

Definition of “Motor Vehicle Dealer” in *Va. Code* § 46.2-1500 Study

2018 Report

Virginia Department of Motor Vehicles
December 2018

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Executive Summary

For many Virginians, ownership of a motor vehicle is a virtual necessity of life. Except for buying a home, the purchase of a motor vehicle is one of the biggest purchases a person makes, and the transaction often cannot be easily reversed if the person enters into a disadvantageous transaction. For this reason, Virginia law heavily regulates motor vehicle dealers to ensure that consumers are protected throughout the vehicle purchasing process and have adequate redress if something goes wrong.

Many of Virginia's motor vehicle consumer protection laws depend on the person selling the vehicle being a "motor vehicle dealer," as defined in *Va. Code* § 46.2-1500. However, the current definition of motor vehicle dealer has ambiguities which can make it difficult to determine whether a person is a motor vehicle dealer. Under current law, a person can be considered a motor vehicle dealer either by undertaking certain actions with respect to one motor vehicle, being in the business of being a motor vehicle dealer, or by selling five or more motor vehicles. Delegate Landes introduced House Bill (HB) 896 in the 2018 session in an attempt to clarify the definition. Chairman Yancey of the House Transportation Committee requested that the Department of Motor Vehicles (DMV) convene a stakeholder group to study the definition of a motor vehicle dealer and make recommendations on how the definition could be improved. This report is submitted in accordance with Chairman Yancey's request.

This report recommends that the definition of a motor vehicle dealer be amended to focus on the actions of the person alleged to be a motor vehicle dealer, rather than focusing solely on the number of vehicles that a person has sold. The ultimate goal of Virginia's motor vehicle laws is to protect consumers, and this is best achieved by focusing on those persons undertaking actions which potentially affect consumers. At the same time, however, the report recognizes that having guidance as to the number of motor vehicles sold can be helpful because a person selling many vehicles is acting in a way that affects consumers. Nonetheless, the report recommends that the current language regarding the sale of five or more vehicles be changed to provide that a person who sells five or more vehicles is presumed to be a motor vehicle dealer, instead of automatically being a motor vehicle dealer. This change would recognize that there are circumstances where a person selling more than five vehicles should not be considered a motor vehicle dealer, and allows the person to demonstrate evidence showing that he is not a motor vehicle dealer to overcome the presumption. The report also recommends a number of other changes to the definition to clarify the law and promote consumer protection. The report also includes information on suggested modifications to motor vehicle dealer laws which are not included in the draft legislation of this report, but which may merit further consideration by the General Assembly at a later date.

Current Definition

Va. Code § 46.2-1500 defines a motor vehicle dealer as follows:

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

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or
2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or
3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any 12 consecutive months.

Thus, current law provides three ways in which a person can qualify to be a motor vehicle dealer. Additionally, *Va. Code* § 46.2-1500 contains a list of 15 exceptions to the definition; a person who falls under those exceptions is not considered a motor vehicle dealer even if his actions would otherwise make him a dealer.

A problem with the current definition is that the relationship between the provisions in Clause 1 and Clause 3 is ambiguous. Clause 1 provides that a person who engages in “a sale, purchase, or exchange of an interest” is a motor vehicle dealer, and required to be licensed. In contrast, Clause 3 suggests that only persons who deal in five or more motor vehicles within any twelve consecutive months are motor vehicle dealers. This has caused some confusion among law enforcement professionals; some believe that the sale of one motor vehicle is enough to make a person a motor vehicle dealer, while others believe that it is necessary to sell five motor vehicles within twelve months prior to becoming a motor vehicle dealer. The conflict has also caused confusion with individuals attempting to comport their conduct to the law, as it is not clear whether the sale of four or fewer motor vehicles would make one a motor vehicle dealer.

House Bill 896

In the 2018 session, Delegate Landes introduced HB 896. This bill would have amended Clause 1 of the definition of motor vehicle dealer to provide that a person performing the various acts described in that clause would only fall within the definition of a motor vehicle dealer if he had performed the act in relation to five or more vehicles. It also would have amended Clause 2 by defining “being in the business” as selling, offering to sell, or permitting the display of at least five vehicles per year. Clause 3 would have been merged into Clause 2. The text of HB 896 is available in Appendix 2.

DMV raised concerns about this language specifically in relation to the changes to Clause 1 because the language could be read to allow people to engage in up to four instances of each activity without being considered a motor vehicle dealer – e.g. to buy four vehicles, to sell four different vehicles, to display four other vehicles, etc. DMV considered this to be a departure from current law, which even if read to require the sale of five or more vehicles prior to being considered a motor vehicle dealer would apply when the person had engaged in five or more of a combination of any of the acts listed in Clause 1. Accordingly, DMV recommended an amendment to the bill to clarify that a person who engages in five or more of any of the acts listed, or any combination thereof, would be a motor vehicle dealer.

Following submission of the DMV amendment, other stakeholders also expressed concern with the legislation. Accordingly, Chairman Yancey of the House Transportation Committee, with the consent of Delegate Landes, directed DMV to study the issue with stakeholders and report back the results of the study and any recommendations.

Review of Laws in Other States

DMV reviewed the definitions of motor vehicle dealer in other states, and its research was supplemented by information submitted by other stakeholders. Generally speaking, DMV's research found that most other definitions of the term "motor vehicle dealer," or equivalent, either defined a motor vehicle dealer as a person selling more than a specified number of motor vehicles, or as one who was in the business of being a motor vehicle dealer. Some states combine the two categories, so that a person is considered to be in the business of being a motor vehicle dealer if he sells more than a certain number of vehicles.

Most states also have a list of exceptions for persons who are not to be considered motor vehicle dealers even though they would otherwise fall under the definition. One of the most common exceptions applies to individuals selling their own motor vehicles which were acquired for personal use and actually so used. This allows individuals to sell their own cars without needing to become a motor vehicle dealer. Other common exceptions include banks selling repossessed vehicles, insurance companies selling damaged vehicles, and other persons who come into ownership of vehicles as part of the normal course of their business but are not in the business of selling vehicles.

Like other states, Virginia defines a motor vehicle dealer as one who is in the business of being a motor vehicle dealer. Also, like other states, Virginia defines a motor vehicle dealer as one who sells, buys, displays, etc., more than a specified number of motor vehicles (in the case of Virginia, five). Virginia also has many of the common exceptions which are included in other states' statutes. Unlike other states, however, the sale of five or more motor vehicles is not defined as being in the business of being a motor vehicle dealer; they are separate criteria. Likewise, the separation of Clause 1 and Clause 3 as separate criteria qualifying a person as a motor vehicle dealer is unusual.

Stakeholder Process

Pursuant to Chairman Yancey's charge letter, DMV convened a group of stakeholders representing motor vehicle dealers, manufacturers, law enforcement, prosecutors, and other interested parties. A full list of stakeholders is in Appendix 7. Stakeholder meetings were held

on June 30, 2018 and August 6, 2018. For Sherman Antitrust Act purposes, it should be noted that stakeholders were invited to the meeting at the request of DMV and the Motor Vehicle Dealer Board (MVDB) to assist the agencies in making recommendations to the General Assembly. Although this report recommends modifying the definition of motor vehicle dealer in Va. Code § 46.2-1500, those recommendations will not become law unless and until they are acted upon by Virginia's General Assembly.

At the first stakeholder meeting, DMV reviewed *Va. Code* § 46.2-1500 with the stakeholders, and listened to their concerns regarding the statute. Following the meeting, DMV sent out a number of questions to the stakeholders regarding whether certain issues needed addressing, and then requested proposals for model legislation.

Based on responses from the stakeholders, DMV prepared draft legislation incorporating comments from the stakeholders, which was distributed to the stakeholders prior to the second stakeholder meeting. At the second stakeholder meeting, the draft legislation was discussed, and additions, modifications, and deletions were made based on the stakeholders' responses. The legislation was revised again and sent out to the stakeholders by e-mail for their approval. The final draft of the legislative proposal is included in Appendix 3; a discussion of the draft legislation follows.

Discussion of the Proposed Legislation

Items Included in the Legislation

As a result of the stakeholder meetings, DMV developed draft legislation which included the suggestions which were agreed to by the stakeholders. All of the stakeholders agreed that the draft legislation was appropriate except for Tesla, Inc. (Tesla). Therefore, references to “the stakeholders agree” or similar language in this section of the report do not indicate agreement from Tesla unless otherwise indicated. Tesla would have preferred recommending no legislation.

Conduct Making a Person a Motor Vehicle Dealer

DMV and the stakeholders believed that it was important to remedy the conflict between Clause 1 of the definition of motor vehicle dealer and Clause 3 of that definition. The stakeholders agreed that qualification as a motor vehicle dealer should depend primarily on the actions of the person alleged to be a dealer, and not the sale of a pre-determined number of vehicles. At the same time, the stakeholders recognized that having a number written into the statute is helpful because, as a person sells, buys, etc., more vehicles, he is more likely to be a motor vehicle dealer. However, the stakeholders also recognized that there may be special circumstances where a person who sells more than that number of vehicles should not be considered a motor vehicle dealer.

Accordingly, the draft legislation changes Clause 1 to remove the language relating to “a sale” and replaces it with “**the** sale.” Additionally, Clause 3 is amended to provide that selling, buying, displaying, etc., five or more vehicles within a year raises the presumption that a person is a motor vehicle dealer, but that a person who is alleged to be a motor vehicle dealer may rebut the presumption by a “preponderance of the evidence.” This means that if a person provides evidence which makes it more likely than not that he is **not** a motor vehicle dealer, the

presumption will not apply, and it will be necessary for the authority attempting to prove that the person is a motor vehicle dealer to do so without the benefit of the presumption.

With these amendments, the actions and transactions described within Clause 1 would set out the primary actions which, if performed, would qualify one as a motor vehicle dealer. The language in Clause 3 provides guidance for individuals by providing that a person who sells or displays five or more motor vehicles is a motor vehicle dealer, but allows the presumption to be rebutted in appropriate cases. While this draft does not amend the language of Clause 2, DMV and MVDB believe as a practical matter that a person who performs the actions listed in Clause 1 and is unable to rebut the presumption as provided in Clause 3, will be in the business of being a motor vehicle dealer for the purposes of Clause 2.

Fire-Fighting Vehicles and Ambulances

Prior to 2004, Virginia law provided that a person who sold firefighting equipment, ambulances, and funeral vehicles was not considered a motor vehicle dealer. In that year, HB 453 (Delegate McQuigg) repealed the exception in its entirety. An exception for funeral vehicles was re-introduced to the *Code* in 2005 by HB 2022 (Delegate Welch), but under current law sales of firefighting vehicles and ambulances must occur through licensed dealers.

Firefighting vehicles and ambulances are specialized vehicles usually purchased by governmental entities or sophisticated corporate entities. Sales to such entities do not raise the same consumer protection concerns as sales to individuals. Additionally, the stakeholders noted that many Virginia localities currently purchase emergency vehicles from out of state. The stakeholders believe that reinstating the exception for firefighting vehicles and ambulances could help Virginia sellers of such vehicles without risking consumer protection.

Exception for Manufacturers or Distributors Selling to Motor Vehicle Dealers

The proposed language includes an exception for automobile manufacturers or distributors selling a new motor vehicle to a motor vehicle dealer holding a franchise for the make of the vehicle being sold, or to sell a used motor vehicle to any motor vehicle dealer. Manufacturers are generally prohibited from operating motor vehicle dealers under *Va. Code* § 46.2-1572; instead, they must franchise with motor vehicle dealers operated by third parties to sell their vehicles.

It is generally accepted that manufacturers and distributors selling to motor vehicle dealers are not motor vehicle dealers themselves, as the cars are later sold to the end user by a motor vehicle dealer. Nonetheless, the stakeholders agreed that it would be helpful to clarify the matter by writing an explicit exception into the *Code*. This proposed language appropriately clarifies the matter.

New Trailers

After the final stakeholder meeting, DMV discovered another issue in *Va. Code* § 46.2-1500 which the General Assembly should consider. In 2015, the General Assembly enacted HB 2189 (Delegate McQuinn), which transferred responsibility for licensing trailer, recreational vehicle, and motorcycle dealers from DMV to the MVDB. For trailers, in particular, the bill amended several definitions in order to attempt to subject trailer dealers and manufacturers to the same licensure rules as motor vehicle dealers and manufacturers. The approach of the bill was to remove an existing exclusion for trailers from the definition of “motor vehicle” in order to treat

trailers as motor vehicles; provide for “motor vehicle dealer” to mean “trailer dealer” for purposes of trailer franchises; and, to include a definition of “new trailer” separate from “new motor vehicle” to account for differing conditions under which those vehicles can be sold as new. Unfortunately, while both DMV and the MVDB implemented HB 2189 in a manner consistent with the intent behind the bill, the enacted language is not sufficient to meet that intent.

Inadvertent drafting errors created two key issues within the definitions in *Va. Code* § 46.2-1500 that prevent them from meeting the intent of HB 2189. First, the bill was drafted with the intent to include trailers in the definition of “motor vehicle.” To achieve this, an existing exclusion for trailers was removed from the definition of “motor vehicle” and a definition of “trailer” was added that makes reference to trailers “being drawn by **another** motor vehicle ...” [emphasis added]. With a few stated exceptions, the definition of “motor vehicle” in *Va. Code* § 46.2-1500 shares its meaning with that term in *Va. Code* § 46.2-100. However, the hallmark of a motor vehicle in *Va. Code* § 46.2-100 is that the vehicle must be “self-propelled or designed for self-propulsion ...” Trailers, while vehicles are neither self-propelled nor designed for self-propulsion. As defined in *Va. Code* § 46.2-100, trailers are “designed ... for being drawn by **a** motor vehicle ...” [emphasis added]. Despite the intent behind the definitions in *Va. Code* § 46.2-1500, a trailer is not a motor vehicle in *Va. Code* § 46.2-100 and, so, is not a motor vehicle for the purposes of Virginia’s dealer laws.

