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SENATE BILL NO. 293

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 46.2-1500, 46.2-1529.1, and 46.2-1530 of the Code of Virginia, relating to motor vehicle dealers; demonstrator vehicles; damaged vehicles; vehicle history reports; vehicle buyer's orders.*

Patron—McDougle

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1500, 46.2-1529.1, and 46.2-1530 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.

"Demonstrator" means a new motor vehicle having a gross vehicle weight rating of less than 16,000 pounds that (i) has more than 750 miles accumulated on its odometer that has been driven by dealer personnel or by prospective purchasers during the course of selling, displaying, demonstrating, showing, or exhibiting it and (ii) may be sold as a new motor vehicle, provided the dealer complies with the provisions of subsection D of § 46.2-1530.

"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

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59 the franchisor's trademark, trade name, advertising, or other commercial symbol designating the
60 franchisor, the motor vehicle or its manufacturer or distributor. The term shall include any severable part
61 or parts of a franchise agreement which separately provides for selling and servicing different line-makes
62 of the franchisor.

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

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

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

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

71 *"Known material repaired collision damage" means any replacement, repair, or refinishing of a*
72 *vehicle's frame, body, suspension, or drive train as the result of collision of which the dealer has actual*
73 *knowledge. Known material repaired collision damage does not include repairs to or replacement of a*
74 *vehicle's glass, tires, bumpers, or routine maintenance items such as replacement of fluids, filters,*
75 *batteries, hoses, wiper blades, belts, seals, brake pads and shoes, brake drums and rotors, or other parts*
76 *subject to normal wear and tear.*

77 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
78 preceding model year.

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

81 "Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter
82 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new
83 motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing
84 engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by
85 the final manufacturer or assembler of the truck.

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

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

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

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

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

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

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

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

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

111 4. Persons dealing solely in the sale and distribution of funeral vehicles, including motor vehicles
112 adapted therefor; however, this exemption shall not exempt any person from the provisions of
113 §§ 46.2-1519, 46.2-1520 and 46.2-1548.

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

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

120 7. Any person licensed to sell real estate who sells a manufactured home or similar vehicle in

conjunction with the sale of the parcel of land on which the manufactured home or similar vehicle is located.

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

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

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

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

12. 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 motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under 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 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) 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) that is in the possession of the manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued by the Department of Motor Vehicles of the Commonwealth or by the issuing agency of any other state.

"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

182 mortgage, or otherwise.

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

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

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

188 "*Vehicle history report*" means an electronic or paper document containing information from
189 nationwide databases that discloses the history of the vehicle as derived from available vehicle records.

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

191 § 46.2-1529.1. Sales of used motor vehicles by dealers; disclosures; penalty.

192 A. If, in any retail sale by a dealer of a used motor vehicle of under 6,000 pounds gross vehicle
193 weight for use on the public highways, and normally used for personal, family or household use, the
194 dealer offers an express warranty, the dealer shall provide the buyer a written disclosure of this
195 warranty. The written disclosure shall be the Buyer's Guide required by federal law, shall be completely
196 filled out and, in addition, signed and dated by the buyer and incorporated as part of the buyer's order.

197 B. A dealer may sell a used motor vehicle at retail "AS IS" and exclude all warranties only if the
198 dealer provides the buyer, prior to sale, a separate written disclosure as to the effect of an "AS IS" sale.
199 The written disclosure shall be conspicuous and contained on the front of the buyer's order and printed
200 in not less than bold, ten-point type and signed by the buyer: "I understand that this vehicle is being
201 sold "AS IS" with all faults and is not covered by any dealer warranty. I understand that the dealer is
202 not required to make any repairs after I buy this vehicle. I will have to pay for any repairs this vehicle
203 will need." A fully completed Buyer's Guide, as required by federal law, shall be signed and dated by
204 the buyer and incorporated as part of the buyer's order.

205 C. Failure to provide the applicable disclosure required by subsection A or B of this section shall be
206 punishable by a civil penalty of no more than \$1,000. Any such civil penalty shall be paid into the
207 general fund of the state treasury. Furthermore, if the applicable disclosure required by subsection A or
208 B of this section is not provided as required in this section, the buyer may cancel the sale within thirty
209 days. In this case, the buyer shall have the right to return the vehicle to the dealer and obtain a full
210 refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred
211 while ownership was vested in the purchaser, and less a reasonable amount for the use not to exceed
212 one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation,
213 revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for
214 use of a personal vehicle for business purposes. Notice of the provisions of this subsection shall be
215 included as part of every disclosure made under subsection A or B of this section.

216 *D. A dealer that provides at no cost to a used motor vehicle buyer, prior to sale of a used motor*
217 *vehicle, a copy of a vehicle history report purchased by the dealer within 30 days prior to the sale from*
218 *a national supplier of such reports shall not be held liable in any civil action brought by a buyer of the*
219 *used motor vehicle for alleged failure to disclose damage to the used motor vehicle, unless the buyer*
220 *can show by a preponderance of the evidence that (i) prior to the sale of the vehicle to the buyer the*
221 *vehicle sustained known material repaired collision damage for which the cost of repair at retail*
222 *appears to exceed 25 percent of the vehicle's price when sold to the buyer and (ii) the dealer had actual*
223 *knowledge of the known material repaired collision damage or the dealer could have determined the*
224 *known material repaired collision damage from an inspection of the vehicle.*

225 § 46.2-1530. Buyer's order.

