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HOUSE BILL NO. 523

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact § 46.2-1992 of the Code of Virginia, relating to the Department of Motor Vehicles; trailer dealers; definitions.

Patron—Hogan

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1992 of the Code of Virginia is amended and reenacted as follows:

§ 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

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

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

69 "Relevant market area" means as follows:

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

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

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

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

87 "Retail installment sale" means every sale of one or more trailers to a buyer for his use and not for  
88 resale, in which the price of the trailer is payable in one or more installments and in which the seller  
89 has either retained title to the goods or has taken or retained a security interest in the goods under form  
90 of contract designated either as a security agreement, conditional sale, bailment lease, chattel mortgage,  
91 or otherwise.

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

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

96 "Trailer" means every vehicle without motive power designed for carrying property or passengers  
97 wholly on its own structure and for being drawn by a motor vehicle, including semitrailers but not  
98 mobile homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36, and not  
99 (i) *modular buildings as defined by § 58.1-602*, (ii) watercraft trailers as defined in this section, or ~~(iii)~~  
100 (iii) travel trailers as defined in § 46.2-1900.

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

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

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

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

110 The term "trailer dealer" does not include:

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

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

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

119 4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and  
120 funeral trailers, including trailers adapted therefor; however, this exemption shall not exempt any person

121 from the provisions of §§ 46.2-1992.17, 46.2-1992.18 and 46.2-1992.41.

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

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

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

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

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

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

135 11. Any credit union authorized to do business in Virginia, provided the credit union does not  
136 receive a commission, money, or other thing of value directly from a trailer dealer.

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

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

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

143 "Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a  
144 motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter 8  
145 (§ 29.1-800 et seq.) of Title 29.1.

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

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