Second, while HB 2189 expressly excluded trailers from the definition of “new motor vehicle” in *Va. Code* § 46.2-1500 in order to enact “new trailer,” it did not amend the various definitions that reference “new motor vehicle” to include trailers. These definitions are: “certificate of origin,” “distributor,” “franchise,” “franchised motor vehicle dealer,” “manufacturer,” and “used motor vehicle.” As a result, the first five of these definitions do not apply to new trailers, meaning the rules for licensure and business practices of new trailer dealers, manufacturers, and distributors may be unenforceable. The definition of “used motor vehicle,” in contrast, can be read to include “new trailers,” since they do not share the exclusion provided for new motor vehicles, which could mean independent trailer and car dealers, which sell used vehicles, could also sell new trailers without additional licenses.

In order to give effect to the intent of the General Assembly in HB 2189, DMV recommends that the definition of motor vehicle in *Va. Code* § 46.2-1500 be amended to provide that a trailer is a motor vehicle for the purposes of Virginia’s motor vehicle dealer laws. Additionally, in order to treat new trailers on parity with other motor vehicles, it is necessary to add references to new trailers in the definitions for “certificate of origin,” “distributor,” “franchise,” “franchised motor vehicle dealer,” “manufacturer,” and “used motor vehicle.” These changes will clarify that manufacturers and sellers of new trailers are motor vehicle manufacturers and dealers subject to Virginia’s dealer laws.

Technical Changes

DMV, MVDB, and the stakeholders also identified a number of technical changes which would clarify the definition by better delineating the actions which make a person a motor vehicle dealer.

Items Recommended by Stakeholders but not Included in the Legislation

Profit Motive

The Virginia Independent Automobile Dealers Association (VIADA) recommended including language which would make one of the determinants of defining a motor vehicle dealer a motor vehicle dealer to be whether the person has a profit motive when he sells the vehicle. This would be similar to language in the used motor vehicle dealer statute in Georgia, where the intent to make a profit is one of the hallmarks of defining a used motor vehicle dealer.

Other stakeholders were concerned that this language would make it more difficult to prove that a person is a motor vehicle dealer. Although it can be easy to prove a profit motive when the person has an established business and lot, it can be much harder to prove in a curbstoning situation. Curbstoning occurs when a person sells vehicles without an established business or lot; often, vehicles are parked on the curb outside of an individual's home. Adding a profit motive requirement may lead to curbstoners claiming that they are simply selling the cars as a hobby with no intent to profit. This could make it difficult to prosecute curbstoners, and consumer protection could suffer as a result.

The other stakeholders also argued that the draft legislation, without the intent to profit language, would still target individuals with a profit motive because the actions described in the *Code* are the actions generally taken by those attempting to make a profit. The difference, however, is that the draft language would do so without requiring prosecutors and law enforcement to discern the individual's intent. VIADA agreed that the intent to profit language was not necessary, and it was not included in the draft legislation.

Exception for Auctioneers

The Virginia Auctioneers Association (VAA) requested a specific exemption for auctioneers who do not take title to motor vehicles which they auction. Under current law, an auctioneer may qualify as a motor vehicle dealer; however, DMV has exercised enforcement discretion in cases in which an auctioneer auctions a vehicle as part of a larger auction for other items. For example, an auctioneer facilitating an estate sale has been permitted to auction off the deceased's vehicle as part of that auction without needing to register as a motor vehicle dealer. In contrast, vehicle auctions, which specialize in auctioning motor vehicles have long been required to be licensed as motor vehicle dealers. These auctions often have dedicated premises at which they sell motor vehicles exclusively. DMV understood the auctioneers to be seeking an exemption for the former type of auctioneer but not for the latter.

Following discussion, it was determined that the same result could be achieved without specific language because of the new presumption language which is recommended to be added to Clause 3 of the motor vehicle dealer definition. DMV represented that, if the language passed, it would interpret the presumption language to exclude auctioneers who only tangentially auction motor vehicles but would continue to enforce the motor vehicle dealer laws against auctioneers who specialize in auctioneering vehicles. The VAA was satisfied with DMV's representation, and agreed that their requested exception did not need to be included in the bill.

Car Subscription Language

The Virginia Automobile Dealers Association (VADA) requested language which would define as a motor vehicle dealer a person who sells a contractual interest in a motor vehicle. The

Car Subscription Language

The Virginia Automobile Dealers Association (VADA) requested language which would define as a motor vehicle dealer a person who sells a contractual interest in a motor vehicle. The language would have exempted rental car companies. The language is aimed at the growing “car subscription” business model. A VADA representative informed the group that it was seeking to add language defining sellers of car subscriptions as motor vehicle dealers because it believed that anybody offering access to a car for money should be licensed as a dealer.

A car subscription can be structured in several ways, but often falls somewhere between leasing and renting a motor vehicle. Such subscriptions often have a higher price than a traditional lease, but that price typically includes services such as the purchase of automobile insurance and payment of registration fees which would not be covered in a traditional lease. Car subscriptions differ from car rentals in that they are generally for longer periods of time, and some have an indefinite term. However, many subscription services include the ability for the subscriber to switch between cars on a frequent basis – for example, the Book service by Cadillac allows individuals to switch to a new car up to 18 times per year, included in the price of the monthly subscription.

Car subscription programs have been operated by a number of entities. Many car subscription services are operated by vehicle manufacturers, including programs run by Cadillac and Volvo. Others are run by third parties, and DMV is aware of a car subscription service in Winston-Salem, North Carolina that is operated by a group which owns multiple dealerships in that state. At the present time, most car subscription services are operating in limited areas, and few appear to be operating in Virginia. However, Volvo’s car subscription program is offered nationwide, while the car subscription service in Winston-Salem may be serving customers in northern North Carolina who would otherwise purchase vehicles from motor vehicle dealers in Southside Virginia.

Car subscription services are a novel concept which may warrant further consideration by the General Assembly. However, other stakeholders were hesitant to address the matter in this study because of the concern that addressing it would require a substantive change in motor vehicle dealer laws more broadly, whereas the scope of the study was to make clarifying and technical changes to the definition of motor vehicle dealer. The representative from VADA agreed that adding its proposed language would be a substantive change to the law. The stakeholders agreed that VADA’s suggestion would not be included in the draft legislation produced in this report.

Non-Franchising Manufacturers

At the second stakeholder meeting, representatives from Tesla requested that the scope of the study be extended to examine the situation of non-franchising manufacturers. Under *Va. Code* § 46.2-1572, it is unlawful for a motor vehicle manufacturer to operate a dealership unless it falls into one of the exceptions listed in that statute. Instead, manufacturers must enter into franchise agreements with motor vehicle dealers to sell their cars. Tesla applied to DMV for an exemption from the franchise requirement on the grounds that there are no motor vehicle dealers available to sell Tesla vehicles. The exception was granted after a hearing was held; however, Tesla and VADA are engaged in litigation with DMV regarding that decision. Because of the litigation, Commissioner Holcomb recused himself from discussion on this matter.

Many stakeholders expressed concern with expanding the scope of the study, which was limited to the definition of a motor vehicle dealer in *Va. Code* § 46.2-1500. Additionally, because that matter is in litigation, it was noted that the General Assembly may not be willing to pass a bill which included such provisions. Ultimately, most stakeholders did not favor the inclusion of Tesla's language in the draft legislation, and so it was not included.

Virginia Sheriffs' Association Language

The Virginia Sheriffs' Association (VSA) requested that the legislation include an exemption for the VSA when selling vehicles pursuant to *Va. Code* § 2.2-4304. That statute permits public bodies to purchase from the contract of the VSA in lieu of using the standard procurement process.

As explained to DMV, the VSA runs a program whereby it enters into contracts with a number of licensed dealers across the state to allow Sheriffs' offices and other public bodies to purchase police vehicles. The contract includes a set price for a standard police vehicle; however, sheriffs' offices are free to negotiate additional features with the dealer and negotiate the price for those features outside of the program. The VSA does not take title to the vehicle at any time; however, the dealer pays the association a percentage of the standard price.

DMV shared the VSA's proposed language with the stakeholders; the only objection came from Tesla, which as noted above objected to any legislative change. However, DMV and MVDB personnel examined the *Code* and concluded that the VSA's actions do not make it a motor vehicle dealer. This is because the VSA is not negotiating the sale of any particular vehicle, but is only creating a standard price which serves as a starting point for negotiations between the public body and the dealer selling the vehicle. Because the language is unnecessary, the VSA proposed language is not included in the draft legislation.

Conclusion

The purpose of this study was to determine where improvements could be made to the definition of "motor vehicle dealer" in *Va. Code* § 46.2-1500. By working closely with stakeholders, DMV developed proposed legislation which clarifies the definition of motor vehicle dealer by shifting its focus to the actions of the person alleged to be a motor vehicle dealer instead of the number of vehicles sold. The changes proposed by the legislation will make it easier to determine whether or not a person is a motor vehicle dealer.

The shift in focus to the person's actions recommended in the proposed legislation will enhance consumer protection by allowing DMV and MVDB to focus its resources on those whose actions are more likely to cause consumer protection concerns. At the same time, however, the proposed changes will benefit those whose actions do not fall under the definition of a motor vehicle dealer, as they will be able to operate their business without needing to become a licensed dealer. The draft legislation in this report strikes the proper balance between those two aims, and DMV recommends that the legislation be adopted by the General Assembly.

Appendix 1

Charge Letter



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

DAVID E. YANCEY
POST OFFICE BOX 1163
NEWPORT NEWS, VIRGINIA 23601

NINETY-FOURTH DISTRICT

COMMITTEE ASSIGNMENTS:
TRANSPORTATION (CHAIRMAN)
EDUCATION
COMMERCE AND LABOR

February 05, 2018

Mr. Richard D. Holcomb,
Commissioner
Virginia Department of Motor Vehicles
P.O. Box 27412
2300 West Broad Street
Richmond, Virginia 23269

Dear Commissioner Holcomb:

During the 2018 General Assembly Session, a bill was introduced to redefine “Motor vehicle dealer” in § 46.2-1500 of the *Code of Virginia*, House Bill 896 patroned by Delegate Landes. Current law provides in § 46.2-1500 that any person who buys, sells, or exchanges a motor vehicle for value, any person who is engaged in the business of selling motor vehicles, or any person who offers or displays more than five motor vehicles for sale on his property over a 12 month period is considered a motor vehicle dealer. The original language of Delegate Landes’ bill aimed to clarify that under this section, an individual cannot be guilty of acting as a motor vehicle dealer without proper licensure by selling a single vehicle. The legislation also set a clearer standard regarding the number of vehicles that may be sold in a 12 month period to qualify an individual as a motor vehicle dealer.

In conversations with the patron, DMV expressed concerns that the bill’s language may make the definition far more broad than intended. To avoid unintended consequences, DMV offered the Delegate amendments. However, the amendments DMV proposed created concerns among relevant stakeholders including the Virginia Automobile Dealers Association (VADA) and motor vehicle manufacturers, including Tesla. DMV suggested that it be allowed to study the issues over the next year to obtain the input of stakeholders to revise the definition of “Motor vehicle dealer”. I, as the chair of the House Committee on Transportation, recognize the need to clarify the definition of “Motor vehicle dealer” and to have the input of relevant stakeholders in determining the definition, agree that additional study is necessary.

Therefore, I respectfully request that the Department of Motor Vehicles study how to revise the definition of “Motor vehicle dealer” to make it clearer which persons require motor vehicle dealer licenses and to limit, to the greatest extent possible, the improper sale of vehicles by individuals acting as motor vehicle dealers without the appropriate licensure under Virginia

Mr. Richard D. Holcomb
February 05, 2018

law. I request that DMV convene a working group of interested parties to conduct a study including the Motor Vehicle Dealer Board, the Virginia State Police, the Virginia Sheriffs' Association, the Virginia Association of Chiefs of Police, VADA, the Virginia Independent Automobile Dealers Association, the Office of the Attorney General, the Virginia Association of Commonwealth's Attorneys, representatives from vehicle manufacturers, and other stakeholders identified by the Department.

I ask that the working group research how to appropriately define a "motor vehicle dealer". I request that you report back to the House Committee on Transportation in December of 2018 with the results of the study and the working group's recommendations. As part of the report, the working group should provide for each item it proposes an analysis of the feasibility, the cost to the Commonwealth, and its cost-effectiveness. Also include any proposed legislation that would be necessary in order to pursue the recommendations.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. E. Yancey".

The Honorable David E. Yancey
Chairman, House Transportation

cc: The Honorable R. Steven Landes, Delegate
The Honorable Shannon R. Valentine, Secretary of Transportation

Appendix 2

House Bill 896 (Delegate Landes)

18104021D

HOUSE BILL NO. 896

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 46.2-1500 of the Code of Virginia, relating to motor vehicle dealer; definition.

Patron—Landes

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-1500 of the Code of Virginia is 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, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been employed

INTRODUCED

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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 of a
63 particular line-make or late model or used motor vehicles of a particular line-make manufactured or
64 distributed by the grantor of the right, the franchisor, and where the operation of the franchisee's
65 business is substantially associated with the franchisor's trademark, trade name, advertising, or other
66 commercial symbol designating the franchisor, the motor vehicle or its manufacturer or distributor.
67 "Franchise" includes any severable part or parts of a franchise agreement which separately provides for
68 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 that
73 has a franchise agreement with a manufacturer or distributor of new motor vehicles to sell new motor
74 vehicles or to sell used motor vehicles under the trademark of a manufacturer or distributor regardless of
75 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 and, in the case of trucks, recreational
89 vehicles, and motor homes, also means a person engaged in the business of manufacturing engines,
90 transmissions, power trains, or rear axles, when such engines, transmissions, power trains, or rear axles
91 are not warranted by the final manufacturer or assembler of the truck, recreational vehicle, or motor
92 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" does not include (i) manufactured homes, sales of which are regulated under Chapter
107 4.2 (§ 36-85.16 et seq.) of Title 36; (ii) nonrepairable vehicles, as defined in § 46.2-1600; (iii) salvage
108 vehicles, as defined in § 46.2-1600; or (iv) mobile cranes that exceed the size or weight limitations as
109 set forth in § 46.2-1105, 46.2-1110, or 46.2-1113 or Article 17 (§ 46.2-1122 et seq.) of Chapter 10.

