



Team VADA Webinar

*2011 Legislative Update:
Actions You Should Take*

The 2011 Team VADA Convention



Colonial Williamsburg, VA

June 26 - 29, 2011

Legislative Success

- 2011 was a highly successful legislative session for Team VADA
- We were successful in driving the passage of important franchise bills
- We successfully represented Virginia's dealers on other bills

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Other Issues

- TILA Refresher
- Personnel Issues
- Franchise Issues
- Motor Vehicle Dealer Board Update

VADA Legislative Team

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Successful VADA Bills

Franchise – Facilities Upgrades

HB 1696 – *Athey*

SB 1191 – *Norment*

- *The bill prevents a manufacturer from withholding incentives based on facilities requirements:*
 - *Where the dealer has made a improvements to dealership facilities within the past 10 years*
 - *When the previous improvements were required or approved by the manufacturer*
 - *When the dealer is being asked to “replace or substantially alter” the previous improvements.*

Successful VADA Bills

Franchise – Allocations

HB 1696 – *Athey*

SB 1191 – *Norment*

- *A dealer is entitled to a reasonable supply delivered within a reasonable time of all models of vehicles that are advertised by the manufacturer as available for delivery to customers in the Commonwealth.*
- *Each dealer must have the right to receive roughly the same proportion of vehicles compared to its sales objectives set by the manufacturer that other same line-make dealers have a right to receive compared to their sales objectives.*

Successful VADA Bills

Franchise – “Buy Virginia”

HB 1696 – *Athey*

SB 1191 – *Norment*

- *Several new Code sections address the designation by the manufacturers of preferred and/or required vendors for dealership purchases of materials and supplies*
- *The Code sections protect a dealer’s ability to purchase substantially similar goods from vendors of their choice.*
- *Manufacturers will be required to disclose any business relationship with, or compensation they receive from, any vendor they require a dealer to use.*

Successful VADA Bills

Franchise – Family Successorship

HB 1696 – *Athey*

SB 1191 – *Norment*

- *Make clear the designation of a family member as a successor to the dealership can be made even after death or incapacity by an executor or other representative.*
- *This issue was raised where a dealer did not designate a successor during his life but did so in his will.*
- *This will clarify that in the future such a designation is protected under the statute.*

Successful VADA Bills

Franchise – Side Agreements

HB 1696 – *Athey*

SB 1191 – *Norment*

- *So some manufacturers are using agreements in addition to the dealers' franchise agreements such as a site control agreement under which the manufacturer controls the dealer's real estate, an agreement giving the manufacturer the option to purchase the franchise if it is dissatisfied with the dealer, or a delayed termination agreement to be used if the manufacturer claims that the dealer is not performing as it wants.*
- *Makes it improper coercion to condition the grant of a new franchise on the dealer's consent to one of these tactics.*
- *Provides that a manufacturer's use of such a supplemental agreement with the effect of terminating a dealer should be subject to review by the DMV Commissioner at the request of a dealer just like any other termination. (For good cause).*

Successful VADA Bills

Franchise – Hearing Process

SB 1437– McDougle

- *This bill establishes that the burden of proof in the DMV hearing process is on the manufacturer.*
- *This means the manufacturer will have to prove its actions that the dealer is protesting are justified under the statute.*

Successful VADA Bills

Franchise

HB 1696 – *Athey*

SB 1191 – *Norment*

- *Passed with an emergency clause.*
- *In effect NOW.*

SB 1437 – *McDougle*

- *Singed by the Governor.*
- *In effect July 1, 2011.*

Other Bills

Motor Vehicle Dealer Board

HB 1838 / HB 2011

- *Made several changes requested by the Motor Vehicle Dealer Board.*

SB 1374 (Defeated)

- *Proposed by the Trail Lawyers to more than double the amount a consumer can recover from the Transaction Recovery Fund. (Will be studied over the summer)*

Other Bills

Water Damage

HB 1412 / SB 1416

- *The threshold for reporting water damage on a vehicle will be increased from \$1,000 to \$3,500. Insurance companies will report payment of a claim over the threshold to the Department of Motor Vehicles.*

Other Bills

Hybrids in the HOV Lanes HB 1432

- *The exemption to the HOV passenger restrictions for hybrid vehicles with clean fuel plates was extended to July 1, 2012*
- *IMPORTANT: Vehicles issued clean special fuels plates after July 1, 2011 will be excluded from both 395/95 and 66 HOV lanes.*

Other Legislation

CTE - Industry Certification

Lemon Law

Vehicle Tracking Devices

Window Tinting

Workers comp

Other Issues - TILA

- With the enactment of the Dodd-Frank Act, TILA's maximum jurisdiction has now been increased to \$50,000, effective July 2011, and the law will once again cover most vehicles financed.
- TILA will be reinvigorated as a basis for lawsuits against dealers, including federal class actions.

