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SENATE BILL NO. 746

Offered January 10, 2007

Prefiled November 15, 2006

A *BILL to amend and reenact §§ 46.2-644.1, 46.2-644.3, and 46.2-1993 of the Code of Virginia, relating to all-terrain vehicles and off-road motorcycles.*

Patron—Williams

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-644.1, 46.2-644.3, and 46.2-1993 of the Code of Virginia are amended and reenacted as follows:

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

A. Every owner, ~~except other than a dealer licensed under § 46.2-1933.6, of any in all-terrain vehicle~~ *vehicles* or off-road ~~motorcycle motorcycles~~ *motorcycles* powered by a gasoline or diesel ~~engine engines~~ 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. 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.

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

Any dealer ~~licensed under § 46.2-1933.6 in all-terrain vehicles or off-road motorcycles~~ 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.

§ 46.2-1993. 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" 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

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59 or distributor, or its agents.

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

63 "Farm utility vehicle" shall have the meaning ascribed in § 46.2-100.

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

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

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

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

80 "Late model motorcycle" means a motorcycle of the current model year and the immediately
81 preceding model year.

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

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

89 "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact
90 with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in
91 § 46.2-100. Except as otherwise provided in this chapter, for the purposes of this chapter "all-terrain
92 vehicles" and "off-road motorcycles" shall be deemed to be "motorcycles."

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

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

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

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

103 The term "motorcycle dealer" does not include:

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

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

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

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

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

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

120 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" 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.