

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 1043

An Act to amend and reenact §§ 46.2-1900, 46.2-1907, 46.2-1909 through 46.2-1912, 46.2-1916, 46.2-1918, 46.2-1919, 46.2-1927, 46.2-1930, 46.2-1931, 46.2-1933, 46.2-1943, 46.2-1944, 46.2-1947, 46.2-1948, 46.2-1949, 46.2-1950, 46.2-1951, 46.2-1952, 46.2-1953, 46.2-1955, 46.2-1956, 46.2-1975, 46.2-1976, 46.2-1977, 46.2-1979, 46.2-1985, and 46.2-1988 of the Code of Virginia; to amend the Code of Virginia by adding in Title 46.2 chapters numbered 19.1, consisting of articles numbered 1 through 9, consisting of sections numbered 46.2-1992 through 46.2-1992.85, and 19.2, consisting of articles numbered 1 through 9, consisting of sections numbered 46.2-1993 through 46.2-1993.82; and to repeal §§ 46.2-1902, 46.2-1903, 46.2-1942, and 46.2-1961 of the Code of Virginia, relating to T&M vehicle dealers, trailer dealers, and motorcycle dealers; penalties.

[S 387]

Approved May 6, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1900, 46.2-1907, 46.2-1909 through 46.2-1912, 46.2-1916, 46.2-1918, 46.2-1919, 46.2-1927, 46.2-1930, 46.2-1931, 46.2-1933, 46.2-1943, 46.2-1944, 46.2-1947, 46.2-1948, 46.2-1949, 46.2-1950, 46.2-1951, 46.2-1952, 46.2-1953, 46.2-1955, 46.2-1956, 46.2-1975, 46.2-1976, 46.2-1977, 46.2-1979, 46.2-1985, and 46.2-1988 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 46.2 chapters numbered 19.1, consisting of articles numbered 1 through 9, consisting of sections numbered 46.2-1992 through 46.2-1992.85, and 19.2, consisting of articles numbered 1 through 9, consisting of sections 46.2-1993 through 46.2-1993.82, as follows:

CHAPTER 19. T&M VEHICLE DEALERS.

§ 46.2-1900. Definitions.

Unless the context otherwise requires, the following words and terms for the purpose of this chapter shall have the following meanings:

"Certificate of origin" means the document provided by the manufacturer of a new T&M vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised T&M 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.

"Distributor" means a person who sells or distributes new T&M vehicles pursuant to a written agreement with the manufacturer, to franchised T&M vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of T&M vehicles to T&M vehicle 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 T&M 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 T&M vehicles to distributors or for the sale of T&M vehicles to T&M vehicle 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 T&M vehicles, or by a factory branch for the purpose of making or promoting the sale of its T&M vehicles, or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase T&M vehicle" means a T&M vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the T&M vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the T&M 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 T&M vehicles of a particular line-make or late model or factory repurchase T&M 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 T&M 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.

"Franchised late model or factory repurchase T&M vehicle dealer" means a dealer in late model or factory repurchase T&M vehicles, including a franchised new T&M vehicle dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase T&M vehicles.

"Franchised T&M vehicle dealer" or *"franchised dealer"* means a dealer in new T&M vehicles that has a franchise agreement with a manufacturer or distributor of new T&M vehicles.

"Independent T&M vehicle dealer" means a dealer in used T&M vehicles.

"Late model T&M vehicle" means a T&M vehicle of the current model year and the immediately preceding model year.

"Manufacturer" means a person engaged in the business of constructing or assembling new T&M vehicles ~~and, in the case of motor homes, also means~~ or a person engaged in the business of manufacturing engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by the final manufacturer or assembler of the motor home.

"Motor home" means a motor vehicle with a normal seating capacity of not more than ten persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle dealer," ~~means "motor vehicle manufacturer," "motor vehicle factory branch," "motor vehicle distributor," "motor vehicle distributor branch," "motor vehicle factory representative," and "motor vehicle distributor representative" mean the same as provided in § 46.2-100, except for the purposes of this chapter it shall not include (i) trailers and semitrailers; (ii) mobile homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (iii) motor homes; (iv) motorcycles; (v) nonrepairable vehicles, as defined in § 46.2-1600; or (vi) salvage vehicles, as defined in § 46.2-1600 § 46.2-1500.~~

"New T&M vehicle" means any T&M 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 T&M 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 T&M 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 T&M vehicle safety and emission standards. Notwithstanding provisions (i) and (iii), a T&M vehicle that has been previously sold but not titled shall be deemed a new T&M vehicle if it meets the requirements of provisions (ii), (iv), and (v) of this definition.

"Relevant market area" means as follows:

1. In metropolitan localities with a population of 250,000, the relevant market area shall be a circular area around an existing franchised dealer not to exceed a radius of ten miles, but in no case less than seven miles.

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

3. In all other cases the relevant market area shall be an area within a radius of twenty 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 twenty 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 T&M vehicles to a buyer for his use and not for resale, in which the price of the T&M 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 T&M vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to T&M vehicle dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"T&M vehicle" means ~~trailers, semitrailers, motor homes, and motorcycles but not mobile homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36~~ travel trailers as defined in this section.

"T&M vehicle dealer" or "dealer" means any person who:

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

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

3. Offers to sell, sells, displays, or permits the display for sale, of five or more T&M vehicles within any twelve consecutive months.

The term "T&M vehicle dealer" does not include:

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

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

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

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including T&M vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1919, 46.2-1920 and 46.2-1949.

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

6. An employee of an organization arranging for the purchase or lease by the organization of T&M vehicles for use in the organization's business.

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

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

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of T&M 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 T&M vehicles owned by others.

11. Any person dealing solely in the sale or lease of T&M 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 T&M 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.

"T&M vehicle salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a T&M vehicle dealer to sell or exchange T&M vehicles.

"T&M vehicle show" means a display of T&M vehicles to the general public at a location other than a dealer's location licensed under this chapter where the T&M vehicles are not being offered for sale or exchange during or as part of the display.

"Travel trailer" means a vehicle designed to provide temporary living quarters of such size or weight as not to require special highway movement permits when towed by a motor vehicle and having a gross trailer area less than 320 square feet.

"Used T&M vehicle" means any T&M vehicle other than a new T&M vehicle as defined in this section.

"Wholesale auction" means an auction of T&M vehicles restricted to sales at wholesale.

§ 46.2-1907. Penalties.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil ~~fine~~ *penalty* not to exceed \$1,000 for any single violation. Civil penalties collected under this chapter shall be deposited into the Transportation Trust Fund.

§ 46.2-1909. Application for license or certificate of dealer registration.

Application for license or certificate of dealer registration under this chapter shall be made to the Commissioner and contain such information as the Commissioner shall require. The application shall be accompanied by the required fee.

The Commissioner shall require, in the application or otherwise, information relating to the matters set forth in § 46.2-1985 as grounds for refusing licenses, certificates of dealer registration, and to other pertinent matters requisite for the safeguarding of the public interest, including, if the applicant is a

dealer in new T&M vehicles with factory warranties, a copy of a current service agreement with the manufacturer or with the distributor, requiring the applicant to perform within a reasonable distance of his established place of business, the service, repair, and replacement work required of the manufacturer or distributor by such T&M vehicle warranty. All of these matters shall be considered by the Commissioner in determining the fitness of the applicant to engage in the business for which he seeks a license or certificate of dealer registration.

§ 46.2-1910. Dealers required to have established place of business.

No license shall be issued to any T&M 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 § 46.2-1929;
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;
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 T&M vehicles.

However, any licensee engaging in business exclusively as a dealer in used mobile homes without inventory need not have contiguous display space and need have only 120 square feet of sales and office space devoted exclusively to its business.

Any ~~dealer~~ person licensed by the Department as a dealer under any provision of this subtitle on or before July 1, 1995 June 30, 1996, shall be considered in compliance with subdivisions 2 and 6 of this section for that licensee.

§ 46.2-1911. Dealer-operator to have certificate of qualification.

No license shall be issued to any T&M vehicle dealer unless the dealer-operator holds a valid certificate of qualification issued by the Department. Such certificate shall be issued only on application to the Department, payment of a twenty-five dollar application fee, the successful completion of an examination prepared and administered by the Department, and other prerequisites as set forth in this section. However, any individual who is the dealer-operator of a ~~licensed T&M dealer on July 1, 1995~~ licensed by the Department under any provision of this subtitle on June 30, 1996, shall be entitled to such a certificate without examination on application to the Department made on or before January 1, 1996 1997.

The Commissioner may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

§ 46.2-1912. Salesperson to have certificate of qualification.

No license shall be issued to any T&M vehicle salesperson unless he holds a valid certificate of qualification issued by the Department. A certificate shall be issued only on application to the Department, payment of a twenty-five dollar application fee, the successful completion of an examination prepared and administered by the Department, and other prerequisites as set forth in this section. However, any individual who is licensed as a salesperson by the Department under any provision of this subtitle on July 1, 1995 June 30, 1996, shall be entitled to such a certificate without examination on application to the Department made on or before January 1, 1996 1997.

The Commissioner may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

§ 46.2-1916. Supplemental sales locations.

The Commissioner may issue a license for a licensed T&M vehicle dealer to display for sale or sell T&M vehicles at locations other than his established place of business, subject to compliance with local ordinances and requirements.

A permanent supplemental license may be issued for premises less than 500 yards from the dealer's established place of business, provided a sign is displayed as required for the established place of business. A supplemental license shall not be required for premises otherwise contiguous to the established place of business except for a public thoroughfare.

A temporary supplemental license may be issued for a period not to exceed seven days, provided that the application is made fifteen days prior to the sale. A temporary supplemental license for the sale of new T&M vehicles may be issued only for locations within the dealer's area of responsibility, as defined in his franchise or sales agreement, unless proof is provided that all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought do not oppose the issuance of the temporary license.

However, the application for a temporary supplemental license may be made five business days prior to the sale if the applicant submits evidence that the location is in compliance with all applicable local ordinances and that all other requirements of this section have been met. The application shall include affirmative proof of nonopposition, in the form of letters signed by all dealers in the same line-make in

whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought, approving the Department's granting the temporary supplemental license.

A temporary supplemental license for sale of used T&M vehicles may be issued only for the county, city, or town in which the dealer is licensed pursuant to § 46.2-1910, or for a contiguous county, city, or town. Temporary licenses may be issued without regard to the foregoing geographic restrictions where the dealer operating under a temporary license provides notice, at least thirty days before any proposed sale under a temporary license, to all other dealers licensed in the jurisdiction in which the sale will occur of the intent to conduct a sale and permits any locally licensed dealer who wishes to do so to participate in the sale on the same terms as the dealer operating under the temporary license. Any locally licensed dealer who chooses to participate in the sale must obtain a temporary supplemental license for the sale pursuant to this section.

~~A temporary supplemental license may be issued for the sale of boat trailers at a boat show. Any such license shall be valid for no more than fourteen days. Application for such a license shall be made and such license obtained prior to the opening of the show. Temporary supplemental licenses for sale of boat trailers at boat shows may be issued for any boat show located anywhere in the Commonwealth without notification of or approval by other boat trailer dealers.~~

§ 46.2-1918. Display of salesperson's license; notice on termination.

No salesperson shall be employed by more than one dealer, unless the dealers are owned by the same person.

Each dealer shall ~~post and~~ maintain in a place conspicuous to the public a list of salespersons employed.

Each salesperson, ~~and each T&M vehicle and motor vehicle~~ factory representative, and distributor representative shall carry his license when engaged in his business and shall display it on request.

Each dealer and each motor vehicle and T&M vehicle manufacturer and distributor shall notify the Department in writing not later than the tenth day of the month following the termination of any licensed salesperson's or representative's employment. In lieu of written notification, the license of the terminated salesperson or representative may be returned to the Department annotated "terminated" on the face of the license and signed and dated by the dealer-operator, owner, or officer.

§ 46.2-1919. 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 as follows:

1. For T&M vehicle dealers, \$100 for each principal place of business, plus \$20 for each supplemental license.

2. For T&M and motor vehicle manufacturers, distributors, and each factory branch and distributor branch, \$100.

3. For T&M and motor vehicle ~~and~~ rebuilder salespersons, factory representatives, and distributor representatives, \$10.

4. For motor vehicle dealers and T&M vehicle dealers licensed in other states, but not in Virginia, a registration fee of \$50.

5. For manufactured home dealers, a registration fee of \$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. *However, the Commissioner may waive fees for those licensed under Chapter 15, 19.1, or 19.2 of this title.*

§ 46.2-1927. Bonding requirements for applicants for license.

~~Before the Commissioner shall issue a license under this chapter, the applicant~~ *Every applicant for an original, second year renewal, and third year renewal dealer's license shall obtain and file with the Commissioner a bond in the amount of \$25,000. However, no dealer shall be required to obtain more than one \$25,000 bond for all licenses held under this subtitle. Any dealer who is licensed under Chapter 15 of this title and who obtains a T&M vehicle dealer license under this chapter, shall be exempt from the bond requirements set out in this section. In addition, any person who purchases a T&M vehicle from a dealer who is licensed under Chapter 15 of this title shall have access to the Motor Vehicle Transaction Recovery Fund as prescribed in Article 3 (§ 46.2-1527 et seq.) of Chapter 15 of this title.* The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Commissioner may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file.

If a person suffers any of the following: (i) loss or damage in connection with the purchase of a T&M vehicle by reason of fraud practiced on him or fraudulent representation made to him by a licensed T&M vehicle dealer or one of the dealer's salespersons acting within his scope of employment; (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter in connection with the purchase of a T&M vehicle; or (iii) loss or damage resulting from a breach of an extended service contract entered into on or after the effective date of this act, as defined by § 59.1-435,

that person shall have a claim against the dealer and the dealer's bond, and may recover such damages as may be awarded to such person by final judgment of a court of competent jurisdiction against the dealer as a proximate result of such loss or damage up to, but not exceeding, the amount of the bond, from such surety, who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages, and shall not include any punitive damages or attorneys' fees assessed against the dealer or salesperson.

The dealer's surety shall notify the Department when a claim is made against a dealer's bond, when a claim is paid and when the bond is cancelled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be cancelled as to future liability by the dealer's surety upon thirty days' notice to the Department.

§ 46.2-1930. Buyer's order.

A. Every T&M vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange of a T&M 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 years in accordance with § 46.2-1929, 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 T&M 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 T&M vehicle fee, registration 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.

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

12. For sales involving dealer-arranged financing, the following notice, printed in bold type no less than ~~ten-point~~ 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 TWENTY-FOUR HOURS OF WRITTEN OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL."

If the transaction does not include a policy of T&M vehicle liability insurance, the seller shall stamp or mark on the face of the bill of sale in boldface letters no smaller than eighteen 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 Commissioner shall approve a buyer's order form and each dealer shall file with each license application, or renewal, 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 Commissioner.

§ 46.2-1931. Consignment vehicles; contract.

Any T&M vehicle dealer offering a T&M vehicle for sale on consignment shall have in his possession a consignment contract for the T&M vehicle, executed and signed by the dealer and the consignor. The consignment contract shall include:

1. The complete name, address, and the telephone number of the owners.
2. The name, address, and dealer certificate number of the selling dealer.
3. A complete description of the T&M vehicle on consignment, including the make, model year, vehicle identification number, and body style.
4. The beginning and termination dates of the contract.
5. The percentage of commission, the amount of the commission, or the net amount the owner is to

receive, if the *T&M* vehicle is sold.

6. Any fees for which the owner is responsible.

7. A disclosure of all unsatisfied liens on the *T&M* vehicle and the location of the certificate of title to the *T&M* vehicle.

8. A requirement that the *T&M* vehicle pass a safety inspection prior to sale.

Any dealer offering a *T&M* vehicle for sale on consignment shall inform any prospective customer that the *T&M* vehicle is on consignment.

Dealer license plates shall not be used to demonstrate a *T&M* vehicle on consignment except on (i) *T&M* vehicles with gross vehicle weight of 15,000 pounds or more and (ii) *T&M* vehicles on consignment from another licensed *T&M* vehicle dealer. The owner's license plates may be used if liability insurance coverage is in effect in the amounts prescribed by § 46.2-472. *No vehicles other than T&M vehicles shall be sold on consignment by T&M vehicle dealers.*

§ 46.2-1933. Certain disclosures required by manufacturers and distributors.

T&M vehicle manufacturers and distributors shall affix or cause to be affixed in a conspicuous place to every *T&M* vehicle offered for sale as a new *T&M* vehicle a statement disclosing the place of assembly or manufacture of the *T&M* vehicle. For disclosures of place of assembly, the assembly plant shall be the same as that designated by the *T&M* vehicle identification number.

The provisions of this section shall apply only to *T&M* vehicles manufactured for the 1991 or subsequent model years.

§ 46.2-1943. Temporary certificates of ownership.

A. Notwithstanding §§ 46.2-617 and 46.2-628, whenever a dealer licensed by the Department sells and delivers to a purchaser a ~~*T&M* vehicle, trailer, or semitrailer,~~ and is unable at the time of the sale to deliver to the purchaser the certificate of title or certificate of origin for the vehicle because the certificate of title or certificate of origin is lost or is being detained by another in possession or for any other reason beyond the dealer's control, the dealer shall execute, on forms provided by the Commissioner, a temporary certificate of ownership. The certificate shall bear its date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, the name and address of the person from whom the dealer acquired the vehicle, and whatever other information may be required by the Commissioner. A copy of the temporary certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle. One copy of the certificate shall be retained by the dealer and shall be subject to inspection at any time by the Department's agents. The original of the certificate shall be forwarded by the dealer to the Department directly on issuance to the purchaser if the vehicle is to be titled outside the Commonwealth, along with application for title. The issuance of a temporary certificate of ownership to a purchaser pursuant to this section shall have the effect of vesting ownership ~~to~~ of the vehicle in the purchaser for the period that the certificate remains effective.

B. A temporary certificate of ownership issued by a dealer to a purchaser pursuant to this section shall expire on receipt by the purchaser of a certificate of title to the vehicle issued by the Department in the name of the purchaser, but in no event shall any temporary certificate of ownership issued under this section be effective for more than thirty days from the date of its issuance. In the event that the dealer fails to produce the old certificate of title or certificate of origin to the vehicle or fails to apply for a replacement certificate of title pursuant to § 46.2-632, thereby preventing delivery to the Department or purchaser before the expiration of the temporary certificate of ownership, the purchaser's ownership of the vehicle may terminate and the purchaser shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes.

C. Notwithstanding subsection B of this section, if the dealer fails to deliver the certificate of title or certificate of origin to the purchaser within thirty days, a second temporary certificate of ownership may be issued. However, the dealer shall, not later than the expiration of the first temporary certificate, deliver to the Department an application for title, copy of the bill of sale, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of title or certificate of origin to the vehicle. On receipt of the title application with attachments as described herein, the Department shall record the purchaser's ownership of the vehicle and may authorize the dealer to issue a second thirty-day temporary certificate of ownership. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the second temporary certificate, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

D. If the dealer is unable to produce the certificate of title or certificate of origin to the vehicle within the sixty-day period from the date of issuance of the first temporary certificate, the Department may extend temporary ownership for an additional period of up to ninety days, provided the dealer

makes application in the format required by the Department. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the additional ninety-day period, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

E. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may, after a hearing, suspend the right of the dealer to issue temporary certificates of ownership.

§ 46.2-1944. Use of old license plates and registration number on a motor home.

An owner who sells or transfers a registered T&M vehicle, ~~trailer, or semitrailer~~ may have the license plates and the registration number transferred to a T&M vehicle titled in the owner's name according to the provisions of Chapter 6 (§ 46.2-600 et seq.), which is in a like vehicle category as specified in § 46.2-694 and which requires an identical registration fee, on application to the Department accompanied by a fee of two dollars or, if the T&M vehicle requires a greater registration fee than that for which the license plates were assigned, on the payment of a fee of two dollars and the amount of the difference in registration fees between the two vehicles, all such transfers ~~to~~ shall be in accordance with the regulations of the Department. All fees collected under this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department. For purposes of this section, a T&M vehicle dealer licensed by the Department may be authorized to act as an agent of the Department for the purpose of receiving, processing, and approving applications from its customers for assignment of license plates and registration numbers pursuant to this section, using the forms and following the procedures prescribed by the Department. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the authority of the dealer to receive, process, and approve the assignment of license plates and registration numbers pursuant to this section.

§ 46.2-1947. Registration of dealers; fees.

Every manufacturer, distributor, or dealer, before he commences to operate *T&M* vehicles in his inventory for sale or resale, shall apply to the Commissioner for a dealer's certificate of vehicle registration and license plates. For the purposes of this article, a vehicle is in inventory when it is owned by, or assigned to, a dealer and is offered and available for sale or resale. All dealer's certificates of vehicle registration and license plates issued under this section may, at the discretion of the Commissioner, be placed in a system of staggered issue to distribute the work of issuing vehicle registration certificates and license plates as uniformly as practicable throughout the year. Dealerships which sold fewer than twenty-five vehicles during the last twelve months of the preceding license year shall be eligible to receive no more than two dealer's license plates; dealerships which sold at least twenty-five but fewer than fifty vehicles during the last twelve months of the preceding license year shall be eligible to receive no more than four dealer's license plates. However, dealerships which sold fifty or more *T&M* vehicles during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership. Dealerships which sold fifty or more *T&M* vehicles during the last twelve months of the preceding license year shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. A new applicant for a dealership shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. For the purposes of this article, a salesperson or employee shall be considered to be employed only if he (i) works for the dealership at least twenty-five hours each week on a regular basis and (ii) is compensated for this work. All salespersons' or employees' employment records shall be retained in accordance with the provisions of § 46.2-1929. A salesperson shall not be considered employed, within the meaning of this section, if he is an independent contractor as defined by the United States Internal Revenue Code. The fee for the issuance of dealer's license plates shall be thirty dollars per year for the first two dealer's license plates and thirteen dollars per year for each additional dealer's license plate. ~~However, for motorcycle dealers, the fee shall be nine dollars per year for each dealer's license plate.~~

§ 46.2-1948. License under this chapter prerequisite to receiving dealer's license plates; insurance required; Commissioner may revoke plates.

