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HOUSE BILL NO. 2575

Offered January 20, 1997

A BILL to amend and reenact §§ 46.2-1900 and 46.2-1908 of the Code of Virginia, relating to sales of certain vehicles at exposition centers.

Patron—McClure

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-1900 and 46.2-1908 of the Code of Virginia are amended and reenacted as follows:**

§ 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.

"Exposition center" means a permanent building with at least 50,000 square feet of interior space that is frequently used for expositions and sale of furniture, antiques, motor homes, camping trailers, or other personal property to the public or to the trade.

"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.

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

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

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

68 "Motor vehicle dealer," "motor vehicle manufacturer," "motor vehicle factory branch," "motor vehicle
69 distributor," "motor vehicle distributor branch," "motor vehicle factory representative," and "motor
70 vehicle distributor representative" mean the same as provided in § 46.2-1500.

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

80 "Relevant market area" means as follows:

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

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

88 3. In all other cases the relevant market area shall be an area within a radius of twenty miles around
89 an existing franchised dealer or the area of responsibility defined in the franchise, whichever is greater.
90 In any case where the franchise agreement is silent as to area responsibility, the relevant market area
91 shall be the greater of an area within a radius of twenty miles around an existing franchised dealer or
92 that area in which the franchisor otherwise requires the franchisee to make significant retail sales or
93 sales efforts.

94 In determining population for this definition, the most recent census by the U.S. Bureau of the
95 Census or the most recent population update, either from the National Planning Data Corporation or
96 other similar recognized source, shall be accumulated for all census tracts either wholly or partially
97 within the relevant market area.

98 "Retail installment sale" means every sale of one or more T&M vehicles to a buyer for his use and
99 not for resale, in which the price of the T&M vehicle is payable in one or more installments and in
100 which the seller has either retained title to the goods or has taken or retained a security interest in the
101 goods under form of contract designated either as a security agreement, conditional sale, bailment lease,
102 chattel mortgage, or otherwise.

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

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

107 "T&M vehicle" means motor homes and travel trailers as defined in this section.

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

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

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

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

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

119 1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting
120 under judgment or order of any court or their employees when engaged in the specific performance of
121 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.
- A. 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 *and may sell motor homes and camping trailers at an exposition center* 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.
- B. *To participate in a sale of motor homes or camping trailers at an exposition center, an out-of-state dealer shall register with the Commissioner and provide the Commissioner such information as the Commissioner may require, pay a fifty dollar registration fee, appoint the Secretary of the*

183 *Commonwealth as agent for service of process for any matter regarding a sale at such exposition*
184 *centers, and comply with the bonding requirements of this chapter. In any action arising out of a sale of*
185 *a motor home or camping trailer at an exposition center, the out-of-state dealer shall be subject to the*
186 *jurisdiction of the Virginia courts. Such out-of-state dealers selling at an exposition center shall be*
187 *subject to regulation by the Commissioner who shall issue regulations to regulate such sales at*
188 *exposition centers. No sales by an out-of-state dealer at an exposition center shall be in violation of a*
189 *provision of a franchise agreement under Article 7 (§ 46.2-1973 et seq.) of this chapter. Sales at such*
190 *exposition centers shall not take place for more than five consecutive days, and any person licensed in*
191 *another state shall not engage in sales in the Commonwealth at exposition centers for more than*
192 *eighteen days per year. Nothing in this section shall permit the sale by out-of-state dealers not licensed*
193 *in Virginia to sell any motor vehicles other than motor homes and camping trailers at an exposition*
194 *center.*