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

111 1. For commission, money, or other thing of value, (i) buys *at least five motor vehicles within 12*
112 *consecutive months*, (ii) offers to sell or sells *at least five motor vehicles within 12 consecutive months*,
113 (iii) displays or permits the display for sale of *at least five motor vehicles within 12 consecutive months*,
114 (iv) exchanges, either outright or on conditional sale, bailment lease, or chattel mortgage *at least five*
115 *motor vehicles within 12 consecutive months*, ~~or otherwise~~ or (v) arranges or offers or attempts to solicit
116 or negotiate on behalf of others *a the sale, purchase, or exchange of an interest in new at least five*
117 *motor vehicles within 12 consecutive months, new and used motor vehicles, or used motor vehicles*
118 ~~alone~~, whether or not the motor vehicles are owned by ~~him~~ *such person*; or

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

121 3. ~~Offers such person, provided that such person, through such business, offers to sell, sells,~~
122 ~~displays, or permits the display for sale, of at least five or more motor vehicles within any 12~~
123 ~~consecutive months.~~

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

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

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

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

132 3. Persons other than business entities primarily engaged in (i) the leasing or renting of motor
133 vehicles to others when selling or offering such vehicles for sale at retail, or (ii) disposing of motor
134 vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and
135 used in good faith and not for the purpose of avoiding the provisions of this chapter.

136 4. Persons dealing solely in the sale and distribution of funeral vehicles, including motor vehicles
137 adapted therefor; however, this exemption shall not exempt any person from the provisions of
138 §§ 46.2-1519, 46.2-1520, and 46.2-1548.

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

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

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

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

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

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

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

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

157 13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under
158 Chapter 4.2 (§ 36-85.16 et seq.) of Title 36.

159 14. The State Department of Social Services or local departments of social services.

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

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

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

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

178 "Motor vehicle show" means a display of motor vehicles to the general public at a location other
179 than a dealer's location licensed under this chapter where the vehicles are not being offered for sale or
180 exchange during or as part of the display.

181 "New motor vehicle" means any vehicle, excluding trailers, that is in the possession of the

182 manufacturer, factory branch, distributor, distributor branch, or motor vehicle dealer and for which an
183 original title has not been issued by the Department or by the issuing agency of any other state and has
184 less than 7,500 miles accumulated on its odometer.

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

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

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

201 "Relevant market area" means as follows:

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

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

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

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

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

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

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

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

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

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

243 "Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles

244 and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached
245 thereto.

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

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

252 "Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this section.

253 "Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a
254 motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter 8
255 (§ 29.1-800 et seq.) of Title 29.1.

256 "Watercraft trailer dealer" means any watercraft dealer licensed under Chapter 8 (§ 29.1-800 et seq.)
257 of Title 29.1.

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

Appendix 3

Draft Legislation

1 **Be it enacted by the General Assembly of Virginia:**

2 **1. That § 46.2-1500 of the *Code of Virginia* is amended and re-enacted as follows:**

3 **§ 46.2-1500. Definitions.**

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

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

14 "Board" means the Motor Vehicle Dealer Board.

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

18 "Certificate of origin" means the document provided by the manufacturer of a new motor vehicle
19 or new trailer, or its distributor, which is the only valid indication of ownership between the
20 manufacturer, its distributor, its franchised motor vehicle dealers, and the original purchaser not
21 for resale.

22 "Dealer-operator" means the individual who works at the established place of business of a
23 dealer and who is responsible for and in charge of day-to-day operations of that place of
24 business.

25 "Demonstrator" means a new motor vehicle having a gross vehicle weight rating of less than
26 16,000 pounds that (i) has more than 750 miles accumulated on its odometer that has been driven
27 by dealer personnel or by prospective purchasers during the course of selling, displaying,
28 demonstrating, showing, or exhibiting it and (ii) may be sold as a new motor vehicle, provided
29 the dealer complies with the provisions of subsection D of § 46.2-1530.

30 "Distributor" means a person who is licensed by the Department under this chapter and who sells
31 or distributes new motor vehicles or new trailers pursuant to a written agreement with the
32 manufacturer to franchised motor vehicle dealers in the Commonwealth.

33 "Distributor branch" means a branch office licensed by the Department under this chapter and
34 maintained by a distributor for the sale of motor vehicles to motor vehicle dealers or for directing
35 or supervising, in whole or in part, its representatives in the Commonwealth.

36 "Distributor representative" means a person who is licensed by the Department under this chapter
37 and employed by a distributor or by a distributor branch, for the purpose of making or promoting
38 the sale of motor vehicles or for supervising or contacting its dealers, prospective dealers, or
39 representatives in the Commonwealth.

40 "Factory branch" means a branch office maintained by a person for the sale of motor vehicles to
41 distributors or for the sale of motor vehicles to motor vehicle dealers, or for directing or
42 supervising, in whole or in part, its representatives in the Commonwealth.

43 "Factory representative" means a person who is licensed by the Department under this chapter
44 and employed by a person who manufactures or assembles motor vehicles or by a factory branch
45 for the purpose of making or promoting the sale of its motor vehicles or for supervising or
46 contacting its dealers, prospective dealers, or representatives in the Commonwealth.

47 "Factory repurchase motor vehicle" means a motor vehicle sold, leased, rented, consigned, or
48 otherwise transferred to a person under an agreement that the motor vehicle will be resold or
49 otherwise retransferred only to the manufacturer or distributor of the motor vehicle, and which is
50 reacquired by the manufacturer or distributor, or its agents.

51 "Family member" means a person who either (i) is the spouse, child, grandchild, spouse of a
52 child, spouse of a grandchild, brother, sister, or parent of the dealer or owner or (ii) has been
53 employed continuously by the dealer for at least five years.

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

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

67 "Franchised motor vehicle dealer" or "franchised dealer" means a dealer in new motor vehicles
68 or new trailers that has a franchise agreement with a manufacturer or distributor of new motor
69 vehicles or new trailers to sell new motor vehicles or new trailers, or to sell used motor vehicles
70 under the trademark of a manufacturer or distributor under the trademark of a manufacturer or
71 distributor regardless of the age of the motor vehicles.

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

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

74 "Late model motor vehicle" means a motor vehicle of the current model year and the
75 immediately preceding model year.

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

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

83 "Manufacturer" means a person who is licensed by the Department under this chapter and
84 engaged in the business of constructing or assembling new motor vehicles or new trailers and, in

85 the case of trucks, recreational vehicles, and motor homes, also means a person engaged in the
86 business of manufacturing engines, transmissions, power trains, or rear axles, when such
87 engines, transmissions, power trains, or rear axles are not warranted by the final manufacturer or
88 assembler of the truck, recreational vehicle, or motor home.

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

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

101 "Motor vehicle" means the same as provided in § 46.2-100, except, for the purposes of this
102 chapter, "motor vehicle" includes trailers, as defined in this section, and does not include (i)
103 manufactured homes, sales of which are regulated under Chapter 4.2 (§ 36-85.16 et seq.) of Title
104 36; (ii) nonrepairable vehicles, as defined in § 46.2-1600; (iii) salvage vehicles, as defined in
105 § 46.2-1600; or (iv) mobile cranes that exceed the size or weight limitations as set forth in
106 § 46.2-1105, 46.2-1110, or 46.2-1113 or Article 17 (§ 46.2-1122 et seq.) of Chapter 10.

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

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

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

116 3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles
117 within any 12 consecutive months; provided, however, that a person whose activities meet the
118 requirements of only this clause is presumed to be a motor vehicle dealer, and may rebut the
119 presumption by a preponderance of the evidence.

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

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

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

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

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

134 4. Persons dealing solely in the sale and distribution of fire-fighting vehicles, ambulances, and
135 funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not
136 exempt any person from the provisions of §§ [46.2-1519](#), [46.2-1520](#), and [46.2-1548](#).

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

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

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

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

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

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

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

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

156 13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson
157 under Chapter 4.2 (§ [36-85.16](#) et seq.) of Title 36.

158 14. The State Department of Social Services or local departments of social services.

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

162 16. Any sale at wholesale by a motor vehicle manufacturer or distributor of a new motor vehicle
163 to its franchised dealer or a used motor vehicle to a licensed dealer.

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

166 "Motor vehicle salesperson" or "salesperson" means (i) any person who is hired as an employee
167 by a motor vehicle dealer to sell or exchange motor vehicles and who receives or expects to
168 receive a commission, fee, or any other consideration from the dealer; (ii) any person who
169 supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or
170 by commission; (iii) any person, compensated by salary or commission by a motor vehicle

171 dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of
172 a dealer; or (iv) any person who is licensed as a motor vehicle dealer and who sells or exchanges
173 motor vehicles. For purposes of this section, any person who is an independent contractor as
174 defined by the United States Internal Revenue Code shall be deemed not to be a motor vehicle
175 salesperson.

176 "Motor vehicle show" means a display of motor vehicles to the general public at a location other
177 than a dealer's location licensed under this chapter where the vehicles are not being offered for
178 sale or exchange during or as part of the display.

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

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

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

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

199 "Relevant market area" means as follows:

200 1. For motor vehicle dealers except motorcycle dealers, in metropolitan localities the relevant
201 market area shall be a circular area around an existing franchised dealer with a population of
202 250,000, not to exceed a radius of 10 miles, but in no case less than seven miles.

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

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

212 area in which the franchisor otherwise requires the franchisee to make significant retail sales or
213 sales efforts.

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

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

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

231 "Retail installment sale" means every sale of one or more motor vehicles to a buyer for his use
232 and not for resale, in which the price of the vehicle is payable in one or more installments and in
233 which the seller has either retained title to the goods or has taken or retained a security interest in

234 the goods under form of contract designated either as a security agreement, conditional sale,
235 bailment lease, chattel mortgage, or otherwise.

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

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

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

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

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

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

252 "Used motor vehicle" means any vehicle other than a new motor vehicle or new trailer as defined
253 in this section.

254 "Watercraft trailer" means any new or used trailer specifically designed to carry a watercraft or a
255 motorboat and purchased, sold, or offered for sale by a watercraft dealer licensed under Chapter
256 8 (§ 29.1-800 et seq.) of Title 29.1.

257 "Watercraft trailer dealer" means any watercraft dealer licensed under Chapter 8 (§ 29.1-800 et
258 seq.) of Title 29.1.

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

260

Appendix 4

Table Explaining Changes Made in Draft Legislation

Note: Phrases such as “the stakeholders agree” or similar language do not indicate agreement from Tesla, Inc., unless otherwise indicated.

Explanation of Amendments in Proposed Legislation

Line No.	Change	Notes
19	<ul style="list-style-type: none"> • Add “or new trailer” to the definition of Certificate of Origin. 	<ul style="list-style-type: none"> • Clarifies that new trailers can be issued certificates of origin.
31	<ul style="list-style-type: none"> • Add “or new trailers” to the definition of Distributor. 	<ul style="list-style-type: none"> • Clarify that distributors can enter into contracts with manufacturers of new trailers.
57	<ul style="list-style-type: none"> • Add “or new trailers” to the definition of franchise. 	<ul style="list-style-type: none"> • Clarify that franchises may be awarded for the sale of new trailers.
68-69	<ul style="list-style-type: none"> • Add “new trailers” at appropriate places in the definition of franchised motor vehicle dealer. 	<ul style="list-style-type: none"> • Clarify that the sale of new trailers is within the definition of a franchised motor vehicle dealer.
102	<ul style="list-style-type: none"> • Adds “includes trailers, as defined in this section, and” to the definition of motor vehicle. 	<ul style="list-style-type: none"> • A trailer is not considered a motor vehicle for the purpose of Va. Code § 46.2-100, and so does not fall into the definition of motor vehicle under current law. • This law clarifies that, for the purpose of applying the motor vehicle dealer laws, the sale of trailers count as the sale of motor vehicles.
108	<ul style="list-style-type: none"> • Add “for resale” after buy. 	<ul style="list-style-type: none"> • The stakeholders felt that only buying vehicles for resale is indicative of being a motor vehicle dealer. • This change will avoid people who purchase many vehicles for private or business use from being considered motor vehicle dealers.
108	<ul style="list-style-type: none"> • Insert “or” between sells and exchanges. 	<ul style="list-style-type: none"> • This is a technical amendment meant to clarify the statute.
109	<ul style="list-style-type: none"> • Strike “bailment” between sale and lease. 	<ul style="list-style-type: none"> • The stakeholders felt that the types of leases in the definition of motor vehicle dealer should not be limited to bailment leases.

Note: Phrases such as “the stakeholders agree” or similar language do not indicate agreement from Tesla, Inc., unless otherwise indicated.

Line No.	Change	Notes
109-110	<ul style="list-style-type: none"> Strike “otherwise” and replace with “other similar transaction.” 	<ul style="list-style-type: none"> This is a technical change meant to better explain the types of transactions to be considered when determining whether someone is a motor vehicle dealer.
110	<ul style="list-style-type: none"> Strike “a” between others and sale, and replace it with “the.” 	<ul style="list-style-type: none"> Current law implies that buying, selling, etc., one vehicle makes one a motor vehicle dealer under the law. The replacement of “a” with “the” will cure the conflict between the first clause of the definition and the third clause. It will also shift the focus of the statute to the person’s actions, which will become the primary determinant of whether the person is a motor vehicle dealer.
111-112	<ul style="list-style-type: none"> Add language clarifying that for the purpose of determining whether somebody is a motor vehicle dealer, the exchange of a vehicle may occur outright or on conditional sale, lease, chattel mortgage, or other similar transaction. 	<ul style="list-style-type: none"> The stakeholders agreed it was important to clarify that an exchange could include a number of transactions.
112	<ul style="list-style-type: none"> Strike “of” before “an interest.” 	<ul style="list-style-type: none"> This is a grammatical change necessary due to the added language.

