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SENATE BILL NO. 522

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 46.2-1993 of the Code of Virginia, relating to the definition of "relevant market area" as it applies to motorcycle dealers.

Patron—Norment

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-1993 of the Code of Virginia is amended and reenacted as follows:**

§ 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 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.

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

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

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

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

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59 "Late model motorcycle" means a motorcycle of the current model year and the immediately
60 preceding model year.

61 "Line-make" means the name of the motorcycle manufacturer or distributor and a brand or name
62 plate marketed by the manufacturer or distributor. For the purposes of this chapter, the "line-make" of a
63 motorcycle manufacturer, factory branch, distributor, or distributor branch shall include every brand of
64 all-terrain vehicle and off-road motorcycle manufactured or distributed bearing the name of the
65 motorcycle manufacturer or distributor.

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

68 "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact
69 with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in
70 § 46.2-100. Except as otherwise provided in this chapter, for the purposes of this chapter "all-terrain
71 vehicles" and "off-road motorcycles" shall be deemed to be "motorcycles."

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

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

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

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

82 The term "motorcycle dealer" does not include:

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

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

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

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

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

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

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

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

103 9. Any credit union authorized to do business in Virginia, provided the credit union does not receive
104 a commission, money, or other thing of value directly from a motorcycle dealer.

105 "Motorcycle salesperson" or "salesperson" means any person who is licensed as and employed as a
106 salesperson by a motorcycle dealer to sell or exchange motorcycles.

107 "Motorcycle show" means a display of motorcycles to the general public at a location other than a
108 dealer's location licensed under this chapter where the motorcycles are not being offered for sale or
109 exchange during or as part of the display.

110 "New motorcycle" means any motorcycle which (i) has not been previously sold except in good faith
111 for the purpose of resale, (ii) has not been used as a rental, driver education, or demonstration
112 motorcycle, or for the personal and business transportation of the manufacturer, distributor, dealer, or
113 any of his employees, (iii) has not been used except for limited use necessary in moving or road testing
114 the motorcycle prior to delivery to a customer, (iv) is transferred by a certificate of origin, and (v) has
115 the manufacturer's certification that it conforms to all applicable federal motorcycle safety and emission
116 standards. Notwithstanding provisions (i) and (iii), a motorcycle that has been previously sold but not
117 titled shall be deemed a new motorcycle if it meets the requirements of provisions (ii), (iv), and (v).

118 "Off-road motorcycle" shall have the meaning ascribed in § 46.2-100.

119 "Original license" means a motorcycle dealer license issued to an applicant who has never been
120 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 ~~40~~ 20 miles.

2. If the population in an area within a radius of ~~40~~ 20 miles around an existing franchised dealer is less than 250,000, but the population in an area within a radius of ~~45~~ 30 miles around an existing franchised dealer is 150,000 or more, the relevant market area shall be that area within the ~~45-mile~~ 30-mile radius.

3. In all other cases the relevant market area shall be an area within a radius of ~~20~~ 40 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~~ 40 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.