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SENATE BILL NO. 1035

Offered January 17, 2020

A BILL to amend and reenact §§ 46.2-1500 and 46.2-1573.36 of the Code of Virginia, relating to motor vehicle dealers; motorcycle franchises.

Patron—DeSteph

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1500 and 46.2-1573.36 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 new trailer, 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 or new trailers 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, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed

59 continuously by the dealer for at least five years.

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

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

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

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

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

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

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

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

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

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

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

105 "Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this chapter,
106 "motor vehicle" includes trailers, as defined in this section, and does not include (i) manufactured
107 homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title 36; (ii) nonrepairable
108 vehicles, as defined in § 46.2-1600; (iii) salvage vehicles, as defined in § 46.2-1600; or (iv) mobile
109 cranes that exceed the size or weight limitations as set forth in § 46.2-1105, 46.2-1110, or 46.2-1113 or
110 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 for resale, sells, or exchanges, either
113 outright or on conditional sale, lease, chattel mortgage, or other similar transaction or arranges or offers
114 or attempts to solicit or negotiate on behalf of others the sale, purchase, or exchange of, either outright
115 or on conditional sale, lease, chattel mortgage, or other similar transaction, an interest in new motor
116 vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles
117 are owned by him; or

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

120 Any person who offers to sell, sells, displays, or permits the display for sale, of five or more motor

vehicles within any 12 consecutive months is presumed to be a motor vehicle dealer and may rebut the presumption by a preponderance of the evidence.

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 fire-fighting vehicles, ambulances, and 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.

16. Any motor vehicle manufacturer or distributor selling a new motor vehicle at wholesale to its franchised dealer or a used motor vehicle to a licensed dealer.

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.

"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.

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

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

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

198 "Relevant market area" means as follows:

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

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

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

212 4. For motorcycle dealers, the relevant market area shall be a circular ~~area within~~ *area around an*
213 *existing franchised motor cycle dealer with a population of one million or more, not to exceed* a radius
214 of 20 miles ~~around an existing franchised dealer location with a population of one million or more.~~ If
215 the population in a circular area within a ~~20-mile~~ radius of 20 miles is less than one million, but the
216 population in an area within a radius of 30 miles is greater than 750,000, the relevant market area shall
217 be a circular area within a radius of 30 miles. If the population in a circular area within a ~~30-mile~~
218 radius of 30 miles is less than 750,000, the relevant market area shall be a circular area within a radius
219 of 40 miles *or the area of responsibility defined in the franchise, whichever is greater. In any case*
220 *where the franchise agreement is silent as to area of responsibility, the relevant market area shall be*
221 *the greater of a circular area within radius of 40 miles around an existing franchised dealer or that*
222 *area in which the franchisor otherwise requires the franchisee to make significant retail sales or sales*
223 *efforts.*

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

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

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

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

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

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

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

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by another motor vehicle, including semitrailers but not 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.

§ 46.2-1573.36. Hearings and other remedies; civil penalties.

A. In every case of a hearing before the Commissioner authorized under this article, the Commissioner shall give reasonable notice of each hearing to all interested parties, and the Commissioner's decision shall be binding on the parties, subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). *In every case of a hearing before the Commissioner authorized under this article based on a request or petition of a dealer, the manufacturer, factory branch, distributor, or distributor branch shall have the burden of proving by a preponderance of the evidence that the manufacturer, factory branch, distributor, or distributor branch has good cause to take the action for which the dealer has filed the petition for a hearing or that such action is reasonable if required under the relevant provision.*

B. Hearings before the Commissioner under this article shall commence within 90 days of the request for a hearing, and the Commissioner's decision shall be rendered within 60 days from the receipt of the hearing officer's recommendation. Hearings authorized under this article shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court. On request of the Commissioner, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. The hearing officer shall provide recommendations to the Commissioner within 90 days of the conclusion of the hearing.

C. Notwithstanding any contrary provision of this article, the Commissioner shall initiate investigations, conduct hearings, and determine the rights of parties under this article whenever he is provided information indicating a possible violation of any provision of this article.

D. For purposes of any matter brought to the Commissioner under subdivisions 3, 4, 5, 6, and 9 of § 46.2-1573.28 with respect to which the Commissioner is to determine whether there is good cause for a proposed action or whether it would be unreasonable under the circumstances, the Commissioner shall consider:

1. The volume of the affected dealer's business in the relevant market area;
2. The nature and extent of the dealer's investment in its business;
3. The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;
4. The effect of the proposed action on the community;
5. The extent and quality of the dealer's service under motorcycle warranties;
6. The dealer's performance under the terms of its franchise; and
7. Other economic and geographical factors reasonably associated with the proposed action.

With respect to subdivision 6, any performance standard or program for measuring dealership performance that may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable, and equitable and, if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

E. An interested party in a hearing held pursuant to subsection A shall comply with the effective date of compliance established by the Commissioner in his decision in such hearing, unless a stay or extension of such date is granted by the Commissioner or the Commissioner's decision is under judicial review and appeal as provided in subsection A. If, after notice to such interested party and an

305 opportunity to comment, the Commissioner finds an interested party has not complied with his decision
306 by the designated date of compliance, unless a stay or extension of such date has been granted by the
307 Commissioner or the Commissioner's decision is under judicial review and appeal, the Commissioner
308 may assess such interested party a civil penalty not to exceed \$1,000 per day of noncompliance. Civil
309 penalties collected under this subsection shall be deposited into the Transportation Trust Fund
310 established pursuant to § 33.2-1524.