Note: Phrases such as “the stakeholders agree” or similar language do not indicate agreement from Tesla, Inc., unless otherwise indicated.

Line No.	Change	Notes
117-119	<ul style="list-style-type: none"> Provides that a person who sells, displays, or permits the display for sale of five more motor vehicles within any twelve consecutive months, but does not meet the other criteria in § 46.2-1500, is only presumed to be a motor vehicle dealer and may rebut the presumption by a preponderance of the evidence. 	<ul style="list-style-type: none"> The stakeholders believed that it was important to continue to have a guideline number of vehicles sold in the statute to provide the public with information on what likely constitutes being a motor vehicle dealer. The stakeholders agree that a person who sells or displays five or more motor vehicles in twelve months will, under most circumstances, be a motor vehicle dealer. However, adding a presumption recognizes that there may be special circumstances where a person is not a motor vehicle dealer, and allows for discretion in those circumstances.
129	<ul style="list-style-type: none"> Add a comma after “persons.” 	<ul style="list-style-type: none"> This is a technical change meant to clarify the statute.
134	<ul style="list-style-type: none"> Add fire-fighting vehicles and ambulances to the exception for funeral vehicles. 	<ul style="list-style-type: none"> Fire-fighting vehicles and ambulances were part of this exception prior to the 2004 session. The stakeholders agree that it would be appropriate to provide an exception for sellers of fire-fighting vehicles and ambulances.

Note: Phrases such as “the stakeholders agree” or similar language do not indicate agreement from Tesla, Inc., unless otherwise indicated.

Line No.	Change	Notes
162-163	<ul style="list-style-type: none">Provides an exception for motor vehicle manufacturers and distributors who sell a new motor vehicle to its franchised dealer, or a used motor vehicle dealer to a licensed dealer.	<ul style="list-style-type: none">Virginia dealership laws contemplate that, in the normal course of business, new motor vehicles will be sold from the manufacturer or distributor to a franchised dealer, and used motor vehicles to a licensed dealer.This modification will clarify that manufacturers may sell vehicles in this manner without violating Virginia dealer laws.
252	<ul style="list-style-type: none">Adds “or new trailer” to the definition of used motor vehicle.	<ul style="list-style-type: none">Clarifies that new trailers do not fall within the definition of a used motor vehicle.

Appendix 5

Stakeholder Correspondence

Invite to First Stakeholder Meeting

Jun
5

Holcomb, Richard <richard.holcomb@dmv.virginia.gov>

Dear Stakeholders,

Delegate David Yancey, Chairman of the House Committee on Transportation, has directed the Department of Motor Vehicles (DMV) to study the definition of a “motor vehicle dealer” in § 46.2-1500 of the *Code of Virginia* to clarify who requires a motor vehicle dealer license and to limit to the greatest extent possible the improper sale of vehicles by persons without the proper licensure.

During the 2018 General Assembly Session, House Bill 896 was introduced by Delegate Landes to modify the definition of a “motor vehicle dealer” in § 46.2-1500. The bill was continued to provide DMV and stakeholders the opportunity to discuss it in greater detail. Chairman Yancey requested that DMV convene a working group to include the Motor Vehicle Dealer Board (MVDB), Virginia State Police, Virginia Sheriff’s Association, Virginia Association of Chiefs of Police, Virginia Automobile Dealers Association (VADA), Virginia Independent Automobile Dealers Association (VIADA), Office of the Attorney General, Virginia Association of Commonwealth’s Attorneys, and representatives from vehicle manufacturers.

The kick-off meeting is scheduled for June 28th, 2018 from 1 P.M. to 3 P.M. at the DMV Headquarters Building at [2300 West Broad St.](#) in Richmond. We would like to include your organization and request that you or your designee participate in this study. During this initial meeting, we will present research we have conducted and provide an overview of our current law enforcement approach. Additional meetings will be held as needed.

The study coordinator and point of contact will be Gregory Cavalli. Please contact him by June 21st at gregory.cavalli@dmv.virginia.gov or (804) 249-5132 to let him know who will be representing your organization at the meeting.

I thank you in advance for your organization’s participation in this study.

Sincerely,

Rick



Richard D. Holcomb

Virginia DMV | Commissioner

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Request for Feedback on First Stakeholder Meeting

Jul
12

Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>

Based on the discussion in the first stakeholder meeting of the Motor Vehicle Dealer Definition Study, the following issues were raised as possibly warranting changes to the definition of dealer in Code of Virginia section 46.2-1500

- Should restrictions on car buying remain in the definition?
- Should the definition be based on the intent of the vehicle transfer? In other words, should the intention of buying and selling cars expressly to turn a profit be the definition of operating as a motor vehicle dealer?
- What constitutes a sale? Does it require an exchange of money?
- Should the status of auctions be addressed by the definition? If so, how?
- Should there be an exemption for companies selling off their vehicle fleets?
- How best to maintain current practice of manufacturers not being classified as or required to be dealers?
- Does the concept of car sharing need to be addressed within section 46.2-1500 or is it strictly a rental transaction?
- How to address the difficulty of enforcing the restrictions on vehicle sales activities in a 12 month period.

Please provide any suggested Code language that addresses the topics above. I will compile the suggestions and send the compiled information to the team prior to the next meeting. Please include in your submission any “model language” from your respective associations and/or other states that you believe address your concerns.

In order to aggregate the submitted language and send the suggestions back out to everyone prior to the next meeting, **please send me your language by July 23rd**. We will finalize the meeting notes by next week and you will receive a copy. Additionally, to accommodate those of you who will be at the National Conference of State Legislators, our next meeting has been moved to August 6 at 9:30 A.M. in conference room 702, the same room as the first meeting. Look forward to seeing you all there!

--



Greg Cavalli

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Responses to Request for Feedback on First Meeting

Leigh Dicks <Leigh@viada.org>

Jul
14

Hi Gregory –

I contacted our national office but they did not have any ‘model law’ language for motor vehicle dealer. Below are two sentences extracted from GA’s language that we feel addresses one of our concerns. We do have a Board meeting this coming weekend and any additional concerns/suggestions that might come out of that meeting will be sent to you on the 23rd.

"Used motor vehicle dealer" means any person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by such person. The sale of five or more used motor vehicles in any one calendar year shall be prima-facie evidence that a person is engaged in the business of selling used motor vehicles.

Leigh

**Leigh M. Dicks, CAE, Executive Director
Virginia Independent Automobile Dealers Association**

Bea González <bea@capresults.net>

Jul
24

Greg—attached is a letter from Tesla. Thank you for giving us an opportunity to comment and continue participation in the workgroup. Please call me if you have any questions.



Greg Cavalli
Virginia Department of Motor Vehicles
Senior Policy Analyst
Strategic Management Services
P.O. Box 27412
Richmond, VA 23269

July 24, 2018

Re: Virginia DMV “Motor Vehicle Dealer” Definition – First Stakeholder Meeting

Dear Mr. Cavalli,

Pursuant to a request from Chairman Yancey, on June 28, 2018, the Virginia Department of Motor Vehicles (“DMV”) held a Motor Vehicle Definition Stakeholder Meeting concerning whether the statutory definition of the term “motor vehicle dealer” should be amended. By email dated July 12, you asked the stakeholders to provide any suggested code language to address the following questions:¹

- Should restrictions on car buying remain in the definition?
- Should the definition be based on the intent of the vehicle transfer? In other words, should the intention of buying and selling cars expressly to turn a profit be the definition of operating as a motor vehicle dealer?
- What constitutes a sale? Does it require an exchange of money?
- Should the status of auctions be addressed by the definition? If so, how?
- Should there be an exemption for companies selling off their vehicle fleets?
- How best to maintain current practice of manufacturers not being classified as or required to be dealers?
- Does the concept of car sharing need to be addressed within section 46.2-1500 or is it strictly a rental transaction?
- How to address the difficulty of enforcing the restrictions on vehicle sales activities in a 12 month period.

¹ As you are aware, Tesla is engaged in litigation with the Virginia Automobile Dealers Association (VADA), which concerns Tesla’s right to operate as a motor vehicle dealer at its store in Richmond, Virginia. In an abundance of caution, to avoid any potential unintended consequence in the present or any future dispute with VADA, we limit our feedback the specific questions raised in your July 12 email.

With respect to these questions, Tesla is not aware of widespread abuse or other specific concerns that would signal shortcomings in the current definition. As such, Tesla does not believe the above questions warrant any changes to the definition and has no specific statutory language to offer at this time.

More broadly, Tesla would support changes to the statute that would make it clear that Tesla, as a non-franchising manufacturer, may obtain dealer licenses without the necessity of showing the unavailability of a third-party dealer². This issue appears to be beyond the scope of what the DMV is considering with the present workgroup, but we would be happy to work with DMV and other stakeholders on specific proposals, if the DMV believes that exercise would be productive.

Tesla appreciates the opportunity to participate in this process, and looks forward to hearing the perspectives of the Commission, Staff, and other stakeholders on these interesting and important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Auerbacher". The signature is fluid and cursive, with a large initial "K" and "A".

Kevin Auerbacher

Senior Counsel, Tesla Inc.

kauerbacher@tesla.com

² As to the question “How best to maintain current practice of manufacturers not being classified as or required to be dealers,” Tesla notes that the question does not address the status of non-franchising manufacturers, like Tesla, that sell vehicles directly to consumers.

Anne Gambardella <AGambardella@vada.com>

Jul
25

Good morning. I am not sure if you need this, but we had discussed getting you dealer definitions from other states. Attached is a compilation we put together from our industry trade group. It is a franchise law compilation so some of the definitions are directed at new vehicle dealers for purposes of franchise section. Some definitions are broader.

Thank you.

Anne Gambardella
Virginia Automobile Dealers Assn

ALABAMA § 8-20-3. Definitions.

For the purpose of this chapter, the following terms shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(12) Motor vehicle dealer. A person operating under a dealer agreement from a manufacturer or distributor and who is engaged regularly in the business of buying, selling, or exchanging motor vehicles in this state and who has in this state an established place of business.

ARIZONA § 28-4301. Definitions.

In this chapter, unless the context otherwise requires:

22. "Motor vehicle dealer" means a new motor vehicle dealer, a used motor vehicle dealer, a public consignment auction dealer, a broker or a wholesale motor vehicle auction dealer, excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells, auctions or exchanges the motor vehicle.

25. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.

35. "Used motor vehicle dealer" means a person, other than a new motor vehicle dealer, who buys, sells, auctions, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, seven or more used motor vehicles in a continuous twelve month period. Used motor vehicle dealer does not include a wholesale motor vehicle auction dealer.

ARKANSAS § 23-112-103 Definitions.

As used in this chapter:

(21)(A)(i) "Motor vehicle dealer" means a person that is:

(a) Engaged in the business of selling, offering to sell, soliciting, or advertising the sale of servicing or repairing motor vehicles under a manufacturer's warranty, and

(b) Located at an established and permanent place of business under a franchise, sales and service agreement, or a bona fide contract in effect with a manufacturer or distributor.

(ii) "Motor vehicle dealer" includes any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale, regardless of the medium used, of commercial buses, school buses, or other multipassenger motor vehicles, or possessing them for the purpose of resale.

(B) "Motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree, or order of any court;

(ii) Public officers while performing their duties as officers;

(iii) Employees of persons, corporations, or associations enumerated in subdivision (19)(B)(i) of this section when engaged in the specific performance of their duties as employees;

(iv) Specialty vehicle dealers;

(v) Financial institutions engaged in the leasing of motor vehicles; or

(vi) Used motor vehicle dealers licensed by the state under § 23-112-601 et seq.;

(22) "Motor vehicle lessor" means any person not excluded by subdivision (21) of this section engaged in the motor vehicle leasing or rental business;

(34) "Used motor vehicle dealer" means any person, wholesaler, or auto auctioneer who, for a commission or with the intent to make a profit or gain of money or other thing of value:

(A) Sells, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle; or

(B) Is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not the used motor vehicles are owned by the person; and

ARKANSAS § 23-112-602. Definitions.

As used in this subchapter:

(1)(A) "Auto auction" means any person who operates or provides a place of business or facilities for the wholesale exchange of motor vehicles by and between duly licensed motor vehicle dealers, or from used motor vehicle dealers to individuals, or individuals to used motor vehicle dealers, or any combination thereof, or any motor vehicle dealer licensed to sell used motor vehicles, selling used motor vehicles using an auction format or on consignment.

(B) "Auto auction" also applies to any person who provides the facilities for or is in the business of selling motor vehicles in an auction format;

(10)(A)(i) "Used motor vehicle dealer", hereinafter referred to as "dealer", means any person, wholesaler, or auto auction who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents, or leases with the option to purchase or own, or attempts to negotiate a sale or exchange of an interest in any used motor vehicle, or who is wholly or in part in the business of buying, selling, trading, or exchanging used motor vehicles, whether or not such motor vehicles are owned by the person.

(ii) The sale or attempted sale of five (5) or more used motor vehicles in any one (1) calendar year shall be prima facie evidence and shall constitute a rebuttable presumption that a person is engaged in the business of selling used motor vehicles.

(B) "Used motor vehicle dealer" shall not include:

(i) A receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to a judgment or order of any court;

(ii) A public officer, while performing his or her official duties;

(iii) A mortgagee or secured party as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagee or secured leasing party shall not realize for their own account from such sales any moneys in excess of the outstanding balance secured by the mortgage or security agreement after consideration of the costs of collection;

(iv) A lienholder, artisan, mechanic, or garage selling repaired items pursuant to a lien granted by Arkansas law;

(v) A person selling a motor vehicle titled in his or her own name and used exclusively as a personal vehicle, or a motor vehicle titled in a business name and used exclusively as a business vehicle, or a person engaged in leasing or renting vehicles; or

(vi) A new motor vehicle dealer selling a used motor vehicle in conjunction with his or her new motor vehicle dealer operations who is licensed under this chapter;

COLORADO § 12-6-102. Definitions.