No T&M vehicle manufacturer, distributor, or dealer, unless licensed under this chapter, shall be entitled to receive or maintain any dealer's license plates. It shall be unlawful to use or permit the use of any dealer's license plates for which there is no ~~automobile~~ liability insurance coverage or a certificate of self-insurance as defined in § 46.2-368 on any T&M vehicle. No dealer's license plates shall be issued unless the dealer certifies to the Department that there is ~~automobile~~ liability insurance coverage or a certificate of self-insurance with respect to each dealer's license plate to be issued. Such ~~automobile~~ liability insurance or a certificate of self-insurance shall be maintained for each dealer's license plate for so long as the registration for the dealer's license plate remains valid without regard to whether the plate is actually being used on a *T&M* vehicle. If insurance or a certificate of self-insurance is not so maintained, the dealer's license plate shall be surrendered to the Department. The Commissioner shall

revoke any dealer's license plate for which there is no insurance or a certificate of self-insurance. The Commissioner may also revoke any dealer's license plate that has been used in any way not authorized by the provisions of this title.

§ 46.2-1949. Transferable dealer's license plates.

In lieu of registering each *T&M* vehicle of a type described in this section, a manufacturer, distributor, or dealer owning and operating any *T&M* vehicle on any highway may obtain a dealer's license plate from the Department, on application therefor on the prescribed form and on payment of the fees required by law. These license plates shall be attached to each *T&M* vehicle as required by subsection A of § 46.2-711. Each plate shall bear a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol indicating that the plate is issued to a manufacturer, distributor, or dealer. Month and year decals indicating the date of expiration shall be affixed to each license plate. Any license plates so issued may, during the calendar year or years for which they have been issued, be transferred from one *T&M* vehicle to another, used or operated by the manufacturer, distributor, or dealer, who shall keep a written record of the *T&M* vehicle on which the dealer's license plates are used. This record shall be in a format approved by the Commissioner and shall be open to inspection by any law-enforcement officer or any officer or employee of the Department.

Display of a transferable manufacturer's, distributor's, or dealer's license plate or plates on a *T&M* vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

All manufacturer's, distributor's, and dealer's license plates shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as may be necessary to distribute the registrations as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license plate shall be renewed annually on application by the owner and by payment of fees required by law, such renewal to take effect on the first day of the succeeding month.

The Commissioner may offer an optional multi-year license plate registration to manufacturers, distributors, and dealers licensed pursuant to this chapter provided that he has chosen to offer optional multi-year licensing to such persons pursuant to § 46.2-1921. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of registration shall be multiplied by the number of years or fraction thereof the licensee will be licensed pursuant to § 46.2-1921.

§ 46.2-1950. Dealer's license plates to distinguish between various types of dealers.

The Commissioner shall provide for the issuance of appropriate franchised or independent dealer's license plates so as to distinguish between:

1. ~~Factory~~ dealers;
2. ~~Trailer~~ dealers;
3. ~~Motor home~~ dealers; and
4. ~~Motorcycle~~ *dealers factory dealers and T&M dealers.*

§ 46.2-1951. Dealer's promotional license plates.

In addition to any other license plate authorized by this article, the Commissioner may issue dealer's promotional license plates to a dealership for use on *T&M* vehicles held for sale or resale in the dealership's inventory. The design of these license plates shall be at the discretion of the Commissioner. These license plates shall be for use as authorized by the Commissioner. For each such license plate issued or renewed, the Commissioner shall charge an annual fee of \$100. Issuance of license plates pursuant to this section shall be subject to the insurance requirement contained in § 46.2-1948. The Commissioner shall limit the validity of any license plate issued under this section to no more than thirty consecutive days. Upon written request from the dealership, the Commissioner may consider an extended use of a license plate issued under this section. The Commissioner's authorization for use of any license plate issued under this section shall be kept in the *T&M* vehicle on which the license plate is displayed until expiration of the authorization. These license plates shall be included in the number of dealer's license plates authorized under § 46.2-1547 and not in addition thereto.

§ 46.2-1952. Use of dealer's license plates, generally.

Dealer's license plates may be used on *T&M* vehicles in the inventory of licensed *T&M* vehicle manufacturers, distributors, and dealers in the Commonwealth when operated on the highways of Virginia by dealers, their spouses, or employees of manufacturers, distributors, and dealers as permitted in this article. Except as otherwise explicitly permitted in this article, it shall be unlawful for any dealer to cause or permit: (i) use of ~~dealer's T&M dealer~~ license plates on ~~vehicles~~ *any T&M vehicle* other than ~~those~~ *one* held in inventory for sale or resale; (ii) dealer's license plates to be lent, leased, rented, or placed at the disposal of any persons other than those permitted by this article to use dealer's license plates; and (iii) use of dealer's license plates on any vehicle of a type for which their use is not authorized by this article other than a *T&M* vehicle. It shall be unlawful for any dealer to cause or permit dealer's license plates to be used on:

1. Vehicles such as tow trucks, wrecking cranes, or other service vehicles;
2. Vehicles used to deliver or transport (i) *T&M* vehicles; (ii) portions of vehicles; (iii) vehicle components, parts, or accessories; or (iv) fuel;

3. Courtesy vehicles; or
4. Vehicles used in conjunction with any other business.

A dealer may permit his license plates to be used in the operation of a T&M vehicle (i) by any person whom the dealer reasonably believes to be a bona fide prospective purchaser who is either accompanied by a licensed salesperson or has the written permission of the dealer, or (ii) when the plates are being used by a customer on a T&M vehicle owned by the dealer in whose repair shop the customer's T&M vehicle is being repaired. The dealer shall issue to the prospective purchaser or customer whose T&M vehicle is being repaired a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the T&M vehicle. The certificate shall entitle the person to operate with dealer's license plates for a specific period of no more than five days. Not more than two certificates may be issued by a dealer to the same person for successive periods.

§ 46.2-1953. Use of dealer's license plates and temporary transport plates on certain vehicles.

Notwithstanding the provisions of § 46.2-1952, dealer's license plates or dealer's temporary transport plates may be used on vehicles being transported (i) *to or* from a ~~T&M~~ vehicle auction or other point of purchase or sale, (ii) between properties owned or controlled by the same dealership, or (iii) for repairs, painting, or installation of parts or accessories. This section shall also apply to return trips by such vehicles.

§ 46.2-1955. Use of dealer's license plates and temporary transport plates on certain vehicles traveling from one establishment to another for purpose of having special equipment installed.

Notwithstanding the provisions of § 46.2-1952, dealer's license plates or temporary transport plates may be used on ~~trailers, or semitrailers~~ T&M vehicles for the purpose of delivering these T&M vehicles to another establishment for the purpose of having a ~~fifth wheel~~, body, *work* or any special permanently mounted equipment installed on the T&M vehicles, and for the purpose of returning the T&M vehicle to the dealer whose plates are attached to the ~~trailer, or semitrailer~~ T&M vehicle, whether or not the title to the T&M vehicle has been retained by the dealer, and no other license, permit, warrant, exemption card, or classification plate from any other agency of the Commonwealth shall be required under these circumstances. No other statute or regulation in conflict with the provisions of this section shall be applicable to the extent of the conflict. This section shall also apply to trips into the Commonwealth by a T&M vehicle owned and operated outside the Commonwealth to an establishment within the Commonwealth and to the return trip of that T&M vehicle from the Commonwealth to another state, provided the operator of the T&M vehicle carries on his person when so operating a bill of sale for the ~~fifth wheel~~, body, *work* or special equipment.

§ 46.2-1956. Use of dealer's license plates on newly purchased vehicles.

Notwithstanding the provisions of § 46.2-1952, any dealer who sells and delivers to a purchaser a T&M vehicle at a time when the main offices of the Department, its branch offices, or offices of its local agents, are not open for business and the purchaser is therefore unable to register the T&M vehicle, may permit the purchaser to use, for a period not exceeding five days, on the newly purchased T&M vehicle, license plates which have been issued to the dealer, provided that, at the time of the purchase, the dealer executes in duplicate, on forms provided by the Commissioner, a certificate bearing the date of issuance, the name and address of the purchaser, the identification number of the T&M vehicle, the registration number to be used temporarily on the T&M vehicle, the name of the state in which the T&M vehicle is to be registered, and whatever other information may be required by the Commissioner. The original of the certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the T&M vehicle under dealer plates. One copy of the certificate shall be retained by the dealer, filed by him, and shall be subject to inspection at any time by the Department's agents. If the T&M vehicle is to be titled and registered in the Commonwealth, application for title and registration shall be made by the purchaser on the first business day following issuance of the certificate and a copy of the certificate shall accompany the applications.

License plates temporarily used by the purchaser shall be returned to the dealer by the purchaser not later than five days after the issuance of the certificate.

§ 46.2-1975. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts prohibited.

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail T&M vehicle dealer or prospective retail T&M vehicle dealer in the Commonwealth to sell, assign, or transfer any retail installment sales contract obtained by the dealer in connection with the sale by him in the Commonwealth of T&M vehicles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies or to any other specified persons by any of the following:

1. Any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is expressed or

implied or made directly or indirectly.

2. Any act that will benefit or injure the dealer.

3. Any contract, or any expressed or implied offer of contract, made directly or indirectly to the dealer, for handling the T&M vehicle on the condition that the dealer sell, assign, or transfer his retail installment sales contract on the T&M vehicle, in the Commonwealth, to a specified finance company or class of finance companies or to any other specified person.

4. Any expressed or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign, or transfer any of his retail sales contracts in the Commonwealth on T&M vehicles manufactured or sold by the manufacturer or distributor to a finance company, or class of finance companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies or the specified person or persons.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor.

§ 46.2-1976. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of T&M vehicles, parts, and accessories.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any T&M vehicle or T&M vehicles, parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.

3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.

4. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, unless the franchisor provides written notice to the dealer of its objection and the reasons therefor at least thirty days prior to the proposed effective date of the transfer, sale, assignment, or change. No such objection shall be effective to prevent the sale, transfer, assignment, or change if the Commissioner has determined, if requested in writing by the dealer within thirty days after receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the circumstances. No franchise may be sold, assigned, or transferred unless (i) the franchisor has been given at least ninety days' prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed transferee, and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.

5. To grant an additional franchise for a particular line-make of T&M vehicle in a relevant market area in which a dealer or dealers in that line-make are already located unless the franchisor has first advised in writing all other dealers in the line-make in the relevant market area. No such additional franchise may be established at the proposed site unless the Commissioner has determined, if requested by a dealer of the same line-make in the relevant market area within thirty days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that there is reasonable evidence that after the grant of the new franchise, the market will support all of the dealers in that line-make in the relevant market area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has not been in operation for more than two years shall constitute the establishment of a new franchise subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor was legally permitted finally to terminate the franchise. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more than ten miles distant from any other dealer for the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant than the existing site from all other dealers of the same line-make in that relevant market area; or (iii) the relocation of an existing new T&M vehicle dealer within two miles of the existing site of the relocating dealer.

6. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise, to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty

days prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested in writing by the dealer within the sixty-day period and, after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is made to the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this subdivision, notice of termination, cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are any of the following:

- a. Insolvency of the franchised T&M vehicle dealer or filing of any petition by or against the franchised T&M vehicle dealer, under any bankruptcy or receivership law, leading to liquidation or which is intended to lead to liquidation of the franchisee's business;
- b. Failure of the franchised T&M vehicle dealer to conduct its customary sales and service operations during its posted business hours for seven consecutive business days, except where the failure results from acts of God or circumstances beyond the direct control of the franchised T&M vehicle dealer;
- c. Revocation of any license which the franchised T&M vehicle dealer is required to have to operate a dealership;
- d. Conviction of the dealer or any principal of the dealer of a felony.

The change or discontinuance of a marketing or distribution system of a particular line-make product by a manufacturer or distributor, while the name identification of the product is continued in substantial form by the same or different manufacturer or distributor, may be considered to be a franchise termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in which such a change or discontinuance occurring prior to that date has been challenged as constituting a termination, cancellation or nonrenewal.

7. To fail to provide continued parts and service support to a dealer which holds a franchise in a discontinued line-make for at least five years from the date of such discontinuance. This requirement shall not apply to a line-make which was discontinued prior to January 1, 1989.

8. To fail to allow a dealer the right at any time to designate a member of his family as a successor to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not provided to the member of the family previously designated by the dealer as his successor written notice of its objections to the succession and of such person's right to seek a hearing on the matter before the Commissioner pursuant to this article, and the Commissioner determines, if requested in writing by such member of the family within thirty days of receipt of such notice from the franchisor, and after a hearing on the matter before the Commissioner pursuant to this article, that the failure to permit or honor the succession is unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i) the franchisor has been given written notice as to the identity, financial ability, and qualifications of the member of the family in question and (ii) the succession to the franchise will not involve, without the franchisor's consent, a relocation of the business.

9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new *T&M* vehicles of each make, series, and model needed by the dealer to receive a percentage of total new *T&M* vehicle sales of each make, series, and model equitably related to the total new *T&M* vehicle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer or distributor shall disclose to the dealer in writing the basis upon which new *T&M* vehicles are allocated, scheduled, and delivered to the dealers of the same line-make. If allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor provide to the dealer, within thirty days of such demand, all records of sales and all records of distribution of all *T&M* vehicles to the same line-make dealers who compete with the dealer requesting the hearing.

10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

11. To include in any franchise with a *T&M* vehicle dealer terms that are contrary to, prohibited by, or otherwise inconsistent with the requirements of this chapter.

12. For any franchise agreement to require a *T&M* vehicle dealer to pay the attorney's fees of the manufacturer or distributor related to hearings and appeals brought under this article.

13. To fail to include in any franchise with a *T&M* vehicle dealer the following language: "If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by

such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force," or words to that effect.

§ 46.2-1977. Manufacturer or distributor right of first refusal.

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new T&M vehicle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within forty-five days of its receipt of the completed proposal for the proposed sale *or* transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons; and

4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within thirty days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

§ 46.2-1979. Warranty obligations.

A. Each T&M vehicle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its T&M vehicle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service and diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable;

2. For purposes of determining warranty parts and service compensation, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers;

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a ninety-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup which shall be uniformly applied to all the manufacturer's or distributor's parts;

4. In the case of warranty parts compensation, the provisions of this ~~subdivision~~ *subsection* shall be effective only for model year 1992 and succeeding model years;

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production T&M vehicles which constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work; or

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for nonvehicular, residential purposes; ~~nor does it apply to compensation for parts used in warranty repair of motorcycles.~~ Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation

shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within thirty days of dealer submission or within thirty days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the twelve-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the eighteen-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims.

B. It shall be unlawful for any T&M vehicle manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a T&M vehicle;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to *T&M* vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;
4. Fail to compensate any of the T&M vehicle dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;
5. Fail to compensate its T&M vehicle dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A of this section, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;
6. Misrepresent in any way to purchasers of T&M vehicles that warranties with respect to the manufacture, performance, or design of the *T&M* vehicle are made by the dealer, either as warrantor or co-warrantor;
7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the *T&M* vehicle; or
8. Shift or attempt to shift to the T&M vehicle dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any T&M vehicle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its T&M vehicle dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of T&M vehicles, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the *T&M* vehicle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made which come within this subsection whenever reasonably practicable to do so. Every T&M vehicle dealer franchise issued to, amended, or renewed for T&M vehicle dealers in Virginia shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new T&M vehicle, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new T&M vehicle is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a T&M vehicle is otherwise damaged prior to delivery to the new T&M vehicle dealer, the new T&M vehicle dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new T&M vehicle to the new T&M vehicle dealership or within the additional time specified in the franchise; and
2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the *T&M* vehicle exceeds the three percent rule, in which case the dealer may reject the vehicle within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within ten days after receipt of notification, or if the dealer rejects the *T&M* vehicle because damage exceeds the three percent rule, ownership of the new T&M vehicle shall revert to the manufacturer or distributor, and the new T&M vehicle dealer shall have no obligation, financial or otherwise, with respect to such

T&M vehicle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgment by the buyer is required. If there is less than three percent damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new T&M vehicle in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within thirty days of purchase, the T&M vehicle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the T&M vehicle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the vehicle as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either party may petition the Commissioner in writing, within thirty days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9. However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

§ 46.2-1985. Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification.

A license or certificate of dealer registration or qualification issued under this subtitle may be denied, suspended, or revoked on any one or more of the following grounds:

1. Material misstatement or omission in application for license, dealer's license plates, certificate of dealer registration, certificate of qualification, or certificate of title;
2. Failure to comply subsequent to receipt of a written warning from the Department or any willful failure to comply with any provision of this chapter *or any applicable provision of this subtitle* or any *applicable* regulation promulgated by the Commissioner under this chapter subtitle;
3. Failure to have an established place of business as defined in § 46.2-1910 or failure to have as the dealer-operator an individual who holds a valid certificate of qualification;
4. Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business;
5. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth with respect to the retaking of vehicles under retail installment contracts and the redemption and resale of those vehicles;
6. Having used deceptive acts or practices;
7. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered *under this subtitle* or for which a license or registration is sought;
8. Having been convicted of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud;
9. Having been convicted of any criminal act involving the business of selling vehicles;
10. Willfully retaining in his possession title to a T&M vehicle that has not been completely and legally assigned to him;
11. Failure to comply with any provision of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 or any regulation promulgated pursuant to that chapter;
12. Leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by persons not specifically authorized under this title;
13. Having been convicted of a felony;
14. Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collected for the Department on behalf of a buyer;
15. Having been convicted of larceny of a vehicle or receipt or sale of a stolen vehicle;
16. Having been convicted of odometer tampering or any related violation;
17. If a salvage dealer, salvage pool, or rebuilder, failing to comply with any provision of Chapter 16 of this title or any regulation promulgated by the Commissioner under that chapter; or
18. Failing to maintain automobile liability insurance, issued by a company licensed to do business in the Commonwealth, or a certificate of self-insurance as defined in § 46.2-368, with respect to each dealer's license plate issued to the dealer by the Department.

§ 46.2-1988. Appeals to Court of Appeals; bond.

Either party may appeal from the decision of the court under § 46.2-1987 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

No appeal shall be taken on behalf of the person whose license or certificate of registration or qualification was suspended or revoked until the person enters into a proper bond with surety approved by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the T&M

motor vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the Court of Appeals.

**CHAPTER 19.1.
TRAILER DEALERS.**

Article 1.

Trailer Dealers Generally.

§ 46.2-1992. Definitions.

Unless the context otherwise requires, the following words and terms, for the purpose of this chapter, shall have the following meanings:

"Certificate of origin" means the document, provided by the manufacturer or distributor of a new trailer, that is the only valid indication of ownership between the manufacturer, its distributor, its franchised trailer 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 trailers, pursuant to a written agreement with the manufacturer, to franchised trailer dealers in the Commonwealth.

"Distributor branch" means a branch office maintained by a distributor for the sale of trailers to trailer 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 trailers 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 trailers to distributors, for the sale of trailers to trailer dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person employed either by a person who manufactures or assembles trailers or by a factory branch for the purpose of (i) making or promoting the sale of its trailers or (ii) for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase trailer" means a trailer that is (i) sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the trailer will be resold or otherwise retransferred only to the manufacturer or distributor of the trailer, and (ii) 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 trailers of a particular line-make or late model or factory repurchase trailers 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 trailer 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 trailer dealer" means a dealer in late model or factory repurchase trailers, including a franchised new trailer dealer, that has a franchise agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase trailers.

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

"Independent trailer dealer" means a dealer in used trailers.

"Late model trailer" means a trailer of the current model year and the immediately preceding model year.

"Manufacturer" means a person engaged in the business of constructing or assembling new trailers.

"New trailer" means any trailer 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 trailer, 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 trailer 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 trailer safety and emission standards. Notwithstanding provisions (i) and (iii), a trailer that has been previously sold but not titled shall be deemed a new trailer if it meets the requirements of provisions (ii), (iv), and (v).

"Relevant market area" means as follows:

1. In metropolitan localities with a population of 250,000, the relevant market area shall be a

circular area around an existing franchised dealer not to exceed a radius of ten miles, but in no case less than seven miles.

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

3. In all other cases the relevant market area shall be an area within a radius of twenty 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 twenty 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 trailers to a buyer for his use and not for resale, in which the price of the trailer 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 trailer to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to trailer dealers or wholesalers other than to consumers, or a sale to one who intends to resell.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including semitrailers but not mobile homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36, and not (i) watercraft trailers as defined in this section or (ii) travel trailers as defined in § 46.2-1900.

"Trailer dealer" or "dealer" means any person who:

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

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

3. Offers to sell, sells, displays, or permits the display for sale, of five or more trailers within any twelve consecutive months.

The term "trailer dealer" does not include:

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

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

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

4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral trailers, including trailers adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1992.17, 46.2-1992.18 and 46.2-1992.41.

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

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

7. Any person who permits the operation of a trailer show or permits the display of trailers for sale by any trailer dealer licensed under this chapter.

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

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

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

11. 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 trailer dealer.

"Trailer salesperson" or "salesperson" means any person who is licensed as and employed as a salesperson by a trailer dealer to sell or exchange trailers.

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

"Used trailer" means any trailer other than a new trailer as defined in this section.

"Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1.

"Watercraft trailer dealer" means any watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1 who obtains a certificate of dealer registration under this chapter.

"Wholesale auction" means an auction of trailers restricted to sales at wholesale.

