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HOUSE BILL NO. 1917

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on/for Transportation
on February 18, 1999)

(Patron Prior to Substitute—Delegate Phillips)

A BILL amend and reenact §§ 46.2-1500 and 63.1-133.49 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 7 of Title 11 a section numbered 11-40.4, relating to the Virginia Public Procurement Act; the sale, purchase, and transfer of surplus motor vehicles and other surplus state property; motor vehicle dealers; and the Virginia Initiative for Employment Not Welfare (VIEW).

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1500 and 63.1-133.49 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 7 of Title 11 a section numbered 11-40.4, as follows:

§ 11-40.4. Exception for acquisition of certain motor vehicles by State Department of Social Services. The provisions of this chapter shall not apply to the acquisition of motor vehicles by the State Department of Social Services for sale or transfer to VIEW participants under § 63.1-133.49.

§ 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

60 or parts of a franchise agreement which separately provides for selling and servicing different line-makes
61 of the franchisor.

62 "Franchised late model or factory repurchase motor vehicle dealer" means a dealer in late model or
63 factory repurchase motor vehicles, including a franchised new motor vehicle dealer, that has a franchise
64 agreement with a manufacturer or distributor of the line-make of the late model or factory repurchase
65 motor vehicles.

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

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

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

70 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
71 preceding model year.

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

74 "Manufacturer" means a person who is licensed by the Department of Motor Vehicles under Chapter
75 19 (§ 46.2-1900 et seq.) of this title and engaged in the business of constructing or assembling new
76 motor vehicles and, in the case of trucks, also means a person engaged in the business of manufacturing
77 engines, power trains, or rear axles, when such engines, power trains, or rear axles are not warranted by
78 the final manufacturer or assembler of the truck.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. *The Virginia Department of Social Services.*

"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~~ means 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 of 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.

§ 63.1-133.49. Virginia Initiative for Employment Not Welfare (VIEW).

A. The Department shall establish and administer the Virginia Initiative for Employment Not Welfare (VIEW), to reduce long-term dependence on welfare, to emphasize personal responsibility and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. The Department shall endeavor to develop placements for VIEW participants that will enable participants to develop job skills that are likely to result in independent employment and that take into consideration the proficiency, experience, skills and prior training of a participant. The State Board shall promulgate the necessary regulations and shall implement VIEW within 280 days of the enactment of this chapter.

VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients and shall include a written agreement of personal responsibility requiring parents to participate in work activities while receiving AFDC, earned-income disregards to reduce disincentives to work, and a limit on AFDC financial assistance.

VIEW shall require all able-bodied recipients of AFDC who do not meet an exemption and who are not employed within ninety days of receipt of AFDC benefits to participate in a work activity. VIEW shall require eligible AFDC recipients to participate in unsubsidized, partially subsidized or fully subsidized employment and enter into an agreement of personal responsibility. If recipients cannot be placed in an unsubsidized or subsidized job, they shall be required to participate in a six-month community work experience placement. Upon completion of the initial six-month work requirement, participants may receive education and training in conjunction with continued work experience to make them more employable.

B. To the maximum extent permitted by federal law, and notwithstanding other provisions of Virginia law, the Department and local departments may, through applicable procurement laws and regulations, engage the services of public and private organizations to operate VIEW and to provide services incident to such operation.

C. All VIEW participants shall be under the direction and supervision of a case manager.

D. The Department shall ensure that participants are assigned to one of the following employment categories in priority order not less than ninety days after AFDC eligibility determination:

1. Unsubsidized private-sector employment;

2. Subsidized employment, as follows:

(a) The Department shall conduct a program in accordance with this section and any applicable federal waivers that shall be known as the Full Employment Program (FEP). FEP replaces AFDC and food stamp benefits with subsidized employment. Persons not able to find unsubsidized employment who are otherwise eligible for both AFDC and food stamp benefits shall participate in FEP unless exempted by this chapter. FEP will assign participants to and subsidize wage-paying private-sector jobs designed to increase the participants' self-sufficiency and improve their competitive position in the work force.

