

1997 RECONVENED SESSION

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HB2140ER

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 46.2-1500, 46.2-1508, 46.2-1521, 46.2-1900, 46.2-1908, 46.2-1921, 46.2-1992, 46.2-1992.6, 46.2-1992.19, 46.2-1993, 46.2-1993.6, and 46.2-1993.19 of the Code of Virginia, relating to motor vehicle, T&M vehicle, trailer, and motorcycle dealers; penalties.

[H 2140]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1500, 46.2-1508, 46.2-1521, 46.2-1900, 46.2-1908, 46.2-1921, 46.2-1992, 46.2-1992.6, 46.2-1992.19, 46.2-1993, 46.2-1993.6, and 46.2-1993.19 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-1500. Definitions.

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

"Board" means the Motor Vehicle Dealer Board.

"Certificate of origin" means the document provided by the manufacturer of a new motor vehicle, or its distributor, which is the only valid indication of ownership between the manufacturer, its distributor, its franchised motor vehicle dealers, and the original purchaser not for resale.

"Dealer-operator" means the individual who works at the established place of business of a dealer and who is responsible for and in charge of day-to-day operations of that place of business.

"Distributor" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and who sells or distributes new motor vehicles pursuant to a written agreement with the manufacturer, to franchised motor vehicle dealers in the Commonwealth.

"Distributor branch" means a branch office licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Distributor representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a distributor or by a distributor branch, for the purpose of making or promoting the sale of motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory branch" means a branch office maintained by a person for the sale of motor vehicles to distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives in the Commonwealth.

"Factory representative" means a person who is licensed by the Department of Motor Vehicles under Chapter 19 (§ 46.2-1900 et seq.) of this title and employed by a person who manufactures or assembles motor vehicles or by a factory branch for the purpose of making or promoting the sale of its motor vehicles or for supervising or contacting its dealers, prospective dealers, or representatives in the Commonwealth.

"Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or otherwise transferred to a person under an agreement that the motor vehicle will be resold or otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is reacquired by the manufacturer or distributor, or its agents.

"Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed continuously by the dealer for at least five years.

"Franchise" means a written contract or agreement between two or more persons whereby one person, the franchisee, is granted the right to engage in the business of offering and selling, servicing, or offering, selling, and servicing new motor vehicles of a particular line-make or late model or factory repurchase motor vehicles of a particular line-make manufactured or distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor. The term shall include any severable part or parts of a franchise agreement which separately provides for selling and servicing different line-makes of the franchisor.

"Franchised late model or factory repurchase motor vehicle dealer" means a dealer in late model or factory repurchase motor vehicles, including a franchised new motor vehicle dealer, that has a franchise

57 agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase
58 motor vehicles.

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

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

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

63 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
64 preceding model year.

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

67 "Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter
68 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new
69 motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing
70 engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by
71 the final manufacturer or assembler of the truck.

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

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

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

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

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

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

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

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

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

95 4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and
96 funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt
97 any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548.

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

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

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

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

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

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

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

113 12. Any credit union authorized to do business in Virginia, provided the credit union does not
114 receive a commission, money, or other thing of value directly from a motor vehicle dealer.

115 13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under
116 Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

117 "Motor vehicle salesperson" or "salesperson" means any person who is licensed as and employed as a

salesperson by a motor vehicle dealer to sell or exchange motor vehicles. It shall also mean any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles.

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

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

"Original license" means a motor vehicle dealer license issued to an applicant who has never been licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been expired for more than thirty days.

"Relevant market area" means as follows:

1. In metropolitan localities, the relevant market area shall be a circular area around an existing franchised dealer with a population of 250,000, not to exceed a radius of 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 motor vehicles to a buyer for his use and not for resale, in which the price of the vehicle is payable in one or more installments and in which the seller has either retained title to the goods or has taken or retained a security interest in the goods under form of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage, or otherwise.

"Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or otherwise disposing of a motor vehicle to a buyer for his personal use and not for resale.

"Sale at wholesale" or "wholesale" means a sale to motor vehicle dealers or wholesalers other than to consumers; a sale to one who intends to resell.

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

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

§ 46.2-1508. Licenses required.

