

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 166

An Act to amend and reenact § 46.2-1581 of the Code of Virginia, relating to motor vehicle dealer advertising.

[H 372]

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1581 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-1581. Regulated advertising practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

1. A vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the requirements of § 46.2-1500.

2. When advertising any vehicle which does not conform to the definition of "new" as provided in § 46.2-1500, the fact that it is used shall be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. By way of example but not by limitation, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased vehicles" used alone clearly express that the vehicles are used for advertising purposes.

3. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

4. Terms, conditions, and disclaimers shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but shall not be used as a means of contradicting or changing the meaning of an advertised statement.

5. The expiration date of an advertised sale shall be clearly and conspicuously disclosed.

6. The term "list price," "sticker price," or "suggested retail price" and similar terms, shall be used only in reference to the manufacturer's suggested retail price for new vehicles or the dealer's own usual and customary price for used vehicles.

7. Terms such as "at cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice or a bona fide bill of sale and the invoice or bill of sale is available for customer inspection.

"Manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges.

8. When the price or credit terms of a vehicle are advertised, the vehicle shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and not line-make marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller, except buyer-selected options, state and local fees and taxes, and manufacturer's or distributor's freight or destination charges, and a processing fee, if any. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be (i) clearly and conspicuously disclosed in not less than eight-point boldface type or (ii) not smaller than the largest typeface within the advertisement. If the processing fee is not included in the advertised price, the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than eight-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement includes an asterisk or other such notation to refer the reader to the listing of the fees.

9. Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable.

10. Advertisements of "dealer rebates" shall not be used. This does not affect advertisement of manufacturer rebates.

11. "Free," "at no cost," or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. This provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups.

12. "Bait" advertising, in which an advertiser may have no intention to sell at the price or terms advertised, shall not be used. By way of example, but not by limitation:

a. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles, and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. For purposes of this

subdivision, the listing of a vehicle by stock number or vehicle identification number in the advertisement for a used vehicle is one means of satisfactorily disclosing a limitation of availability. ~~Stock numbers or vehicle identification numbers shall not be used in advertising a new vehicle unless the advertisement clearly and conspicuously discloses that it relates to only one vehicle.~~

b. Advertising a vehicle at a certain price, including "as low as" statements, but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price, above the advertised price, shall also be considered "bait" advertising.

c. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

13. The term "repossessed" shall be used only to describe vehicles that have been sold, registered, titled and then taken back from a purchaser and not yet resold to an ultimate user. Advertisers offering repossessed vehicles for sale shall provide proof of repossession upon request.

14. Words such as "finance" or "loan" shall not be used in a motor vehicle advertiser's firm name or trade name, unless that person is actually engaged in the financing of motor vehicles.

15. Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used.