(b) The Department shall administer a wage fund, which shall be used exclusively to meet the necessary expenditures of FEP. Funds to operate FEP, drawn from funds appropriated for expenditure by or apportioned to Virginia for operation of the AFDC and food stamp programs, shall be deposited in this pool. All payments by the Department to participating employers for FEP participants shall be made from the pool.

(c) Participants in FEP shall be placed in full-time employment when appropriate and shall be paid by the employer at an hourly rate not less than the federal or state minimum wage, whichever is higher. For each participant hour worked, the Department shall reimburse the employer the amount of the federal or state minimum wage and costs up to the available amount of the participant's combined value of AFDC and food stamps. At no point shall a participant's spendable income received from wages and tax credits be less than the value of AFDC and food stamps received prior to the work placement.

(d) Every employer subject to the Virginia unemployment insurance tax shall be eligible for assignment of FEP participants, but no employer shall be required to utilize such participants. Employers shall ensure that jobs made available to FEP participants are in conformity with Section 3304 (a) (5) of the Federal Unemployment Tax Act. FEP participants cannot be used to displace regular workers.

(e) FEP employers shall:

(i) Endeavor to make FEP placements positive learning and training experiences;

(ii) Provide on-the-job training to the degree necessary for the participants to perform their duties;

(iii) Pay wages to participants at the same rate that they are paid to other employees performing the same type of work and having similar experience and employment tenure;

(iv) Provide sick leave, holiday and vacation benefits to participants to the same extent and on the same basis that they are provided to other employees performing the same type of work and having similar employment experience and tenure;

(v) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and no less than those in which other employees perform the same type of work;

(vi) Provide workers' compensation coverage for participants;

(vii) Encourage volunteer mentors from among their other employees to assist participants in becoming oriented to work and the workplace; and

(viii) Sign an agreement with the local department outlining the employer requirements to participate in FEP. All agreements shall include notice of the employer's obligation to repay FEP reimbursements in the event the employer violates Program rules.

(f) As a condition of FEP participation, employers shall be prohibited from discriminating against any person, including program participants, on the basis of race, color, sex, national origin, religion, age, or disability.

3. Part-time or temporary employment;

4. Community work experience as follows:

(a) The Department and local departments shall expand the community work experience program authorized under the Job Opportunity and Basic Skills Training Program (JOBS) to include job

placement in community work experience programs which serve a useful public purpose as provided in § 482 (f) of the Social Security Act.

(b) The Department and local departments shall work with other state, regional and local agencies and governments in developing job placements. Placements shall be selected to provide skills and serve a public function. Program participants shall not displace regular workers.

(c) The number of hours per week for participants shall be determined by combining the total dollar amount of AFDC and food stamps and dividing by the minimum wage with a maximum of a work week of thirty-two-hours, of which up to eight hours of employment-related education and training may substitute for work experience employment.

E. Participants may be re-evaluated after a period determined by the local department and re-assigned to another work component. In addition, the number of hours worked may be reduced by the local department so that a participant may complete additional training and/or education to further his employability.

F. Local departments shall be authorized to sanction participants up to the full amount of the AFDC grant and food stamps allotment for noncompliance.

G. *The Department may purchase or otherwise acquire motor vehicles from the centralized fleet of motor vehicles controlled by the Commonwealth Transportation Commissioner under Chapter 12 (§ 33.1-400 et seq.) of Title 33.1 and sell or otherwise transfer such vehicles to VIEW participants. Purchases, sales, and other transfers of vehicles under this subsection shall not be subject to the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.), or the provisions of §§ 2.1-457.2, 2.1-505, 2.1-512, and 33.1-404 relating to the sale, purchase, and transfer of surplus motor vehicles and other surplus state property.*

H. VIEW participants shall not be assigned to projects which require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Any injury to a VIEW participant by accident arising out of and in the course of community work experience shall be covered by the participant's existing Medicaid coverage. If a community work experience participant is unable to work due to such an accident, his status shall be reviewed to determine whether he is eligible for an exemption from the limitation on AFDC financial assistance.

A community work experience participant who becomes incapacitated for thirty days or more shall be eligible for AFDC financial assistance for the duration of the incapacity, if otherwise eligible.

The State Board shall promulgate regulations providing for the accrual of paid sick leave or other equivalent mechanism for community work experience participants.