As used in this part 1, and in part 5 of this ARTICLE 6, unless the context or section 12-6-502 otherwise requires:

(18) "Motor vehicle auctioneer" means any person, not otherwise required to be licensed pursuant to this part 1, who is engaged in the business of offering to sell, or selling, used motor vehicles owned by persons other than the auctioneer at public auction only. Any auctioning of motor vehicles by an auctioneer MUST be incidental to the primary business of auctioning goods.

(19) "Motor vehicle dealer" means a person who, for commission or with intent to make a profit or gain of money or other thing of value, sells, leases, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale, lease, or exchange of an interest in new or new and used motor vehicles or who is engaged wholly or in part in the business of selling or leasing new or new and used motor vehicles, whether or not THE motor vehicles are owned by THE person. The sale or lease of three or more new or new and used motor vehicles or the offering for sale or lease of more than three new or new and used motor vehicles at the same address or telephone number in any one calendar year IS prima facie evidence that a person is engaged in the business of selling or leasing new or new and used motor vehicles. "Motor vehicle dealer" includes an owner of real property who allows more than three new or new and used motor vehicles to be offered for sale or lease on THE property during one calendar year unless said property is leased to a licensed motor vehicle dealer. "Motor vehicle dealer" does not include:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court;
- (b) Public officers while performing their official duties;
- (c) Employees of A motor vehicle dealer when engaged in the specific performance of their duties as such employees;
- (d) A wholesaler or anyone selling motor vehicles solely to wholesalers;
- (e) Any person engaged in the selling of a fire truck; OR
- (f) A motor vehicle auctioneer.

CONNECTICUT § 42-133r. Definitions.

As used in sections 42-133r to 42-133ee, inclusive, unless the context indicates a different meaning:

(6) "Dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds a valid sales and service agreement, franchise or contract, granted by a manufacturer or distributor for the retail sale of the manufacturer's or distributor's new motor vehicles.

DELAWARE § 4902. Definitions.

The following words, terms and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(9) "New motor vehicle dealer" or "dealer" means any person or entity engaged in the business of selling, offering to sell, soliciting or advertising the sale of new motor vehicles and who holds, or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles. The Term "new motor vehicle dealer" or "dealer" shall also include any person who engages exclusively in the repair of motor vehicles, except motor homes, if such repairs are performed pursuant to the terms of a franchise or other agreement with a franchiser or such repairs are performed as part of a manufacturer's or franchiser's warranty. The term "new motor vehicle dealer" or "dealer" shall not mean any person engaged solely in the business of selling used motor vehicles.

FLORIDA § 320.60. Definitions for ss. 320.61-320.70.

Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(11)(a) "Motor vehicle dealer" means any person, firm, company, corporation, or other entity, who,

1. Is licensed pursuant to s. 320.27 as a "franchised motor vehicle dealer" and, for commission, money, or other things of value, repairs or services motor vehicles or used motor vehicles pursuant to an agreement as defined in subsection (1), or

2. Who sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles, or

3. Who is engaged wholly or in part in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation.

(b) Any person who repairs or services three or more motor vehicles or used motor vehicles as set forth in paragraph (a), or who buys, sells, or deals in three or more motor vehicles in any 12-month period or who offers or displays for sale three or more motor vehicles in any 12-month period shall be prima facie presumed to be a motor vehicle dealer. The terms "selling" and "sale" include lease-purchase transactions.

(c) The term "motor vehicle dealer" does not include:

1. Public officers while performing their official duties;

2. Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court;

3. Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; or

4. Motor vehicle rental and leasing companies that sell motor vehicles to motor vehicle dealers licensed under s.320.27.

GEORGIA § 10-1-622. Definitions.

As used in this article, the term:

(1) "Dealer" means any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale of new motor vehicles and who is licensed or otherwise authorized to utilize trademarks or service marks associated with one or more makes of motor vehicles in connection with such sales. The term "dealer" shall also include any person who engages exclusively in the repair of motor vehicles, except motor homes, if such repairs are performed pursuant to the terms of a franchise or other agreement with a franchisor or such repairs are performed as part of a manufacturer's or franchisor's warranty. The term "dealer" shall not mean any person engaged solely in the business of selling used motor vehicles.

HAWAII § 437-1.1. Definitions.

As used in this chapter:

"Dealer" includes "auction" as defined in this section or any person or entity not expressly excluded by this chapter who sells three or more vehicles within a calendar year, or who is engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor

vehicles or any interest therein, including options to purchase motor vehicles. The term “dealer” excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution that sells or offers for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement;
- (5) A person not engaged in the business of selling or purchasing motor vehicles who acquires or disposes of motor vehicles for the person's own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person's use in good faith and not for the purpose of evading any provision of this chapter;
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers who wish to purchase or lease motor vehicles; provided that the consumer consultant shall register and pay a fee to the board prior to offering consultant services; or
- (7) A Hawaii bank or its affiliate selling or offering for sale motor vehicles surrendered or redelivered to it under the terms of a lease or sold by it pursuant to a purchase option contained in a lease.

“New motor vehicle dealer” means a dealer who engages in the business of selling, at wholesale or retail, new motor vehicles or new and used motor vehicles.

“Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles.

ILLINOIS § 815 ILCS 710-2. Definitions.

§ 2. Definitions. As used in this Act, the following words shall, unless the context otherwise requires, have the following meanings:

(h) “Motor vehicle dealer”, any person who, in the ordinary course of business, is engaged in the business of selling new or used motor vehicles to consumers or other end users.

KANSAS § 8-2401. Definitions.

As used in this act, the following words and phrases shall have the meanings:

(a) "Vehicle dealer" means any person who: (1) For commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in vehicles; or (2) for commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in motor vehicles as an auction motor vehicle dealer as defined in (bb); but does not include: (A) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, or any bank, trustee or lending company or institution which is subject to state or federal regulations as such, with regard to its disposition of repossessed vehicles; (B) public officers while performing their official duties; (C) employees of persons enumerated in provisions (A) and (B), when engaged in the specific performance of their duties as such employees; (D) auctioneers conducting auctions for persons enumerated in provisions (A), (B) or (C); or (E) auctioneers who, while engaged in conducting an auction of tangible personal property for others, offer for sale: (i) Vehicles which have been used primarily in a farm or business operation by the owner offering the vehicle for sale, including all vehicles which qualified for a farm vehicle tag at the time of sale except vehicles owned by a business engaged primarily in the business of leasing or renting passenger cars; (ii) vehicles which meet the statutory definition of antique vehicles; or (iii) vehicles for no more than four principals or households per auction. All sales of vehicles exempted pursuant to provision (E), except truck, truck tractors, pole trailers, trailers and semitrailers as defined by K.S.A. 8-126, and amendments thereto, shall be registered in Kansas prior to the sale.

(b) "New vehicle dealer" means any vehicle dealer who is a party to an agreement, with a first or second stage manufacturer or distributor, which agreement authorizes the vehicle dealer to sell, exchange or transfer new motor vehicles, trucks, motorcycles, or trailers or parts and accessories made or sold by such first or second stage manufacturer or distributor and obligates the vehicle dealer to fulfill the warranty commitments of such first or second stage manufacturer or distributor.

(c) "Used vehicle dealer" means any person actively engaged in the business of buying, selling or exchanging used vehicles.

KENTUCKY § 190.010. Definitions for chapter (Effective until January 1, 2015).

(2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto.

(3) The term "motor vehicle dealer" shall not include:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;

(b) Public officers while performing their official duties; or

(c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees.

(4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles.

(5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles.

(6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties.

(7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers.

(8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation.

(11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction.

LOUISIANA § 32-1252. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:

(9) "Dealer" means any person licensed to sell a motor vehicle, specialty vehicle, or recreational product subject to regulation by this Chapter.

(35)(a) "Motor vehicle dealer" means any person, not excluded by Subparagraph (b) of this Paragraph who holds a bona fide franchise in effect with a manufacturer or distributor of new motor vehicles, and a license under the provisions of this Chapter or a subsidiary of any such entity. Such duly franchised and licensed motor vehicle dealers shall be the sole and only persons entitled to sell, publicly solicit, and advertise the sale of new motor vehicles as such.

(b) The term "motor vehicle dealer" does not include any of the following:

(i) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court.

(ii) Public officers while performing or in operation of their duties.

(iii) Employees of persons enumerated in Item (i) of this Subparagraph when engaged in the specific performance of their duties as such employees.

(iv) Financial institutions engaged in the sale of motor vehicles for the collection of debts secured thereby.

MAINE § 1171. Definitions.

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

12. Motor vehicle dealer. "Motor vehicle dealer" means a person other than a manufacturer, distributor, distributor branch, distributor representative, factory branch or factory representative who sells or solicits or advertises the sale of new or used motor vehicles. "Motor vehicle dealer" does not include receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court or public officers while performing their duties as public officers.

MARYLAND § 15-101. Definitions.

In general

(a) In this title the following words have the meanings indicated.

Dealer

(c)(1) "Dealer" means, except as provided in paragraph (3) of this subsection, a dealer in vehicles of a type required to be registered under Title 13 of this article.

(2)(i) "Dealer" includes:

1. A person who is in the business of buying, selling, or exchanging vehicles, including a person who during any 12-month period offers to sell three or more of these vehicles, the ownership of which was acquired for resale purposes; and

2. For the purposes of §§15-301 through 15-315, inclusive, of this title, any person who sells vehicles, whether or not that person acquired the vehicles for personal or business use, if the vehicles are displayed at a fixed location used principally for the purpose of selling vehicles on a regular basis.

(ii) 1. For the purposes of subparagraph (i)1 of this paragraph, a person who offers to sell three or more vehicles during any 12-month period is presumed to have acquired the vehicles for resale purposes.

2. The vehicle owner has the burden of rebutting the presumption established under sub-subparagraph 1 of this subparagraph by a preponderance of the evidence.

(3) "Dealer" does not include:

- (i) A public official who sells or disposes of vehicles in the performance of his official duties;
- (ii) An insurance company, finance company, bank, or other lending institution licensed or otherwise authorized to do business in this State that, to save it from loss, sells or disposes of vehicles under a contractual right and in the regular course of its business;
- (iii) A licensed auctioneer acting on behalf of a seller, secured party or owner and where title does not pass to the auctioneer and the auction is not for the purpose of avoiding the provisions of this title;
- (iv) A receiver, trustee, personal representative, or other person appointed by or acting under the authority of any court;
- (v) Either a manufacturer or distributor who sells or distributes vehicles to licensed dealers or a person employed by a manufacturer or distributor to promote the sale of the vehicles of the manufacturer or distributor, if that manufacturer, distributor, or person does not sell vehicles to retail buyers;
- (vi) A person who sells or disposes of vehicles acquired and used for personal or business use and not for the purpose of avoiding the provisions of this title, if that person is not engaged in buying, selling, or exchanging vehicles as a business;
- (vii) An automotive dismantler and recycler who during the normal course of business acquires a salvage vehicle and transfers the vehicle on a salvage certificate. However, if the automotive dismantler and recycler rebuilds and sells more than 5 vehicles during a 12-month period to a person other than another automotive dismantler and recycler or licensed dealer, the automotive dismantler and recycler must be licensed as a dealer under §15-302 of this title;
- (viii) A person engaged in the leasing of motor vehicles under leases not intended as security; or
- (ix) A religious, charitable, or volunteer organization exempt from taxation under § 501(c) of the Internal Revenue Code, the Department of Human Resources, or a local department of social services transferring a vehicle under §13-810 of this article.

MASSACHUSETTS § 1. Definitions.

As used in this chapter the following words shall have the following meanings:

"Dealer", "motor vehicle dealer" or "dealership", any person who, in the ordinary course of its business, is engaged in the business of selling new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a class 1 license pursuant to the provisions of section 58 and 59 of chapter 140. It shall not include: (1) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court, or (2) public officers while performing their duties as such officers.

MICHIGAN 445.1565. Definitions

Sec. 5. (2) "New motor vehicle dealer" means a person, including a distributor, that holds a dealer agreement granted by a manufacturer, distributor, or importer for the sale or distribution of its motor vehicles; is engaged in the business of purchasing, selling, exchanging, or dealing in new motor vehicles; and has an established place of business in this state.

Sec. 6 (4) "Used motor vehicle dealer" means a person that is engaged in the business of purchasing, selling, exchanging, or dealing in used motor vehicles and that has an established place of business in this state at which it conducts that business. The term does not include a new motor vehicle dealer purchasing, selling, exchanging, or dealing in used motor vehicles as part of its business of purchasing, selling, exchanging, or dealing in new motor vehicles.

MINNESOTA 80E.03. Definitions.

Subdivision 1. Terms. As used in sections 80E.01 to 80E.17, unless the context otherwise requires, the following terms have the meanings given them.

Subd. 3. New motor vehicle dealer; dealer. "New motor vehicle dealer" or "dealer" means a person who in the ordinary course of business is engaged in the business of selling new motor vehicles to consumers or other end users and who holds a valid sales and service agreement, franchise, or contract, granted by a manufacturer, distributor, or wholesaler for the sale of its motor vehicles.

MISSISSIPPI § 63-17-55. Definitions.

The following words, terms and phrases, when used in the Mississippi Motor Vehicle Commission Law, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(b) "Motor vehicle dealer" means any person, firm, partnership, copartnership, association, corporation, trust or legal entity, not excluded by paragraph (c) of this section, who holds a bona fide contract or franchise in effect with a manufacturer, distributor or wholesaler of new motor vehicles, and a license under the provisions of the Mississippi Motor Vehicle Commission Law, and such duly franchised and licensed motor vehicle dealers shall be the sole and only persons, firms, partnerships, copartnerships, associations, corporations, trusts or legal entities entitled to sell and publicly or otherwise solicit and advertise for sale new motor vehicles as such.

