

1 **[Changes from S.241 as introduced highlighted: Sen. Perchlik; DMV]**

2 \* \* \* Direct Sale Manufacturer; Definition and Exceptions \* \* \*

3 Sec. 1. 23 V.S.A. § 4(8) is amended to read:

4 (8)(A)(i) “Dealer” means a person, partnership, corporation, or other  
5 entity engaged in the business of selling or exchanging new or used motor  
6 vehicles, snowmobiles, motorboats, or all-terrain vehicles. A dealer may, as  
7 part of or incidental to such business, repair such vehicles or motorboats, sell  
8 parts and accessories, or lease or rent such vehicles or motorboats. “Dealer”  
9 shall not include a finance or auction dealer, ~~or a transporter,~~ or **direct-sale**  
10 **manufacturer.**

11 \* \* \*

12 (B) **“Direct-sale manufacturer”** means any person that manufactures  
13 motor vehicles and also engages in the business of directly selling its motor  
14 vehicles to consumers in the State and does not currently have a valid sales and  
15 service agreement, franchise, or contract with a new motor vehicle dealer, as  
16 defined under 9 V.S.A. § 4085(13), operating in the State. Except as otherwise  
17 expressly provided, a direct-sale manufacturer is subject to the same provisions  
18 and granted the same rights under this subchapter as a dealer.

19 \* \* \*

1       Sec. 2. 23 V.S.A. chapter 7, subchapter 4 is amended to read:

2               Subchapter 4. Registration of Dealers, Direct-Sale Manufacturers,

3                               and Transporters

4                                       \* \* \*

5       § 450a. DEALER REGISTRATION; ELIGIBILITY

6               (a) A person shall not be eligible to register as a dealer unless the person:

7                                       \* \* \*

8               (4) Owns real estate (as defined in 1 V.S.A. § 132) as his or her place of  
9       business or has a lease with an expiration date not earlier than the last day of  
10       the registration year for which registration is sought under the provisions of  
11       this subchapter, which includes a building of at least 1,200 square feet in size  
12       used primarily for the business of the dealership. The building shall have  
13       adequate facilities for the maintenance of the records required by law to be  
14       kept, including those required by section 466 of this title.

15                                       \* \* \*

16               (c) In addition to the requirements of subsections (a) and (b) of this section,  
17       a person shall not be eligible to register as a dealer in cars or motor trucks  
18       unless the person is open for business at least 146 days during the calendar  
19       year. The applicant shall provide the Commissioner with the hours of  
20       operation of the business ~~which~~ that the person shall maintain during the  
21       registration period at the time of the application.

1 (d) Notwithstanding subdivision (a)(4) and subsection (c) of this section, a  
2 direct-sale manufacturer is not required to own or lease real estate that includes  
3 a building of at least 1,200 square feet in size used primarily for the business of  
4 the direct-sale manufacturer or to be open for business at least 146 days during  
5 the calendar year.

6 \* \* \*

7 **§ 466. RECORDS; CUSTODIAN**

8 (a) On a form prescribed or approved by the Commissioner, every licensed  
9 dealer shall maintain and retain for six years a record containing the following  
10 information, which shall be open to inspection by any law enforcement officer  
11 or motor vehicle inspector or other agent of the Commissioner during  
12 reasonable business hours:

13 (1) ~~Every~~ every vehicle or motorboat that is bought, sold, or exchanged  
14 by the licensee or received or accepted by the licensee for sale or exchange;

15 (2) ~~Every~~ every vehicle or motorboat that is bought or otherwise  
16 acquired and dismantled by the licensee; and

17 (3) ~~The~~ the name and address of the person from whom such vehicle or  
18 motorboat was purchased or acquired, the date thereof, the name and address  
19 of the person to whom any such vehicle or motorboat was sold or otherwise  
20 disposed of and the date thereof, and a sufficient description of every such

1 vehicle or motorboat by name and identifying numbers thereon to identify the  
2 same.

3 (4) [Repealed.]

4 (b) Every licensed dealer shall designate a custodian of documents who  
5 shall have primary responsibility for administration of documents required to  
6 be maintained under this title. In the absence of the designated custodian, the  
7 dealer shall have an ongoing duty to make such records available for  
8 inspection by any law enforcement officer or motor vehicle inspector or other  
9 agent of the Commissioner during reasonable business hours.

10 (c) Notwithstanding subsections (a) and (b) of this section, a direct-sale  
11 manufacturer does not need to maintain and retain records on a form  
12 prescribed or approved by the Commissioner or designate a custodian of  
13 documents, provided that the information delineated under subdivisions (a)(1),  
14 (a)(2), and (a)(3) of this section for all business conducted by the direct-sale  
15 manufacturer in the State for at least the prior six years can be produced in  
16 electronic form within 72 hours after a request by any law enforcement officer,  
17 motor vehicle inspector, or other agent of the Commissioner.

