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SENATE BILL NO. 945

Offered January 19, 2018

A *BILL to amend and reenact §§ 46.2-1500, 46.2-1572, and 46.2-1572.1 of the Code of Virginia and to repeal §§ 46.2-1573.21 and 46.2-1573.22 of the Code of Virginia, relating to operation of dealerships or service facilities; manufacturers.*

Patron—Newman

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1500, 46.2-1572, and 46.2-1572.1 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affiliate" means any entity in which a manufacturer, factory branch, distributor, or distributor branch has voting control or owns at least 51 percent of the ownership equity, or any entity in which another entity has voting control or owns at least 51 percent of the ownership equity and also has voting control and owns at least 51 percent of the ownership of a manufacturer, factory branch, distributor, or distributor branch. An entity that provides vehicle purchase or lease financing that uses the name of the manufacturer or distributor, or the name of any line make of the manufacturer or distributor, in the name of the entity under which it transacts business with a consumer, other than in the name of an individual product offered by the entity, shall be considered an "affiliate."

"Board" means the Motor Vehicle Dealer Board.

"Camping trailer" means a recreational vehicle constructed with collapsible partial side walls that fold for towing by a consumer-owned tow vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

"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.

"Demonstrator" means a new motor vehicle having a gross vehicle weight rating of less than 16,000 pounds that (i) has more than 750 miles accumulated on its odometer that has been driven by dealer personnel or by prospective purchasers during the course of selling, displaying, demonstrating, showing, or exhibiting it and (ii) may be sold as a new motor vehicle, provided the dealer complies with the provisions of subsection D of § 46.2-1530.

"Distributor" means a person who is licensed by the Department under this chapter 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 under this chapter 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 under this chapter 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 under this chapter 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,

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59 spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed
60 continuously by the dealer for at least five years.

61 "Franchise" means a written contract or agreement between two or more persons whereby one
62 person, the franchisee, is granted the right to engage in the business of offering and selling, offering and
63 delivering pursuant to a lease, servicing, or offering, selling, and servicing new motor vehicles of a
64 particular line-make or late model or used motor vehicles of a particular line-make manufactured or
65 distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's
66 business is substantially associated with the franchisor's trademark, trade name, advertising, or other
67 commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor.
68 "Franchise" includes any severable part or parts of a franchise agreement which separately provides for
69 selling and servicing different line-makes of the franchisor.

70 "Franchised late model or franchised used motor vehicle dealer" means a dealer selling used motor
71 vehicles, including vehicles purchased from the franchisor, under the trademark of a manufacturer or
72 distributor that has a franchise agreement with a manufacturer or distributor.

73 "Franchised motor vehicle dealer" or "franchised dealer" means a dealer in new motor vehicles that
74 has a franchise agreement with a manufacturer or distributor of new motor vehicles to sell new motor
75 vehicles or to sell used motor vehicles under the trademark of a manufacturer or distributor regardless of
76 the age of the motor vehicles.

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

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

79 "Late model motor vehicle" means a motor vehicle of the current model year and the immediately
80 preceding model year.

81 "Line-make" means the name of the motor vehicle manufacturer or distributor and a brand or name
82 plate marketed by the manufacturer or distributor. The line-make of a motorcycle manufacturer, factory
83 branch, distributor, or distributor branch includes every brand of all-terrain vehicle, autocycle, and
84 off-road motorcycle manufactured or distributed bearing the name of the motorcycle manufacturer or
85 distributor.

86 "Manufactured home dealer" means any person licensed as a manufactured home dealer under
87 Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

88 "Manufacturer" means a person who is licensed by the Department under this chapter and engaged in
89 the business of constructing or assembling new motor vehicles and, in the case of trucks, recreational
90 vehicles, and motor homes, also means a person engaged in the business of manufacturing engines,
91 transmissions, power trains, or rear axles, when such engines, transmissions, power trains, or rear axles
92 are not warranted by the final manufacturer or assembler of the truck, recreational vehicle, or motor
93 home.

94 "Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact
95 with the ground, except any vehicle within the term "farm tractor" or "moped" as defined in § 46.2-100.
96 Except as otherwise provided, for the purposes of this chapter, all-terrain vehicles, autocycles, and
97 off-road motorcycles are deemed to be motorcycles.