(c) The term "motor vehicle dealer" does not include:

(i) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;

(ii) Public officers while performing their duties as such officers;

(iii) Employees of persons, corporations or associations enumerated in paragraph (c)(i) of this section when engaged in the specific performance of their duties as such employees; or

(iv) A motor vehicle manufacturer operating a project as defined in Section 57-75-5(f)(iv) 1; and the provisions of the Mississippi Motor Vehicle Commission Law shall not apply to:

1. a. Any lease by such a motor vehicle manufacturer of three (3) or fewer motor vehicles at any one time and related vehicle maintenance, of any line of vehicle produced by the manufacturer or its subsidiaries, to any one (1) employee of the motor vehicle manufacturer on a direct basis; or

b. Any sale or other disposition of such motor vehicles by the motor vehicle manufacturer at the end of a lease through direct sales to employees of the manufacturer or through an open auction or auction limited to dealers of the manufacturer's vehicle line or its subsidiaries' vehicle lines; or

2. Any sale or other disposition by such a motor vehicle manufacturer of motor vehicles for which the manufacturer obtained distinguishing number tags under Section 27-19-309(8).

MONTANA § 61-4-201. Definitions.

As used in this part, the following definitions apply unless the context clearly indicates otherwise:

(14) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

NEBRASKA

§ 60-1401.04. Auction, defined.

Auction means a sale of motor vehicles and trailers of types required to be registered in this state, except such vehicles as are eligible for registration pursuant to section 60-3,198, sold or offered for sale at which the price offered is increased by the prospective buyers who bid against one another, the highest bidder becoming the purchaser. The holding of a farm auction or an occasional motor vehicle or trailer auction of not more than two auctions in a calendar year does not constitute an auction subject to the Motor Vehicle Industry Regulation Act.

§ 60-1401.05. Auction dealer, defined.

Auction dealer means any person engaged in the business of conducting an auction for the sale of motor vehicles and trailers.

§ 60-1401.26. Motor vehicle dealer, defined.

Motor vehicle dealer means any person, other than a bona fide consumer, actively and regularly engaged in the act of selling, leasing for a period of thirty or more days, or exchanging new or used motor vehicles, trailers, and manufactured homes who buys, sells, exchanges, causes the sale of, or offers or attempts to sell new or used motor vehicles. Such person is a motor vehicle dealer and subject to the Motor Vehicle Industry Regulation Act.

Motor vehicle dealer does not include a lessor who was not involved in or associated with the selection, location, acquisition, or supply of a motor vehicle which is the subject of a lease agreement.

NEW HAMPSHIRE § 357-C:1. Definitions.

For the purpose of this chapter only:

VIII. (a) "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his or her own account or on behalf of another, either as his or her primary business or incidental thereto. "Motor vehicle dealer" means a person granted the right to service motor vehicles or component parts manufactured or distributed by the manufacturer but does not include any person who has an agreement with a manufacturer or distributor to perform service only on fleet, government, or rental vehicles.

However, "motor vehicle dealer" shall not include:

- (1) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or
- (2) Public officers while performing their duties as such officers.

(b) "New motor vehicle dealer" means a motor vehicle dealer who holds a valid sales and service agreement, franchise or contract granted by the manufacturer or distributor for the sale, service, or both, of its new motor vehicles, but does not include any person who has an agreement with a manufacturer or distributor to perform service only on fleet, government, or rental vehicles.

NEW HAMPSHIRE § 357-D:2. Definitions.

XI. "Motor vehicle dealer" means any person engaged in the business of selling, offering to sell, leasing, soliciting or advertising the sale of new or used motor vehicles or possessing motor vehicles for the purpose of resale either on his own account or on behalf of another, either as his primary business or incidental thereto. However, "motor vehicle dealer" shall not include:

- (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment, decree or order of any court; or
- (b) Public officers while performing their duties as such officers

NEW MEXICO § 57-16-3. Definitions.

As used in Chapter 57, Article 16 NMSA 1978:

B. "motor vehicle dealer" or "dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles. "Motor vehicle dealer" or "dealer" shall not include:

- (1) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;
- (2) public officers while performing their duties as such officers;

(3) persons making casual sales of their own vehicles duly registered and licensed to them by the state;
or

(4) finance companies, banks and other lending institutions covering sales of repossessed vehicles;

NORTH CAROLINA § 20-286. Definitions.

The following definitions apply in this Article:

(11) Motor vehicle dealer or dealer. --

a. A person who does any of the following:

1. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

2. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

3. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.

4. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.

5. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

b. The term "motor vehicle dealer" or "dealer" does not include any of the following:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court.

2. Public officers while performing their official duties.

3. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the vehicles have been acquired and used in good faith and not for the purpose of avoiding the provisions of this Article.

4. Persons who sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance, and auctioneers who sell motor vehicles for the owners or the heirs of the owners of those vehicles as part of an auction of other

personal or real property or for the purpose of settling an estate or closing a business or who sell motor vehicles on behalf of a governmental entity, and who do not maintain a used car lot or building with one or more employed motor vehicle sales representatives.

5. Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 2,500 pounds unloaded weight.

6. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.

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

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

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

10. Any real property owner who leases any interest in property for use by a dealer.

11. Any person acquiring any interest in a motor vehicle for a family member.

12. Any auctioneer licensed pursuant to Chapter 85B of the General Statutes employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer.

(13) New motor vehicle dealer.--A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, new or new and used motor vehicles.

(16) Used motor vehicle dealer.--A motor vehicle dealer who buys, sells or exchanges, or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged, wholly or in part, in the business of selling, used motor vehicles only.

NORTH DAKOTA § 51-07-00.1. Definitions.

used in sections 51-07-01, 51-07-02.1, 51-07-02.1, 51-07-02.2, 51-07-02.3, 51-07-02.4, and 51-07-03 unless context or subject matter otherwise requires:

2. "Dealer" means a person that engages in the business of selling, at retail, new motor vehicles or trucks or new and used motor vehicles or trucks and possesses a current new motor vehicle dealer license as defined in section 39-22-16.

OHIO § 4517.01. Motor vehicle dealer, auction owner and salesperson definitions.

As used in sections 4517.01 to 4517.65 of the Revised Code:

(J) "Dealer" or "motor vehicle dealer" means any new motor vehicle dealer, any motor vehicle leasing dealer, and any used motor vehicle dealer.

(K) "New motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in new motor vehicles pursuant to a contract or agreement entered into with the manufacturer, remanufacturer, or distributor of the motor vehicles.

(L) "Used motor vehicle dealer" means any person engaged in the business of selling, displaying, offering for sale, or dealing in used motor vehicles, at retail or wholesale, but does not mean any new motor vehicle dealer selling, displaying, offering for sale, or dealing in used motor vehicles incidentally to engaging in the business of selling, displaying, offering for sale, or dealing in new motor vehicles, any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing official duties.

(M) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, sublease, or other contractual arrangement under which a charge is made for its use at a periodic rate for a term of thirty days or more, and title to the motor vehicle is in and remains in the motor vehicle leasing dealer who originally leases it, irrespective of whether or not the motor vehicle is the subject of a later sublease, and not in the user, but does not mean a manufacturer or its affiliate leasing to its employees or to dealers.

OKLAHOMA § 562. Definitions.

The following words, terms and phrases, when used in Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

2. "New motor vehicle dealer" means any person, firm, association, corporation or trust not excluded by this paragraph who sells, offers for sale, advertises to sell, leases or displays new, motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor authorized by the manufacturer to make predelivery preparation of such vehicles sold to purchasers and to perform post-sale work pursuant to the manufacturer's, or distributor's warranty. As used herein, "authorized predelivery preparation" means the rendition by the dealer of services and safety adjustments on each new, motor vehicle in accordance with the procedure and safety standards required by the manufacturer of the vehicle to be made before its delivery to the purchaser. "Performance of authorized post-sale work pursuant to the warranty", as used herein, means the rendition of services which are required by the terms of the warranty that stands extended to the vehicle at the time of its sale and are to be made in accordance with the safety standards prescribed by the manufacturer. The term includes premises or facilities at which a person engages only in the repair of motor vehicles if repairs are performed pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. However, the term shall not include premises or facilities at which a new motor vehicle dealer or dealers within the area of responsibility of such dealer or dealers as defined in the manufacturer's franchise agreement of such dealer or dealers performs motor vehicle repairs pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. For the purpose of Sections 561 through 567, 572, 578.1, 579 and

579.1 of this title, the terms "new motor vehicle dealer" and "new motor vehicle dealership" shall be synonymous. The term "new motor vehicle dealer" does not include:

- a. receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment or order of any court,
- b. public officers while performing or in operation of their duties, or
- c. employees of persons, corporations or associations enumerated in subparagraph a of this paragraph when engaged in the specific performance of their duties as such employees;

OREGON § 650.120. Definitions.

For the purposes of ORS 650.120 to 650.170:

(1) "Dealer" means any person who has been issued a vehicle dealer certificate under ORS 822.020 and pursuant to a franchise from a manufacturer, distributor or importer engages in buying, selling, leasing or exchanging new motor vehicles.

PENNSYLVANIA § 818.2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Dealer." A person required to be licensed under this act who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles, regardless of whether the vehicles are owned by that person. The term includes persons engaged in consignment sales for a seller, but does not include a person issued an identification number by the Department of Transportation, unless the board has also issued a dealer license to the person. Vehicle dealers shall be classified as one or more of the following:

(1) A new vehicle dealer, who is a person engaged in the business of buying, selling or exchanging new and used vehicles, trailers or semitrailers for commission, compensation or other consideration, who holds a franchise with a manufacturer or distributor, giving the dealer selling rights for that particular line-make of new vehicles, trailers or semitrailers, or who is a distributor of new vehicles, trailers or semitrailers who holds a franchise with a manufacturer or distributor of vehicles, trailers and semitrailers.

(2) A used vehicle dealer, who is a person engaged in the business of buying, selling or exchanging used vehicles, trailers or semitrailers for commission, compensation or other consideration. The term includes fleet owners who engage directly in the retail sale of its fleet vehicles.

RHODE ISLAND § 31-5.1-1. Definitions.

The following words and phrases, for the purposes of this chapter, have the following meanings:

(11) "New motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale of new motor vehicles and who holds, or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise, or contract, granted by the manufacturer or distributor for the retail sale of that manufacturer's or distributor's new motor vehicles.

SOUTH CAROLINA § 56-15-10. Definitions.

As used in this chapter the following words shall, unless the text otherwise requires, have the following meanings:

(h) "Dealer" or "motor vehicle dealer", any person who sells or attempts to effect the sale of any motor vehicle.

These terms do not include:

(1) distributors or wholesalers.

(2) receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court.

(3) public officers while performing their official duties.

(4) persons disposing of motor vehicles acquired for their own use and so used in good faith and not for the purpose of avoiding the provisions of law. Any person who effects or attempts to effect the sale of more than five motor vehicles in any one calendar year is considered a dealer or wholesaler, as appropriate, for purposes of this chapter.

(5) finance companies or other financial institutions who sell repossessed motor vehicles and insurance companies who sell motor vehicles they own as an incident to payments made under policies of insurance.

SOUTH DAKOTA § 32-6B-1. Definition of terms.

Terms as used in this chapter mean:

(21) "Used vehicle dealer," any person who, for commission or with intent to make a profit or gain sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of used vehicles or who is engaged in the business of selling used vehicles; or any person who sells five or more used vehicles or offers for sale five or more used vehicles at the same address or telephone number in any one calendar year;

(23) "Vehicle dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers or attempts to negotiate a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles.

TENNESSEE § 55-17-102. Definitions

As used in this part, unless the context otherwise requires:

(2) "Automobile auction" means:

(A) Any person offering motor vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers or their duly authorized agents;

(B) Any person who provides the facilities for or is in the business of selling in an auction format motor vehicles that in the opinion of the commission are antique or unique; or

(C) Any motor vehicle dealer licensed to sell used motor vehicles, and which dealer is licensed as an auctioneer by the Tennessee auctioneer commission, and is auctioneering on consignment by and between persons, motor vehicles originally manufactured for mass transportation and exceeding thirty-four feet (34') in length;

(16) "Motor vehicle dealer" means any person not excluded by subdivision (17), engaged in the business of selling, offering to sell, soliciting or advertising the sale of motor vehicles or used recreational vehicles, or possessing motor vehicles or used recreational vehicles for the purpose of resale, either on that person's own account or on behalf of another, either as that person's primary business or incidental to that person's business;

(17) "Motor vehicle salesperson" or "vehicle salesperson" means any person who is not excluded by subdivision (19), and who is:

(A) Employed by a licensed motor vehicle dealer who is engaged in the business of effecting or attempting to effect the sale or purchase of motor vehicles or used recreational vehicles owned by some other person to residents of the state, for which service some form of remuneration is expected, whether the remuneration be designated as a salary, fee commission, rental, or otherwise, and regardless of whether the remuneration is paid by the buyer, seller, or a third party; or

(B) Employed by a recreational vehicle dealer licensed pursuant to part 4 of this chapter, and who is engaged in the business of effecting or attempting to effect the sale or purchase of recreational vehicles or used motor vehicles owned by some other person to residents of the state, for which service some form of remuneration is expected, whether the remuneration be designated as a salary, fee commission, rental, or otherwise, and regardless of whether the remuneration is paid by the buyer, seller, or a third party;

(18) "Motor vehicle dealer" and "motor vehicle salesperson" do not include the following:

(A) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court;

(B) Public officers while performing or in the operation of their duties;

(C) Employees of persons, corporations, or associations enumerated in subdivision (18)(A) when engaged in the specific performance of their duties as employees;

(D) News or other advertising media and their employees while in the performance of their usual duties with regard to the sale of advertising;

(E) All banks, finance companies, loan companies, insurance companies, auto body shops or garages that have not obtained a motor vehicle for the purpose of resale, selling or offering to sell used motor vehicles directly to the public without the intervention of any other person, when these sales are merely incidental to their primary business activities;

(F) A recreational vehicle dealer licensed pursuant to part 4 of this chapter engaged in the business of selling, offering to sell, soliciting, or advertising the sale of new or used recreational vehicles or used motor vehicles pursuant to § 55-17-419;

(19) "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity;

TEXAS § 2301.002. Definitions.