§ 46.2-1992.1. General powers of Commissioner.

The Commissioner shall promote the interest of the retail buyers of trailers and endeavor to prevent unfair methods of competition and unfair or deceptive acts or practices.

§ 46.2-1992.2. Commissioner's powers with respect to hearings under this chapter.

The Commissioner may, in hearings arising under this chapter, determine the place in the Commonwealth where they shall be held; subpoena witnesses; take depositions of witnesses residing outside the Commonwealth in the manner provided for in civil actions in courts of record; pay these witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

§ 46.2-1992.3. Suit to enjoin violations.

The Commissioner, whenever he believes from evidence submitted to him that any person has been violating, is violating, or is about to violate any provision of this chapter, in addition to any other remedy, may bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

§ 46.2-1992.4. Regulations.

The Commissioner may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of §§ 46.2-112 and 46.2-629, and any other regulations, not inconsistent with the provisions of this chapter, as he shall consider necessary for the effective administration and enforcement of this chapter. A copy of any regulation promulgated under this section shall be mailed to each trailer dealer licensee thirty days prior to its effective date.

§ 46.2-1992.5. Penalties.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil penalty not to exceed \$1,000 for any single violation. Civil penalties collected under this chapter shall be deposited into the Transportation Trust Fund.

Article 2.

Trailer Dealer Licenses.

§ 46.2-1992.6. Licenses required.

It shall be unlawful for any person to engage in business in the Commonwealth as a trailer dealer, salesperson, manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative, without first obtaining a license as provided in this chapter. Every person licensed as a watercraft dealer under Chapter 8 (§ 29.1-800 et seq.) of Title 29.1 and who offers for sale watercraft trailers, shall obtain a certificate of dealer registration as provided in this chapter, but shall not be required to obtain a dealer license unless he also sells other types of trailers. Any person licensed in another state as a trailer dealer may sell trailers at wholesale auctions in the Commonwealth after having obtained a certificate of dealer registration as provided in this chapter. The offering or granting of a trailer dealer franchise in the Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section, and no new trailer may be sold or offered for sale in the Commonwealth unless the franchisor of trailer dealer franchises for that line-make in the Commonwealth, whether such franchisor is a manufacturer, factory branch, distributor, distributor branch, or otherwise, is licensed under this chapter. In the event a license issued under this chapter to a franchisor of trailer dealer franchises is suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new trailer of such franchisor's line-make manufactured in or brought into the Commonwealth for sale prior to the suspension, revocation or expiration of the license.

§ 46.2-1992.7. Application for license or certificate of dealer registration.

Application for license or certificate of dealer registration under this chapter shall be made to the Commissioner and contain such information as the Commissioner shall require. The application shall be accompanied by the required fee.

The Commissioner shall require, in the application or otherwise, information relating to the matters set forth in § 46.2-1992.79 as grounds for refusing licenses, certificates of dealer registration, and to other pertinent matters requisite for the safeguarding of the public interest, including, if the applicant is a dealer in new trailers with factory warranties, a copy of a current service agreement with the

manufacturer or with the distributor, requiring the applicant to perform within a reasonable distance of his established place of business, the service, repair, and replacement work required of the manufacturer or distributor by such trailer warranty. All of these matters shall be considered by the Commissioner in determining the fitness of the applicant to engage in the business for which he seeks a license or certificate of dealer registration.

§ 46.2-1992.8. Dealers required to have established place of business.

No license shall be issued to any trailer 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 § 46.2-1992.22;
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;
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 trailers.

Any person licensed as a dealer by the Department under any provision of this subtitle on June 1, 1996, shall be considered in compliance with subdivisions 2 and 6 of this section for that licensee.

§ 46.2-1992.9. Dealer-operator to have certificate of qualification.

No license shall be issued to any trailer dealer unless the dealer-operator holds a valid certificate of qualification issued by the Department. Such certificate shall be issued only on application to the Department, payment of a twenty-five dollar application fee, the successful completion of an examination prepared and administered by the Department, and other prerequisites as set forth in this section. However, any individual who is the dealer-operator of a dealer licensed by the Department under any provision of this subtitle on June 30, 1996, shall be entitled to such a certificate without examination on application to the Department made on or before January 1, 1997.

The Commissioner may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

§ 46.2-1992.10. Salesperson to have certificate of qualification.

No license shall be issued to any trailer salesperson unless he holds a valid certificate of qualification issued by the Department. A certificate shall be issued only on application to the Department, payment of a twenty-five dollar application fee, the successful completion of an examination prepared and administered by the Department, and other prerequisites as set forth in this section. However, any individual who is licensed as a salesperson by the Department under any provision of this subtitle on June 30, 1996, shall be entitled to such a certificate without examination on application to the Department made on or before January 1, 1997.

The Commissioner may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

§ 46.2-1992.11. Continued operation on loss of a dealer-operator holding certificate of qualification.

Each dealer shall notify the Department in writing immediately when a dealer-operator who holds a certificate of qualification dies, becomes disabled, retires, is removed, or for any other cause ceases to act as dealer-operator. The dealer may continue to operate for 120 days thereafter without a dealer-operator and may be granted approval by the Department to operate for an additional sixty days on application and with good cause shown for such delay.

§ 46.2-1992.12. Action on applications; hearing on denial; denial for failure to have established place of business.

The Commissioner shall act on all applications for a license or certificate of dealer registration under this chapter within sixty days after receipt by either granting or refusing the application. Any applicant denied a license or certificate shall, on his written request filed within thirty days, be given a hearing at a time and place determined by the Commissioner or a person designated by him. All hearings under this section shall be public and shall be held promptly. The applicant may be represented by counsel.

Any applicant denied a license for failure to have an established place of business as provided in § 46.2-1992.8 may not, nor shall anyone, apply for a license for premises for which a license was denied for thirty days from the date of the rejection of the application.

§ 46.2-1992.13. Location to be specified; display of license; change of location.

The licenses of trailer dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business, branch or other location occupied or to be occupied by the licensee in conducting his business and the license issued therefor shall be conspicuously displayed at each of the premises. If any licensee intends to change a licensed location, he shall provide the Commissioner thirty days' advance written notice, and a successful inspection of the new location shall be required prior to approval of a change of location. The Commissioner shall

endorse the change of location on the license, without charge, if the new location is within the same county or city. A change in location to another county or city shall require a new license and fee.

§ 46.2-1992.14. Supplemental sales locations.

The Commissioner may issue a license for a licensed trailer dealer to display for sale or sell trailers at locations other than his established place of business, subject to compliance with local ordinances and requirements.

A permanent supplemental license may be issued for premises less than 500 yards from the dealer's established place of business, provided a sign is displayed as required for the established place of business. A supplemental license shall not be required for premises otherwise contiguous to the established place of business except for a public thoroughfare.

A temporary supplemental license may be issued for a period not to exceed fourteen days, provided that the application is made fifteen days prior to the sale. A temporary supplemental license for the sale of new trailers may be issued only for locations within the dealer's area of responsibility, as defined in his franchise or sales agreement, unless certification is provided that all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought do not oppose the issuance of the temporary license.

However, the application for a temporary supplemental license may be made five business days prior to the sale, provided the applicant submit evidence that the location is in compliance with all local ordinances and that all other requirements of this section have been met. The application shall include affirmative proof of nonopposition in the form of letters signed by all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought, approving the Department's granting of the temporary supplemental license.

A temporary supplemental license for sale of used trailers may be issued only for the county, city, or town in which the dealer is licensed pursuant to § 46.2-1992.8, or for a contiguous county, city, or town. Temporary licenses may be issued without regard to the foregoing geographic restrictions where the dealer operating under a temporary license provides notice, at least thirty days before any proposed sale under a temporary license, to all other dealers licensed in the jurisdiction in which the sale will occur of the intent to conduct a sale and permits any locally licensed dealer who wishes to do so to participate in the sale on the same terms as the dealer operating under the temporary license. Any locally licensed dealer who chooses to participate in the sale must obtain a temporary supplemental license for the sale pursuant to this section.

§ 46.2-1992.15. Changes in form of ownership, line-make, name.

Any change in the form of ownership or the addition or deletion of a partner shall require a new application, license, and fee.

Any addition or deletion of a franchise or change in the name of a dealer shall require immediate notification to the Department, and the Commissioner shall endorse the change on the license without a fee. The change of an officer or director of a corporation shall be made at the time of license renewal.

§ 46.2-1992.16. Display of salesperson's license; notice on termination.

No salesperson shall be employed by more than one dealer, unless the dealers are owned by the same person.

Each dealer shall maintain a list of salespersons employed.

Each salesperson, factory representative, and distributor representative shall carry his license when engaged in his business and shall display it on request.

Each dealer and each manufacturer and distributor shall notify the Department in writing not later than the tenth day of the month following the termination of any licensed salesperson's or representative's employment. In lieu of written notification, the license of the terminated salesperson or representative may be returned to the Department annotated "terminated" on the face of the license and signed and dated by the dealer-operator, owner, or officer.

§ 46.2-1992.17. 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 as follows:

1. For trailer dealers, \$100 for each principal place of business, plus \$20 for each supplemental license.
2. For each trailer manufacturer, distributor, factory branch and distributor branch, \$100.
3. For trailer rebuilder salespersons, factory representatives, and distributor representatives, \$10.
4. For trailer dealers licensed in other states, but not in Virginia, and for watercraft trailer dealers, a registration fee of \$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. However, the Commissioner may waive fees for those licensed under Chapter 15, 19, or 19.2 of this title.

§ 46.2-1992.18. Collection of license and registration fees; payments from fund.

All licensing and registration fees provided for in this chapter, except as identified in Article 3 (§ 46.2-1992.20 et seq.) of this chapter, shall be collected by the Commissioner and paid into the state

treasury and set aside as a special fund to meet the expenses of the Department.

§ 46.2-1992.19. Issuance, expiration, and renewal of licenses and certificates of registration.

All licenses and certificates of registration issued under this chapter shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

Article 3.

Bonding Requirements.

§ 46.2-1992.20. Bonding requirements for applicants for license.

Every applicant for an original, second year renewal, and third year renewal trailer dealer's license shall obtain and file with the Commissioner a bond in the amount of \$25,000. However, no dealer shall be required to obtain more than one \$25,000 bond for all licenses held under this subtitle. Any dealer who is licensed under Chapter 15 of this title and who obtains a trailer dealer license under this chapter, shall be exempt from the bond requirements set out in this section. In addition, any person who purchases a trailer from a dealer who is licensed under Chapter 15 of this title, shall have access to the Motor Vehicle Transaction Recovery Fund as prescribed in Article 3 (§ 46.2-1527 et seq.) of Chapter 15 of this title. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General. The bond shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Commissioner may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file.

If a person suffers any of the following: (i) loss or damage in connection with the purchase of a trailer by reason of fraud practiced on him or fraudulent representation made to him by a licensed trailer dealer or one of the dealer's salespersons acting within his scope of employment; (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter in connection with the purchase of a trailer; or (iii) loss or damage resulting from a breach of an extended service contract as defined by § 59.1-435, and entered into on or after the effective date of this act, that person shall have a claim against the dealer and the dealer's bond, and may recover such damages as may be awarded to such person by final judgment of a court of competent jurisdiction against the dealer as a proximate result of such loss or damage up to, but not exceeding, the amount of the bond, from such surety, who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages, and shall not include any punitive damages or attorneys' fees assessed against the dealer or salesperson.

The dealer's surety shall notify the Department when a claim is made against a dealer's bond, when a claim is paid and when the bond is canceled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be canceled as to future liability by the dealer's surety upon thirty days' notice to the Department.

Article 4.

Conduct of Business.

§ 46.2-1992.21. Examination or audit of licensee; costs.

The Commissioner or authorized representatives of the Department may examine, during the posted business hours, the records required to be maintained by this chapter. If a licensee is found to have violated this chapter or any order of the Commissioner, the actual cost of the examination shall be paid by the licensee so examined within thirty days after demand therefor by the Commissioner. The Commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction.

§ 46.2-1992.22. 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; and other records required by the Department shall be maintained on the premises of the licensed location. The Commissioner 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 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 Commissioner.

§ 46.2-1992.23. Buyer's order.

A. Every trailer dealer shall complete, in duplicate, a buyer's order for each sale or exchange of a 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 years in accordance with § 46.2-1992.22, 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 trailer 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, 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.
11. Any item designated as "dealer's business license tax," and the amount charged by the dealer, if any.

12. 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 TWENTY-FOUR HOURS OF WRITTEN OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL."

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

B. The Commissioner shall approve a buyer's order form and each dealer shall file with each license application, or renewal, 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 Commissioner.

§ 46.2-1992.24. Consignment trailers; contract.

Any trailer dealer offering a trailer for sale on consignment shall have in his possession a consignment contract for the trailer, executed and signed by the dealer and the consignor. The consignment contract shall include:

1. The complete name, address, and the telephone number of the owners.
2. The name, address, and dealer certificate number of the selling dealer.
3. A complete description of the trailer on consignment, including the make and model year.
4. The beginning and termination dates of the contract.
5. The percentage of commission, the amount of the commission, or the net amount the owner is to receive, if the trailer is sold.
6. Any fees for which the owner is responsible.
7. A disclosure of all unsatisfied liens on the trailer and the location of the certificate of title to the trailer.
8. A requirement that the trailer pass a safety inspection prior to sale, if periodic safety inspections of the trailer are required under Article 21 (§ 46.2-1157) of Chapter 10 of this title.

Any dealer offering a trailer for sale on consignment shall inform any prospective customer that the trailer is on consignment.

Dealer license plates shall not be used to demonstrate a trailer on consignment except on (i) trailers with gross vehicle weight of 15,000 pounds or more and (ii) trailers on consignment from another licensed trailer dealer. No vehicles other than trailers shall be sold on consignment by trailer dealers.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

§ 46.2-1992.25. Certain disclosures required by manufacturers and distributors.

Trailer and watercraft trailer manufacturers and distributors shall affix or cause to be affixed in a conspicuous place to every trailer and watercraft trailer offered for sale as new, a statement disclosing the place of its assembly or manufacture.

The provisions of this section shall apply only to trailers manufactured for the 1991 or subsequent model years.

§ 46.2-1992.26. Business hours.

Each trailer dealer shall be open for business a minimum of twenty hours per week, at least ten of which shall be between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, except that the Commissioner, on written request by a dealer, may modify these requirements for good cause. The dealer's hours shall be posted and maintained conspicuously on or near the main entrance of each place of business.

Each dealer shall include his business hours on the original and every renewal application for a license, and changes to these hours shall be immediately filed with the Department.

§ 46.2-1992.27. Signs.

Each retail trailer dealer's place of business shall be identified by a permanent sign visible from the front of the business office so that the public may quickly and easily identify the dealership. The sign shall contain the dealer's trade name in letters no less than six inches in height unless otherwise restricted by law or contract.

§ 46.2-1992.28. Advertisements.

Unless the dealer is clearly identified by name, whenever any licensee places an advertisement in any newspaper or publication, the abbreviations "VA DLR," denoting a Virginia licensed dealer, shall appear therein.

§ 46.2-1992.29. Coercing purchaser to provide insurance coverage on trailer.

It shall be unlawful for any dealer or salesperson or any employee of a dealer or representative of either to coerce or offer anything of value to any purchaser of a trailer to provide any type of insurance coverage on the trailer.

Nothing in this section shall prohibit a dealer from requiring that a retail customer obtain vehicle physical damage insurance to protect collateral secured by an installment sales contract. Any person found guilty of violating any provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 46.2-1992.30. Prohibited solicitation and compensation.

It shall be unlawful for any trailer dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a trailer through a person with a pecuniary interest, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a trailer, unless the person is duly licensed as a salesperson employed by the dealer.

§ 46.2-1992.31. Salesperson selling for other than his employer prohibited.

It shall be unlawful for any trailer salesperson licensed under this chapter to sell or exchange or offer or attempt to sell or exchange any trailer except for the licensed trailer dealer by whom he is employed, or to offer, transfer, or assign any sale or exchange that he may have negotiated to any other dealer or salesperson.

§ 46.2-1992.32. Inspection of vehicles required.

No person required to be licensed as a dealer under this chapter shall sell at retail any vehicle which is intended by the buyer for use on the public highways, and which is required to comply with the safety inspection requirements provided in Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of this title unless between the time the vehicle comes into the possession of the dealer and the time it is sold at retail it is inspected by an official safety inspection station. If the vehicle is found not to be in compliance with all safety inspection requirements, the dealer shall either take steps to bring it into compliance or shall furnish any buyer intending it for use on the public highway a written disclosure, prior to sale, that the trailer did not pass a safety inspection. Any person found guilty of violating any provisions of this section shall be guilty of a Class 1 misdemeanor.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

§ 46.2-1992.33. Inspections prior to sale not required of certain sellers.

The provisions of §§ 46.2-1158 and 46.2-1992.32 requiring inspection of any vehicle prior to sale at retail shall not apply to any person conducting a public auction for the sale of vehicles at retail, provided that the individual, firm, or business conducting the auction has not taken title to the trailer, but is acting as an agent for the sale of the trailer. Nor shall the provisions of §§ 46.2-1158 and 46.2-1992.32 requiring inspection of any vehicle prior to sale at retail apply to any new trailer or trailers sold on the basis of a special order placed by a dealer with a manufacturer outside Virginia on behalf of a customer who is a nonresident of Virginia and takes delivery outside Virginia. Nor shall the provisions of §§ 46.2-1158 and 46.2-1992.32 requiring inspection of any trailer prior to sale at retail apply to the sale of five or more used trailers, to the same buyer, provided the trailers have a valid safety inspection, of trailers with a gross weight of more than 10,000 pounds.

The provisions of this section shall also apply to watercraft trailers.

§ 46.2-1992.34. Inspections or disclosure required before sale of certain trailers.

Any trailer required by any provision of this title to undergo periodic safety inspections shall be inspected by an official inspection station between the time it comes into the possession of a retail dealer and the time the trailer is sold by the dealer or, in lieu of an inspection, the dealer shall present to the purchaser, prior to purchase of the trailer, a written itemization of all the trailer's deficiencies

relative to applicable Virginia safety inspection requirements. The provisions of this section shall not apply to sales of trailers or watercraft trailers by individuals not ordinarily engaged in the business of selling trailers or watercraft trailers nor shall this section apply to the retail sale of five or more trailers to the same buyer. Any person found guilty of violating any provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 46.2-1992.35. Temporary certificates of ownership.

A. Notwithstanding §§ 46.2-617 and 46.2-628, whenever a dealer licensed by the Department sells and delivers to a purchaser a vehicle, and is unable at the time of the sale to deliver to the purchaser the certificate of title or certificate of origin for the vehicle because the certificate of title or certificate of origin is lost or is being detained by another in possession or for any other reason beyond the dealer's control, the dealer shall execute, on forms provided by the Commissioner, a temporary certificate of ownership. The certificate shall bear its date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, the name and address of the person from whom the dealer acquired the vehicle, and whatever other information may be required by the Commissioner. A copy of the temporary certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle. One copy of the certificate shall be retained by the dealer and shall be subject to inspection at any time by the Department's agents. The original of the certificate shall be forwarded by the dealer to the Department directly on issuance to the purchaser if the vehicle is to be titled outside the Commonwealth, along with application for title. The issuance of a temporary certificate of ownership to a purchaser pursuant to this section shall have the effect of vesting ownership of the vehicle in the purchaser for the period that the certificate remains effective.

B. A temporary certificate of ownership issued by a dealer to a purchaser pursuant to this section shall expire on receipt by the purchaser of a certificate of title to the vehicle issued by the Department in the name of the purchaser, but in no event shall any temporary certificate of ownership issued under this section be effective for more than thirty days from the date of its issuance. In the event that the dealer fails to produce the old certificate of title or certificate of origin to the vehicle or fails to apply for a replacement certificate of title pursuant to § 46.2-632, thereby preventing delivery to the Department or purchaser before the expiration of the temporary certificate of ownership, the purchaser's ownership of the vehicle may terminate and the purchaser shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred while ownership was vested in the purchaser.

C. Notwithstanding subsection B of this section, if the dealer fails to deliver the certificate of title or certificate of origin to the purchaser within thirty days, a second temporary certificate of ownership may be issued. However, the dealer shall, not later than the expiration of the first temporary certificate, deliver to the Department an application for title, copy of the bill of sale, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of title or certificate of origin to the vehicle. On receipt of the title application with attachments as described herein, the Department shall record the purchaser's ownership of the vehicle and may authorize the dealer to issue a second thirty-day temporary certificate of ownership. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the second temporary certificate, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the trailer as provided in subsection B of this section.

D. If the dealer is unable to produce the certificate of title or certificate of origin to the vehicle within the sixty-day period from the date of issuance of the first temporary certificate, the Department may extend temporary ownership for an additional period of up to ninety days, provided the dealer makes application in the format required by the Department. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the additional ninety-day period, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

E. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may, after a hearing, suspend the right of the dealer to issue temporary certificates of ownership.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

§ 46.2-1992.36. Use of old license plates and registration number on a trailer.

An owner who sells or transfers a registered trailer, may have the license plates and the registration number transferred to a trailer titled in the owner's name according to the provisions of Chapter 6 (§ 46.2-600 et seq.), which is in a like trailer category as specified in § 46.2-694 and which requires an identical registration fee, on application to the Department accompanied by a fee of two dollars or, if the trailer requires a greater registration fee than that for which the license plates were assigned, on the payment of a fee of two dollars and the amount of the difference in registration fees between the two trailers, all such transfers shall be in accordance with the regulations of the Department. All fees collected under this section shall be paid by the Commissioner into the state treasury and shall be set

aside as a special fund to be used to meet the expenses of the Department. For purposes of this section, a trailer dealer licensed by the Department may be authorized to act as an agent of the Department for the purpose of receiving, processing, and approving applications from its customers for assignment of license plates and registration numbers pursuant to this section, using the forms and following the procedures prescribed by the Department. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the authority of the dealer to receive, process, and approve the assignment of license plates and registration numbers pursuant to this section.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

§ 46.2-1992.37. Certificate of title for dealers.