98 "Motor home" means a motorized recreational vehicle designed to provide temporary living quarters
99 for recreational, camping, or travel use that contains at least four of the following permanently installed
100 independent life support systems that meet the National Fire Protection Association standards for
101 recreational vehicles: (i) a cooking facility with an onboard fuel source; (ii) a potable water supply
102 system that includes at least a sink, a faucet, and a water tank with an exterior service supply
103 connection; (iii) a toilet with exterior evacuation; (iv) a gas or electric refrigerator; (v) a heating or air
104 conditioning system with an onboard power or fuel source separate from the vehicle engine; or (vi) a
105 110-125 volt electric power supply.

106 "Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter,
107 "motor vehicle" does not include (i) manufactured homes, sales of which are regulated under Chapter
108 4.2 (§ 36-85.16 et seq.) of Title 36; (ii) nonrepairable vehicles, as defined in § 46.2-1600; (iii) salvage
109 vehicles, as defined in § 46.2-1600; or (iv) mobile cranes that exceed the size or weight limitations as
110 set forth in § 46.2-1105, 46.2-1110, or 46.2-1113 or Article 17 (§ 46.2-1122 et seq.) of Chapter 10.

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

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

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

119 3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within
120 any 12 consecutive months.

For the purposes of Article 7.2 (§ 46.2-1573.2 et seq.), "dealer" means recreational vehicle dealer. For the purposes of Article 7.3 (§ 46.2-1573.13 et seq.), "dealer" means trailer dealer and watercraft trailer dealer. For the purposes of Article 7.4 (§ 46.2-1573.25 et seq.), "dealer" means motorcycle dealer.

"Motor vehicle dealer" or "dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, conservators 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 motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the 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 funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520, and 46.2-1548.

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 motor 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 vehicle.

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

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

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

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

11. Any person dealing solely in the sale or lease of 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 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 State Department of Social Services or local departments of social services.

15. Any person dealing solely in the sale and distribution of utility or cargo trailers that have unloaded weights of 3,000 pounds or less; however, this exemption shall not exempt any person who deals in stock trailers or watercraft trailers.

For the purposes of Article 7 (§ 46.2-1566 et seq.), "dealer" does not include recreational vehicle dealers, trailer dealers, watercraft trailer dealers, or motorcycle dealers.

"Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to receive a commission, fee, or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges motor vehicles. For purposes of this section, any person who is an independent contractor as defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle salesperson.

"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.

"Multistage truck" means any truck constructed or assembled in two or more stages by two or more manufacturers or assemblers.

"New motor vehicle" means any vehicle, excluding trailers, that is in the possession of the manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an original title has not been issued by the Department or by the issuing agency of any other state and has less than 7,500 miles accumulated on its odometer.

"New trailer" means any trailer that (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

182 personal or business transportation of the manufacturer, distributor, dealer, or any of its employees; (iii)
183 has not been used except for limited use necessary in moving or road testing the trailer prior to delivery
184 to a customer; (iv) is transferred by a certificate of origin; and (v) has the manufacturer's certification
185 that it conforms to all applicable federal trailer safety and emission standards. Notwithstanding clauses
186 (i) and (iii), a trailer that has been previously sold but not titled shall be deemed a new trailer if it
187 meets the requirements of clauses (ii), (iv), and (v).

188 "Original license" means a motor vehicle dealer license issued to an applicant who has never been
189 licensed as a motor vehicle dealer in Virginia or whose Virginia motor vehicle dealer license has been
190 expired for more than 30 days.

191 "Recreational vehicle" or "RV" means a vehicle that (i) is either self-propelled or towed by a
192 consumer-owned tow vehicle, (ii) is primarily designed to provide temporary living quarters for
193 recreational, camping, or travel use; and (iii) complies with all applicable federal vehicle regulations and
194 does not require a special movement permit to legally use the highways. Recreational vehicle includes
195 motor homes, travel trailers, and camping trailers.

196 "Relevant market area" means as follows:

197 1. For motor vehicle dealers except motorcycle dealers, in metropolitan localities the relevant market
198 area shall be a circular area around an existing franchised dealer with a population of 250,000, not to
199 exceed a radius of 10 miles, but in no case less than seven miles.

200 2. For motor vehicle dealers except motorcycle dealers, if the population in a circular area within a
201 radius of 10 miles around an existing franchised dealer is less than 250,000, but the population in an
202 area within a radius of 15 miles around an existing franchised dealer is 150,000 or more, the relevant
203 market area shall be that circular area within the 15-mile radius.

204 3. For motor vehicle dealers except motorcycle dealers, in all other cases the relevant market area
205 shall be a circular area within a radius of 20 miles around an existing franchised dealer or the area of
206 responsibility defined in the franchise, whichever is greater. In any case where the franchise agreement
207 is silent as to area of responsibility, the relevant market area shall be the greater of a circular area
208 within a radius of 20 miles around an existing franchised dealer or that area in which the franchisor
209 otherwise requires the franchisee to make significant retail sales or sales efforts.

