

**REPORT OF THE
DEPARTMENT OF MOTOR VEHICLES**

**DESIRABILITY AND FEASIBILITY OF
AMENDING VIRGINIA'S LAWS
PERTAINING TO MOTOR VEHICLE
DEALERS TO ALLOW UNLICENSED
INDIVIDUALS TO NEGOTIATE THE
PURCHASE OF MOTOR VEHICLES FROM
DEALERS ON BEHALF OF THIRD PARTIES**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 18

**COMMONWEALTH OF VIRGINIA
RICHMOND
1997**

PREFACE

The 1995 Virginia General Assembly established the Motor Vehicle Dealer Board. This board, composed primarily of motor vehicle dealers, has the responsibility for oversight of the motor vehicle dealer industry.

In this oversight capacity, the Board has examined the issue of allowing individuals who are not licensed by the Board, to negotiate the purchase of motor vehicles from dealers, for a fee, on the behalf of others.

The Board sought the opinion of dealer associations, heard presentations from an advocate for allowing this activity and studied written materials on this topic.

Generally, the arguments in favor of allowing unlicensed individuals to provide a negotiating service, is that the negotiator is providing a service and never has possession of a product (the vehicle). Individuals and organizations opposed to this concept state that in order to be in the automobile sales business, one must commit to a real presence through some permanency and investment in time and money by meeting the qualifications established by law. In addition, consumer protection is an issue when someone arranging for a sale of a motor vehicle is not accountable to a single entity.

Sincerely,



Richard D. Holcomb
Commissioner

November 8, 1996

EXECUTIVE SUMMARY

House Joint Resolution 189 (1996) requested the establishment of a joint subcommittee to study, among other issues, the desirability and feasibility of amending Virginia's laws pertaining to motor vehicle dealers to allow unlicensed individuals to negotiate the purchase of motor vehicles from dealers on behalf of third parties. This report is in response to a letter received from The Honorable Thomas W. Moss, Jr., Speaker of the House of Delegates, dated April 29, 1996. In this report, DMV addresses one issue raised both by HJR 189 and by Speaker Moss in his letter, allowing unlicensed individuals to negotiate the purchase of motor vehicles from dealers on behalf of third parties.

Presentations on both sides of this issue were given to both the Dealer Licensing Committee of the Board and the full Board. The Licensing Committee recommended to the Board, and the Board agreed, that the current statute protects consumers and that no changes should be made.

EXPLANATION

In the following definition of a motor vehicle dealer, as set out in § 46.2-1500, it is clear that the intent of the General Assembly was to ensure that all persons involved in the sale of an automobile be licensed:

"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** [emphasis added] 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 twelve consecutive months.

The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.
2. Public officers, their deputies, assistants, or employees, while performing their official duties.
3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this chapter.
4. Persons dealing solely in the sale and distribution of fire-fighting equipment, ambulances, and funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions of §§ 46.2-1519, 46.2-1520 and 46.2-1548.
5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.
6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

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

Currently, Virginia consumers are protected by the licensing requirements of Chapter 15 of Title 46.2 of the Code of Virginia. Chapter 15 requires that all persons engaged in the business of selling automobiles be licensed. There are no exceptions --everyone from the manufacturer to the salesperson is licensed.

In order to become licensed, one must satisfy certain requirements. In order to prevent unscrupulous individuals from entering this profession, tests must be taken, comprehensive background investigations are conducted, and a place of business must be established. This latter requirement, assures that consumers know where and how to contact businesses with which they have had a business transaction. Further, licensed dealers and salespersons pay into the Motor Vehicle Transaction Recovery Fund. This Fund assists consumers who have been wronged by licensed dealers and salespersons.

Consumer protection would be compromised if unlicensed individuals who have not met the criteria to be a dealer, were allowed to engage in the automobile sales industry.

The 1995 Virginia General Assembly established the Motor Vehicle Dealer Board. This Board, composed primarily of motor vehicle dealers, has the responsibility for oversight of the motor vehicle dealer industry.

At its May 1996 meeting, the Dealer Licensing Committee of the Motor Vehicle Dealer Board discussed the issue of "brokers." The committee voted to recommend to the full Board that anyone wishing to be in the business of selling motor vehicles in the Commonwealth of Virginia be licensed as a dealer.