Except as otherwise provided in this chapter, every dealer shall obtain, on the purchase of each trailer, a certificate of title issued to the dealer or shall obtain an assignment or reassignment of a certificate of title for each trailer purchased, except that a certificate of title shall not be required for any new trailer to be sold as such.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

§ 46.2-1992.38. Termination of business.

No dealer, unless his license has been suspended, revoked, or canceled, shall cease business without a thirty-day prior notification to the Department. On cessation of the business, the dealer shall immediately surrender to the Department the dealer's certificate of license, all salespersons' licenses, all dealer and temporary license plates, all fees and taxes collected, and any other materials furnished by the Department. After cessation of business, the former licensee shall continue to maintain and make available to the Department dealer records as set forth in this chapter.

The provisions of this section shall also apply to watercraft trailers and watercraft trailer dealers.

Article 5.

Trailer Dealer License Plates.

§ 46.2-1992.39. Registration of dealers; fees.

Every manufacturer, distributor, or dealer, before he commences to operate trailers in his inventory for sale or resale, shall apply to the Commissioner for a dealer's certificate of vehicle registration and license plates. For the purposes of this article, a trailer is in inventory when it is owned by, or assigned to, a dealer and is offered and available for sale or resale. All dealer's certificates of vehicle registration and license plates issued under this section may, at the discretion of the Commissioner, be placed in a system of staggered issue to distribute the work of issuing vehicle registration certificates and license plates as uniformly as practicable throughout the year. Dealerships which sold fewer than twenty-five trailers during the last twelve months of the preceding license year shall be eligible to receive no more than two dealer's license plates; dealerships which sold at least twenty-five but fewer than fifty trailers during the last twelve months of the preceding license year shall be eligible to receive no more than four dealer's license plates. However, dealerships which sold fifty or more trailers during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership. Dealerships which sold fifty or more trailers during the last twelve months of the preceding license year shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. A new applicant for a dealership shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. For the purposes of this article, a salesperson or employee shall be considered to be employed only if he (i) works for the dealership at least twenty-five hours each week on a regular basis and (ii) is compensated for this work. All salespersons' or employees' employment records shall be retained in accordance with the provisions of § 46.2-1992.22. A salesperson shall not be considered employed, within the meaning of this section, if he is an independent contractor as defined by the United States Internal Revenue Code. The fee for the issuance of dealer's license plates shall be thirty dollars per year for the first two dealer's license plates and thirteen dollars per year for each additional dealer's license plate.

§ 46.2-1992.40. License under this chapter prerequisite to receiving dealer's license plates; Commissioner may revoke plates.

No trailer manufacturer, distributor, or dealer, unless licensed under this chapter, shall be entitled to receive or maintain any dealer's license plates. The Commissioner may revoke any dealer's license plate that has been used in any way not authorized by the provisions of this title.

§ 46.2-1992.41. Transferable dealer's license plates.

In lieu of registering each trailer of a type described in this section, a manufacturer, distributor, or dealer owning and operating any trailer on any highway may obtain a dealer's license plate from the Department, on application therefor on the prescribed form and on payment of the fees required by law. These license plates shall be attached to each trailer as required by subsection A of § 46.2-711. Each plate shall bear a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol indicating that the plate is issued to a manufacturer, distributor, or dealer. Month and year decals indicating the date of expiration shall be

affixed to each license plate. Any license plates so issued may, during the calendar year or years for which they have been issued, be transferred from one trailer to another, used or operated by the manufacturer, distributor, or dealer, who shall keep a written record of the trailer on which the dealer's license plates are used. This record shall be in a format approved by the Commissioner and shall be open to inspection by any law-enforcement officer or any officer or employee of the Department.

Display of a transferable manufacturer's, distributor's, or dealer's license plate or plates on a trailer shall subject the trailer to the requirements of §§ 46.2-1038 and 46.2-1056.

All manufacturer's, distributor's, and dealer's license plates shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as may be necessary to distribute the registrations as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license plate shall be renewed annually on application by the owner and by payment of fees required by law, such renewal to take effect on the first day of the succeeding month.

The Commissioner may offer an optional multi-year license plate registration to manufacturers, distributors, and dealers licensed pursuant to this chapter provided that he has chosen to offer optional multi-year licensing to such persons pursuant to § 46.2-1992.19. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of registration shall be multiplied by the number of years or fraction thereof the licensee will be licensed pursuant to § 46.2-1992.19.

§ 46.2-1992.42. Dealer's license plates to distinguish between various types of dealers.

The Commissioner shall provide for the issuance of appropriate franchised or independent dealer's license plates so as to distinguish between factory trailer dealers and trailer dealers.

§ 46.2-1992.43. Dealer's promotional license plates.

In addition to any other license plate authorized by this article, the Commissioner may issue dealer's promotional license plates to a dealership for use on trailers held for sale or resale in the dealership's inventory. The design of these license plates shall be at the discretion of the Commissioner. These license plates shall be for use as authorized by the Commissioner. For each such license plate issued or renewed, the Commissioner shall charge an annual fee of \$100. The Commissioner shall limit the validity of any license plate issued under this section to no more than thirty consecutive days. Upon written request from the dealership, the Commissioner may consider an extended use of a license plate issued under this section. The Commissioner's authorization for use of any license plate issued under this section shall be kept in the trailer on which the license plate is displayed until expiration of the authorization. These license plates shall be included in the number of dealer's license plates authorized under § 46.2-1992.39 and not in addition thereto.

§ 46.2-1992.44. Use of dealer's license plates, generally.

Dealer's license plates may be used on trailers in the inventory of licensed trailer manufacturers, distributors, and dealers in the Commonwealth when operated on the highways of Virginia by dealers, their spouses, or employees of manufacturers, distributors, and dealers as permitted in this article. Except as otherwise explicitly permitted in this article, it shall be unlawful for any dealer to cause or permit: (i) use of dealer's license plates on trailers other than those held in inventory for sale or resale; (ii) dealer's license plates to be lent, leased, rented, or placed at the disposal of any persons other than those permitted by this article to use dealer's license plates; and (iii) use of dealer's license plates on any vehicle other than a trailer or watercraft trailer. It shall be unlawful for any dealer to cause or permit dealer's license plates to be used on:

1. Vehicles such as tow trucks, wrecking cranes, or other service vehicles;
2. Vehicles used to deliver or transport (i) trailers; (ii) portions of vehicles; (iii) vehicle components, parts, or accessories; or (iv) fuel;
3. Courtesy vehicles; or
4. Vehicles used in conjunction with any other business.

A dealer may permit his license plates to be used in the operation of a trailer (i) by any person whom the dealer reasonably believes to be a bona fide prospective purchaser who is either accompanied by a licensed salesperson or has the written permission of the dealer, or (ii) when the plates are being used by a customer on a trailer owned by the dealer in whose repair shop the customer's trailer is being repaired. The dealer shall issue to the prospective purchaser or customer whose trailer is being repaired a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the trailer. The certificate shall entitle the person to operate with dealer's license plates for a specific period of no more than five days. Not more than two certificates may be issued by a dealer to the same person for successive periods.

§ 46.2-1992.45. Use of dealer's license plates and temporary transport plates on certain trailers.

Notwithstanding the provisions of § 46.2-1992.44, dealer's license plates or dealer's temporary transport plates may be used on vehicles being transported (i) to or from a vehicle auction or other point of purchase or sale, (ii) between properties owned or controlled by the same dealership, or (iii)

for repairs, painting, or installation of parts or accessories. This section shall also apply to return trips by such vehicles.

§ 46.2-1992.46. Issuance and use of temporary transport plates, generally.

The Department, subject to the limitations and conditions set forth in this section and the insurance requirements contained in § 46.2-1992.40, may provide for the issuance of temporary transport plates designed by the Department to any dealer licensed under this chapter who applies for at least ten plates and who encloses with his application a fee of one dollar for each plate. The application shall be made on a form prescribed and furnished by the Department. Temporary transport plates may be used for those purposes outlined in § 46.2-1992.45. Every dealer who has applied for temporary transport plates shall maintain a permanent record of (i) all temporary transport plates delivered to him, (ii) all temporary transport plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary transport plates which may be required by the Department.

Every dealer who issues temporary transport plates shall insert clearly and indelibly on the face of the temporary transport plates the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the trailer for which issued.

The dealer shall issue to the operator of the specified trailer a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the trailer. The certificate shall entitle the person to operate with the dealer's temporary transport plate for a period of no more than five days. Temporary transport plates may also be used by the dealer to demonstrate types of vehicles taken in trade but for which he has not been issued dealer's license plates.

§ 46.2-1992.47. Use of dealer's license plates or temporary transport plates on certain vehicles traveling from one establishment to another for purpose of having special equipment installed.

Notwithstanding the provisions of § 46.2-1992.44, dealer's license plates or temporary transport plates may be used on trailers or semitrailers for the purpose of delivering these vehicles to another establishment for the purpose of having a body or any special permanently mounted equipment installed on the trailers, and for the purpose of returning the vehicle to the dealer whose plates are attached to the trailer or semitrailer, whether or not the title to the trailer has been retained by the dealer, and no other license, permit, warrant, exemption card, or classification plate from any other agency of the Commonwealth shall be required under these circumstances. No other statute or regulation in conflict with the provisions of this section shall be applicable to the extent of the conflict. This section shall also apply to trips into the Commonwealth by a trailer owned and operated outside the Commonwealth to an establishment within the Commonwealth and to the return trip of that trailer from the Commonwealth to another state, provided the operator of the trailer carries on his person when so operating a bill of sale for the body or special equipment.

§ 46.2-1992.48. Use of dealer's license plates on newly purchased trailers.

Notwithstanding the provisions of § 46.2-1992.44, any dealer who sells and delivers to a purchaser a trailer at a time when the main offices of the Department, its branch offices, or offices of its local agents, are not open for business and the purchaser is therefore unable to register the trailer, may permit the purchaser to use, for a period not exceeding five days, on the newly purchased trailer, license plates which have been issued to the dealer, provided that, at the time of the purchase, the dealer executes in duplicate, on forms provided by the Commissioner, a certificate bearing the date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the trailer, the name of the state in which the trailer is to be registered, and whatever other information may be required by the Commissioner. The original of the certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the trailer under dealer plates. One copy of the certificate shall be retained by the dealer, filed by him, and shall be subject to inspection at any time by the Department's agents. If the trailer is to be titled and registered in the Commonwealth, application for title and registration shall be made by the purchaser on the first business day following issuance of the certificate and a copy of the certificate shall accompany the applications.

License plates temporarily used by the purchaser shall be returned to the dealer by the purchaser not later than five days after the issuance of the certificate.

§ 46.2-1992.49. Operation without license plate prohibited.

No manufacturer or distributor of or dealer in trailers shall cause or permit any trailer, owned by him to be operated or moved on a public highway without there being displayed on the trailer, a license plate or plates issued to him, either under § 46.2-711 or under § 46.2-1992.41, except as otherwise authorized in §§ 46.2-733, 46.2-1992.40, and 46.2-1992.51.

§ 46.2-1992.50. Movement by manufacturer to place of shipment or delivery.

Any manufacturer of trailers may operate or move or cause to be moved or operated on the highways for a distance of no more than twenty-five miles trailers from the factory where manufactured or assembled to a railway depot, vessel, or place of shipment or delivery, without registering them and without license plates attached thereto, under a written permit first obtained from the local

law-enforcement authorities having jurisdiction over the highways and on displaying in plain sight on each trailer a placard bearing the name and address of the manufacturer authorizing or directing the movement.

§ 46.2-1992.51. Movement by dealers to salesrooms.

Any dealer in trailers may operate or move, or cause to be operated or moved, any trailer on the highways for a distance of no more than twenty-five miles from a vessel, railway depot, warehouse, or any place of shipment or from a factory where manufactured or assembled to a salesroom, warehouse, or place of shipment or transshipment without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways, and on displaying in plain sight on each trailer, a placard bearing the name and address of the dealer authorizing or directing the movement.

§ 46.2-1992.52. Operation under foreign dealer's license.

It shall be unlawful, except as provided for by reciprocal agreement, for any person to operate a trailer or for the owner thereof to permit a trailer to be operated in the Commonwealth on a foreign dealer's license, unless the operation of the trailer on the license is specifically authorized by the Commissioner.

§ 46.2-1992.53. Removal of plates by Department of Motor Vehicles investigators; cancellation; reissuance.

If any Department of Motor Vehicles investigator finds that a trailer bearing license plates or temporary transport plates issued under this article is being operated in a manner inconsistent with (i) the requirements of this article or (ii) the Commissioner's authorization provided for in this article, the Department of Motor Vehicles investigator may remove the license plate for cancellation. Once a license plate has been canceled, the dealership may reapply for the license plate. Reissuance of the license plate shall be subject to the approval of the Commissioner and the payment of the fee prescribed for issuance of license plates under this article.

§ 46.2-1992.54. Penalties for violations of article; service of summons.

Notwithstanding § 46.2-1992.5, any person violating any of the provisions of this article shall be guilty of a Class 3 misdemeanor. Any summons issued for any violation of any provision of this article relating to use or misuse of dealer's license plates shall be served upon the dealership to whom the plates were issued or to the person expressly permitting the unlawful use, or upon the operator of the trailer if the plates are used contrary to the use authorized by the certificate issued pursuant to § 46.2-1992.44.

§ 46.2-1992.55. Watercraft trailers and watercraft trailer dealers.

For the purposes of this article, the term "trailer" shall include watercraft trailers and the terms "dealer" and "trailer dealer" shall include watercraft trailer dealers.

Article 6.

Issuance of Temporary License Plates by Dealers.

§ 46.2-1992.56. Issuance of temporary license plates to dealers and vehicle owners.

The Department may, subject to the limitations and conditions set forth in this article, deliver temporary license plates designed by the Department to any dealer licensed under this chapter who applies for at least ten sets of plates and who encloses with his application a fee of two dollars for each set applied for. The application shall be made on a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions set forth in this article, may issue temporary license plates to owners of trailers. The owners shall comply with the provisions of this article and §§ 46.2-705, 46.2-706 and 46.2-707. Dealers issuing temporary license plates may do so free of charge, but if they charge a fee for issuing temporary plates, the fee shall be no more than the fee charged the dealer by the Department under this section.

Display of a temporary license plate or plates on a vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

§ 46.2-1992.57. Records to be kept by dealers; inspection.

Every dealer who has applied for temporary license plates shall maintain a permanent record of (i) all temporary license plates delivered to him, (ii) all temporary license plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary license plates which may be required by the Department. Each record shall be kept for at least one year from the date of entry. Every dealer shall allow full access to these records during regular business hours to authorized representatives of the Department and to law-enforcement officers.

§ 46.2-1992.58. Application for temporary license plate.

No dealer shall issue a temporary license plate except on written application by the person entitled to receive the license plate, which application shall be forwarded by the dealer to the Department as provided in § 46.2-1992.35.

§ 46.2-1992.59. To whom temporary plates shall not be issued; dealer to forward application for current titling and registration; misstatements and false information.

No dealer shall issue, assign, transfer, or deliver temporary license plates to other than the bona fide purchaser or owner of a trailer, whether or not the trailer is to be registered in Virginia. If the trailer

is to be registered in Virginia, the dealer shall submit to the Department a written application for the current titling and registration of the purchased trailer, accompanied by the prescribed fees. Any dealer who issues temporary license plates to a purchaser who fails or declines to request that his application be forwarded promptly to the Department forthwith shall notify the Department of the issuance in the manner provided in this article. No dealer shall issue temporary license plates to any person who possesses current license plates for a trailer that has been sold or exchanged, nor shall any dealer lend temporary license plates to any person for use on any trailer. If the dealer does not have in his possession the certificate of title or certificate of origin, he shall issue temporary license plates even though the purchaser has current license plates to be transferred. The dealer shall present the title or certificate of origin to the customer within thirty days of purchase and after this transaction is completed, the customer shall transfer his current license plates to the trailer. If the title or certificate of origin cannot be produced for a trailer within thirty days, a second set of temporary license plates may be issued provided that a temporary certificate of ownership is issued as provided in § 46.2-1992.35. It shall be unlawful for any person to issue any temporary license plates containing any misstatement of fact, or for any person issuing or using temporary license plates knowingly to insert any false information on their face.

§ 46.2-1992.60. Dealer to insert his name, date of issuance and expiration, make and identification number of trailer.

Every dealer who issues temporary license plates shall insert clearly and indelibly on the face of each temporary license plate the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the trailer for which issued.

§ 46.2-1992.61. Suspension of right of dealer to issue.

The Commissioner, on determining that the provisions of this chapter or the directions of the Department are not being complied with by any dealer, may, after a hearing, suspend the right of a dealer to issue temporary license plates.

§ 46.2-1992.62. Plates to be destroyed on expiration.

Every person to whom temporary license plates have been issued shall destroy them on the thirtieth day after issue or immediately on receipt of the permanent license plates from the Department, whichever occurs first.

§ 46.2-1992.63. When plates to expire; refunds or credit.

Temporary license plates shall expire on the receipt of the permanent license plates from the Department, or on the rescission of a contract to purchase a trailer, or on the expiration of, or thirty days from the date of issuance, whichever occurs first. No refund or credit of fees paid by dealers to the Department for temporary license plates shall be allowed, except that when the Department discontinues the right of a dealer to issue temporary license plates, the dealer, on returning temporary license plates to the Department, may receive a refund or a credit for them.

§ 46.2-1992.64. Penalties.

Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor.

§ 46.2-1992.65. Watercraft trailers and watercraft trailer dealers.

For the purposes of this article, the term "trailer" shall include watercraft trailers and the terms "dealer" and "trailer dealer" shall include watercraft trailer dealers.

Article 7. Franchises.

§ 46.2-1992.66. Filing of franchises.

Each trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall file with the Commissioner a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer which affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a trailer dealer or prospective trailer dealer in the Commonwealth no later than sixty days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a trailer dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

§ 46.2-1992.67. Exemption of franchises from Retail Franchising Act.

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

§ 46.2-1992.68. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts prohibited.

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail trailer dealer or prospective retail trailer dealer in the Commonwealth to sell, assign, or transfer any retail installment sales contract obtained by the dealer in connection with the sale by him in the Commonwealth of trailers manufactured or sold by the

manufacturer or distributor, to a specified finance company or class of finance companies or to any other specified persons by any of the following:

1. Any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is expressed or implied or made directly or indirectly.

2. Any act that will benefit or injure the dealer.

3. Any contract, or any expressed or implied offer of contract, made directly or indirectly to the dealer, for handling the trailer on the condition that the dealer sell, assign, or transfer his retail installment sales contract on the trailer, in the Commonwealth, to a specified finance company or class of finance companies or to any other specified person.

4. Any expressed or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign, or transfer any of his retail sales contracts in the Commonwealth on trailers manufactured or sold by the manufacturer or distributor to a finance company, or class of finance companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies or the specified person or persons.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor.

§ 46.2-1992.69. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of trailers, parts, and accessories.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any trailer or trailers, parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.

3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.

4. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, unless the franchisor provides written notice to the dealer of its objection and the reasons therefor at least thirty days prior to the proposed effective date of the transfer, sale, assignment, or change. No such objection shall be effective to prevent the sale, transfer, assignment, or change if the Commissioner has determined, if requested in writing by the dealer within thirty days after receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the circumstances. No franchise may be sold, assigned, or transferred unless (i) the franchisor has been given at least ninety days' prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed transferee, and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.

5. To grant an additional franchise for a particular line-make of trailer in a relevant market area in which a dealer or dealers in that line-make are already located unless the franchisor has first advised in writing all other dealers in the line-make in the relevant market area. No such additional franchise may be established at the proposed site unless the Commissioner has determined, if requested by a dealer of the same line-make in the relevant market area within thirty days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that there is reasonable evidence that after the grant of the new franchise, the market will support all of the dealers in that line-make in the relevant market area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has not been in operation for more than two years shall constitute the establishment of a new franchise subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor was legally permitted finally to terminate the franchise. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more than ten miles distant from any other dealer for the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant than the existing site from all other dealers of the same line-make in that relevant market area; or (iii) the relocation of an existing new trailer dealer within two miles of the existing site of the relocating dealer.

6. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise, to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty days prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested in writing by the dealer within the sixty-day period and, after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is made to the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this subdivision, notice of termination, cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are any of the following:

a. Insolvency of the franchised trailer dealer or filing of any petition by or against the franchised trailer dealer, under any bankruptcy or receivership law, leading to liquidation or which is intended to lead to liquidation of the franchisee's business;

b. Failure of the franchised trailer dealer to conduct its customary sales and service operations during its posted business hours for seven consecutive business days, except where the failure results from acts of God or circumstances beyond the direct control of the franchised trailer dealer;

c. Revocation of any license which the franchised trailer dealer is required to have to operate a dealership; or

d. Conviction of the dealer or any principal of the dealer of a felony.

The change or discontinuance of a marketing or distribution system of a particular line-make product by a manufacturer or distributor, while the name identification of the product is continued in substantial form by the same or different manufacturer or distributor, may be considered to be a franchise termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in which such a change or discontinuance occurring prior to that date has been challenged as constituting a termination, cancellation or nonrenewal.

7. To fail to provide continued parts and service support to a dealer which holds a franchise in a discontinued line-make for at least five years from the date of such discontinuance. This requirement shall not apply to a line-make which was discontinued prior to January 1, 1989.

