenue shall make available to taxpayers on request a reasonable description of his valuation methods. Such commissioner, or other assessing officer, or his authorized agent, when using a recognized pricing guide as provided for in this section, may automatically extend the assessment if the pricing information is stored in a computer.

§ 58.1-3504. Classification of certain household goods and personal effects for taxation; governing body may exempt.

A. Notwithstanding any provision of § 58.1-3503, household goods and personal effects are hereby defined as separate items of taxation and classified as follows:

1. Bicycles.

2. Household and kitchen furniture, including gold and silver plates, plated ware, watches and clocks, sewing machines, refrigerators, automatic refrigerating machinery of any type, vacuum cleaners and all other household machinery, books, firearms and weapons of all kinds.

3. Pianos, organs, and all other musical instruments; phonographs, record players, and records to be used therewith; and radio and television instruments and equipment.

4. Oil paintings, pictures, statuary, curios, articles of virtu and works of art.

5. Diamonds, cameos or other precious stones and all precious metals used as ornaments or jewelry.

6. Sporting and photographic equipment.

7. Clothing and objects of apparel.

8. Antique motor vehicles as defined in § 46.2-100 which may not be used for general transportation purposes.

9. *All-terrain vehicles and off-road motorcycles as defined in § 46.2-100.*

10. All other tangible personal property used by an individual or a family or household incident to maintaining an abode.

The classification above set forth shall apply only to such property owned and used by an individual or by a family or household incident to maintaining an abode.

The governing body of any county, city or town may, by ordinance duly adopted, exempt from taxation all of the above classes of household goods and personal effects.

B. Notwithstanding any provision set forth above, household appliances in residential rental property used by an individual or by a family or household incident to maintaining an abode shall be deemed to be fixtures and shall be assessed as part of the real property in which they are located.

For purposes of this subsection, "household appliances" shall mean all major appliances customarily used in a residential home and which are the property of the owner of the real estate, including, without limitation, refrigerators, stoves, ranges, microwave ovens, dishwashers, trash compactors, clothes dryers, garbage disposals and air conditioning units.

§ 58.1-3523. (Effective January 1, 2006) Definitions.

As used in this chapter:

"Commissioner of the revenue" means the same as that set forth in § 58.1-3100. For purposes of this chapter, in a county or city which does not have an elected commissioner of the revenue, "commissioner of the revenue" means the officer who is primarily responsible for assessing motor vehicles for the purposes of tangible personal property taxation.

"Department" means the Department of Motor Vehicles.

"Effective tax rate" means the tax rate imposed by a locality on tangible personal property multiplied by any assessment ratio in effect.

"Leased" means leased by a natural person as lessee and used for nonbusiness purposes.

"Privately owned" means owned by a natural person and used for nonbusiness purposes.

"Qualifying vehicle" means any passenger car, motorcycle, and pickup or panel truck, as those terms are defined in § 46.2-100, that is determined by the commissioner of the revenue of the county or city in which the vehicle has situs as provided by § 58.1-3511 to be (i) privately owned or (ii) leased pursuant to a contract requiring the lessee to pay the tangible personal property tax on such vehicle. In determining whether a vehicle is a qualifying vehicle, the commissioner of revenue may rely on the registration of such vehicle with the Department pursuant to Chapter 6 (§ 46.2-600 et seq.) of Title 46.2. *For purposes of this chapter, all-terrain vehicles and off-road motorcycles titled with the Department of Motor Vehicles shall not be deemed qualifying vehicles.*

"Tangible personal property tax" means the tax levied pursuant to Article 1 (§ 58.1-3500 et seq.) of Chapter 35 of Title 58.1.

"Tax year" means the 12-month period beginning in the calendar year for which tangible personal property taxes are imposed.

"Treasurer" means the same as that set forth in § 58.1-3123, when used herein with respect to a county or city. When used herein with respect to a town, "treasurer" means the officer who is primarily responsible for the billing and collection of tangible personal property taxes levied upon motor vehicles

by such town, and means the treasurer of the county or counties in which such town is located if such functions are performed for the town by the county treasurer or treasurers.

"Used for nonbusiness purposes" means the preponderance of use is for other than business purposes. The preponderance of use for other than business purposes shall be deemed not to be satisfied if: (i) the motor vehicle is expensed on the taxpayer's federal income tax return pursuant to Internal Revenue Code § 179; (ii) more than 50 percent of the basis for depreciation of the motor vehicle is depreciated for federal income tax purposes; or (iii) the allowable expense of total annual mileage in excess of 50 percent is deductible for federal income tax purposes or reimbursed pursuant to an arrangement between an employer and employee.

"Value" means the fair market value determined by the method prescribed in § 58.1-3503 and used by the locality in valuing the qualifying vehicle.