The recommendation of the Licensing Committee was reported to the full Board at its May meeting. The full Board unanimously agreed with the Committee's recommendation.

Both the Virginia Independent Automobile Dealers Association (VIADA) and the Virginia Automobile Dealers Association (VADA) have written to the Chairman of the Motor Vehicle Dealer Board, expressing their opposition to allowing unlicensed individuals to participate in the sale of motor vehicles. Both of these letters can be found in the appendix of this report.

ARGUMENTS IN FAVOR OF UNLICENSED INDIVIDUALS ACTING AS BROKERS

By deleting the words “. . . *or negotiate on behalf of others* . . .” from the definition of a “motor vehicle dealer”, unlicensed individuals would be allowed to provide a negotiating service for buyers. The following points support such a measure:

- The broker (negotiator) would merely be helping the customer purchase a vehicle from an established dealership. The broker would be providing a service and the dealer would be providing the product.
- The broker never has any of the customer’s money nor do they ever have possession of the motor vehicle.
- The motor vehicle is sold by the dealership directly to the customer. The broker just assists the customer by putting the deal together.
- Since the broker would not have any motor vehicles nor would he have responsibility of completing all the paperwork associated with a dealership, there is no reason for the broker to go through the requirements for becoming a dealer and obtaining a license.

ARGUMENTS AGAINST ALLOWING UNLICENSED INDIVIDUALS ACTING AS BROKERS

The following points support continuing the requirement that individuals involved in the business of buying, selling and arranging the sale of motor vehicles be licensed. As detailed below, in order to be licensed, certain requirements must be met.

- The facility requirements ensure accountability of the licensed business since permanency is established through a capital investment.
- Minimum hours of operation and other requirements ensure the consumer they will be able to find and contact the dealer.
- A broker not being accountable to a single dealership, gives the customer fewer options or a place to go for recourse when addressing problems.
- The Motor Vehicle Dealer Board, the Virginia Dealers Association and the Virginia Independent Dealer's Association all oppose unlicensed individuals entering the motor vehicle sales industry.
- Consumer protection is enhanced by requiring licensure.

CONCLUSION

The purchase of a motor vehicle is the one of the most expensive purchases a consumer will make. For this reason, it is important that those involved in the business of selling motor vehicles or arranging for the sale of motor vehicles be licensed by the Commonwealth. In addition, an investment in a business operation and location ensures the consumer that they are conducting business with a professional who has made a financial commitment to his or her profession. For the reasons of consumer protection, the Virginia Motor Vehicle Dealer Board, the Virginia Independent Automobile Dealers Association (VIADA) and the Virginia Automobile Dealers Association (VADA) all oppose any changes to the current definition of a motor vehicle dealer.

APPENDIX

Letter from the Virginia Independent Automobile Dealers Association

Letter from the Virginia Automobile Dealers Association

Open letter from Mr. Flippin to the Board



VIRGINIA INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

4700 THOROUGHGOOD SQUARE • VIRGINIA BEACH, VIRGINIA 23455-4043
PHONE (757) 464-3460 • WATS 1 (800) 394-1960 • FAX (757) 460-1346

June 13, 1996

Mr. Richard D. Holcomb, Chairman
Motor Vehicle Dealer Board
2201 West Broad Street, Suite 210
Richmond, Virginia 23220

Dear Rick:

You have asked the VIADA to comment on the letter from J. Bradley Flippin dated May 8, 1996, and the memo from Delegate McClure dated February 10, 1996.

It appears from Mr. Flippin's letter, of which several pages seem to be missing from my copy, that he wishes to "broker" the sale of motor vehicles in the Commonwealth without benefit of a license. It is this Association's position, as it has been over the years, that, if anyone wishes to enter the automobile business, we will welcome and assist them as long as they adhere to all local ordinances and the provisions set out in the Code of Virginia.

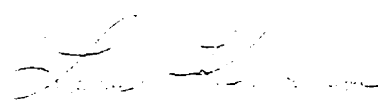
It is clear to us that what Mr. Flippin wishes to do is not possible under the current provisions of §46.2-1500 of the Code; therefore, we would oppose any effort by anyone to conduct this type of activity without the proper license as well as any legislative initiative that would allow unlicensed individuals to negotiate the purchase of motor vehicles from dealers on behalf of third parties.