8. To fail to allow a dealer the right at any time to designate a member of his family as a successor to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not provided to the member of the family previously designated by the dealer as his successor written notice of its objections to the succession and of such person's right to seek a hearing on the matter before the Commissioner pursuant to this article, and the Commissioner determines, if requested in writing by such member of the family within thirty days of receipt of such notice from the franchisor, and after a hearing on the matter before the Commissioner pursuant to this article, that the failure to permit or honor the succession is unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i) the franchisor has been given written notice as to the identity, financial ability, and qualifications of the member of the family in question and (ii) the succession to the franchise will not involve, without the franchisor's consent, a relocation of the business.

9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new trailers of each make, series, and model needed by the dealer to receive a percentage of total new trailer sales of each make, series, and model equitably related to the total new trailer production or importation currently being achieved nationally by each make, series, and model covered under the franchise. Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer or distributor shall disclose to the dealer in writing the basis upon which new trailers are allocated, scheduled, and delivered to the dealers of the same line-make. If allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor provide to the dealer, within thirty days of such demand, all records of sales and all records of distribution of all trailers to the same line-make dealers who compete with the dealer requesting the hearing.

10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

11. To include in any franchise with a trailer dealer terms that are contrary to, prohibited by, or otherwise inconsistent with the requirements of this chapter.

12. For any franchise agreement to require a trailer dealer to pay the attorney's fees of the manufacturer or distributor related to hearings and appeals brought under this article.

13. To fail to include in any franchise with a trailer dealer the following language: "If any provision

herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force," or words to that effect.

§ 46.2-1992.70. Manufacturer or distributor right of first refusal.

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new trailer dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within forty-five days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons; and

4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within thirty days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

§ 46.2-1992.71. Discontinuation of distributors.

If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to trailer dealers in Virginia by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute trailers of the same line-make or the same trailers of a renamed line-make shall be substituted for the discontinued distributor under the existing trailer dealer franchises and those franchises shall be modified accordingly.

§ 46.2-1992.72. Warranty obligations.

A. Each trailer manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its trailer dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service and diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable;

2. For purposes of determining warranty parts and service compensation, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers;

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a ninety-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup which shall be uniformly applied to all the manufacturer's or distributor's parts;

4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years;

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules; or

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

This section does not apply to compensation for parts such as components, systems, fixtures, appliances, furnishings, accessories, and features that are designed, used, and maintained primarily for

nonvehicular, residential purposes. Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within thirty days of dealer submission or within thirty days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the twelve-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the eighteen-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims.

B. It shall be unlawful for any trailer manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a trailer;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;
3. Fail to include in written notices of factory recalls to trailer owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;
4. Fail to compensate any of the trailer dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;
5. Fail to compensate its trailer dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A of this section, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;
6. Misrepresent in any way to purchasers of trailers that warranties with respect to the manufacture, performance, or design of the trailer are made by the dealer, either as warrantor or co-warrantor;
7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the trailer; or
8. Shift or attempt to shift to the trailer dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any trailer manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its trailer dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of trailers, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the trailer or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made which come within this subsection whenever reasonably practicable to do so. Every trailer dealer franchise issued to, amended, or renewed for trailer dealers in Virginia shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new trailer, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to glass, tires, and bumpers are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new trailer is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a trailer is otherwise damaged prior to delivery to the new trailer dealer, the new trailer dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new trailer to the new trailer dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the trailer exceeds the three percent rule, in which case the dealer may reject the trailer within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within ten days after receipt of notification, or if the dealer rejects the trailer because damage exceeds the three percent rule, ownership of the new trailer shall revert to the manufacturer or distributor, and the new trailer dealer shall have no obligation, financial or otherwise, with respect to such trailer. Should

either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgment by the buyer is required. If there is less than three percent damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new trailer in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within thirty days of purchase, the trailer is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the trailer and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the trailer as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either party may petition the Commissioner in writing, within thirty days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9. However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

§ 46.2-1992.73. Operation of dealership by manufacturer.

It shall be unlawful for any trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any trailer dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership;

3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of trailers through the dealership for a continuous period of three years prior to July 1, 1972, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community to own and operate the franchise in a manner consistent with the public interest; or

4. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.

§ 46.2-1992.74. Ownership of service facilities.

It shall be unlawful for any trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control, either directly or indirectly, any trailer warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any trailer manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, from owning, operating, or controlling any warranty or service facility for warranty or service of trailers owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a trailer manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

§ 46.2-1992.75. Hearings and other remedies.

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9.

B. Hearings before the Commissioner under this article shall commence within ninety days of the request for a hearing and the Commissioner's decision shall be rendered within sixty days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within ninety days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 9 of § 46.2-1992.69 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

- 1. The volume of the affected dealer's business in the relevant market area;*
- 2. The nature and extent of the dealer's investment in its business;*
- 3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;*
- 4. The effect of the proposed action on the community;*
- 5. The extent and quality of the dealer's service under trailer warranties;*
- 6. The dealer's performance under the terms of its franchise; and*
- 7. Other economic and geographical factors reasonably associated with the proposed action.*

With respect to subdivision 6 of this subsection, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

§ 46.2-1992.76. Late model and factory repurchase franchises.

Franchised late model or factory repurchase trailer dealers shall have the same rights and obligations as provided for franchised new trailer dealers in this article, mutatis mutandis.

§ 46.2-1992.77. Watercraft trailers and watercraft trailer dealers.

For the purposes of this article, the term "trailer" shall include watercraft trailers and the terms "dealer" and "trailer dealer" shall include watercraft trailer dealers.

Article 8.

Denial, Suspension, and Revocation of Dealer Licenses.

§ 46.2-1992.78. Acts of officers, directors, partners, and salespersons.

If a licensee or registrant is a partnership or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license or certificate of dealer registration that any officer, director, or trustee of the partnership or corporation, or any member in the case of a partnership or the dealer-operator, has committed any act or omitted any duty which would be cause for refusing, suspending, or revoking a license or certificate of dealer registration issued to him as an individual under this chapter. Each licensee or registrant shall be responsible for the acts of any of his salespersons while acting as his agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and, after such knowledge, retained the benefit, proceeds, profits, or advantages accruing from those acts or otherwise ratified those acts.

§ 46.2-1992.79. Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification.

A license or certificate of dealer registration or qualification issued under this subtitle may be denied, suspended, or revoked on any one or more of the following grounds:

- 1. Material misstatement or omission in application for license, dealer's license plates, certificate of dealer registration, certificate of qualification, or certificate of title;*
- 2. Failure to comply subsequent to receipt of a written warning from the Department or any willful failure to comply with any provision of this chapter or any applicable provision of this subtitle or any applicable regulation promulgated under this subtitle;*
- 3. Failure to have an established place of business as defined in § 46.2-1992.8 or failure to have as the dealer-operator an individual who holds a valid certificate of qualification;*
- 4. Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business;*
- 5. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth with respect to the retaking of vehicles under retail installment contracts and the redemption and resale of those vehicles;*
- 6. Having used deceptive acts or practices;*
- 7. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered under this subtitle or for which a license or registration is sought;*
- 8. Having been convicted of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud;*
- 9. Having been convicted of any criminal act involving the business of selling vehicles;*
- 10. Willfully retaining in his possession title to a vehicle that has not been completely and legally assigned to him;*
- 11. Failure to comply with any provision of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 or any regulation promulgated pursuant to that chapter;*
- 12. Leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by persons not*

specifically authorized under this title;

- 13. Having been convicted of a felony;*
- 14. Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collected for the Department on behalf of a buyer;*
- 15. Having been convicted of larceny of a vehicle or receipt or sale of a stolen vehicle;*
- 16. Having been convicted of odometer tampering or any related violation;*
- 17. If a salvage dealer, salvage pool, or rebuilder, failing to comply with any provision of Chapter 16 of this title or any regulation promulgated by the Commissioner under that chapter; or*
- 18. Failing to maintain liability insurance, issued by a company licensed to do business in the Commonwealth, or a certificate of self-insurance as defined in § 46.2-368, with respect to each dealer's license plate issued to the dealer by the Department.*

§ 46.2-1992.80. Suspension, revocation, and refusal to renew licenses or certificates of dealer registration or qualification; notice and hearing.

A. Except as provided in subsection B of this section, no license or certificate of dealer registration or qualification issued under this subtitle shall be suspended or revoked, or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee, registrant, or qualifier against whom the same is directed and a public hearing thereon has been had before the Commissioner. At least ten days' written notice of the time and place of the hearing shall be given to the licensee, registrant, or qualifier by registered mail addressed to his last known post office address or as shown on his license or certificate or other record of information in possession of the Commissioner. At the hearing the licensee, registrant, or qualifier shall have the right to be heard personally or by counsel. After hearing, the Commissioner may suspend, revoke, or refuse to renew the license or certificate in question. Immediate notice of any suspension, revocation, or refusal shall be given to the licensee, registrant, or qualifier in the same manner provided in this section for giving notices of hearing.

B. Should a dealer fail to maintain an established place of business, the Commissioner may cancel the license of the dealer without a hearing after notification of the intent to cancel has been sent, by return receipt mail, to the dealer at the dealer's residence and business addresses, and the notices are returned undelivered or the dealer does not respond within twenty days from the date the notices were sent. Any subsequent application for a dealer's license shall be treated as an original application.

§ 46.2-1992.81. Appeals from actions of the Commissioner.

Any person aggrieved by the action of the Commissioner in refusing to grant or renew a license or certificate of dealer registration or qualification issued under this chapter, or by any other action of the Commissioner which is alleged to be improper, unreasonable, or unlawful under the provisions of this chapter is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 46.2-1992.82. Appeals to Court of Appeals; bond.

Either party may appeal from the decision of the court under § 46.2-1992.81 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

No appeal shall be taken on behalf of the person whose license or certificate of registration or qualification was suspended or revoked until the person enters into a proper bond with surety approved by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the motor vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the Court of Appeals.

§ 46.2-1992.83. Equitable remedies not impaired.

The remedy at law provided by §§ 46.2-1992.81 and 46.2-1992.82 shall not in any manner impair the right to applicable equitable relief. That right to equitable relief is hereby preserved, notwithstanding the provisions of §§ 46.2-1992.81 and 46.2-1992.82.

Article 9.

Trailer Dealer Advertising.

§ 46.2-1992.84. Regulated advertising practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

1. A trailer shall not be advertised as new, either by word or implication, unless it is one which conforms to the requirements of § 46.2-1992.

2. When advertising any trailer which does not conform to the definition of "new" as provided in § 46.2-1992, the fact that it is used shall be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the trailer is used. By way of example but not by limitation, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased trailers" used alone clearly express that the trailers are used for advertising purposes.

3. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

4. Terms, conditions, and disclaimers shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but shall not be used as a means of contradicting or changing the meaning of an advertised statement.

5. The expiration date of an advertised sale shall be clearly and conspicuously disclosed.

6. The term "list price," "sticker price," or "suggested retail price" and similar terms, shall be used only in reference to the manufacturer's suggested retail price for new trailers or the dealer's own usual and customary price for used trailers.

7. Terms such as "at cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice or a bona fide bill of sale and the invoice or bill of sale is available for customer inspection.

"Manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges.

8. When the price or credit terms of a trailer are advertised, the trailer shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and not line-make marketing groups, the stated price or credit terms shall include all charges which the buyer must pay to the seller, except buyer-selected options, state and local fees and taxes, and manufacturer's or distributor's freight or destination charges. If freight or destination charges are not included in the advertised price, the amount of any such freight or destination charge must be clearly and conspicuously disclosed.

9. Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable.

10. Advertisements of "dealer rebates" shall not be used. This does not affect advertisement of manufacturer rebates.

11. "Free," "at no cost," or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. This provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups.

12. "Bait" advertising, in which an advertiser may have no intention to sell at the price or terms advertised, shall not be used. By way of example, but not by limitation:

a. If a specific trailer is advertised, the seller shall be in possession of a reasonable supply of said trailers, and they shall be available at the advertised price. If the advertised trailer is available only in limited numbers or only by order, that shall be stated in the advertisement. For purposes of this subdivision, the listing of a trailer by stock number or vehicle identification number in the advertisement for a used trailer is one means of satisfactorily disclosing a limitation of availability. Stock numbers or vehicle identification numbers shall not be used in advertising a new trailer unless the advertisement clearly and conspicuously discloses that it relates to only one trailer;

b. Advertising a trailer at a certain price, including "as low as" statements, but having available for sale only trailers equipped with dealer added cost "options" which increase the selling price, above the advertised price, shall also be considered "bait" advertising;

c. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

13. The term "repossessed" shall be used only to describe trailers that have been sold, registered, titled and then taken back from a purchaser and not yet resold to an ultimate user. Advertisers offering repossessed trailers for sale shall provide proof of repossession upon request.

14. Words such as "finance" or "loan" shall not be used in a trailer advertiser's firm name or trade name, unless that person is actually engaged in the financing of trailers.

15. Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used.

§ 46.2-1992.85. Enforcement; regulations.

The Commissioner may promulgate regulations reasonably necessary for enforcement of this article.

In addition to any other sanctions or remedies available to the Commissioner under this chapter, the Commissioner may assess a civil penalty not to exceed \$1,000 for any single violation of this article. Each day that a violation continues shall constitute a separate violation.

CHAPTER 19.2.

MOTORCYCLE DEALERS.

Article 1.

Motorcycle Dealers Generally.

§ 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:

"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.

"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.

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

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

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm vehicle" or "moped" as defined in § 46.2-100.

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

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

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

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

The term "motorcycle dealer" does not include:

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

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

3. Persons other than business entities primarily engaged in the leasing or renting of motorcycles to others when selling or offering such motorcycles for sale at retail, disposing of motorcycles acquired for their own use and actually so used, when the motorcycles have been so acquired and used in good faith

and not for the purpose of avoiding the provisions of this chapter.

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

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

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

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

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

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

10. 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 motorcycle dealer.

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

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

"New motorcycle" means any motorcycle 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 motorcycle, 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 motorcycle 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 motorcycle safety and emission standards. Notwithstanding provisions (i) and (iii), a motorcycle that has been previously sold but not titled shall be deemed a new motorcycle if it meets the requirements of provisions (ii), (iv), and (v).

"Relevant market area" means as follows:

1. In metropolitan localities with a population of 250,000, the relevant market area shall be a circular area around an existing franchised dealer not to exceed a radius of ten miles, but in no case less than seven miles.

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

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

§ 46.2-1993.1. General powers of Commissioner.

The Commissioner shall promote the interest of the retail buyers of motorcycles and endeavor to prevent unfair methods of competition and unfair or deceptive acts or practices.

§ 46.2-1993.2. Commissioner's powers with respect to hearings under this chapter.

The Commissioner may, in hearings arising under this chapter, determine the place in the Commonwealth where they shall be held; subpoena witnesses; take depositions of witnesses residing

outside the Commonwealth in the manner provided for in civil actions in courts of record; pay these witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

§ 46.2-1993.3. Suit to enjoin violations.

The Commissioner, whenever he believes from evidence submitted to him that any person has been violating, is violating or is about to violate any provision of this chapter, in addition to any other remedy, may bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

§ 46.2-1993.4. Regulations.

The Commissioner may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of §§ 46.2-112 and 46.2-629, and any other regulations, not inconsistent with the provisions of this chapter, as he shall consider necessary for the effective administration and enforcement of this chapter. A copy of any regulation promulgated under this section shall be mailed to each motorcycle dealer licensee thirty days prior to its effective date.

§ 46.2-1993.5. Penalties.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil penalty not to exceed \$1,000 for any single violation. Civil penalties collected under this chapter shall be deposited into the Transportation Trust Fund.

Article 2.

Motorcycle Dealer Licenses.

§ 46.2-1993.6. Licenses required.

It shall be unlawful for any person to engage in business in the Commonwealth as a motorcycle dealer, salesperson, manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative, without first obtaining a license as provided in this chapter. Any person licensed in another state as a motorcycle dealer may sell motorcycles at wholesale auctions in the Commonwealth after having obtained a certificate of dealer registration as provided in Chapter 19 of Title 46.2. The offering or granting of a motorcycle dealer franchise in the Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section, and no new motorcycle may be sold or offered for sale in the Commonwealth unless the franchisor of motorcycle dealer franchises for that line-make in the Commonwealth, whether such franchisor is a manufacturer, factory branch, distributor, distributor branch, or otherwise, is licensed under this chapter. In the event a license issued under this chapter to a franchisor of motorcycle dealer franchises is suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new motorcycle of such franchisor's line-make manufactured in or brought into the Commonwealth for sale prior to the suspension, revocation or expiration of the license.

§ 46.2-1993.7. Application for license or certificate of dealer registration.

Application for license or certificate of dealer registration under this chapter shall be made to the Commissioner and contain such information as the Commissioner shall require. The application shall be accompanied by the required fee.

The Commissioner shall require, in the application or otherwise, information relating to the matters set forth in § 46.2-1993.76 as grounds for refusing licenses, certificates of dealer registration, and to other pertinent matters requisite for the safeguarding of the public interest, including, if the applicant is a dealer in new motorcycles with factory warranties, a copy of a current service agreement with the manufacturer or with the distributor, requiring the applicant to perform within a reasonable distance of his established place of business, the service, repair, and replacement work required of the manufacturer or distributor by such motorcycle warranty. All of these matters shall be considered by the Commissioner in determining the fitness of the applicant to engage in the business for which he seeks a license or certificate of dealer registration.

§ 46.2-1993.8. Dealers required to have established place of business.

No license shall be issued to any motorcycle 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 § 46.2-1993.22;
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;
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 motorcycles.

Any person licensed as a dealer by the Department under any provision of this subtitle on June 30, 1996, shall be considered in compliance with subdivisions 2 and 6 of this section for that licensee.

§ 46.2-1993.9. Dealer-operator to have certificate of qualification.

No license shall be issued to any motorcycle dealer unless the dealer-operator holds a valid certificate of qualification issued by the Department. Such certificate shall be issued only on application to the Department, payment of a twenty-five dollar application fee, the successful completion of an examination prepared and administered by the Department, and other prerequisites as set forth in this section. However, any individual who is the dealer-operator of a dealer licensed by the Department under any provision of this subtitle on June 30, 1996, shall be entitled to such a certificate without examination on application to the Department made on or before January 1, 1997.

The Commissioner may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

§ 46.2-1993.10. Salesperson to have certificate of qualification.

No license shall be issued to any motorcycle salesperson unless he holds a valid certificate of qualification issued by the Department. A certificate shall be issued only on application to the Department, payment of a twenty-five-dollar application fee, the successful completion of an examination prepared and administered by the Department, and other prerequisites as set forth in this section. However, any individual who is licensed as a salesperson by the Department under any provision of this subtitle on June 30, 1996, shall be entitled to such a certificate without examination on application to the Department made on or before January 1, 1997.

The Commissioner may establish minimum qualifications for applicants and require applicants to satisfactorily complete courses of study or other prerequisites prior to taking the examination.

§ 46.2-1993.11. Continued operation on loss of a dealer-operator holding certificate of qualification.

Each dealer shall notify the Department in writing immediately when a dealer-operator who holds a certificate of qualification dies, becomes disabled, retires, is removed, or for any other cause ceases to act as dealer-operator. The dealer may continue to operate for 120 days thereafter without a dealer-operator and may be granted approval by the Department to operate for an additional sixty days on application and with good cause shown for such delay.

§ 46.2-1993.12. Action on applications; hearing on denial; denial for failure to have established place of business.

The Commissioner shall act on all applications for a license or certificate of dealer registration under this chapter within sixty days after receipt by either granting or refusing the application. Any applicant denied a license or certificate shall, on his written request filed within thirty days, be given a hearing at a time and place determined by the Commissioner or a person designated by him. All hearings under this section shall be public and shall be held promptly. The applicant may be represented by counsel.

Any applicant denied a license for failure to have an established place of business as provided in § 46.2-1993.8 may not, nor shall anyone, apply for a license for premises for which a license was denied for thirty days from the date of the rejection of the application.

§ 46.2-1993.13. Location to be specified; display of license; change of location.

The licenses of motorcycle dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of each place of business, branch or other location occupied or to be occupied by the licensee in conducting his business and the license issued therefor shall be conspicuously displayed at each of the premises. If any licensee intends to change a licensed location, he shall provide the Commissioner thirty days' advance written notice, and a successful inspection of the new location shall be required prior to approval of a change of location. The Commissioner shall endorse the change of location on the license, without charge, if the new location is within the same county or city. A change in location to another county or city shall require a new license and fee.

§ 46.2-1993.14. Supplemental sales locations.

The Commissioner may issue a license for a licensed motorcycle dealer to display for sale or sell motorcycles at locations other than his established place of business, subject to compliance with local ordinances and requirements.

A permanent supplemental license may be issued for premises less than 500 yards from the dealer's established place of business, provided a sign is displayed as required for the established place of business. A supplemental license shall not be required for premises otherwise contiguous to the established place of business except for a public thoroughfare.

A temporary supplemental license may be issued for a period not to exceed fourteen days, provided that the application is made fifteen days prior to the sale. A temporary supplemental license for the sale of new motorcycles may be issued only for locations within the dealer's area of responsibility, as defined in his franchise or sales agreement, unless certification is provided that all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary supplemental license is sought do not oppose the issuance of the temporary license.

However, the application for a temporary supplemental license may be made five business days prior to the sale, provided the applicant submit evidence that the location is in compliance with all local ordinances and that all other requirements of this section have been met. The application shall include affirmative proof of nonopposition in the form of letters signed by all dealers in the same line-make in whose areas of responsibility, as defined in their franchise or sales agreements, where the temporary

supplemental license is sought, approving the Department's granting the temporary supplemental license.