18 \* \* \*

19 Sec. 3. 9 V.S.A. § 4085 is amended to read:

20 § 4085. DEFINITIONS

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

4 \* \* \*

5 (10)(A) “Manufacturer” means any person, resident, or nonresident who  
6 manufactures or assembles new motor vehicles, or imports for distribution  
7 through distributors of motor vehicles, or any partnership, firm, association,  
8 joint venture, corporation, or trust, resident or nonresident, which is controlled  
9 by the manufacturer.

10 (B) Additionally, the term manufacturer shall include the following  
11 terms:

12 (i) “Distributor” means any person, resident or nonresident, who  
13 in whole or in part offers for sale, sells, or distributes any new motor vehicle to  
14 new motor vehicle dealers or who maintains factory representatives or who  
15 controls any person, firm, association, corporation, or trust, resident or  
16 nonresident, who in whole or in part offers for sale, sells, or distributes any  
17 new motor vehicle to new motor vehicle dealers; and

18 (ii) “Factory branch” means a branch office maintained by a  
19 manufacturer for the purpose of selling, or offering for sale, vehicles to a  
20 distributor or new motor vehicle dealer, or for directing or supervising in  
21 whole or in part factory or distributor representatives.

1           (C) The term manufacturer shall not include a direct-sale  
2 manufacturer.

3   \* \* \*

4           (13) “New motor vehicle dealer” means any person engaged in the  
5 business of selling, offering to sell, soliciting, or advertising the sale of new  
6 motor vehicles and who holds, or held at the time a cause of action under this  
7 chapter accrued, a valid sales and service agreement, franchise, or contract,  
8 granted by the manufacturer or distributor for the retail sale of said  
9 manufacturer’s or distributor’s new motor vehicles. The term new motor  
10 vehicle dealer shall not include a direct-sale manufacturer.

11   \* \* \*

12           (18) “Direct-sale manufacturer” means any person that manufactures  
13 motor vehicles and also engages in the business of directly selling its motor  
14 vehicles to consumers in the State and does not currently have a valid sales and  
15 service agreement, franchise, or contract with a new motor vehicle dealer  
16 operating in the State.

17   \* \* \* Service Facility Center \* \* \*

18       Sec. 4. 9 V.S.A. § 4086a is added to read:

19       § 4086a. DIRECT-SALE MANUFACTURER; SERVICE FACILITY

20           A direct-sale manufacturer may own, operate, or control, either directly or  
21 indirectly, a motor vehicle warranty or service facility located in the State.

1 Sec. 5. 23 V.S.A. § 450a(d) is amended to read:

2 (d)(1) Notwithstanding subdivision (a)(4) and subsection (c) of this section,  
3 a direct-sale manufacturer is not required to own or lease real estate that  
4 includes a building of at least 1,200 square feet in size used primarily for the  
5 business of the direct-sale manufacturer or to be open for business at least  
6 146 days during the calendar year.

7 (2) A direct-sale manufacturer shall own, operate, or control, either  
8 directly or indirectly, a motor vehicle warranty or service facility located in the  
9 State and shall provide the Commissioner with the hours of operation of the  
10 motor vehicle warranty or service facility that the person shall own, operate, or  
11 control during the registration period at the time of the application.

12 \* \* \* Study on Regulation; Report \* \* \*

13 Sec. 6. STUDY ON REGULATION; REPORT

14 (a) The Agency of Transportation, in consultation with the Vehicle and  
15 Automotive Distributors Association (VADA), Transportation Board, and  
16 Automotive Consumer Action Program (AUTOCAP), shall conduct a study on  
17 the regulation of direct-sale manufacturers, as defined in 23 V.S.A. § 4(8)(B)  
18 as added by Sec. 1 of this act, and the online sale of new and used motor  
19 vehicles through websites such as Carvana, Vroom, and TrueCar.

1       (b) The Agency shall review laws, rules, and best practices from other  
2       jurisdictions and model legislation, including approaches to consumer  
3       protection, as part of its study.

4       (c) The Agency shall file a written report including the findings of its  
5       study, sources reviewed, recommendations regarding the regulation of direct-  
6       sale manufacturers and the online sale of new and used motor vehicles, and  
7       recommended legislation on or before December 15, 2020 with the House  
8       Committees on Commerce and Economic Development and on Transportation  
9       and the Senate Committees on Economic Development, Housing and General  
10      Affairs and on Transportation.

11                   \* \* \* Effective Dates \* \* \*

12      Sec. 7. EFFECTIVE DATES

13      (a) This section and Secs. 1 (definitions; 23 V.S.A. § 4(8)); 2 (registration;  
14      23 V.S.A. chapter 7, subchapter 4); 3 (definitions; 9 V.S.A. § 4085); and  
15      6 (report) shall take effect on passage.

16      (b) Secs. 4 (service facility; 9 V.S.A. § 4086a) and 5 (service facility;  
17      23 V.S.A. § 450a(d)) shall take effect on January 15, 2022.