The licensing of franchise recreational vehicle dealers is of concern to us because we are not aware of any RV dealers who do not also merchandise used RV's. We believe Delegate McClure's effort to improve HB 944 falls short of the mark as pointed out in the questions raised in Bruce's April 10th memo and one other important point. Who will support the warranty on these vehicles once the out-of-state dealers return to their dealerships at the end of the exposition?

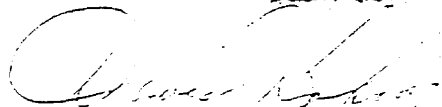
As it is currently envisioned, we will speak against HB 944. The Code of Virginia offers a level playing field for all those brave enough to enter the business of selling motor vehicles as well as protection to the citizens of the Commonwealth who choose to deal with them.

Thank you for the opportunity to comment.

Sincerely,


Lois Keenan
Executive Director

J. Keenan
JUN 19 1996


David W. Boling
Director of Government Relations

Individually we struggle to be heard—Collectively we cannot be ignored.

Virginia Automobile Dealers Association

J. Ronald Norwiana
President

June 3, 1996

The Honorable Richard D. Holcomb
Commissioner, DMV
P O Box 27412
Richmond, Virginia 23269 0001

RE: Motor Vehicle Brokers

Dear Rick:

This is in response to your inquiry as to VADA's position regarding proposed legislation to allow motor vehicle brokering in Virginia. Several years ago, the late Delegate Warren Stambaugh introduced legislation which would have created a licensing mechanism for automobile brokers. That legislation was soundly defeated in the House "Roads" committee. VADA opposed that legislation, then, and would do likewise, today.

Although brokering may have the appearance of being good for retail purchasers, it is, in the long term, not in the best interests of consumers. Under current law, in order to be in the business of arranging for sale, or sale, of motor vehicles an individual must be licensed by the Motor Vehicle Dealer Board as either a "dealer" or a "salesperson". The logic for this requirement is clear -- a dealer must commit to a real presence and some permanency (capital investment in facilities, etc.). Similarly, a salesperson may only serve one dealer, not several -- this provides for accountability.

Brokers, on the other hand, generally do not have this permanency or accountability. Unless they are willing to be regulated as dealers or salespersons they can do more harm than good for consumers as well as to the image and reliability of our industry.

Yours truly,



Don Hall
Vice President - President elect

/mm

P. Kucuken
JUN 04 1996

FAX

To: Motor Vehicle Dealer Board

Fm: J. Bradley Flippin
13627 Clarendon Springs Court
Centreville, Virginia 22020-3019

Subj: Public Statement

As some of you will remember, I was at the License Subcommittee meeting on Friday and made a brief five minute presentation to the Board. I wanted to appear before you again today at your full meeting to ensure there was a crystal clear understanding of my proposal relating to brokers. Unfortunately, however, I am not able to appear, so I have elected to use this method in the hopes of ensuring that all the members clearly understand the issue.

Some of the confusion may be the result of my using the word "Broker" as it may conjure up thoughts of people buying cars here and selling them there. *Nothing could be further from the fact.* Instead I am talking about people helping consumers purchase their vehicles *from already established dealerships.* It is important to remember that these people are providing a service and not a product. It is the dealerships who are providing the product. They never have any of the customer's money nor do they ever have possession of the customer's car. The car belongs to the dealership. It is the dealership that is selling the car to the customer. The "negotiator" is simply assisting the customer in putting the deal together.

Perhaps an example will help. An elderly lady called me saying she needed to buy a car but was afraid of car dealers. She had not purchased a new car since her husband died seven years ago, her car was falling apart and she desperately needed a new car. Under the current law, if I assist her and received "anything of value," even if she only bought me dinner, I am in violation of the *Code.*

I do not think it was ever the intention to require such a person to go through all the requirements of obtaining a dealer's license because he has no cars, he has no paperwork, he does not have anything normally associated with a dealership. It is the dealership that has all the paperwork relating to that vehicle. He is simply providing a service to his clients.

It is for this reason that I would hope the Board would recommend removing the six words "*...or negotiate on behalf of others...*" from the definition of a dealer.