A temporary supplemental license for sale of used motorcycles may be issued only for the county, city, or town in which the dealer is licensed pursuant to § 46.2-1993.8, or for a contiguous county, city, or town. Temporary licenses may be issued without regard to the foregoing geographic restrictions where the dealer operating under a temporary license provides notice, at least thirty days before any proposed sale under a temporary license, to all other dealers licensed in the jurisdiction in which the sale will occur of the intent to conduct a sale and permits any locally licensed dealer who wishes to do so to participate in the sale on the same terms as the dealer operating under the temporary license. Any locally licensed dealer who chooses to participate in the sale must obtain a temporary supplemental license for the sale pursuant to this section.

§ 46.2-1993.15. Changes in form of ownership, line-make, name.

Any change in the form of ownership or the addition or deletion of a partner shall require a new application, license, and fee.

Any addition or deletion of a franchise or change in the name of a dealer shall require immediate notification to the Department, and the Commissioner shall endorse the change on the license without a fee. The change of an officer or director of a corporation shall be made at the time of license renewal.

§ 46.2-1993.16. Display of salesperson's license; notice on termination.

No salesperson shall be employed by more than one dealer, unless the dealers are owned by the same person.

Each dealer shall maintain a list of salespersons employed.

Each salesperson, factory representative, and distributor representative shall carry his license when engaged in his business and shall display it on request.

Each dealer and each motorcycle manufacturer and distributor shall notify the Department in writing not later than the tenth day of the month following the termination of any licensed salesperson's or representative's employment. In lieu of written notification, the license of the terminated salesperson or representative may be returned to the Department annotated "terminated" on the face of the license and signed and dated by the dealer-operator, owner, or officer.

§ 46.2-1993.17. 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 as follows:

1. For motorcycle dealers, \$100 for each principal place of business, plus \$20 for each supplemental license.
2. For each motorcycle manufacturer, distributor, factory branch, and distributor branch, \$100.
3. For motorcycle rebuilder salespersons, factory representatives, and distributor representatives, \$10.
4. For motorcycle dealers licensed in other states, but not in Virginia, a registration fee of \$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. However, the Commissioner may waive fees for those licensed under Chapter 15, 19, or 19.1 of this title.

§ 46.2-1993.18. Collection of license and registration fees; payments from fund.

All licensing and registration fees provided for in this chapter, except as identified in Article 3 (§ 46.2-1993.20) of this chapter, shall be collected by the Commissioner and paid into the state treasury and set aside as a special fund to meet the expenses of the Department.

§ 46.2-1993.19. Issuance, expiration, and renewal of licenses and certificates of registration.

All licenses and certificates of registration issued under this chapter shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as is necessary to distribute the licenses and certificates as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license and certificate of registration shall be renewed annually on application by the licensee or registrant and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

Article 3.

Bonding Requirements.

§ 46.2-1993.20. Bonding requirements for applicants for license.

Every applicant for an original, second year renewal and third year renewal motorcycle dealer's license shall obtain and file with the Commissioner a bond in the amount of \$25,000. However, no dealer shall be required to obtain more than one \$25,000 bond for all licenses held under this subtitle. Any dealer who is licensed under Chapter 15 of this title and who obtains a motorcycle dealer license under this chapter, shall be exempt from the bond requirements set out in this section. In addition, any person who purchases a motorcycle from a dealer who is licensed under Chapter 15 of this title, shall have access to the Motor Vehicle Transaction Recovery Fund as prescribed in Article 3 (§ 46.2-1527 et seq.) of Chapter 15 of this title. The bond shall come from a corporate surety licensed to do business in the Commonwealth and approved by the Attorney General. The bond shall be conditioned on a

statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Commissioner may, without holding a hearing, suspend the dealer's license during the period that the dealer does not have a sufficient bond on file.

If a person suffers any of the following: (i) loss or damage in connection with the purchase of a motorcycle by reason of fraud practiced on him or fraudulent representation made to him by a licensed motorcycle dealer or one of the dealer's salespersons acting within his scope of employment; (ii) loss or damage by reason of the violation by a dealer or salesperson of any provision of this chapter in connection with the purchase of a motorcycle; or (iii) loss or damage resulting from a breach of an extended service contract entered into on or after the effective date of this act, as defined by § 59.1-435, that person shall have a claim against the dealer and the dealer's bond, and may recover such damages as may be awarded to such person by final judgment of a court of competent jurisdiction against the dealer as a proximate result of such loss or damage up to, but not exceeding, the amount of the bond, from such surety, who shall be subrogated to the rights of such person against the dealer or salesperson. The liability of such surety shall be limited to actual damages, and shall not include any punitive damages or attorneys' fees assessed against the dealer or salesperson.

The dealer's surety shall notify the Department when a claim is made against a dealer's bond, when a claim is paid and when the bond is canceled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation. The bond may be canceled as to future liability by the dealer's surety upon thirty days' notice to the Department.

Article 4.

Conduct of Business.

§ 46.2-1993.21. Examination or audit of licensee; costs.

The Commissioner or authorized representatives of the Department may examine, during the posted business hours, the records required to be maintained by this chapter. If a licensee is found to have violated this chapter or any order of the Commissioner, the actual cost of the examination shall be paid by the licensee so examined within thirty days after demand therefor by the Commissioner. The Commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction.

§ 46.2-1993.22. 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; and other records required by the Department shall be maintained on the premises of the licensed location. The Commissioner 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 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 Commissioner.

§ 46.2-1993.23. Buyer's order.

A. Every motorcycle dealer shall complete, in duplicate, a buyer's order for each sale or exchange of a 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 years in accordance with § 46.2-1993.22, 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 motorcycle dealer selling or trading the vehicle.
4. The make, model year, and vehicle identification number.
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, 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.
11. Any item designated as "dealer's business license tax," and the amount charged by the dealer, if any.

12. 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 TWENTY-FOUR HOURS OF WRITTEN OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL."

If the transaction does not include a policy of 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 Commissioner shall approve a buyer's order form and each dealer shall file with each license application, or renewal, 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 Commissioner.

§ 46.2-1993.24. Consignment motorcycles; contract.

Any motorcycle dealer offering a motorcycle for sale on consignment shall have in his possession a consignment contract for the motorcycle, executed and signed by the dealer and the consignor. The consignment contract shall include:

1. The complete name, address, and the telephone number of the owners.
2. The name, address, and dealer certificate number of the selling dealer.
3. A complete description of the motorcycle on consignment, including the make, model year, vehicle identification number, and body style.
4. The beginning and termination dates of the contract.
5. The percentage of commission, the amount of the commission, or the net amount the owner is to receive, if the motorcycle is sold.
6. Any fees for which the owner is responsible.
7. A disclosure of all unsatisfied liens on the motorcycle and the location of the certificate of title to the motorcycle.
8. A requirement that the motorcycle pass a safety inspection prior to sale.

Any dealer offering a motorcycle for sale on consignment shall inform any prospective customer that the motorcycle is on consignment.

Dealer license plates shall not be used to demonstrate a motorcycle on consignment except motorcycles on consignment from another licensed motorcycle dealer. The owner's license plates may be used if liability insurance coverage is in effect in the amounts prescribed by § 46.2-472. No vehicles other than motorcycles shall be sold on consignment by motorcycle dealers.

§ 46.2-1993.25. Odometer disclosure.

Every motorcycle dealer shall comply with all requirements of the Federal Odometer Act and § 46.2-629 by completing the appropriate odometer mileage statement form for each vehicle purchased, sold or transferred, or in any other way acquired or disposed of. Odometer disclosure statements shall be maintained by the dealer in a manner that permits systematic retrieval. Any person found violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 46.2-1993.26. Certain disclosures required by manufacturers and distributors.

Motorcycle manufacturers and distributors shall affix or cause to be affixed in a conspicuous place to every motorcycle offered for sale as a new motorcycle a statement disclosing the place of assembly or manufacture of the motorcycle. For disclosures of place of assembly, the assembly plant shall be the same as that designated by the vehicle identification number.

The provisions of this section shall apply only to motorcycles manufactured for the 1991 or subsequent model years.

§ 46.2-1993.27. Business hours.

Each motorcycle dealer shall be open for business a minimum of twenty hours per week, at least ten of which shall be between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, except that the Commissioner, on written request by a dealer, may modify these requirements for good cause. The dealer's hours shall be posted and maintained conspicuously on or near the main entrance of each place of business.

Each dealer shall include his business hours on the original and every renewal application for a license, and changes to these hours shall be immediately filed with the Department.

§ 46.2-1993.28. Signs.

Each retail motorcycle dealer's place of business shall be identified by a permanent sign visible from

the front of the business office so that the public may quickly and easily identify the dealership. The sign shall contain the dealer's trade name in letters no less than six inches in height unless otherwise restricted by law or contract.

§ 46.2-1993.29. Advertisements.

Unless the dealer is clearly identified by name, whenever any licensee places an advertisement in any newspaper or publication, the abbreviations "VA DLR," denoting a Virginia licensed dealer, shall appear therein.

§ 46.2-1993.30. Coercing purchaser to provide insurance coverage on motorcycle.

It shall be unlawful for any dealer or salesperson or any employee of a dealer or representative of either to coerce or offer anything of value to any purchaser of a motorcycle to provide any type of insurance coverage on the motorcycle.

Nothing in this section shall prohibit a dealer from requiring that a retail customer obtain vehicle physical damage insurance to protect collateral secured by an installment sales contract. Any person found guilty of violating any provisions of this section shall be guilty of a Class 1 misdemeanor.

Nothing in this section shall prohibit a dealer from informing the retail customer of Virginia's insurance requirements.

§ 46.2-1993.31. Prohibited solicitation and compensation.

It shall be unlawful for any motorcycle dealer or salesperson licensed under this chapter, directly or indirectly, to solicit the sale of a motorcycle through a person with a pecuniary interest, or to pay, or cause to be paid, any commission or compensation in any form whatsoever to any person in connection with the sale of a motorcycle, unless the person is duly licensed as a salesperson employed by the dealer.

§ 46.2-1993.32. Salesperson selling for other than his employer prohibited.

It shall be unlawful for any motorcycle salesperson licensed under this chapter to sell or exchange or offer or attempt to sell or exchange any motorcycle except for the licensed motorcycle dealer by whom he is employed, or to offer, transfer, or assign any sale or exchange that he may have negotiated to any other dealer or salesperson.

§ 46.2-1993.33. Inspection of vehicles required.

No person required to be licensed as a dealer under this chapter shall sell at retail any vehicle which is intended by the buyer for use on the public highways, and which is required to comply with the safety inspection requirements provided in Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of this title unless between the time the vehicle comes into the possession of the dealer and the time it is sold at retail it is inspected by an official safety inspection station. If the vehicle is found not to be in compliance with all safety inspection requirements, the dealer shall either take steps to bring it into compliance or shall furnish any buyer intending it for use on the public highway a written disclosure, prior to sale, that the vehicle did not pass a safety inspection. Any person found guilty of violating any provisions of this section shall be guilty of a Class 1 misdemeanor.

§ 46.2-1993.34. Inspections prior to sale not required of certain sellers.

The provisions of §§ 46.2-1158 and 46.2-1993.33 requiring inspection of any vehicle prior to sale at retail shall not apply to any person conducting a public auction for the sale of vehicles at retail, provided that the individual, firm, or business conducting the auction has not taken title to the vehicle, but is acting as an agent for the sale of the vehicle. Nor shall the provisions of §§ 46.2-1158 and 46.2-1993.33 requiring inspection of any motorcycle prior to sale at retail apply to any new motorcycle sold on the basis of a special order placed by a dealer with a manufacturer outside Virginia on behalf of a customer who is a nonresident of Virginia and takes delivery outside Virginia.

§ 46.2-1993.35. Temporary certificates of ownership.

A. Notwithstanding §§ 46.2-617 and 46.2-628, whenever a dealer licensed by the Department sells and delivers to a purchaser a vehicle and is unable at the time of the sale to deliver to the purchaser the certificate of title or certificate of origin for the vehicle because the certificate of title or certificate of origin is lost or is being detained by another in possession or for any other reason beyond the dealer's control, the dealer shall execute, on forms provided by the Commissioner, a temporary certificate of ownership. The certificate shall bear its date of issuance, the name and address of the purchaser, the identification number of the vehicle, the registration number to be used temporarily on the vehicle, the name of the state in which the vehicle is to be registered, the name and address of the person from whom the dealer acquired the vehicle, and whatever other information may be required by the Commissioner. A copy of the temporary certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the vehicle. One copy of the certificate shall be retained by the dealer and shall be subject to inspection at any time by the Department's agents. The original of the certificate shall be forwarded by the dealer to the Department directly on issuance to the purchaser if the vehicle is to be titled outside the Commonwealth, along with application for title. The issuance of a temporary certificate of ownership to a purchaser pursuant to this section shall have the effect of vesting ownership of the motorcycle in the purchaser for the period that the certificate remains effective.

B. A temporary certificate of ownership issued by a dealer to a purchaser pursuant to this section

shall expire on receipt by the purchaser of a certificate of title to the vehicle issued by the Department in the name of the purchaser, but in no event shall any temporary certificate of ownership issued under this section be effective for more than thirty days from the date of its issuance. In the event that the dealer fails to produce the old certificate of title or certificate of origin to the vehicle or fails to apply for a replacement certificate of title pursuant to § 46.2-632, thereby preventing delivery to the Department or purchaser before the expiration of the temporary certificate of ownership, the purchaser's ownership of the vehicle may terminate and the purchaser shall have the right to return the vehicle to the dealer and obtain a full refund of all payments made toward the purchase of the vehicle, less any damage to the vehicle incurred while ownership was vested in the purchaser, and less a reasonable amount for use not to exceed one-half the amount allowed per mile by the Internal Revenue Service, as provided by regulation, revenue procedure, or revenue ruling promulgated pursuant to § 162 of the Internal Revenue Code, for use of a personal vehicle for business purposes.

C. Notwithstanding subsection B of this section, if the dealer fails to deliver the certificate of title or certificate of origin to the purchaser within thirty days, a second temporary certificate of ownership may be issued. However, the dealer shall, not later than the expiration of the first temporary certificate, deliver to the Department an application for title, copy of the bill of sale, all required fees and a written statement of facts describing the dealer's efforts to secure the certificate of title or certificate of origin to the vehicle. On receipt of the title application with attachments as described herein, the Department shall record the purchaser's ownership of the vehicle and may authorize the dealer to issue a second thirty-day temporary certificate of ownership. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the second temporary certificate, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the vehicle as provided in subsection B of this section.

D. If the dealer is unable to produce the certificate of title or certificate of origin to the vehicle within the sixty-day period from the date of issuance of the first temporary certificate, the Department may extend temporary ownership for an additional period of up to ninety days, provided the dealer makes application in the format required by the Department. If the dealer does not produce the certificate of title or certificate of origin to the vehicle before the expiration of the additional ninety-day period, the purchaser's ownership of the vehicle may terminate and he shall have the right to return the motorcycle as provided in subsection B of this section.

E. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may, after a hearing, suspend the right of the dealer to issue temporary certificates of ownership.

§ 46.2-1993.36. Use of old license plates and registration number on a motorcycle.

An owner who sells or transfers a registered motorcycle may have the license plates and the registration number transferred to a motorcycle titled in the owner's name according to the provisions of Chapter 6 (§ 46.2-600 et seq.), on application to the Department and accompanied by a fee of two dollars. All such transfers shall be in accordance with the regulations of the Department. All fees collected under this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department. For purposes of this section, a motorcycle dealer licensed by the Department may be authorized to act as an agent of the Department. As an agent for the Department, the dealer is authorized to receive, process, and approve applications from its customers for assignment of license plates and registration numbers pursuant to this section, using the forms and following the procedures prescribed by the Department. The Commissioner, on determining that the provisions of this section or the directions of the Department are not being complied with by a dealer, may suspend, after a hearing, the authority of the dealer to receive, process, and approve the assignment of license plates and registration numbers pursuant to this section.

§ 46.2-1993.37. Certificate of title for dealers.

Except as otherwise provided in this chapter, every dealer shall obtain, on the purchase of each motorcycle, a certificate of title issued to the dealer or shall obtain an assignment or reassignment of a certificate of title for each motorcycle purchased, except that a certificate of title shall not be required for any new motorcycle to be sold as such.

§ 46.2-1993.38. Termination of business.

No dealer, unless his license has been suspended, revoked, or canceled, shall cease business without a thirty-day prior notification to the Department. On cessation of the business, the dealer shall immediately surrender to the Department the dealer's certificate of license, all salespersons' licenses, all dealer and temporary license plates, all fees and taxes collected, and any other materials furnished by the Department. After cessation of business, the former licensee shall continue to maintain and make available to the Department dealer records as set forth in this chapter.

Article 5.

Motorcycle Dealer License Plates.

§ 46.2-1993.39. Registration of dealers; fees.

Every manufacturer, distributor, or dealer, before he commences to operate motorcycles in his

inventory for sale or resale, shall apply to the Commissioner for a dealer's certificate of vehicle registration and license plates. For the purposes of this article, a motorcycle is in inventory when it is owned by, or assigned to, a dealer and is offered and available for sale or resale. All dealer's certificates of vehicle registration and license plates issued under this section may, at the discretion of the Commissioner, be placed in a system of staggered issue to distribute the work of issuing vehicle registration certificates and license plates as uniformly as practicable throughout the year. Dealerships which sold fewer than twenty-five motorcycles during the last twelve months of the preceding license year shall be eligible to receive no more than two dealer's license plates; dealerships which sold at least twenty-five but fewer than fifty motorcycles during the last twelve months of the preceding license year shall be eligible to receive no more than four dealer's license plates. However, dealerships which sold fifty or more motorcycles during their current license year may apply for additional license plates not to exceed four times the number of licensed salespersons employed by that dealership. Dealerships which sold fifty or more motorcycles during the last twelve months of the preceding license year shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. A new applicant for a dealership shall be eligible to receive a number of dealer's license plates not to exceed four times the number of licensed salespersons employed by that dealership. For the purposes of this article, a salesperson or employee shall be considered to be employed only if he (i) works for the dealership at least twenty-five hours each week on a regular basis and (ii) is compensated for this work. All salespersons' or employees' employment records shall be retained in accordance with the provisions of § 46.2-1993.22. A salesperson shall not be considered employed, within the meaning of this section, if he is an independent contractor as defined by the United States Internal Revenue Code. The fee for the issuance of motorcycle dealer's license plates shall be nine dollars per year for each dealer's license plate.

§ 46.2-1993.40. License under this chapter prerequisite to receiving dealer's license plates; insurance required; Commissioner may revoke plates.

No motorcycle manufacturer, distributor, or dealer, unless licensed under this chapter, shall be entitled to receive or maintain any dealer's license plates. It shall be unlawful to use or permit the use of any dealer's license plates for which there is no liability insurance coverage or a certificate of self-insurance as defined in § 46.2-368 on any motorcycle. No dealer's license plates shall be issued unless the dealer certifies to the Department that there is liability insurance coverage or a certificate of self-insurance with respect to each dealer's license plate to be issued. Such liability insurance or a certificate of self-insurance shall be maintained for each dealer's license plate for so long as the registration for the dealer's license plate remains valid without regard to whether the plate is actually being used on a motorcycle. If insurance or a certificate of self-insurance is not so maintained, the dealer's license plate shall be surrendered to the Department. The Commissioner shall revoke any dealer's license plate for which there is no insurance or a certificate of self-insurance. The Commissioner may also revoke any dealer's license plate that has been used in any way not authorized by the provisions of this title.

§ 46.2-1993.41. Transferable dealer's license plates.

In lieu of registering each motorcycle, a manufacturer, distributor, or dealer owning and operating any motorcycle on any highway may obtain a dealer's license plate from the Department, on application therefor on the prescribed form and on payment of the fees required by law. These license plates shall be attached to each motorcycle as required by subsection A of § 46.2-711. Each plate shall bear a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol indicating that the plate is issued to a manufacturer, distributor, or dealer. Month and year decals indicating the date of expiration shall be affixed to each license plate. Any license plates so issued may, during the calendar year or years for which they have been issued, be transferred from one motorcycle to another, used or operated by the manufacturer, distributor, or dealer, who shall keep a written record of the motorcycle on which the dealer's license plates are used. This record shall be in a format approved by the Commissioner and shall be open to inspection by any law-enforcement officer or any officer or employee of the Department.

Display of a transferable manufacturer's, distributor's, or dealer's license plate or plates on a motorcycle shall subject the motorcycle to the requirements of §§ 46.2-1038 and 46.2-1056.

All manufacturer's, distributor's, and dealer's license plates shall be issued for a period of twelve consecutive months except, at the discretion of the Commissioner, the periods may be adjusted as may be necessary to distribute the registrations as equally as practicable on a monthly basis. The expiration date shall be the last day of the twelfth month of validity or the last day of the designated month. Every license plate shall be renewed annually on application by the owner and by payment of fees required by law, such renewal to take effect on the first day of the succeeding month.

The Commissioner may offer an optional multi-year license plate registration to manufacturers, distributors, and dealers licensed pursuant to this chapter provided that he has chosen to offer optional multi-year licensing to such persons pursuant to § 46.2-1993.19. When such option is offered and chosen by the licensee, all annual and twelve-month fees due at the time of registration shall be multiplied by the number of years or fraction thereof the licensee will be licensed pursuant to

§ 46.2-1993.19.

§ 46.2-1993.42. *Dealer's license plates to distinguish between various types of dealers.*

The Commissioner shall provide for the issuance of appropriate franchised or independent dealer's license plates so as to distinguish between factory motorcycle dealers and motorcycle dealers.