It shall be unlawful for any person to engage in business in the Commonwealth as a motor vehicle dealer or salesperson without first obtaining a license as provided in this chapter. It shall be unlawful for any person to engage in business in the Commonwealth as a manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative without first obtaining a license as provided in Chapter 19 (§ 46.2-1900 et seq.) of this title. Any person licensed in another state as a motor vehicle dealer may sell motor vehicles at wholesale auctions in the Commonwealth after having obtained a certificate of dealer registration as provided in Chapter 19 of this title. The offering or granting of a motor vehicle dealer franchise in the Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section, and no new motor vehicle may be sold or offered for sale in the Commonwealth unless the franchisor of motor vehicle 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 Chapter 19 of this title. In the event a license issued under Chapter 19 to a franchisor of motor vehicle dealer franchises is suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new motor vehicle 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.

Violation of any provision of this section shall constitute a Class 1 misdemeanor.

§ 46.2-1521. Issuance, expiration, and renewal of licenses and certificates of registration.

A. 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 Board, 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.

B. *Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Board or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Board or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1519.*

§ 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 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," "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 § 46.2-1500.

"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.

"Original license" means a T&M vehicle dealer license issued to an applicant who has never been licensed as a T&M vehicle dealer in Virginia or whose Virginia T&M vehicle dealer license has been expired for more than thirty days.

"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 motor homes and 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.

§ 46.2-1908. Licenses required.

It shall be unlawful for any person to engage in business in the Commonwealth as a T&M vehicle dealer, salesperson, manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative or as a motor vehicle manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative as defined in § 46.2-1500, without first obtaining a license as provided in this chapter. Every person licensed as a manufactured home dealer under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36 shall obtain a certificate of dealer registration as provided in this chapter. Any person licensed in another state as a motor vehicle dealer or T&M vehicle dealer may sell motor vehicles or T&M vehicles 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 T&M vehicle dealer franchise in the Commonwealth shall constitute engaging in business in the Commonwealth for purposes of this section, and no new T&M vehicle may be sold or offered for sale in the Commonwealth unless the franchisor of T&M vehicle 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 T&M vehicle dealer franchises is suspended, revoked, or not renewed, nothing in this section shall prevent the sale of any new T&M vehicle 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.

Violation of any provision of this section shall constitute a Class 1 misdemeanor.

§ 46.2-1921. Issuance, expiration, and renewal of licenses and certificates of registration.

A. 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.

B. *Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Commissioner or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Commissioner or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1919.*

§ 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).

"Original license" means a trailer dealer license issued to an applicant who has never been licensed as a trailer dealer in Virginia or whose Virginia trailer dealer license has been expired for more than thirty days.

"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.

§ 46.2-1992.6. 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.

Violation of any provision of this section shall constitute a Class 1 misdemeanor.

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

A. 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.

B. *Licenses and certificates of registration issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Commissioner or postmarked not more than thirty days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Commissioner or postmarked no more than thirty days after the expiration date of such license or certificate of registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1992.17.*

§ 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).

"Original license" means a motorcycle dealer license issued to an applicant who has never been licensed as a motorcycle dealer in Virginia or whose Virginia motorcycle dealer license has been expired for more than thirty days.

"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

667 for resale, in which the price of the motorcycle is payable in one or more installments and in which the
668 seller has either retained title to the goods or has taken or retained a security interest in the goods under
669 form of contract designated either as a security agreement, conditional sale, bailment lease, chattel
670 mortgage, or otherwise.

671 "Sale at retail" or "retail sale" means the act or attempted act of selling, bartering, exchanging, or
672 otherwise disposing of a motorcycle to a buyer for his personal use and not for resale.

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

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

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

677 § 46.2-1993.6. Licenses required.

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

692 *Violation of any provision of this section shall constitute a Class 1 misdemeanor.*

693 § 46.2-1993.19. Issuance, expiration, and renewal of licenses and certificates of registration.

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

701 *B. Licenses and certificates of registration issued under this chapter shall be deemed not to have*
702 *expired if the renewal application and required fees as set forth in this subsection are received by the*
703 *Commissioner or postmarked not more than thirty days after the expiration date of such license or*
704 *certificate of registration. Whenever the renewal application is received by the Commissioner or*
705 *postmarked no more than thirty days after the expiration date of such license or certificate of*
706 *registration, the license fees shall be 150 percent of the fees provided for in § 46.2-1993.17.*