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HOUSE BILL NO. 967

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 46.2-1500 and 46.2-1537 of the Code of Virginia, relating to motor vehicle dealers; salesperson.

 Patron—Ebbin

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-1500 and 46.2-1537 of the Code of Virginia are amended and reenacted as follows:****§ 46.2-1500. Definitions.**

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

"Board" means the Motor Vehicle Dealer Board.

"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motor vehicle 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 is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and who sells or distributes new motor vehicles pursuant to a written agreement with the manufacturer, to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles 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 motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, 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.

"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 motor vehicles of a particular line-make or late model or factory repurchase motor vehicles 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 motor vehicle 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 motor vehicle dealer" means a dealer in late model or factory repurchase motor vehicles, including a franchised new motor vehicle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase

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59 motor vehicles.

60 "Franchised motor vehicle dealer" means a dealer in new motor vehicles that has a franchise
61 agreement with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers.

62 "Fund" means the Motor Vehicle Dealer Board Fund.

63 "Independent motor vehicle dealer" means a dealer in used motor vehicles.

64 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
65 preceding model year.

66 "Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name
67 plate marketed by the manufacturer or distributor.

68 "Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter
69 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new
70 motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing
71 engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by
72 the final manufacturer or assembler of the truck.

73 "Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter,
74 it shall not include (i) trailers and semitrailers; (ii) manufactured homes, sales of which are regulated
75 under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (iii) motor homes; (iv) motorcycles; (v) nonrepairable
76 vehicles, as defined in § 46.2-1600; (vi) salvage vehicles, as defined in § 46.2-1600; or (vii) mobile
77 cranes that exceed the size or weight limitations as set forth in § 46.2-1105, 46.2-1110, 46.2-1113, or
78 Article 17 (§ 46.2-1122 et seq.) of Chapter 10 of this title.

79 "Motor vehicle dealer" or "dealer" means any person who:

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

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

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

89 The term "motor vehicle dealer" does not include:

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

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

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

98 4. Persons dealing solely in the sale and distribution of funeral vehicles, including motor vehicles
99 adapted therefor; however, this exemption shall not exempt any person from the provisions of
100 §§ 46.2-1519, 46.2-1520 and 46.2-1548.

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

105 6. An employee of an organization arranging for the purchase or lease by the organization of
106 vehicles for use in the organization's business.

107 7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in
108 conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is
109 located.

110 8. Any person who permits the operation of a motor vehicle show or permits the display of motor
111 vehicles for sale by any motor vehicle dealer licensed under this chapter.

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

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

116 11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

117 12. Any credit union authorized to do business in Virginia, provided the credit union does not
118 receive a commission, money, or other thing of value directly from a motor vehicle dealer.

119 13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under
120 Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

14. The State Department of Social Services or local departments of social services.

"Motor vehicle salesperson" or "salesperson" means (i) any person who is licensed as and employed as a salesperson hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) ~~it also means~~ any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.

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

"New motor vehicle" means any vehicle 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 motor vehicle, 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 vehicle 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 motor vehicle safety and emission standards. Notwithstanding provisions (i) and (iii), a motor vehicle that has been previously sold but not titled shall be deemed a new motor vehicle if it meets the requirements of provisions (ii), (iv), and (v).

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

"Relevant market area" means as follows:

1. In metropolitan localities, the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of 10 miles, but in no case less than seven 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 of 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 motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle 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 motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

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

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

§ 46.2-1537. Prohibited solicitation and compensation.

It shall be unlawful for any motor vehicle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motor vehicle through a pecuniarily interested person, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motor vehicle, unless the person is duly licensed as a salesperson employed by the dealer. *It shall also be unlawful for any motor vehicle dealer to compensate, in any form whatsoever, any person acting in the capacity of a salesperson as defined in § 46.2-1500 unless that person is licensed as required by this chapter.*