§ 46.2-1993.43. *Dealer's promotional license plates.*

In addition to any other license plate authorized by this article, the Commissioner may issue dealer's promotional license plates to a dealership for use on motorcycles held for sale or resale in the dealership's inventory. The design of these license plates shall be at the discretion of the Commissioner. These license plates shall be for use as authorized by the Commissioner. For each such license plate issued or renewed, the Commissioner shall charge an annual fee of \$100. Issuance of license plates pursuant to this section shall be subject to the insurance requirement contained in § 46.2-1993.40. The Commissioner shall limit the validity of any license plate issued under this section to no more than thirty consecutive days. Upon written request from the dealership, the Commissioner may consider an extended use of a license plate issued under this section. The Commissioner's authorization for use of any license plate issued under this section shall be kept in the motorcycle on which the license plate is displayed until expiration of the authorization. These license plates shall be included in the number of dealer's license plates authorized under § 46.2-1993.39 and not in addition thereto.

§ 46.2-1993.44. *Use of motorcycle dealer's license plates, generally.*

Motorcycle dealer's license plates may be used on motorcycles in the inventory of licensed motorcycle manufacturers, distributors, and dealers in the Commonwealth when operated on the highways of Virginia by dealers, their spouses, or employees of manufacturers, distributors, and dealers as permitted in this article. Except as otherwise explicitly permitted in this article, it shall be unlawful for any dealer to cause or permit: (i) use of dealer's license plates on motorcycles other than those held in inventory for sale or resale; (ii) dealer's license plates to be lent, leased, rented, or placed at the disposal of any persons other than those permitted by this article to use dealer's license plates; and (iii) use of dealer's license plates on any vehicle other than a motorcycle. It shall be unlawful for any dealer to cause or permit dealer's license plates to be used on:

- 1. Vehicles such as tow trucks, wrecking cranes, or other service vehicles;*
- 2. Vehicles used to deliver or transport (i) motorcycles; (ii) portions of motorcycles; (iii) motorcycle components, parts, or accessories; or (iv) fuel;*
- 3. Courtesy vehicles; or*
- 4. Vehicles used in conjunction with any other business.*

A dealer may permit his license plates to be used in the operation of a motorcycle (i) by any person whom the dealer reasonably believes to be a bona fide prospective purchaser who is either accompanied by a licensed salesperson or has the written permission of the dealer, or (ii) when the plates are being used by a customer on a motorcycle owned by the dealer in whose repair shop the customer's motorcycle is being repaired. The dealer shall issue to the prospective purchaser or customer whose motorcycle is being repaired a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the vehicle. The certificate shall entitle the person to operate with dealer's license plates for a specific period of no more than five days. Not more than two certificates may be issued by a dealer to the same person for successive periods.

§ 46.2-1993.45. *Use of dealer's license plates and temporary transport plates on certain vehicles.*

Notwithstanding the provisions of § 46.2-1993.44, dealer's license plates or dealer's temporary transport plates may be used on vehicles being transported (i) to and from a vehicle auction or other point of purchase or sale, (ii) between properties owned or controlled by the same dealership, or (iii) for repairs, painting, or installation of parts or accessories. This section shall also apply to return trips by such vehicles.

§ 46.2-1993.46. *Issuance and use of temporary transport plates, generally.*

The Department, subject to the limitations and conditions set forth in this section and the insurance requirements contained in § 46.2-1993.40, may provide for the issuance of temporary transport plates designed by the Department to any dealer licensed under this chapter who applies for at least ten plates and who encloses with his application a fee of one dollar for each plate. The application shall be made on a form prescribed and furnished by the Department. Temporary transport plates may be used for those purposes outlined in § 46.2-1993.45. Every dealer who has applied for temporary transport plates shall maintain a permanent record of (i) all temporary transport plates delivered to him, (ii) all temporary transport plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary transport plates which may be required by the Department.

Every dealer who issues temporary transport plates shall insert clearly and indelibly on the face of the temporary transport plates the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the vehicle for which issued.

The dealer shall issue to the operator of the specified vehicle a certificate on forms provided by the Department, a copy of which shall be retained by the dealer and open at all times to the inspection of

the Commissioner or any of the officers or agents of the Department. The certificate shall be in the immediate possession of the person operating or authorized to operate the vehicle. The certificate shall entitle the person to operate with the dealer's temporary transport plate for a period of no more than five days. Temporary transport plates may also be used by the dealer to demonstrate types of vehicles taken in trade but for which he has not been issued dealer's license plates.

§ 46.2-1993.47. Use of motorcycle dealer's license plates on newly purchased motorcycles.

Notwithstanding the provisions of § 46.2-1993.44, any dealer who sells and delivers to a purchaser a motorcycle at a time when the main offices of the Department, its branch offices, or offices of its local agents, are not open for business and the purchaser is therefore unable to register the motorcycle, may permit the purchaser to use, for a period not exceeding five days, on the newly purchased motorcycle, license plates which have been issued to the dealer, provided that, at the time of the purchase, the dealer executes in duplicate, on forms provided by the Commissioner, a certificate bearing the date of issuance, the name and address of the purchaser, the identification number of the motorcycle, the registration number to be used temporarily on the motorcycle, the name of the state in which the motorcycle is to be registered, and whatever other information may be required by the Commissioner. The original of the certificate and a bona fide bill of sale shall be delivered to the purchaser and shall be in the possession of the purchaser at all times when operating the motorcycle under dealer plates. One copy of the certificate shall be retained by the dealer, filed by him, and shall be subject to inspection at any time by the Department's agents. If the motorcycle is to be titled and registered in the Commonwealth, application for title and registration shall be made by the purchaser on the first business day following issuance of the certificate and a copy of the certificate shall accompany the applications.

License plates temporarily used by the purchaser shall be returned to the dealer by the purchaser not later than five days after the issuance of the certificate.

§ 46.2-1993.48. Operation without license plate prohibited.

No manufacturer or distributor of or dealer in motorcycles shall cause or permit any motorcycle, owned by him to be operated or moved on a public highway without there being displayed on the motorcycle, a license plate or plates issued to him, either under § 46.2-711 or under § 46.2-1993.41, except as otherwise authorized in §§ 46.2-733, 46.2-1993.40 and 46.2-1993.50.

§ 46.2-1993.49. Movement by manufacturer to place of shipment or delivery.

Any manufacturer of motorcycles may operate or move or cause to be moved or operated on the highways for a distance of no more than twenty-five miles motorcycles from the factory where manufactured or assembled to a railway depot, vessel, or place of shipment or delivery, without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways and on displaying in plain sight on each motorcycle a placard bearing the name and address of the manufacturer authorizing or directing the movement.

§ 46.2-1993.50. Movement by dealers to salesrooms.

Any dealer in motorcycles may operate or move, or cause to be operated or moved, any motorcycle on the highways for a distance of no more than twenty-five miles from a vessel, railway depot, warehouse, or any place of shipment or from a factory where manufactured or assembled to a salesroom, warehouse, or place of shipment or transshipment without registering them and without license plates attached thereto, under a written permit first obtained from the local law-enforcement authorities having jurisdiction over the highways, and on displaying in plain sight on each motorcycle, a placard bearing the name and address of the dealer authorizing or directing the movement.

§ 46.2-1993.51. Operation under foreign dealer's license.

It shall be unlawful, except as provided for by reciprocal agreement, for any person to operate a motorcycle or for the owner thereof to permit a motorcycle to be operated in the Commonwealth on a foreign dealer's license, unless the operation of the motorcycle on the license is specifically authorized by the Commissioner.

§ 46.2-1993.52. Use of certain foreign-registered motorcycles in driver education programs.

Dealer's license plates may be displayed on motorcycles used by Virginia school systems in connection with driver education programs approved by the State Board of Education. In the event of such use of a motorcycle by a school system, any dealer, his employees and agents furnishing the motorcycle shall be immune from liability in any suit, claim, action, or cause of action, including but not limited to, actions or claims for injury to persons or property arising out of such use. Nothing in this section shall authorize the sale of any motorcycle so used in such driver education program as a demonstrator motorcycle. Notwithstanding the provisions of §§ 46.2-1993 and 46.2-1993.51, school divisions either (i) bordering on Kentucky, Maryland, North Carolina, Tennessee, or West Virginia, or (ii) located in Accomack or Northampton County may use motorcycles bearing foreign motorcycle dealer's license plates in connection with their driver education programs.

§ 46.2-1993.53. Removal of plates by Department of Motor Vehicles investigators; cancellation; reissuance.

If any Department of Motor Vehicles investigator finds that a vehicle bearing license plates or

temporary transport plates issued under this article is being operated in a manner inconsistent with (i) the requirements of this article or (ii) the Commissioner's authorization provided for in this article, the Department of Motor Vehicles investigator may remove the license plate for cancellation. Once a license plate has been canceled, the dealership may reapply for the license plate. Reissuance of the license plate shall be subject to the approval of the Commissioner and the payment of the fee prescribed for issuance of license plates under this article.

§ 46.2-1993.54. Penalties for violations of article; service of summons.

Notwithstanding § 46.2-1993.5, any person violating any of the provisions of this article shall be guilty of a Class 3 misdemeanor. Any summons issued for any violation of any provision of this article relating to use or misuse of dealer's license plates shall be served upon the dealership to whom the plates were issued or to the person expressly permitting the unlawful use, or upon the operator of the motorcycle if the plates are used contrary to the use authorized by the certificate issued pursuant to § 46.2-1993.44.

Article 6.

Issuance of Temporary License Plates by Dealers.

§ 46.2-1993.55. Issuance of temporary license plates to dealers and vehicle owners.

The Department may, subject to the limitations and conditions set forth in this article, deliver temporary license plates designed by the Department to any dealer licensed under this chapter who applies for at least ten sets of plates and who encloses with his application a fee of two dollars for each set applied for. The application shall be made on a form prescribed and furnished by the Department. Dealers, subject to the limitations and conditions set forth in this article, may issue temporary license plates to owners of vehicles. The owners shall comply with the provisions of this article and §§ 46.2-705, 46.2-706 and 46.2-707. Dealers issuing temporary license plates may do so free of charge, but if they charge a fee for issuing temporary plates, the fee shall be no more than the fee charged the dealer by the Department under this section.

Display of a temporary license plate or plates on a vehicle shall subject the vehicle to the requirements of §§ 46.2-1038 and 46.2-1056.

§ 46.2-1993.56. Records to be kept by dealers; inspection.

Every dealer who has applied for temporary license plates shall maintain a permanent record of (i) all temporary license plates delivered to him, (ii) all temporary license plates issued by him, and (iii) any other information pertaining to the receipt or the issuance of temporary license plates which may be required by the Department. Each record shall be kept for at least one year from the date of entry. Every dealer shall allow full access to these records during regular business hours to authorized representatives of the Department and to law-enforcement officers.

§ 46.2-1993.57. Application for temporary license plate.

No dealer shall issue a temporary license plate except on written application by the person entitled to receive the license plate, which application shall be forwarded by the dealer to the Department as provided in § 46.2-1993.35.

§ 46.2-1993.58. To whom temporary plates shall not be issued; dealer to forward application for current titling and registration; misstatements and false information.

No dealer shall issue, assign, transfer, or deliver temporary license plates to other than the bona fide purchaser or owner of a motorcycle, whether or not the motorcycle is to be registered in Virginia. If the motorcycle is to be registered in Virginia, the dealer shall submit to the Department a written application for the current titling and registration of the purchased motorcycle, accompanied by the prescribed fees. Any dealer who issues temporary license plates to a purchaser who fails or declines to request that his application be forwarded promptly to the Department forthwith shall notify the Department of the issuance in the manner provided in this article. No dealer shall issue temporary license plates to any person who possesses current license plates for a motorcycle that has been sold or exchanged, nor shall any dealer lend temporary license plates to any person for use on any vehicle. If the dealer does not have in his possession the certificate of title or certificate of origin, he shall issue temporary license plates even though the purchaser has current license plates to be transferred. The dealer shall present the title or certificate of origin to the customer within thirty days of purchase and after this transaction is completed, the customer shall transfer his current license plates to the motorcycle. If the title or certificate of origin cannot be produced for a vehicle within thirty days, a second set of temporary license plates may be issued provided that a temporary certificate of ownership is issued as provided in § 46.2-1993.35. It shall be unlawful for any person to issue any temporary license plates containing any misstatement of fact, or for any person issuing or using temporary license plates knowingly to insert any false information on their face.

§ 46.2-1993.59. Dealer to insert his name, date of issuance and expiration, make and identification number of vehicle.

Every dealer who issues temporary license plates shall insert clearly and indelibly on the face of each temporary license plate the name of the issuing dealer, the date of issuance and expiration, and the make and identification number of the motorcycle for which issued.

§ 46.2-1993.60. Suspension of right of dealer to issue.

The Commissioner, on determining that the provisions of this chapter or the directions of the Department are not being complied with by any dealer, may, after a hearing, suspend the right of a dealer to issue temporary license plates.

§ 46.2-1993.61. Plates to be destroyed on expiration.

Every person to whom temporary license plates have been issued shall destroy them on the thirtieth day after issue or immediately on receipt of the permanent license plates from the Department, whichever occurs first.

§ 46.2-1993.62. When plates to expire; refunds or credit.

Temporary license plates shall expire on the receipt of the permanent license plates from the Department, or on the rescission of a contract to purchase a motorcycle, or on the expiration of, or thirty days from the date of issuance, whichever occurs first. No refund or credit of fees paid by dealers to the Department for temporary license plates shall be allowed, except that when the Department discontinues the right of a dealer to issue temporary license plates, the dealer, on returning temporary license plates to the Department, may receive a refund or a credit for them.

§ 46.2-1993.63. Penalties.

Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor.

Article 7.

Franchises.

§ 46.2-1993.64. Filing of franchises.

Each motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof shall file with the Commissioner a true copy of each new, amended, modified, or different form or addendum offered to more than one dealer which affects the rights, responsibilities, or obligations of the parties of a franchise or sales, service, or sales and service agreement to be offered to a motorcycle dealer or prospective motorcycle dealer in the Commonwealth no later than sixty days prior to the date the franchise or sales agreement is offered. In no event shall a new, amended, modified, or different form of franchise or sales, service, or sales and service agreement be offered a motorcycle dealer in the Commonwealth until the form has been determined by the Commissioner as not containing terms inconsistent with the provisions of this chapter. At the time a filing is made with the Commissioner pursuant to this section, the manufacturer, factory branch, distributor, distributor branch, or subsidiary shall also give written notice together with a copy of the papers so filed to the affected dealer or dealers.

§ 46.2-1993.65. Exemption of franchises from Retail Franchising Act.

Franchises subject to the provisions of this chapter shall not be subject to any requirement contained in Chapter 8 (§ 13.1-557 et seq.) of Title 13.1.

§ 46.2-1993.66. Coercion of retail dealer by manufacturer or distributor with respect to retail installment sales contracts and extended warranties prohibited.

A. It shall be unlawful for any manufacturer or distributor, or any officer, agent, or representative of either, to coerce or attempt to coerce any retail motorcycle dealer or prospective retail motorcycle dealer in the Commonwealth to sell or offer to sell extended warranties or to sell, assign, or transfer any retail installment sales contract obtained by the dealer in connection with the sale by him in the Commonwealth of motorcycles manufactured or sold by the manufacturer or distributor, to a specified finance company or class of finance companies or to any other specified persons by any of the following:

1. Any statement, suggestion, promise, or threat that the manufacturer or distributor will in any manner benefit or injure the dealer, whether the statement, suggestion, threat, or promise is expressed or implied or made directly or indirectly.

2. Any act that will benefit or injure the dealer.

3. Any contract, or any expressed or implied offer of contract, made directly or indirectly to the dealer, for handling the motorcycle on the condition that the dealer sell, assign, or transfer his retail installment sales contract on the motorcycle, in the Commonwealth, to a specified finance company or class of finance companies or to any other specified person.

4. Any expressed or implied statement or representation made directly or indirectly that the dealer is under any obligation whatsoever to sell, assign, or transfer any of his retail sales contracts in the Commonwealth on motorcycles manufactured or sold by the manufacturer or distributor to a finance company, or class of finance companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies or the specified person or persons.

B. Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

C. Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor.

§ 46.2-1993.67. Other coercion of dealers; transfer, grant, succession to and cancellation of dealer franchises; delivery of motorcycles, parts, and accessories.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or their representatives:

1. To coerce or attempt to coerce any dealer to accept delivery of any motorcycle or motorcycles, parts or accessories therefor, or any other commodities, which have not been ordered by the dealer.

2. To coerce or attempt to coerce any dealer to enter into an agreement with the manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to the dealer, by threatening to cancel any franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer.

3. To coerce or attempt to coerce any dealer to join, contribute to, or affiliate with any advertising association.

4. To prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale, or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, unless the franchisor provides written notice to the dealer of its objection and the reasons therefor at least thirty days prior to the proposed effective date of the transfer, sale, assignment, or change. No such objection shall be effective to prevent the sale, transfer, assignment, or change if the Commissioner has determined, if requested in writing by the dealer within thirty days after receipt of an objection to the proposed sale, transfer, or change, and after a hearing on the matter, that the failure to permit or honor the sale, transfer, assignment, or change is unreasonable under the circumstances. No franchise may be sold, assigned, or transferred unless (i) the franchisor has been given at least ninety days' prior written notice by the dealer as to the identity, financial ability, and qualifications of the proposed transferee, and (ii) the sale or transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the business.

5. To grant an additional franchise for a particular line-make of motorcycle in a relevant market area in which a dealer or dealers in that line-make are already located unless the franchisor has first advised in writing all other dealers in the line-make in the relevant market area. No such additional franchise may be established at the proposed site unless the Commissioner has determined, if requested by a dealer of the same line-make in the relevant market area within thirty days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that there is reasonable evidence that after the grant of the new franchise, the market will support all of the dealers in that line-make in the relevant market area. Establishing a franchised dealer in a relevant market area to replace a franchised dealer that has not been in operation for more than two years shall constitute the establishment of a new franchise subject to the terms of this subdivision. The two-year period for replacing a franchised dealer shall begin on the day the franchise was terminated, or, if a termination hearing was held, on the day the franchisor was legally permitted finally to terminate the franchise. This subdivision shall not apply to (i) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more than ten miles distant from any other dealer for the same line-make; (ii) the relocation of an existing dealer within that dealer's relevant market area if the relocation site is to be more distant than the existing site from all other dealers of the same line-make in that relevant market area; or (iii) the relocation of an existing new motorcycle dealer within two miles of the existing site of the relocating dealer.

6. Except as otherwise provided in this subdivision and notwithstanding the terms of any franchise, to terminate, cancel, or refuse to renew the franchise of any dealer without good cause and unless (i) the dealer and the Commissioner have received written notice of the franchisor's intentions at least sixty days prior to the effective date of such termination, cancellation, or the expiration date of the franchise, setting forth the specific grounds for the action, and (ii) the Commissioner has determined, if requested in writing by the dealer within the sixty-day period and, after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise. In any case where a petition is made to the Commissioner for a determination as to good cause for the termination, cancellation, or nonrenewal of a franchise, the franchise in question shall continue in effect pending the Commissioner's decision or, if that decision is appealed to the circuit court, pending the decision of the circuit court. In any case in which a franchisor neither advises a dealer that it does not intend to renew a franchise nor takes any action to renew a franchise beyond its expiration date, the franchise in question shall continue in effect on the terms last agreed to by the parties. Notwithstanding the other provisions of this subdivision, notice of termination, cancellation, or nonrenewal may be provided to a dealer by a franchisor not less than fifteen days prior to the effective date of such termination, cancellation, or nonrenewal when the grounds for such action are any of the following:

a. Insolvency of the franchised motorcycle dealer or filing of any petition by or against the franchised motorcycle dealer, under any bankruptcy or receivership law, leading to liquidation or which is intended to lead to liquidation of the franchisee's business;

b. Failure of the franchised motorcycle dealer to conduct its customary sales and service operations during its posted business hours for seven consecutive business days, except where the failure results from acts of God or circumstances beyond the direct control of the franchised motorcycle dealer;

c. Revocation of any license which the franchised motorcycle dealer is required to have to operate a

dealership;

d. Conviction of the dealer or any principal of the dealer of a felony.

The change or discontinuance of a marketing or distribution system of a particular line-make product by a manufacturer or distributor, while the name identification of the product is continued in substantial form by the same or different manufacturer or distributor, may be considered to be a franchise termination, cancellation, or nonrenewal. The provisions of this paragraph shall apply to changes and discontinuances made after January 1, 1989, but they shall not be considered by any court in any case in which such a change or discontinuance occurring prior to that date has been challenged as constituting a termination, cancellation or nonrenewal.

7. To fail to provide continued parts and service support to a dealer which holds a franchise in a discontinued line-make for at least five years from the date of such discontinuance. This requirement shall not apply to a line-make which was discontinued prior to January 1, 1989.

8. To fail to allow a dealer the right at any time to designate a member of his family as a successor to the dealership in the event of the death or incapacity of the dealer. It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of a deceased or incapacitated dealer if the franchisor has not provided to the member of the family previously designated by the dealer as his successor written notice of its objections to the succession and of such person's right to seek a hearing on the matter before the Commissioner pursuant to this article, and the Commissioner determines, if requested in writing by such member of the family within thirty days of receipt of such notice from the franchisor, and after a hearing on the matter before the Commissioner pursuant to this article, that the failure to permit or honor the succession is unreasonable under the circumstances. No member of the family may succeed to a franchise unless (i) the franchisor has been given written notice as to the identity, financial ability, and qualifications of the member of the family in question and (ii) the succession to the franchise will not involve, without the franchisor's consent, a relocation of the business.