In this chapter:

(16) "Franchised dealer" means a person who:

(A) holds a franchised motor vehicle dealer's license issued by the board under this chapter and Chapter 503, Transportation Code; and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

(17) "General distinguishing number" means a dealer license issued by the board under Chapter 503, Transportation Code.

(25) "Nonfranchised dealer" means a person who holds an independent motor vehicle dealer's general distinguishing number, an independent mobility motor vehicle dealer's general distinguishing number, or a wholesale motor vehicle dealer's general distinguishing number issued by the board under Chapter 503, Transportation Code.

UTAH § 13-14-102. Definitions.

As used in this chapter:

(17) "New motor vehicle dealer" is a person who is licensed under Subsection 41-3-202(1)(a) to sell new motor vehicles.

VERMONT § 4085. Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(13) "New motor vehicle dealer" means any person engaged in the business of selling, offering to sell, soliciting, or advertising the sale of new motor vehicles and who holds, or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise, or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles.

WASHINGTON § 46.96.020. Definitions.

In addition to the definitions contained in RCW 46.70.011, which are incorporated by reference into this chapter, the definitions set forth in this section apply only for the purposes of this chapter.

(2) "New motor vehicle dealer" means a motor vehicle dealer engaged in the business of buying, selling, exchanging, or otherwise dealing in new motor vehicles or new and used motor vehicles at an established place of business, under a franchise, sales and service agreement, or contract with the manufacturer of the new motor vehicles. However, the term "new motor vehicle dealer" does not include a miscellaneous vehicle dealer as defined in RCW 46.70.011(3) (17)(c) or a motorcycle dealer as defined in chapter 46.94 RCW.

WEST VIRGINIA § 17A-6A-3. Definitions.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(11) "New motor vehicle dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging or dealing in new motor vehicles, service of said vehicles, warranty work and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

WISCONSIN § 218.0101. Definitions.

In ss. 218.0101 to 218.0163, unless the context requires otherwise:

(23)(a) "Motor vehicle dealer" means any person, firm or corporation, not excluded by par. (b) who:

1. For commission, money or other thing of value, sells, leases, exchanges, buys, offers or attempts to negotiate a sale, consumer lease or exchange of an interest in motor vehicles; or

2. Is engaged wholly or in part in the business of selling or leasing motor vehicles, including motorcycles, whether or not the motor vehicles are owned by that person, firm or corporation.

(b) The term "motor vehicle dealer" does not include:

1. Receivers, trustees, personal representatives, guardians, or other persons appointed by or acting under the judgment or order of any court.
2. Public officers while performing their official duties.
3. Employees of persons, corporations or associations enumerated in subds. 1. and 2., when engaged in the specific performance of their duties as employees of the enumerated persons, corporations or associations.
4. Sales finance companies or other loan agencies who sell or offer for sale motor vehicles repossessed or foreclosed on by those sales finance companies or other loan agencies under terms of an installment contract, or motor vehicles taken in trade on such repossessions.
5. Sales finance companies when engaged in purchasing or otherwise acquiring consumer leases from a motor vehicle dealer, or in renegotiating consumer leases previously purchased or otherwise acquired by them.

WYOMING § 31-16-101. Definitions.

(a) As used in this act:

(xviii) "Vehicle dealer" or "dealer" means any person engaged in the business of selling or exchanging vehicles or who buys and sells, or exchanges retail three (3) or more vehicles or six (6) or more new vehicles with a gross vehicle weight rating over twenty-six thousand (26,000) pounds in any twelve (12) consecutive month period, but does not include any insurance company, finance company, public utility company or person coming into possession of any vehicle as an incident to its regular business who sells that vehicle, or who sells that vehicle under any contractual rights it may have with respect thereto. Vehicle dealers are classified as follows:

(A) A "new vehicle dealer" means a vehicle dealer that deals solely in new vehicles or in new and used vehicles. It also includes a person who in the ordinary course of business is engaged in the business of selling new motor vehicles to consumers or other end users and who holds a valid sales and service agreement, franchise or contract, granted by a manufacturer, distributor or wholesaler for the sale of its motor vehicles;

(B) A "used vehicle dealer" means a vehicle dealer that deals solely in used vehicles;

Jul
25

Renee Gibson <rgibson@autoalliance.org>

Rick & Greg,

Thank you for continuing to work with us on this. Over the last few weeks the manufacturers and dealers have been in discussions and we are aware that there are several suggestions that are being submitted to you. We would like to try to find a solution that is as targeted as possible. I have attached a document that reflects what the Alliance views as a feasible solution to changes in the Code definition of "motor vehicle dealer." We remain committed to working through this with everyone. Please feel free to contact me with any questions. We'll look forward to the next meeting on August 6.

Thank you,
Renee Gibson

Renée Gibson
Director, State Affairs
Alliance of Automobile Manufacturers

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

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

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

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within 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.

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

"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.

Jul
26

Anne Gambardella <AGambardella@vada.com>

Good morning. Attached is some language we would suggest for discussion. We are concerned that any person who is transferring vehicles to consumers should be regulated. This language would cover transfers of possession of vehicles for use of the vehicle without ownership – while exempting rentals that are already regulated. We think this is an issue going forward that we should address now. Thank you.

Anne Gambardella
Virginia Automobile Dealers Assn

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

1. For commission, money, or other thing of value, buys for resale, sells, exchanges, either outright or on conditional sale, ~~bailment~~ lease, chattel mortgage, or ~~otherwise~~ other transfer, similar transaction, or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange, either outright or on conditional sale, lease, chattel mortgage, or other transfer, similar transaction, of an interest in, or a contractual right to use of, new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; notwithstanding the foregoing, a company licensed to and engaged in short term rental activities is not a dealer when engaged in those activities; or

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

3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within 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.

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Mullen, Edward A. (RCH) <EMullen@reedsmith.com>

Jul
25

to me, richard.holcomb, eric.henning

Greg:

Pls. find attached edits to the definition of motor vehicle dealer proposed by General Motors.

Pls. note that this is not a redline- but strikethroughs are noted and additions are underlined. All proposed changes are highlighted in yellow.

Pls. confirm receipt and let me know if you have any questions or would like to discuss.

Thank you-

Edward

Edward A. Mullen
emullen@reedsmith.com
Reed Smith LLP

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

1. For commission, money, or other thing of value, buys for resale, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise other similar transaction, or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange, either outright or on conditional sale, lease, chattel mortgage, or other similar transaction, of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or
2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or
3. Offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within 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.
16. Any sale at wholesale by a motor vehicle manufacturer or distributor of a new motor vehicle 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.

Shields Jones <shields@nichollsauction.com>

Jul
25

TO: Greg Cavalli, Virginia DMV, Senior Policy Analyst
FROM: Shields Jones, Virginia Auctioneer Association, Legislative Committee
SUBJECT: HB896

Attached is a reply to Mr. Richard D. Holcomb's July 20 email requesting proposals about the definition of motor vehicle dealer.

Thank you for the invitation to participate and we look forward to attending on August 6th.

Shields Jones
Virginia Auctioneers Association

The Virginia Auctioneers Association represents licensed Virginia auctioneers and auction firms.

On first blush, HB896 would provide a restrictive barrier for auctioneers if limited to the sale of five (5) vehicles per year effectively eliminating auctioneers from auctioning vehicles. Additionally, the bill would impact the ability of Virginia counties, cities, and municipalities to dispose of titled vehicles.

Auctioneers auction real and personal property including motor vehicles and are required to be licensed by the Commonwealth of Virginia, other States and State Agencies.

Auctioneers may be motor vehicle dealers; however, due to the nature of the auction industry and current regulations most are not motor vehicle dealers.

The background of HB896 reveals that the bill was filed to resolve and clarify an interpretation of the definition of motor vehicle dealer for a specific situation. However, the effect of the proposed language could be far more wide-ranging than originally proposed. Moreover, we believe HB896 as currently proposed could restrict the ability of auctioneers to sell motor vehicles at auction.

The Virginia Auctioneers Association supports adding licensed Virginia Auctioneers and Auction Firms as an exemption under HB896 or subsequent legislation.

Since its founding in 1958, the mission of the Virginia Auctioneers Association (VAA) has been to promote the professionalism of auctioneers and auctions through education and technology. For over 50 years, the VAA has been recognized by the auction industry as a professional organization worthy of emulation.

There are over 1,200 auctioneers and nearly 250 auction firms that are licensed by the Commonwealth of Virginia's Department of Professional and Occupational Regulations. DPOR's licensing regulations additionally require auctioneers to be bonded and complete routine continuing education.

Email Prior to Second Stakeholder Meeting

Aug
1

Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>

Good afternoon everyone,

Thank you all for the responses you submitted. Your input is greatly appreciated. We have drafted a legislative proposal based on those submissions which Commissioner Holcomb has asked me to distribute to all participants. Also attached are the actual responses we received from VIADA, VADA, the Alliance of Automobile Manufacturers and their members (Volkswagen and General Motors), Tesla, and the Virginia Auctioneers Association, as well as a compilation of dealer definitions from other states which VADA provided. Please review all of these files in preparation for our upcoming meeting on August 6 at 9:30, where we will discuss the DMV legislative proposal. If you haven't already done so, please let me know who will be attending so I can submit an attendance list to the security desk,

I look forward to seeing you all there.

Greg Cavalli

Response to the Second Meeting Email

Shields Jones <shields@nichollsauktion.com>

Aug
3

Mr. Carvalli,

Following up with our phone contact yesterday, attached is an additional revision to the the proposed legislation. The licensing language is the same that is used in other parts of the code. Thank you.

Shields Jones
VA Auctioneers Association

60 18. ~~An auctioneer~~ Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et. seq.) of
61 Title 54 who facilitates the sale of a motor vehicle at auction, if the auctioneer does not
62 take title to or ~~possession~~ ownership of the motor vehicle.

DMV Email Following Second Stakeholder Meeting

Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>

Aug
10

Good morning everyone,

Thank you all for your work on this study. I appreciate you taking time from your schedule to assist us with this task from the General Assembly. Attached to this email is a revised legislative draft which incorporates the concepts discussed in Monday's meeting. Please review it and send any comments or concerns to me by next Wednesday, August 15.

Thanks again!

Greg

--



Greg Cavalli

Virginia DMV | Senior Policy Analyst | Strategic Management Services

Responses to Email Following Second Meeting

Michael Doucette <mrdoucette539@gmail.com>

Aug
13

The changes to the third subsection (lines 10-13) are different from what we discussed on the phone.

I do have a concern about the cumbersome nature of the drafted language - "provided, however, that a person whose activities meet the requirements of this clause is only presumed to be a motor vehicle dealer, and may rebut the presumption by a preponderance of the evidence."

What this language means is that even if the person meets the definitions contained in subsections 1 and/or 2, if he also meets the definition set forth in subsection 3, he is only presumed to be a motor vehicle dealer. So the presumption applies to all the subsections. But this universal application is not clear since the presumption language is contained in only subsection 3

If that is what you want to do, then the language of the previous draft says it in a clearer fashion in a separate paragraph - "It shall be presumed that a person who offers to sell, sells, displays, or permits the display for sale, of five or more motor vehicles within any twelve consecutive months is a motor vehicle dealer. This presumption may be rebutted by a preponderance of the evidence."

Of course, if the intent of the newest draft is to limit the presumption to only the third subsection, then the wording of "is only" on line 12 needs to be changed. "[P]rovided, however, that a person whose activities meet the requirements of *only* this clause is presumed to be a motor vehicle dealer, and may rebut the presumption by a preponderance of the evidence." However, I do not think that is the intent.

One last comment on lines 23-24. We discussed that if we remove the comma after the word "persons" on line 23, we also need to remove the comma after the word "retail" on line 24. Or leave both commas. Upon further reflection, I believe the better way to deal with this issue is to leave both original commas.

Barranco, Nicole <Nicole.Barranco@vw.com>

Aug
14

to me, richard.holcomb, msatterlund

Dear Mr. Cavalli,

I am writing on behalf of Volkswagen Group of America to respond to the proposed draft language you circulated by email on August 10.

We have reviewed the language and agree that the revised draft reflects the changes agreed to during the August 6 stakeholder meeting.

Thank you for your work on this matter.

Best regards,
Nicole Barranco

Nicole Barranco
Director State Government Relations
Volkswagen Group of America

Aug
15

Mullen, Edward A. (RCH) <EMullen@reedsmith.com>

Greg:

I think this looks good with one note.

On Page 1, line six, strike "of" prior to "an interest".

This was discussed at the meeting but overlooked in this draft.

Thanks for your work on this- let me know if you'd like to discuss.

Edward

Edward A. Mullen

Ted Kefalas <ted@capresults.net>

Aug
15

Greg,

Please find Tesla's comments to the proposed legislative draft attached to this email. Please let me know if you have any questions!

Ted Kefalas
Capital Results



Greg Cavalli
Virginia Department of Motor Vehicles
Senior Policy Analyst
Strategic Management Services
P.O. Box 27412
Richmond, VA 23269

August 13, 2018

Re: Virginia DMV Draft Legislative Comments on the Definition of "Motor Vehicle Dealer"

Dear Mr. Cavalli,

On August 1, 2018, your office circulated a draft legislative proposal and a summary of other stakeholders' previous comments on this matter. Per your request, Tesla has reviewed these documents and provides the following comments.