210 4. For motorcycle dealers, the relevant market area shall be a circular area within a radius of 20
211 miles around an existing franchised dealer location with a population of one million or more. If the
212 population within a 20-mile radius is less than one million but greater than 750,000, the relevant market
213 area shall be a circular area within a radius of 30 miles. If the population within a 30-mile radius is less
214 than 750,000, the relevant market area shall be a circular area within a radius of 40 miles.

215 Notwithstanding the foregoing provision of this section, in the case of dealers in motor vehicles with
216 gross vehicle weight ratings of 26,000 pounds or greater, excluding recreational vehicles, the relevant
217 market area with respect to the dealer's franchise for all such vehicles shall be a circular area around an
218 existing franchised dealer with a radius of 25 miles, except where the population in such circular area is
219 less than 250,000, in which case the relevant market area shall be a circular area around an existing
220 franchised dealer with a radius of 50 miles, or the area of responsibility defined in the franchise,
221 whichever is greater.

222 In determining population for relevant market areas, the most recent census by the U.S. Bureau of
223 the Census or the most recent population update, either from the National Planning Data Corporation or
224 other similar recognized source, shall be accumulated for all census tracts either wholly or partially
225 within the relevant market area.

226 "Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use and
227 not for resale, in which the price of the vehicle is payable in one or more installments and in which the
228 seller has either retained title to the goods or has taken or retained a security interest in the goods under
229 form of contract designated either as a security agreement, conditional sale, bailment lease, chattel
230 mortgage, or otherwise.

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

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

235 "Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with
236 another motor vehicle that some part of its own weight and that of its own load rests on or is carried by
237 another vehicle.

238 "Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles
239 and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached
240 thereto.

241 "Trailer" means every vehicle without motive power designed for carrying property or passengers
242 wholly on its own structure and for being drawn by another motor vehicle, including semitrailers but not
243 manufactured homes, watercraft trailers, camping trailers, or travel trailers.

"Travel trailer" means a vehicle designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight so as not to require a special highway movement permit when towed by a consumer-owned tow vehicle.

"Used motor vehicle" means any vehicle other than a new motor vehicle 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.

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

§ 46.2-1572. Operation of dealership by manufacturer.

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

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

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

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

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

5. The ownership, operation, or control of a dealership dealing exclusively with school buses by a school bus manufacturer or school bus parts manufacturer or a person who assembles school buses; or

6. The ownership, operation, or control of a dealership dealing exclusively with refined fuels truck tanks by a manufacturer of refined fuels truck tanks or by a person who assembles refined fuels truck tanks. Notwithstanding any contrary provision of this chapter, any manufacturer of ~~fire-fighting~~ *firefighting* equipment who, on or before December 31, 2004, had requested a hearing before the Department or the Commissioner in accordance with subdivision 4 for licensure as a dealer in ~~fire-fighting~~ *firefighting* equipment and/or ambulances may be licensed as a dealer in ~~fire-fighting~~ *firefighting* equipment and/or ambulances; or

7. *The ownership, operation, or control of a dealership dealing exclusively with multistage trucks by a manufacturer involved in the second or subsequent stage of construction or assembly of a multistage truck.*

§ 46.2-1572.1. Ownership of service facilities.

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

B. Subsection A shall not apply to the following:

1. Manufacturers of refined fuels truck tanks, persons who assemble refined fuels truck tanks, or persons who exclusively manufacture or assemble school buses or school bus parts; or

2. Manufacturers of engines for trucks having a gross vehicle weight rating of more than 7,500 pounds that owned, operated, or controlled a warranty or service facility in the Commonwealth as of January 1, 2016, provided that the manufacturer:

- 305 a. Does not own, operate, or control more than five such facilities in the Commonwealth;
306 b. Does not otherwise manufacture, distribute, or sell motor vehicles, as defined in § 46.2-1500; and
307 c. Provides to dealers on substantially equal terms access to all support for completing repairs,
308 including parts and assemblies, training, and technical service bulletins and other information concerning
309 repairs, that the manufacturer provides to facilities owned, operated, or controlled by the manufacturer;
310 or
311 3. *Manufacturers involved in the second or subsequent stage of construction or assembly of a*
312 *multistage truck provided that such service facility deals exclusively with multistage trucks.*
313 2. That §§ 46.2-1573.21 and 46.2-1573.22 of the Code of Virginia are repealed.