9. To fail to ship monthly to any dealer, if ordered by the dealer, the number of new motorcycles of each make, series, and model needed by the dealer to receive a percentage of total new motorcycle sales of each make, series, and model equitably related to the total new motorcycle production or importation currently being achieved nationally by each make, series, and model covered under the franchise. Upon the written request of any dealer holding its sales or sales and service franchise, the manufacturer or distributor shall disclose to the dealer in writing the basis upon which new motorcycles are allocated, scheduled, and delivered to the dealers of the same line-make. If allocation is at issue in a request for a hearing, the dealer may demand the Commissioner to direct that the manufacturer or distributor provide to the dealer, within thirty days of such demand, all records of sales and all records of distribution of all motorcycles to the same line-make dealers who compete with the dealer requesting the hearing.

10. To require or otherwise coerce a dealer to underutilize the dealer's facilities.

11. To include in any franchise with a motorcycle dealer terms that are contrary to, prohibited by, or otherwise inconsistent with the requirements of this chapter.

12. For any franchise agreement to require a motorcycle dealer to pay the attorney's fees of the manufacturer or distributor related to hearings and appeals brought under this article.

13. To fail to include in any franchise with a motorcycle dealer the following language: "If any provision herein contravenes the laws or regulations of any state or other jurisdiction wherein this agreement is to be performed, or denies access to the procedures, forums, or remedies provided for by such laws or regulations, such provision shall be deemed to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force," or words to that effect.

§ 46.2-1993.68. Manufacturer or distributor right of first refusal.

Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the new motorcycle dealer's assets or ownership, if such sale or transfer is conditioned upon the manufacturer's or dealer's entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. To exercise its right of first refusal, the manufacturer or distributor must notify the dealer in writing within forty-five days of its receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the dealer's and dealer's owner's receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer;

3. The proposed sale or transfer of the dealership's assets does not involve the transfer or sale to a member or members of the family of one or more dealer owners, or to a qualified manager or a partnership or corporation controlled by such persons; and

4. The manufacturer or distributor agrees to pay the reasonable expenses, including attorney's fees which do not exceed the usual, customary, and reasonable fees charged for similar work done for other clients, incurred by the proposed new owner and transferee prior to the manufacturer's or distributor's exercise of its right of first refusal in negotiating and implementing the contract for the proposed sale

or transfer of the dealership or dealership assets. Notwithstanding the foregoing, no payment of such expenses and attorney's fees shall be required if the dealer has not submitted or caused to be submitted an accounting of those expenses within thirty days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such accounting may be requested by a manufacturer or distributor before exercising its right of first refusal.

§ 46.2-1993.69. Discontinuation of distributors.

If the contract between a distributor and a manufacturer or importer is terminated or otherwise discontinued, all franchises granted to motorcycle dealers in Virginia by that distributor shall continue in full force and shall not be affected by the discontinuance, except that the manufacturer, factory branch, distributor, representative, or other person who undertakes to distribute motorcycles of the same line-make or the same motorcycles of a re-named line-make shall be substituted for the discontinued distributor under the existing motorcycle dealer franchises and those franchises shall be modified accordingly.

§ 46.2-1993.70. Warranty obligations.

A. Each motorcycle manufacturer, factory branch, distributor, or distributor branch shall (i) specify in writing to each of its motorcycle dealers licensed in the Commonwealth the dealer's obligations for preparation, delivery, and warranty service on its products and (ii) compensate the dealer for warranty parts, service and diagnostic work required of the dealer by the manufacturer or distributor as follows:

1. Compensation of a dealer for warranty parts, service and diagnostic work shall not be less than the amounts charged by the dealer for the manufacturer's or distributor's original parts, service and diagnostic work to retail customers for nonwarranty service, parts and diagnostic work installed or performed in the dealer's service department unless the amounts are not reasonable;

2. For purposes of determining warranty parts and service compensation, menu-priced parts or services, group discounts, special event discounts, and special event promotions shall not be considered in determining amounts charged by the dealer to retail customers;

3. Increases in dealer warranty parts and service compensation and diagnostic work compensation, pursuant to this section, shall be requested by the dealer in writing, shall be based on 100 consecutive repair orders or all repair orders over a ninety-day period, whichever occurs first and, in the case of parts, shall be stated as a percentage of markup which shall be uniformly applied to all the manufacturer's or distributor's parts;

4. In the case of warranty parts compensation, the provisions of this subsection shall be effective only for model year 1992 and succeeding model years;

5. If a manufacturer or distributor furnishes a part to a dealer at no cost for use by the dealer in performing work for which the manufacturer or distributor is required to compensate the dealer under this section, the manufacturer or distributor shall compensate the dealer for the part in the same manner as warranty parts compensation, less the wholesale costs, for such part as listed in the manufacturer's current price schedules. A manufacturer or distributor may pay the dealer a reasonable handling fee instead of the compensation otherwise required by this subsection for special high-performance complete engine assemblies in limited production motorcycles which constitute less than five percent of model production furnished to the dealer at no cost, if the manufacturer or distributor excludes such special high-performance complete engine assemblies in determining whether the amounts requested by the dealer for warranty compensation are consistent with the amounts that the dealer charges its other retail service customers for parts used by the dealer to perform similar work; or

6. In the case of service work, manufacturer original parts or parts otherwise specified by the manufacturer or distributor, and parts provided by a dealer either pursuant to an adjustment program as defined in § 59.1-207.34 or as otherwise requested by the manufacturer or distributor, the dealer shall be compensated in the same manner as for warranty service or parts.

Warranty audits of dealer records may be conducted by the manufacturer, factory branch, distributor, or distributor branch on a reasonable basis, and dealer claims for warranty compensation shall not be denied except for good cause, such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation. Claims for dealer compensation shall be paid within thirty days of dealer submission or within thirty days of the end of an incentive program or rejected in writing for stated reasons. The manufacturer, factory branch, distributor, or distributor branch shall reserve the right to reasonable periodic audits to determine the validity of all such paid claims for dealer compensation. Any chargebacks for warranty parts or service compensation and service incentives shall only be for the twelve-month period immediately following the date of the claim and, in the case of chargebacks for sales compensation only, for the eighteen-month period immediately following the date of claim. However, such limitations shall not be effective in the case of intentionally false or fraudulent claims.

B. It shall be unlawful for any motorcycle manufacturer, factory branch, distributor, or distributor branch to:

1. Fail to perform any of its warranty obligations, including tires, with respect to a motorcycle;
2. Fail to assume all responsibility for any liability resulting from structural or production defects;

3. Fail to include in written notices of factory recalls to motorcycle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of defects;

4. Fail to compensate any of the motorcycle dealers licensed in the Commonwealth for repairs effected by the dealer of merchandise damaged in manufacture or transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch;

5. Fail to compensate its motorcycle dealers licensed in the Commonwealth for warranty parts, work, and service pursuant to subsection A of this section, or for legal costs and expenses incurred by such dealers in connection with warranty obligations for which the manufacturer, factory branch, distributor, or distributor branch is legally responsible or which the manufacturer, factory branch, distributor, or distributor branch imposes upon the dealer;

6. Misrepresent in any way to purchasers of motorcycles that warranties with respect to the manufacture, performance, or design of the motorcycle are made by the dealer, either as warrantor or co-warrantor;

7. Require the dealer to make warranties to customers in any manner related to the manufacture, performance, or design of the motorcycle; or

8. Shift or attempt to shift to the motorcycle dealer, directly or indirectly, any liabilities of the manufacturer, factory branch, distributor or distributor branch under the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.), unless such liability results from the act or omission by the dealer.

C. Notwithstanding the terms of any franchise, it shall be unlawful for any motorcycle manufacturer, factory branch, distributor, or distributor branch to fail to indemnify and hold harmless its motorcycle dealers against any losses or damages arising out of complaints, claims, or suits relating to the manufacture, assembly, or design of motorcycles, parts, or accessories, or other functions by the manufacturer, factory branch, distributor, or distributor branch beyond the control of the dealer, including, without limitation, the selection by the manufacturer, factory branch, distributor, or distributor branch of parts or components for the motorcycle or any damages to merchandise occurring in transit to the dealer where the carrier is designated by the manufacturer, factory branch, distributor, or distributor branch. The dealer shall notify the manufacturer of pending suits in which allegations are made which come within this subsection whenever reasonably practicable to do so. Every motorcycle dealer franchise issued to, amended, or renewed for motorcycle dealers in Virginia shall be construed to incorporate provisions consistent with the requirements of this subsection.

D. On any new motorcycle, any uncorrected damage or any corrected damage exceeding three percent of the manufacturer's or distributor's suggested retail price as defined in 15 U.S.C. §§ 1231-1233, as measured by retail repair costs, must be disclosed to the dealer in writing prior to delivery. Factory mechanical repair and damage to tires are excluded from the three percent rule when properly replaced by identical manufacturer's or distributor's original equipment or parts. Whenever a new motorcycle is damaged in transit, when the carrier or means of transportation is determined by the manufacturer or distributor, or whenever a motorcycle is otherwise damaged prior to delivery to the new motorcycle dealer, the new motorcycle dealer shall:

1. Notify the manufacturer or distributor of the damage within three business days from the date of delivery of the new motorcycle to the new motorcycle dealership or within the additional time specified in the franchise; and

2. Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage, unless the damage to the motorcycle exceeds the three percent rule, in which case the dealer may reject the motorcycle within three business days.

E. If the manufacturer or distributor refuses or fails to authorize correction of such damage within ten days after receipt of notification, or if the dealer rejects the motorcycle because damage exceeds the three percent rule, ownership of the new motorcycle shall revert to the manufacturer or distributor, and the new motorcycle dealer shall have no obligation, financial or otherwise, with respect to such motorcycle. Should either the manufacturer, distributor, or the dealer elect to correct the damage or any other damage exceeding the three percent rule, full disclosure shall be made by the dealer in writing to the buyer and an acknowledgment by the buyer is required. If there is less than three percent damage, no disclosure is required, provided the damage has been corrected. Predelivery mechanical work shall not require a disclosure. Failure to disclose any corrected damage within the knowledge of the selling dealer to a new motorcycle in excess of the three percent rule shall constitute grounds for revocation of the buyer order, provided that, within thirty days of purchase, the motorcycle is returned to the dealer with an accompanying written notice of the grounds for revocation. In case of revocation pursuant to this section, the dealer shall accept the motorcycle and refund any payments made to the dealer in connection with the transaction, less a reasonable allowance for the consumer's use of the motorcycle as defined in § 59.1-207.11.

F. If there is a dispute between the manufacturer, factory branch, distributor, or distributor branch and the dealer with respect to any matter referred to in subsection A, B, or C of this section, either party may petition the Commissioner in writing, within thirty days after either party has given written notice of the dispute to the other, for a hearing. The decision of the Commissioner shall be binding on

the parties, subject to rights of judicial review and appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9. However, nothing contained in this section shall give the Commissioner any authority as to the content or interpretation of any manufacturer's or distributor's warranty.

§ 46.2-1993.71. Operation of dealership by manufacturer.

It shall be unlawful for any motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control any motorcycle dealership in the Commonwealth. However, this section shall not prohibit:

1. The operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period, not to exceed one year, during the transition from one owner or operator to another;

2. The ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, while the dealership is being sold under a bona fide contract or purchase option to the operator of the dealership;

3. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motorcycles through the dealership for a continuous period of three years prior to July 1, 1972, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community to own and operate the franchise in a manner consistent with the public interest;

4. The ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof if the Commissioner determines, after a hearing at the request of any party, that there is no dealer independent of the manufacturer or distributor, factory branch or distributor branch, or subsidiary thereof available in the community or trade area to own and operate the franchise in a manner consistent with the public interest.

§ 46.2-1993.72. Ownership of service facilities.

It shall be unlawful for any motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to own, operate, or control, either directly or indirectly, any motorcycle warranty or service facility located in the Commonwealth. Nothing in this section shall prohibit any motorcycle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, from owning, operating, or controlling any warranty or service facility for warranty or service of motorcycles owned or operated by the manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof. Nothing contained in this section shall prohibit a motorcycle manufacturer, factory branch, distributor, or distributor branch from performing service for reasons of compliance with an order of a court of competent jurisdiction or of warranty under Chapter 17.3 (§ 59.1-207.9 et seq.) of Title 59.1.

§ 46.2-1993.73. Hearings and other remedies.

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9.

B. Hearings before the Commissioner under this article shall commence within ninety days of the request for a hearing and the Commissioner's decision shall be rendered within sixty days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court of Virginia. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within ninety days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6 and 9 of § 46.2-1993.67 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;
2. The nature and extent of the dealer's investment in its business;
3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
4. The effect of the proposed action on the community;
5. The extent and quality of the dealer's service under motorcycle warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

With respect to subdivision 6 of this subsection, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such

standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

§ 46.2-1993.74. Late model and factory repurchase franchises.

Franchised late model or factory repurchase motorcycle dealers shall have the same rights and obligations as provided for franchised new motorcycle dealers in this article, *mutatis mutandis*.

Article 8.

Denial, Suspension, and Revocation of Dealer Licenses.

§ 46.2-1993.75. Acts of officers, directors, partners, and salespersons.

If a licensee or registrant is a partnership or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a license or certificate of dealer registration that any officer, director, or trustee of the partnership or corporation, or any member in the case of a partnership or the dealer-operator, has committed any act or omitted any duty which would be cause for refusing, suspending, or revoking a license or certificate of dealer registration issued to him as an individual under this chapter. Each licensee or registrant shall be responsible for the acts of any of his salespersons while acting as his agent, if the licensee approved of those acts or had knowledge of those acts or other similar acts and, after such knowledge, retained the benefit, proceeds, profits, or advantages accruing from those acts or otherwise ratified those acts.

§ 46.2-1993.76. Grounds for denying, suspending, or revoking licenses or certificates of dealer registration or qualification.

A license or certificate of dealer registration or qualification issued under this subtitle may be denied, suspended, or revoked on any one or more of the following grounds:

1. Material misstatement or omission in application for license, dealer's license plates, certificate of dealer registration, certificate of qualification, or certificate of title;
2. Failure to comply subsequent to receipt of a written warning from the Department or any willful failure to comply with any provision of this chapter or any applicable provision of this subtitle or any applicable regulation promulgated under this subtitle;
3. Failure to have an established place of business as defined in § 46.2-1993.8 or failure to have as the dealer-operator an individual who holds a valid certificate of qualification;
4. Defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's or registrant's business;
5. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth with respect to the retaking of vehicles under retail installment contracts and the redemption and resale of those vehicles;
6. Having used deceptive acts or practices;
7. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of the business licensed or registered under this subtitle or for which a license or registration is sought;
8. Having been convicted of any fraudulent act in connection with the business of selling vehicles or any consumer-related fraud;
9. Having been convicted of any criminal act involving the business of selling vehicles;
10. Willfully retaining in his possession title to a vehicle that has not been completely and legally assigned to him;
11. Failure to comply with any provision of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 or any regulation promulgated pursuant to that chapter;
12. Leasing, renting, lending, or otherwise allowing the use of a dealer's license plate by persons not specifically authorized under this title;
13. Having been convicted of a felony;
14. Failure to submit to the Department, within thirty days from the date of sale, any application, tax, or fee collected for the Department on behalf of a buyer;
15. Having been convicted of larceny of a vehicle or receipt or sale of a stolen vehicle;
16. Having been convicted of odometer tampering or any related violation;
17. If a salvage dealer, salvage pool, or rebuilder, failing to comply with any provision of Chapter 16 of this title or any regulation promulgated by the Commissioner under that chapter; or
18. Failing to maintain liability insurance, issued by a company licensed to do business in the Commonwealth, or a certificate of self-insurance as defined in § 46.2-368, with respect to each dealer's license plate issued to the dealer by the Department.

§ 46.2-1993.77. Suspension, revocation, and refusal to renew licenses or certificates of dealer registration or qualification; notice and hearing.

A. Except as provided in subsection B of this section, no license or certificate of dealer registration or qualification issued under this subtitle shall be suspended or revoked, or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee, registrant, or qualifier

against whom the same is directed and a public hearing thereon has been had before the Commissioner. At least ten days' written notice of the time and place of the hearing shall be given to the licensee, registrant, or qualifier by registered mail addressed to his last known post-office address or as shown on his license or certificate or other record of information in possession of the Commissioner. At the hearing the licensee, registrant, or qualifier shall have the right to be heard personally or by counsel. After hearing, the Commissioner may suspend, revoke, or refuse to renew the license or certificate in question. Immediate notice of any suspension, revocation, or refusal shall be given to the licensee, registrant, or qualifier in the same manner provided in this section for giving notices of hearing.

B. Should a dealer fail to maintain an established place of business, the Commissioner may cancel the license of the dealer without a hearing after notification of the intent to cancel has been sent, by return receipt mail, to the dealer at the dealer's residence and business addresses, and the notices are returned undelivered or the dealer does not respond within twenty days from the date the notices were sent. Any subsequent application for a dealer's license shall be treated as an original application.

§ 46.2-1993.78. Appeals from actions of the Commissioner.

Any person aggrieved by the action of the Commissioner in refusing to grant or renew a license or certificate of dealer registration or qualification issued under this chapter, or by any other action of the Commissioner which is alleged to be improper, unreasonable, or unlawful under the provisions of this chapter is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

§ 46.2-1993.79. Appeals to Court of Appeals; bond.

Either party may appeal from the decision of the court under § 46.2-1993.78 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

No appeal shall be taken on behalf of the person whose license or certificate of registration or qualification was suspended or revoked until the person enters into a proper bond with surety approved by the trial court in an amount determined by the trial court, not to exceed \$5,000, to observe the motor vehicle laws of the Commonwealth, including the provisions of this chapter, until final judgment of the Court of Appeals.

§ 46.2-1993.80. Equitable remedies not impaired.

The remedy at law provided by §§ 46.2-1993.78 and 46.2-1993.79 shall not in any manner impair the right to applicable equitable relief. That right to equitable relief is hereby preserved, notwithstanding the provisions of §§ 46.2-1993.78 and 46.2-1993.79.

Article 9.

Motorcycle Dealer Advertising.

§ 46.2-1993.81. Regulated advertising practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

1. A motorcycle shall not be advertised as new, either by word or implication, unless it is one which conforms to the requirements of § 46.2-1993.

2. When advertising any motor vehicle which does not conform to the definition of "new" as provided in § 46.2-1993, the fact that it is used shall be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the motor vehicle is used. By way of example but not by limitation, "special purchase" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased vehicles" used alone clearly express that the vehicles are used for advertising purposes.

3. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

4. Terms, conditions, and disclaimers shall be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information, but shall not be used as a means of contradicting or changing the meaning of an advertised statement.

5. The expiration date of an advertised sale shall be clearly and conspicuously disclosed.

6. The term "list price," "sticker price," or "suggested retail price" and similar terms, shall be used only in reference to the manufacturer's suggested retail price for new motorcycles or the dealer's own usual and customary price for used motorcycles.

7. Terms such as "at cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of the sale. Terms such as "invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice or a bona fide bill of sale and the invoice or bill of sale is available for customer inspection.

"Manufacturer's factory invoice" means that document supplied by the manufacturer to the dealer listing the manufacturer's charge to the dealer before any deduction for holdback, group advertising, factory incentives or rebates, or any governmental charges.

8. When the price or credit terms of a motorcycle are advertised, the motorcycle shall be fully identified as to year, make, and model. In addition, in advertisements placed by individual dealers and

not line-make marketing groups, the stated price or credit terms shall include all charges which the buyer must pay to the seller, except buyer-selected options, state and local fees and taxes, and manufacturer's or distributor's freight or destination charges. If freight or destination charges are not included in the advertised price, the amount of any such freight or destination charge must be clearly and conspicuously disclosed.

9. Advertisements which set out a policy of matching or bettering competitors' prices shall not be used unless the terms of the offer are specific, verifiable and reasonable.

10. Advertisements of "dealer rebates" shall not be used. This does not affect advertisement of manufacturer rebates.

11. "Free," "at no cost," or other words to that effect shall not be used unless the "free" item, merchandise, or service is available without a purchase. This provision shall not apply to advertising placed by manufacturers, distributors, or line-make marketing groups.

12. "Bait" advertising, in which an advertiser may have no intention to sell at the price or terms advertised, shall not be used. By way of example, but not by limitation:

a. If a specific motorcycle is advertised, the seller shall be in possession of a reasonable supply of said motorcycles, and they shall be available at the advertised price. If the advertised motorcycle is available only in limited numbers or only by order, that shall be stated in the advertisement. For purposes of this subdivision, the listing of a motorcycle by stock number or vehicle identification number in the advertisement for a used motorcycle is one means of satisfactorily disclosing a limitation of availability. Stock numbers or vehicle identification numbers shall not be used in advertising a new motorcycle unless the advertisement clearly and conspicuously discloses that it relates to only one motorcycle;

b. Advertising a motorcycle at a certain price, including "as low as" statements, but having available for sale only motorcycles equipped with dealer added cost "options" which increase the selling price, above the advertised price, shall also be considered "bait" advertising;

c. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

13. The term "repossessed" shall be used only to describe motorcycles that have been sold, registered, titled and then taken back from a purchaser and not yet resold to an ultimate user. Advertisers offering repossessed motorcycles for sale shall provide proof of repossession upon request.

14. Words such as "finance" or "loan" shall not be used in a motorcycle advertiser's firm name or trade name, unless that person is actually engaged in the financing of motorcycles.

15. Any advertisement which gives the impression a dealer has a special arrangement or relationship with the distributor or manufacturer, as compared to similarly situated dealers, shall not be used.

§ 46.2-1993.82. Enforcement; regulations.

The Commissioner may promulgate regulations reasonably necessary for enforcement of this article.

In addition to any other sanctions or remedies available to the Commissioner under this chapter, the Commissioner may assess a civil penalty not to exceed \$1,000 for any single violation of this article. Each day that a violation continues shall constitute a separate violation.

2. That §§ 46.2-1902, 46.2-1903, 46.2-1942, and 46.2-1961 of the Code of Virginia are repealed.