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SENATE BILL NO. 293

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on/for Transportation
on February 4, 2010)

(Patron Prior to Substitute—Senator McDougle)

A *BILL to amend and reenact §§ 46.2-1500 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.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1500 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 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.

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

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

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

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

68 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
69 preceding model year.

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

72 "Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter
73 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new
74 motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing
75 engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by
76 the final manufacturer or assembler of the truck.

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

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

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

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

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

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

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

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

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

102 4. Persons dealing solely in the sale and distribution of funeral vehicles, including motor vehicles
103 adapted therefor; however, this exemption shall not exempt any person from the provisions of
104 §§ 46.2-1519, 46.2-1520 and 46.2-1548.

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

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

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

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

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

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

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

121 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 and has less than 7,500 miles accumulated on its odometer.

"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.

§ 46.2-1530. Buyer's order.

A. Every motor vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange

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

- 187 1. The name and address of the person to whom the vehicle was sold or traded.
- 188 2. The date of the sale or trade.
- 189 3. The name and address of the motor vehicle dealer selling or trading the vehicle.
- 190 4. The make, model year, vehicle identification number and body style of the vehicle.
- 191 5. The sale price of the vehicle.
- 192 6. The amount of any cash deposit made by the buyer.
- 193 7. A description of any vehicle used as a trade-in and the amount credited the buyer for the trade-in.
- 194 The description of the trade-in shall be the same as outlined in subdivision 4 of this subsection.
- 195 8. The amount of any sales and use tax, title fee, uninsured motor vehicle fee, registration fee,
- 196 purchaser's on-line systems filing fee, or other fee required by law for which the buyer is responsible
- 197 and the dealer has collected. Each tax and fee shall be individually listed and identified.
- 198 9. The net balance due at settlement.

199 10. Any item designated as "processing fee," and the amount charged by the dealer, if any, for
200 processing the transaction. As used in this section processing includes obtaining title and license plates
201 for the purchaser, but shall not include any "purchaser's on-line systems filing fee" as defined in
202 § 46.2-1530.1 or any "dealer's manual transaction fee" as defined in § 46.2-1530.2.

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

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

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

217 (B) If the dealer delivers to the customer a vehicle purchased by the customer on or after July 1,
218 2010 that is conditional on dealer-arranged financing, the following notice, printed in bold type no less
219 than 10-point: "IF YOU ARE FINANCING THIS VEHICLE PLEASE READ THIS NOTICE: YOU
220 ARE PROPOSING TO ENTER INTO A RETAIL INSTALLMENT SALES CONTRACT WITH THE
221 DEALER. PART OF YOUR CONTRACT INVOLVES FINANCING THE PURCHASE OF YOUR
222 VEHICLE. IF YOU ARE FINANCING THIS VEHICLE AND THE DEALER INTENDS TO
223 TRANSFER YOUR FINANCING TO A FINANCE PROVIDER SUCH AS A BANK, CREDIT UNION
224 OR OTHER LENDER, YOUR VEHICLE PURCHASE DEPENDS ON THE FINANCE PROVIDER'S
225 APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES CONTRACT. IF YOUR
226 RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT
227 INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE
228 CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED THE
229 DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY
230 FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR
231 PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE
232 DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION
233 IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT
234 OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT
235 RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF
236 CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT
237 FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES
238 NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE
239 DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE
240 DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU,
241 EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER
242 THE VIRGINIA CONSUMER PROTECTION ACT."

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

244 If the transaction does not include a policy of motor vehicle liability insurance, the seller shall stamp

245 or mark on the face of the bill of sale in boldface letters no smaller than 18 point type the following
246 words: "No Liability Insurance Included."

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

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

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

254 *D. If the buyer's order is for a new motor vehicle having a gross vehicle weight rating of less than*
255 *16,000 pounds that had accumulated, at the time of the sale, mileage in excess of 750 miles as a*
256 *demonstrator or as a result of delivery to a prospective purchaser who never took title to the new motor*
257 *vehicle and returned it, the vehicle may be sold as new, provided the dealer delivers this disclosure in*
258 *writing on the buyer's order containing type of no smaller than 10 point or in a separate document*
259 *containing only the disclosure in type of no smaller than 14 point: "Notice: This new motor vehicle has*
260 *accumulated mileage in excess of 750 miles as the result of use as a demonstrator and/or as the result*
261 *of delivery to a prior prospective purchaser who never took title to it and who returned it" When*
262 *delivered as a separate document, this disclosure shall also contain the actual odometer reading for the*
263 *vehicle and shall be signed by the purchaser.*