As set forth in Tesla's prior submission, Tesla does not believe any change is needed to address the issues/questions raised in the July 12, 2018 DMV email to stakeholders. Consistent with that position, Tesla does not support the proposed amendments to the statute. The proposed changes are minimal, do not appear directed to any significant shortcomings with the current law, and are not supported by any substantial record of abuse. In these circumstances, Tesla believes that changing the law is more likely to yield unintended consequences than to improve the administration of the laws in Virginia.

Tesla appreciates the DMV's efforts on this issue and the opportunity to participate in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Auerbacher", is positioned above the typed name.

Kevin Auerbacher
Senior Counsel, Tesla Inc.
kauerbacher@tesla.com

Anne Gambardella <AGambardella@vada.com>

Aug
15

Good afternoon. We have no issue with the draft.

As a follow up question, if we would like to include a letter as part of the report of the language we suggested that was not included in the draft, what is the time frame for doing so?

Thanks.

Anne Gambardella
Virginia Automobile Dealers Assn

DMV 8/23 Email to Stakeholders On Suggested Revisions to Proposal

Gabriel Boisvert

Aug
23

Good Afternoon:

Please find attached a revised version of the motor vehicle dealer definition study legislation. DMV has made two changes based on stakeholder responses:

1. At the suggestion of Ed Mullen, we have stricken the "of" on Line 6 and inserted "of" on Line 5 after exchange. This is a grammatical change, since the "of" modifies "the sale, purchase, or exchange" language on Lines 4-5, but the language on Line 6 needs to apply to the entire first clause of the definition.
2. At the suggestion of Michael Doucette, we have modified the language on line 12 to clarify that the rebuttable presumption only applies to persons whose activities fall within the third clause of the definition, and not the first two clauses.

Please let us know if you have any questions or concerns with these changes.

Additionally, DMV was contacted by John Jones from the Virginia Sheriffs' Association who requested that the group consider an additional exception. The Sheriffs' Association runs a procurement program where they enter into contracts with licensed dealers throughout the state to sell vehicles to Sheriffs' Offices and other law enforcement entities. Public bodies are authorized to purchase vehicles from this program by Va. Code 2.2-4304. The Sheriffs' Association does not take title to the cars at any time, but does negotiate standard contracts under which vehicles can be bought by participating agencies from licensed dealers. Mr. Jones has sent language which I have included as a comment to the attached language at line 57. Please review his language and let us know whether or not you think it would be appropriate to include this language in the draft legislation for the report.

I would be grateful if you could please respond to me and Greg Cavalli no later than **Close of Business Wednesday August 29th**.

Best,



Gabriel L. Boisvert

Virginia DMV | Deputy Director | Fuels Tax Collections, Refunds, and Sales Tax

Response to 8/23 Email

Aug
29

Ted Kefalas

Greg and Gabe,

Please find Tesla's comments attached. Please let me know if either of you have any questions. Thanks so much for your hard work in putting everything together!

Ted Kefalas
Capital Results



Greg Cavalli
Virginia Department of Motor Vehicles
Senior Policy Analyst
Strategic Management Services
P.O. Box 27412
Richmond, VA 23269

August 29, 2018

Re: Virginia DMV Draft Legislative Comments on the Definition of "Motor Vehicle Dealer"

Dear Mr. Cavalli,

On August 23, 2018, the Virginia DMV Fuels Tax Collections, Refunds, and Sales Tax office circulated an amended draft legislative proposal on this matter. Per your request, Tesla has reviewed this document and provides the following comments due August 29, 2018.

As set forth in Tesla's prior submission, Tesla does not believe any change is needed to address the issues/questions raised in the July 12, 2018 DMV email to stakeholders. Consistent with that position, Tesla does not support the proposed amendments to the statute. The proposed changes are minimal, do not appear directed to any significant shortcomings with the current law, and are not supported by any substantial record of abuse. Given these circumstances, Tesla believes that changing the law is more likely to yield unintended consequences than to improve the administration of the laws in Virginia.

That said, Tesla would support changes to the statute that would make it clear that Tesla, as a non-franchising manufacturer, may obtain dealer licenses without the necessity of showing the unavailability of a third-party dealer.¹ This issue appears to be beyond the scope of what the DMV is considering with the present workgroup, but Tesla would welcome the opportunity to work with DMV and other stakeholders on specific proposals beyond the limited July 12 scope, if the DMV believes that exercise would be productive.

Tesla appreciates the DMV's efforts on this issue and the opportunity to participate in this process.

Sincerely,

A handwritten signature in black ink, reading "Kevin Auerbacher", is positioned above the typed name.

Kevin Auerbacher
Senior Counsel, Tesla Inc.
kauerbacher@tesla.com

¹ As to the question "How best to maintain current practice of manufacturers not being classified as or required to be dealers," Tesla notes that the question does not address the status of non-franchising manufacturers, like Tesla, that sell vehicles directly to consumers.

Virginia Sheriffs Association Meeting

Sheldon, Robin

Aug
27

Good afternoon. I have been asked to schedule a meeting regarding the statement you would like to include in the dealer definition. The purpose of this meeting is for the study team to better understand the Sherrifs' Association program. The first available time to meet is Thursday, September 6th at 11:00 a.m. The conference line is available for you to participate via telephone. Please let me know if you are available during this time and I will have Greg Cavalli send you the conference call information next week prior to the meeting.

Thanks, Robin Sheldon

On Mon, Aug 27, 2018 at 3:40 PM, John Jones <jjones@virginiasheriffs.org> wrote:

Sept. 6 at 11 am works for me.

John W. Jones
Executive Director
Virginia Sheriffs' Association.

Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>

Tue, Oct 16, 2018 at 2:41 PM

To: cbean@rockinghamcountyva.gov, dana@vachiefs.org, Anne Gambardella <AGambardella@vada.com>, Anne Leigh Kerr <Anneleigh@kerrgovstrategies.com>, Bea González <bea@capresults.net>, Brian Damewood <brian@damewoodauctioneers.com>, Fred Helm <fhelm@kemperconsult.com>, John Jones <jjones@virginiasheriffs.org>, Leigh Dicks <Leigh@viada.org>, Marianne Radcliff <mradcliff@kemperconsult.com>, Michael Doucette <mrducette539@gmail.com>, "Mullen, Edward A. (RCH)" <emullen@reedsmith.com>, "Parrish, Christian A." <CParrish@oag.state.va.us>, Renee Gibson <rgibson@autoalliance.org>, Ross Grogg <rgrogg@kemperconsult.com>, "Satterlund, Michele" <msatterlund@mcguirewoods.com>, Ted Jones <Ted.Jones@vsp.virginia.gov>, Ted Kefalas <ted@capresults.net>, Tommy Lukish <tlukish@vada.com>, Tyler Kidd <Tyler_kidd@carmax.com>, "Woods, Michael W." <Michael.Woods@troutmansanders.com>
Bcc: gabriel.boisvert@dmv.virginia.gov

Good Afternoon:

Please find attached the draft of the Motor Vehicle Dealer Definition Study report for your review.

I would like to draw to your attention an issue which DMV has included in the report and draft legislation, but which was not discussed in the stakeholder meetings. Following the conclusion of stakeholder meetings, DMV staff discovered an issue with the definition of "new trailer" in *Va. Code* § 46.2-1500. In the 2015 session, HB 2189 transferred responsibility for licensing trailer, RV, and motorcycle dealers to MVDB, and to accomplish that the bill attempted to provide that a motor vehicle dealer would include a trailer dealer for the purposes of trailer franchises. However, as explained in more detail on pages 4-5 of the report, inadvertent drafting errors prevent *Va. Code* § 46.2-1500 from meeting the goals of HB 2189. The report and draft legislation recommends language to fix the problem. Please carefully review this portion of the report and draft legislation, and let us know if you have any comments or concerns with those changes.

If you have any comments about the report, or would like to submit a letter regarding the report or the draft legislation, please submit those to DMV by **Wednesday, October 24**. As we have in prior reports, we will publish any letters we receive in the appendices of the report.

Thank you again for all of your invaluable assistance with this study!

Best,

Greg

--



Greg Cavalli

Virginia DMV | Senior Policy Analyst | Strategic Management Services

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[Confidentiality Statement](#)

Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>

Wed, Oct 24, 2018 at 8:59 AM

To: Boisvert Gabriel wjb54935 <gabriel.boisvert@dmv.virginia.gov>

FYI

----- Forwarded message -----

From: **Shields Jones** <shields@nichollsauction.com>

Date: Tue, Oct 23, 2018 at 10:00 PM

Subject: Re: A brief reminder

To: Brian Damewood <brian@damewoodauctioneers.com>, <gregory.cavalli@dmv.virginia.gov>

TO: Greg Cavalli, Virginia DMV

FROM: Shields Jones, Virginia Auctioneers Association

SUBJECT: Motor Vehicle Dealer Definition Study Report

Mr. Cavalli,

Thank you for providing the Study Report for our review.

We request the following revisions to the report.

Page 6, Exception for Auctioneers.

Paragraph 1 line 1 - Revise the beginning of the sentence to read as follows: "The Virginia Auctioneers Association (VAA) requested a specific exemption..."

Paragraph 2 line 6 - Revise the beginning of the last sentence that begins on line 6 to read as follows " The VAA was satisfied wiith..."

Thank you the opportunity to comment.

If further clarification in needed, please feel free the contact me.

Shields Jones

Virginia Auctioneers Association

540 220 1130

shields@nichollsauction.com

Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>
To: Boisvert Gabriel wjb54935 <gabriel.boisvert@dmv.virginia.gov>

Wed, Oct 24, 2018 at 3:47 PM

Tesla's letter

----- Forwarded message -----

From: **Ted Kefalas** <ted@capresults.net>

Date: Wed, Oct 24, 2018 at 3:47 PM

Subject: RE: A brief reminder

To: Cavalli, Gregory <gregory.cavalli@dmv.virginia.gov>

Hi Greg,

Attached are Tesla's newest comments that reiterate what we have been saying throughout the whole process. Thanks for all your efforts so far!

Ted Kefalas

Capital Results | Public Relations | Government Affairs | Digital Strategies

50 Pear Street – Richmond, VA 23223

p. 804-771-5304 | c. 804-822-0020



October 24, 2018

Greg Cavalli
Virginia Department of Motor Vehicles
Senior Policy Analyst
Strategic Management Services
P.O. Box 27412
Richmond, VA 23269

Re: Tesla, Inc.'s Comments on Draft of the Motor Vehicle Dealer Definition Study Report

Dear Mr. Cavalli,

On October 16, 2018, the Virginia DMV circulated "The Definition of 'Motor Vehicle Dealer' in Va. Code § 46.2-1500" Report and asked that interested stakeholders provide comments by October 24, 2018. Per your request, Tesla has reviewed this document and provides the following comments.

As set forth in Tesla's prior submissions, Tesla does not believe any change is needed to address the issues/questions raised to stakeholders. Consistent with that position, Tesla does not support the proposed amendments to the statute. The proposed changes are minimal, do not appear directed to any significant shortcomings with the current law, and are not supported by any substantial record of abuse. Given these circumstances, Tesla believes that changing the law is more likely to yield unintended consequences than to improve the administration of the laws in Virginia.

That said, if legislative changes must be made, Tesla supports amendments to the statute making it clear that Tesla, as a non-franchising manufacturer, may obtain dealer licenses without the necessity of proving up a public interest exception or the unavailability of an independent third-party dealer.¹ This issue appears to be beyond the current scope of what the DMV is considering with the present workgroup, but Tesla welcomes the opportunity to work with DMV and other stakeholders on specific proposals beyond this limited scope.

Tesla appreciates the DMV's efforts on this issue and the opportunity to participate in this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Auerbacher", is positioned above the typed name.

Kevin Auerbacher
Senior Counsel, Tesla Inc.
kauerbacher@tesla.com

¹ As to the question "How best to maintain current practice of manufacturers not being classified as or required to be dealers," Tesla notes that the question does not address the status of non-franchising manufacturers, like Tesla, that sell vehicles directly to consumers.

Appendix 6

List of Stakeholders

Motor Vehicle Dealer Study Participating Stakeholders

Richard Holcomb

Commissioner, Department of Motor Vehicles

Anne Gambardella

Virginia Automobile Dealers Association

William Childress

Executive Director,
Virginia Motor Vehicle Dealer Board

Renee Gibson

Alliance of Automobile Manufacturers

Kevin Auerbacher

Tesla, Inc.

Bea Gonzalez

Tesla, Inc.

Peggy Bailey

Virginia Motor Vehicle Dealer Board

Fred Helm

Alliance of Automobile Manufacturers

Christopher Bean

Rockingham County
Commonwealth Attorney's Office

Eric Henning

General Motors

Tonya Blaine

Department of Motor Vehicles

Joseph Hill

Department of Motor Vehicles

Gabriel Boisvert

Department of Motor Vehicles

Ronna Howard

Department of Motor Vehicles

Gregory Cavalli

Department of Motor Vehicles

Pete Iaricci

Virginia Independent Automobile Dealers Association

Mark Chilcott

Enterprise

John Jones

Virginia Sheriffs Association

Brian Damewood

Virginia Auctioneers Association

Shields Jones

Virginia Auctioneers Association

Leigh Dicks

Virginia Independent Automobile Dealers Association

Ted Kefalas

Tesla, Inc.

Michael Doucette

Virginia Commonwealth's Attorneys Association

Anne Leigh Kerr

Department of Motor Vehicles

Linda Ford

Department of Motor Vehicles

Tyler Kidd

CarMax

Melanie Lester

Department of Motor Vehicles

Tommy Lukish
Virginia Automobile Dealers Association

Edward Mullen
General Motors

Christian Parrish
Office of the Attorney General

Jeff Perry
General Motors

Michele Satterlund
Volkswagen of North America

Dana Schrad
Virginia Association of Chiefs of Police

Melissa Velazquez
Department of Motor Vehicles

Michael Woods
Enterprise