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HOUSE BILL NO. 2011

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 46.2-1503, 46.2-1510, 46.2-1519, 46.2-1529, and 46.2-1530 of the Code of Virginia, relating to motor vehicle dealers and the Virginia Motor Vehicle Dealer Board.

Patron—Carrico

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1503, 46.2-1510, 46.2-1519, 46.2-1529, and 46.2-1530 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-1503. Motor Vehicle Dealer Board.

A. The Motor Vehicle Dealer Board is hereby created. The Board shall consist of nineteen members appointed by the Governor, subject to confirmation by the General Assembly. Every member appointed by the Governor must be a citizen of the United States and must be a resident of Virginia. The Governor may remove any member as provided in subsection B of § 2.2-108. The initial terms of eight of the members appointed in July of 1995 shall commence when appointed and shall be for terms ending on June 30, 1997. Nine members shall be appointed for four-year terms. The members shall be at-large members and, insofar as practical, should reflect fair and equitable statewide representation.

B. Nine members shall be licensed franchised motor vehicle dealers who have been licensed as such for at least two years prior to being appointed by the Governor and seven members shall be licensed independent motor vehicle dealers who (i) have been licensed as such for at least two years prior to being appointed by the Governor and (ii) are not also franchised motor vehicle dealers. One of the independent dealers appointed to the Board shall be a licensed motor vehicle dealer primarily engaged in the business of renting vehicles, and one shall be a licensed independent dealer primarily engaged in the motor vehicle salvage business. One member shall be an individual who has no direct or indirect interest, other than as a consumer, in or relating to the motor vehicle industry.

C. Appointments shall be for terms of four years, and no person other than the Commissioner of the Department of Motor Vehicles and the Commissioner of Agriculture and Consumer Services *or his designee* shall be eligible to serve more than two successive four-year terms. The Commissioner of the Department of Motor Vehicles shall serve as chairman of the Board. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. Any person appointed to fill a vacancy may serve two additional successive terms.

D. The Commissioner of the Department of Motor Vehicles and the Commissioner of Agriculture and Consumer Services *or his designee* shall be ex officio voting members of the Board.

E. Members of the Board shall be reimbursed their actual and necessary expenses incurred in carrying out their duties, such reimbursement to be paid from the special fund referred to in § 46.2-1520.

§ 46.2-1510. Dealers required to have established place of business.

No license shall be issued to any motor vehicle dealer unless he has an established place of business, owned or leased by him, where a substantial portion of the sales activity of the business is routinely conducted and which:

1. Satisfies all local zoning regulations;
2. Has sales, service, and office space devoted exclusively to the dealership of at least 250 square feet in a permanent, enclosed building not used as a residence;
3. Houses all records the dealer is required to maintain by § 46.2-1529;
4. Is equipped with a desk, chairs, filing space, a working telephone listed in the name of the dealership, and working utilities including electricity and provisions for space heating, and an Internet connection and email address;
5. Displays a sign and business hours as required by this chapter; and
6. Has contiguous space designated for the exclusive use of the dealer adequate to permit the display of at least ten vehicles.

Any dealer licensed on or before July 1, 1995, shall be considered in compliance with subdivisions 2 and 6 of this section for that licensee.

Dealers licensed prior to July 1, 2011, shall be exempt from the Internet and email address requirements of this section until July 1, 2012.

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HB2011

§ 46.2-1519. License and registration fees; additional to other licenses and fees required by law.

A. The fee for each license and registration year or part thereof shall be determined by the Board, subject to the following:

1. For motor vehicle dealers, not more than \$300 for each principal place of business, plus not more than \$40 for each supplemental license.

2. For motor vehicle salespersons, not more than \$50.

B. The licenses, registrations, and fees required by this chapter are in addition to licenses, taxes, and fees imposed by other provisions of law and nothing contained in this chapter shall exempt any person from any license, tax, or fee imposed by any other provision of law.

C. The fee for issuance to a nonprofit organization of a certificate pursuant to subsection B of § 46.2-1508.1 shall be \$25 per year or any part thereof.

D. No nonprofit organization granted a certificate pursuant to subsection B of § 46.2-1508.1 shall, either orally or in writing, assign a value to any donated vehicle for the purpose of establishing tax deduction amounts on any federal or state income tax return.

E. The Board may authorize discounts and other incentives to encourage licensees to conduct transactions with the Board (i) by means of electronic technologies and (ii) for multi-year periods.

