



September 9, 2020

Greetings from VADA,

In today's message, get up to speed on VADA's involvement in the General Assembly's 2020 Special Session. Catch the latest High Octane podcast episode, in which VADA's Anne Gambardella, Esq. and Tommy Lukish, Esq. discuss where your dealership(s) should be with Emergency Temporary Standard (ETS) compliance. Read again how DMV is allowing in-person salesperson testing, by appointment, at its Sterling Customer Service Center (CSC) this fall. Plus, see what additional vendors the Motor Vehicle Dealer Board has approved for salesperson background checks.

VADA helps resolve issue surrounding COVID-19 civil liability legislation.

Since mid-August, members of the Virginia General Assembly have met — sometimes virtually — to consider legislation addressing COVID-19, the state's budget, and social justice.

Franchise issues don't squarely fit into one of those categories, but other business-related measures do. And for the past several weeks, VADA was intimately involved in legislation that would have impacted all Virginia businesses, including the more than 450 franchised auto dealerships.

The bills initially drew from language passed in North Carolina that would provide a business immunity from civil liability from injury claims stemming from alleged exposure to or contraction of COVID-19 at the business. In other words, if a customer or employee alleged that they were exposed to or contracted the virus at your dealership, you would be protected from civil lawsuits unless you committed willful misconduct or gross negligence. In addition to the legal consequences for not complying with COVID-19 rules and regulations, the North Carolina language is effectively an incentive for further compliance.

Virginia's House of Delegates and Senate considered similar language; however, the bills here differed in ways that would have impacted a business' ability to assert civil immunity as a defense to a COVID-19 related claim.

With the House version, businesses would have needed to demonstrate "substantial compliance" with all COVID-19 laws and regulations — local, state, and federal — of which there are many, to be immune. Virginia courts have used this standard in cases where the law at hand has a few very clear requirements and a court can rather easily determine whether a defendant's alleged noncompliance materially impacted the plaintiff. It's not so simple with myriad COVID-19 mandates. It was our concern the substantial compliance standard could allow a court to find a business liable for the smallest, most technical violation of the law, like a sign falling from its post.

The Senate version promoted a better "good faith" standard, but it did not protect businesses from employee lawsuits, the most likely source of these future claims.

Throughout, we expressed support of a measure that would inspire further compliance with laws thoughtfully designed to protect people from COVID-19 but that, at the same time, would provide a fair protection for businesses that have worked incredibly hard to create healthy and safe environments for their employees and customers. We couldn't support a bill that would increase our members' potential exposure to liability, plus we wanted protection against customer *and* employee lawsuits.

Not everyone — legislators and lobbyists included — could get on the same page. Typically, when there are differences between House and Senate bills, Delegates and Senators meet in a committee of conference to reconcile them. They meet with lobbyists, too, for input on forming the final language. How such a committee would operate in this COVID-19 world, when Delegates are convening daily via Zoom and Senators meet in unusual quarters at the Science Museum of Virginia, was uncertain.

Ultimately, it became clear *no bill* was the best option for the time being. Even without specific immunity legislation, businesses will still be able to defend claims, and plaintiffs will have to show evidence they were exposed to or contracted the virus at the business they wish to hold liable. We are pleased with this result and grateful for the legislators that helped us get here.

This wildly unorthodox Special Session provides another example of how VADA's interests and advocacy extend beyond the dealer-manufacturer relationship. With it continuing, and with the 2021 Regular Session likely to bring more business items to the forefront, we'll continue to advocate for you.

VADA Legal & Legislative Affairs Team discusses ETS compliance in latest High Octane podcast.

In a new episode of the VADA High Octane podcast, we talk with VADA's Legal and Legislative Affairs team about Virginia's COVID-19 workplace safety regulations, the first such state-level requirements in the nation, formally known as the Emergency Temporary Standard, or ETS.

If you've got questions about where your dealership(s) should be in terms of ETS compliance, or about implementation of an infectious disease preparedness and response plan, be sure to watch the segment or listen on the podcast service of your choice. If, after listening, you have additional questions, please contact [Anne](#) or [Tommy](#).

[Video](#) | [Apple Podcasts](#) | [Google Play](#) | [Spotify](#)

Reminder: DMV Sterling location available for in-person salesperson testing on Wednesdays this fall.

For months, VADA has collaborated with the Motor Vehicle Dealer Board and DMV to streamline the salesperson licensing process, including making testing more broadly available to prospective salespeople statewide. Testing has been especially difficult during the pandemic, during which DMV CSCs have been closed or crowded with thousands of customers seeking appointments.

To help dealers, DMV is making all appointments at its Sterling CSC available for salesperson testing every Wednesday through Oct. 14. **Space is limited to 45 per Wednesday; therefore, it is critical to use appointments made or cancel in enough time for the slot to be filled by another test taker.**

Appointments must be requested by the Friday before the desired testing date, meaning, for example, those wishing to have individuals sit for the test on Wednesday, Sept. 16, must submit required information by Friday (Sept. 11). You must email Ann Majors at ann.majors@mvdv.virginia.gov with this information for the individual who will be testing:

1. Last Name, First Name
2. Email Address
3. Cell/Phone Number
4. Desired Time Slot (first come, first serve)

Testing will be available every half hour from 8 a.m. to 12:30 p.m. and from 2-4:30 p.m. After submitting the necessary information, each testing applicant will receive an email with a reservation confirmation. **You cannot go directly to the Sterling CSC or DMV website for this, so please adhere to the above process.** The process is subject to change.

The Dealer Board is reaching out to other DMV CSCs around the state to get additional dedicated slots for testing, so it's our hope what is happening in Sterling will begin at a CSC near you. Of course, we'll keep you posted.

Lastly, the Dealer Board will continue its remote testing by appointment, which several dealers have used in recent months. To schedule an appointment for remote testing at a dealership, call Ann Majors at (804) 367-1100, ext. 3016#.

Dealer Board approves additional background check vendors.

Since Aug. 1, dealers have been responsible for completing the required background checks for initial salesperson licenses through a Dealer Board-approved vendor. Two weeks ago, we alerted you the Dealer Board added Reliantcy to the list of permissible vendors. They've since added three more: Employment Screening Services, Partnership Screening International, and The Cole Group.

We have submitted to the Dealer Board information on other providers of background checks referred to us by dealers. The Dealer Board staff is reviewing those providers. In the meantime, please use one of these vendors:

Screening One

Paul Craddock
919-533-5005
Paul.Craddock@screeningone.com

Accurate (formerly CareerBuilder)

Employment Screening
866-255-1852
clientservices@careerbuilderscreening.com

Reliantcy

800-649-1243
support@reliantcy.com

Employment Screening Services

Russ Blitz
205-879-0143
rblitz@es2.com

Partnership Screening International Inc.

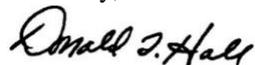
Jim Hulburt
j.hulburt@psiva.com
804-221-2341
Bill Auchmoody
b.auchmoody@psiva.com
804-908-4771

The Cole Group

Paige Johnson
MVDB@thecolegroup.com
1-800-337-0165

More than ever, it is a pleasure to serve the new car and truck dealers of Virginia.

Sincerely,



Donald L. Hall
President and CEO