

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 46.2-1500 of the Code of Virginia, relating to motor vehicle dealers; definitions.

[H 582]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1500 of the Code of Virginia is 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, *offering and delivering pursuant to a lease*, servicing, or offering, selling, and servicing new motor vehicles of a particular line-make or late model or used 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.

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57 "Franchised late model or franchised used motor vehicle dealer" means a dealer selling used motor
 58 vehicles, including vehicles purchased from the franchisor, under the trademark of a manufacturer or
 59 distributor that has a franchise agreement with a manufacturer or distributor.

60 "Franchised motor vehicle dealer" means a dealer in new motor vehicles that has a franchise
 61 agreement with a manufacturer or distributor of new motor vehicles, trailers, or semitrailers to sell new
 62 motor vehicles or to sell used motor vehicles under the trademark of a manufacturer or distributor
 63 regardless of the age of the motor vehicles, trailers, or semitrailers.

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

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

66 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
 67 preceding model year.

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

70 "Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter
 71 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new
 72 motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing
 73 engines, *transmissions*, power trains, or rear axles, when such engines, *transmissions*, power trains, or
 74 rear axles are not warranted by the final manufacturer or assembler of the truck.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 118 11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.
- 119 12. Any credit union authorized to do business in Virginia, provided the credit union does not
- 120 receive a commission, money, or other thing of value directly from a motor vehicle dealer.
- 121 13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under
- 122 Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.
- 123 14. The State Department of Social Services or local departments of social services.
- 124 "Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee by a
- 125 motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a
- 126 commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons
- 127 employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person,
- 128 compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a
- 129 customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as
- 130 a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any
- 131 person who is an independent contractor as defined by the United States Internal Revenue Code shall be
- 132 deemed not to be a motor vehicle salesperson.
- 133 "Motor vehicle show" means a display of motor vehicles to the general public at a location other
- 134 than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or
- 135 exchange during or as part of the display.
- 136 "New motor vehicle" means any vehicle that is in the possession of the manufacturer, factory branch,
- 137 distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued
- 138 by the Department of Motor Vehicles of the Commonwealth or by the issuing agency of any other state
- 139 and has less than 7,500 miles accumulated on its odometer.
- 140 "Original license" means a motor vehicle dealer license issued to an applicant who has never been
- 141 licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been
- 142 expired for more than 30 days.
- 143 "Relevant market area" means as follows:
- 144 1. In metropolitan localities, the relevant market area shall be a circular area around an existing
- 145 franchised dealer with a population of 250,000, not to exceed a radius of 10 miles, but in no case less
- 146 than seven miles.
- 147 2. If the population in an area within a radius of 10 miles around an existing franchised dealer is less
- 148 than 250,000, but the population in an area within a radius of 15 miles around an existing franchised
- 149 dealer is 150,000 or more, the relevant market area shall be that area within the 15-mile radius.
- 150 3. In all other cases the relevant market area shall be an area within a radius of 20 miles around an
- 151 existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater. In
- 152 any case where the franchise agreement is silent as to area of responsibility, the relevant market area
- 153 shall be the greater of an area within a radius of 20 miles around an existing franchised dealer or that
- 154 area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales
- 155 efforts.
- 156 Notwithstanding the foregoing provision of this section, in the case of dealers in motor vehicles with
- 157 gross vehicle weight ratings of 26,000 pounds or greater, the relevant market area with respect to the
- 158 dealer's franchise for all such vehicles shall be a circular area around an existing franchised dealer with
- 159 a radius of 25 miles, except where the population in such circular area is less than 250,000, in which
- 160 case the relevant market area shall be a circular area around an existing franchised dealer with a radius
- 161 of 50 miles, *or the area of responsibility defined in the franchise, whichever is greater.*
- 162 In determining population for this definition, the most recent census by the U.S. Bureau of the
- 163 Census or the most recent population update, either from the National Planning Data Corporation or
- 164 other similar recognized source, shall be accumulated for all census tracts either wholly or partially
- 165 within the relevant market area.
- 166 "Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and
- 167 not for resale, in which the price of the vehicle is payable in one or more installments and in which the
- 168 seller has either retained title to the goods or has taken or retained a security interest in the goods under
- 169 form of contract designated either as a security agreement, conditional sale, bailment lease, chattel
- 170 mortgage, or otherwise.
- 171 "Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or
- 172 otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.
- 173 "Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to
- 174 consumers; a sale to one who intends to resell.
- 175 "Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.
- 176 "Wholesale auction" means an auction of motor vehicles restricted to sales at wholesale.