226 A. Every motor vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange
227 of a motor vehicle. A copy of the buyer's order form shall be made available to a prospective buyer
228 during the negotiating phase of a sale and prior to any sales agreement. The completed original shall be
229 retained for a period of four years in accordance with § 46.2-1529, and a duplicate copy shall be
230 delivered to the purchaser at the time of sale or exchange. A buyer's order shall include:

231 1. The name and address of the person to whom the vehicle was sold or traded.

232 2. The date of the sale or trade.

233 3. The name and address of the motor vehicle dealer selling or trading the vehicle.

234 4. The make, model year, vehicle identification number and body style of the vehicle.

235 5. The sale price of the vehicle.

236 6. The amount of any cash deposit made by the buyer.

237 7. A description of any vehicle used as a trade-in and the amount credited the buyer for the trade-in.
238 The description of the trade-in shall be the same as outlined in subdivision 4 of this subsection.

239 8. The amount of any sales and use tax, title fee, uninsured motor vehicle fee, registration fee,
240 purchaser's on-line systems filing fee, or other fee required by law for which the buyer is responsible
241 and the dealer has collected. Each tax and fee shall be individually listed and identified.

242 9. The net balance due at settlement.

243 10. Any item designated as "processing fee," and the amount charged by the dealer, if any, for

processing the transaction. As used in this section processing includes obtaining title and license plates for the purchaser, but shall not include any "purchaser's on-line systems filing fee" as defined in § 46.2-1530.1 or any "dealer's manual transaction fee" as defined in § 46.2-1530.2.

11. Any item designated as "dealer's business license tax," and the amount charged by the dealer, if any.

12. (A) For sales involving dealer-arranged financing, the following notice, printed in bold type no less than 10-point: **"THIS SALE IS CONDITIONED UPON APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALE CONTRACT AS SUBMITTED TO OR THROUGH THE DEALER. IF THAT PROPOSED RETAIL INSTALLMENT SALE CONTRACT IS NOT APPROVED UNDER THE TERMS AGREED TO WITH THE DEALER, YOU MAY CANCEL THIS SALE AND ANY DOWN PAYMENT AND/OR TRADE-IN YOU SUBMITTED WILL BE RETURNED TO YOU, PROVIDED THAT ANY VEHICLE DELIVERED TO YOU BY THE DEALER PURSUANT TO THIS AGREEMENT IS RETURNED TO THE DEALER IN THE SAME CONDITION AS DELIVERED TO YOU, NORMAL WEAR AND TEAR EXCEPTED, WITHIN 24 HOURS OF WRITTEN OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL."**

A dealer may provide the notice required by § 46.2-1530(a)(12)(B) with respect to vehicles purchased prior to July 1, 2010 instead of the notice required by this § 46.2-1530(a)(12)(A).

(B) If the dealer delivers to the customer a vehicle purchased by the customer on or after July 1, 2010 that is conditional on dealer-arranged financing, the following notice, printed in bold type no less than 10-point: **"IF YOU ARE FINANCING THIS VEHICLE PLEASE READ THIS NOTICE: YOU ARE PROPOSING TO ENTER INTO A RETAIL INSTALLMENT SALES CONTRACT WITH THE DEALER. PART OF YOUR CONTRACT INVOLVES FINANCING THE PURCHASE OF YOUR VEHICLE. IF YOU ARE FINANCING THIS VEHICLE AND THE DEALER INTENDS TO TRANSFER YOUR FINANCING TO A FINANCE PROVIDER SUCH AS A BANK, CREDIT UNION OR OTHER LENDER, YOUR VEHICLE PURCHASE DEPENDS ON THE FINANCE PROVIDER'S APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES CONTRACT. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED THE DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER THE VIRGINIA CONSUMER PROTECTION ACT."**

13. For sales of used motor vehicles, the disclosure required by § 46.2-1529.1.

If the transaction does not include a policy of motor vehicle liability insurance, the seller shall stamp or mark on the face of the bill of sale in boldface letters no smaller than 18 point type the following words: "No Liability Insurance Included."

A completed buyer's order when signed by both buyer and seller may constitute a bill of sale.

B. The Board shall approve a buyer's order form and each dealer shall file with each original license application its buyer's order form, on which the processing fee amount is stated.

C. If a processing fee is charged, that fact and the amount of the processing fee shall be disclosed by the dealer. Disclosure shall be by placing a clear and conspicuous sign in the public sales area of the dealership. The sign shall be no smaller than eight and one-half inches by eleven inches and the print shall be no smaller than one-half inch, and in a form as approved by the Board.

D. If the buyer's order is for a new motor vehicle having a gross vehicle weight rating of less than 16,000 pounds that had accumulated, at the time of the sale, mileage in excess of 750 miles as a demonstrator or as a result of delivery to a prospective purchaser who never took title to the new motor vehicle and returned it, the vehicle may be sold as new, provided the dealer delivers this disclosure in writing on the buyer's order or in a separate document containing type of no smaller than 8 point: **"Notice: This new motor vehicle has accumulated mileage in excess of 750 miles as the result of use as a demonstrator or as the result of delivery to a prior prospective purchaser who never took title to it**

305 *and who returned it."*