F. The fee for reprinting licenses, certificates, and registrations shall be \$10 for each reprint.

G. The fee for reinstating a license, certificate, or registration that has been suspended shall be \$50.

§ 46.2-1529. Dealer records.

All dealer records regarding employees; lists of vehicles in inventory for sale, resale, or on consignment; vehicle purchases, sales, trades, and transfers of ownership; collections of taxes; titling, uninsured motor vehicle, and registration fees; odometer disclosure statements; records of permanent dealer registration plates assigned to the dealer and temporary transport plates and temporary certificates of ownership; *proof of safety inspections performed on vehicles sold at retail*; and other records required by the Department or the Board shall be maintained on the premises of the licensed location. The Board may, on written request by a dealer, permit his records to be maintained at a location other than the premises of the licensed location for good cause shown. All dealer records shall be preserved in original form or in film, magnetic, or optical media (including but not limited to microfilm, microfiche, or other electronic media) for a period of five years in a manner that permits systematic retrieval. Certain records may be maintained on a computerized record-keeping system with the prior approval of the Board.

§ 46.2-1530. Buyer's order.

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

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

2. The date of the sale or trade.

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

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

5. The sale price of the vehicle.

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

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

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

9. The net balance due at settlement.

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. 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

121 APPROVAL OF YOUR PROPOSED RETAIL INSTALLMENT SALES CONTRACT. IF YOUR
122 RETAIL INSTALLMENT SALES CONTRACT IS APPROVED WITHOUT A CHANGE THAT
123 INCREASES THE COST OR RISK TO YOU OR THE DEALER, YOUR PURCHASE CANNOT BE
124 CANCELLED. IF YOUR RETAIL INSTALLMENT SALES CONTRACT IS NOT APPROVED, THE
125 DEALER WILL NOTIFY YOU VERBALLY OR IN WRITING. YOU CAN THEN DECIDE TO PAY
126 FOR THE VEHICLE IN SOME OTHER WAY OR YOU OR THE DEALER CAN CANCEL YOUR
127 PURCHASE. IF THE SALE IS CANCELLED, YOU NEED TO RETURN THE VEHICLE TO THE
128 DEALER WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE IN THE SAME CONDITION
129 IT WAS GIVEN TO YOU, EXCEPT FOR NORMAL WEAR AND TEAR. ANY DOWN PAYMENT
130 OR TRADE-IN YOU GAVE THE DEALER WILL BE RETURNED TO YOU. IF YOU DO NOT
131 RETURN THE VEHICLE WITHIN 24 HOURS OF VERBAL OR WRITTEN NOTICE OF
132 CANCELLATION, THE DEALER MAY LOCATE THE VEHICLE AND TAKE IT BACK WITHOUT
133 FURTHER NOTICE TO YOU AS LONG AS THE DEALER FOLLOWS THE LAW AND DOES
134 NOT CAUSE A BREACH OF THE PEACE WHEN TAKING THE VEHICLE BACK. IF THE
135 DEALER DOES NOT RETURN YOUR DOWN PAYMENT AND ANY TRADE-IN WHEN THE
136 DEALER GETS THE VEHICLE BACK IN THE SAME CONDITION IT WAS GIVEN TO YOU,
137 EXCEPT FOR NORMAL WEAR AND TEAR, THE DEALER MAY BE LIABLE TO YOU UNDER
138 THE VIRGINIA CONSUMER PROTECTION ACT."

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

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

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

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

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

150 D. If the buyer's order is for a new motor vehicle having a gross vehicle weight rating of less than
151 16,000 pounds that had accumulated, at the time of the sale, mileage in excess of 750 miles as a
152 demonstrator or as a result of delivery to a prospective purchaser who never took title to the new motor
153 vehicle and returned it, the vehicle may be sold as new, provided the dealer delivers this disclosure in
154 writing on the buyer's order containing type of no smaller than 10 point or in a separate document
155 containing only the disclosure in type of no smaller than 14 point: "Notice: This new motor vehicle has
156 accumulated mileage in excess of 750 miles as the result of use as a demonstrator and/or as the result of
157 delivery to a prior prospective purchaser who never took title to it and who returned it." When delivered
158 as a separate document, this disclosure shall also contain the actual odometer reading for the vehicle and
159 shall be signed by the purchaser.