

# DLS REPORT

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- **DLS Report** provides information on issues or subject matter of a regional or statewide interest to members of the Virginia General Assembly.

## Regulating Competition Among Motorcycle Dealers

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### Introduction

On March 18, the United States Court of Appeals for the Fourth Circuit held, in *Yamaha Motor Corporation, U.S.A. v. Jim's Motorcycle, Inc.*,<sup>1</sup> that the second paragraph of subdivision 5 of § 46.2-1993.67<sup>2</sup> was invalid, inasmuch as it transgressed the Commerce Clause<sup>3</sup> of the U.S. Constitution by allowing any existing franchised motorcycle dealer anywhere in the Commonwealth to challenge the establishment of a new or additional motorcycle dealer franchise for the same line-make anywhere else in the Commonwealth. This provision of law, like many others that address the relationship between franchise holders and franchisors, was intended to address the disparity in bargaining power

between, in this case, motorcycle manufacturers and their franchised dealers. However, the federal appellate court felt that this particular provision, allowing any dealer in the Commonwealth to object to establishment of a new franchise anywhere else in the Commonwealth, ". . . unduly burdens interstate commerce in violation of the dormant<sup>4</sup> Commerce Clause."

### Court Invalidates Motorcycle Dealer Law Enacted by the General Assembly in 1997

The provision of Virginia's motorcycle dealer laws<sup>5</sup> that was invalidated by the court was enacted by the General Assembly in 1997<sup>6</sup> in an effort to afford franchised motorcycle

**“Motorcycle dealers will still be able to protest against establishment of new franchises for their line-make within their relevant market area under provisions of the law in place prior to the General Assembly’s actions of 1997.”**

dealers, more so than they had enjoyed in the past, a greater ability to challenge the establishment of new franchises statewide, rather than only within limited geographic areas. The General Assembly not only went beyond the provisions of Virginia law that allowed challenges to the establishment of new franchises for motor vehicle dealers, T&M vehicle<sup>7</sup> dealers, and trailer dealers, but also went beyond what any other state legislature had done in this area with respect to motorcycle dealers. No documentary evidence remains as to the reasons behind this action by the General Assembly.

## Conclusion

Since the provision of Virginia law struck down by the court was unique to motorcycle dealers, the legislative fallout from the court's action is likely to be relatively minor. No other types of vehicle dealers are impacted. Even for motorcycle dealers, the consequences may not be great. Motorcycle dealers will still be able to protest against establishment of new franchises for their line-make within their relevant market area<sup>8</sup> under provisions of the law in place prior to the General Assembly’s actions in 1997.<sup>9</sup>

## Notes

<sup>1</sup> *Yamaha Motor Corp. U.S.A. v. Jim's Motorcycle, Inc.*, 4th Circuit, No. 03-2070, 3/18/05.

<sup>2</sup> "No new or additional motorcycle dealer franchise shall be established in any county, city or town unless the manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative gives advance notice to any existing franchised dealers of the same line-make. The notice shall be in writing and sent by certified mail, return receipt requested, at least forty-five days prior to the establishment of the new or additional franchise. Any existing franchise dealer may file a protest within thirty days of the date the notice is received. The burden of proof in establishing inadequate representation of such line-make motorcycles shall be on the manufacturer, factory branch, distributor, distributor branch, or factory or distributor representative."

<sup>3</sup> Article I, section 8, grants Congress the power "... to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes..."

<sup>4</sup> The Commerce Clause is said to be "dormant" when the Congress has neither expressly reserved for itself the ability to control some aspect of interstate commerce nor expressly granted the states to do so.

<sup>5</sup> Chapter 19.2 (§ 46.2-1993 et seq.) of Title 46.2.

<sup>6</sup> See Chapter 802 of the Acts of Assembly of 1997 (Senate Bill No. 1040, Waddell).

<sup>7</sup> A T&M vehicle is a motor home or a travel trailer (see § 46.2-1900).

<sup>8</sup> A circular geographic area surrounding an existing franchised dealer, the radius of which depends on population.

<sup>9</sup> See § 46.2-1993.73.

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