Other Issues – TILA Dos and Don'ts

- **Do** give customer a copy of the Retail Installment Sales Contract once it is signed.
- **Do** provide a copy of the unsigned RISC if the customer changes his or her mind in F&I, won't sign and requests a copy.
- **Do** have a process to protect against packing claims.
 - ✓ **Do** have a procedure for clearly reviewing with the customer the terms of the retail installment sale contract.
 - ✓ **Do** allow the customer to hold and review the contract to guard against claims that the dealership's employee intentionally obscured a portion of the disclosures.
 - ✓ **Do** use a menu.

Other Issues – TILA Dos and Don'ts

- **Do** make sure the menu You use enhances compliance.
 - ✓ **Do** show the monthly payment for the vehicle alone to show that the customer understood the monthly payment without additional products and services.
 - ✓ **Do** show the a la carte price of each product in addition to package prices to avoid a claim that the customer purchased a package unaware that products could be bought individually.
 - ✓ **Do** get the menu signed and the choices initialed.
 - ✓ **Do** disclose prominently in the menu that purchases of additional products and services are not required for finance approval
- **Don't** pass along finance source fees

Other Issues – TILA Dos and Don'ts

- **Do** have a policy about processing fees and charges
 - ✓ When a vehicle is sold, only the processing fee or charged allowed by state law should be charged including cash and credit.
 - ✓ Recent litigation concerning processing fees.

Other Issues – TILA Dos and Don'ts

- **Do** make sure the customer understands the finance approval process.
 - ✓ **Don't** tell a customer that the deal has been finally approved unless it is true.
 - ✓ **Don't** mislead a customer about the fact that the retail installment sale contract will be assigned.
 - ✓ **Don't** mislead the customer about the possibility that further information may be demanded by a potential assignee and the customer's need to cooperate to obtain assignee approval.
 - ✓ **Don't** mislead a customer as to the identity of potential assignee.

Other Issues – Indirect Lending Agreements

- Changes are coming to indirect lending agreements because of the Consumer Financial Protection Bureau.
- Be prepared to review new agreements and challenge overkill.

Other Issues – FTC Compliance

- The FTC will undertake investigations, including compliance. Privacy will be at the top of the list.
 - ✓ Privacy Notices
 - ✓ Information Safeguards
 - ✓ Red Flag Rule
 - ✓ Risk Based Pricing Exception Notice
 - ✓ Don't Forget the Used Car Rule

Other Issues - Personnel

- Fair Labor Standards Act Compliance
- FLSA lawsuits are the vast majority of personnel cases filed, including class actions in federal court.
- Employee v. Independent Contractor

Other Issues - Personnel

- Overtime Exemptions
 - ✓ Salesman – salespeople are exempt, but the terms only includes those who sell, not greeters or inventory personnel. Remember that salespeople must be paid minimum wage for all hours worked, and they must have payplans that protect the dealership.
 - ✓ Partsmen -- are exempt, but only if they sell parts. Does not include drivers or computer entry personnel
 - ✓ Mechanics – are exempt, but only if they turn wrenches. Includes technicians (including functioning as a get ready mechanic or a used car mechanic) or a body technician, including an apprentice or trainee for those positions. Excludes those washing vehicles, cleaning them, changing tires, etc.
 - ✓ Service writers – used to be considered salespeople, but the DOL has changed its view. Use the 7(i) exemption (Commissioned employees).

Other Issues - Franchise

- Make sure you are properly capitalized.
- Silence is not golden – take issue with franchisor communications that falsely claim you are deficient or that threaten you.
- Structural changes.

Other Issues – Motor Vehicle Dealer Board Update

- Referral Fees
- Craigslist Ads
- Advertising and Vehicle Inventory Issues
- License Plate Frames
- Print-On-Demand Temp Tags



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Legislative Update QUESTIONS

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