

# Vermont Agency of Transportation

## Direct-to-Consumer Motor Vehicle Sales Legislative Report

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COSTA PAPPIS, POLICY & PLANNING MANAGER

APRIL 1, 2021

HOUSE COMMITTEE ON TRANSPORTATION



# ACT 121 SECTION 22 - Vermont Direct to Consumer Vehicle Sales Report

## **ACT 121 SECTION 22 - Vermont Direct to Consumer Vehicle Sales Report**

- a) The Agency of Transportation, in consultation with the Attorney General's Office, the Department of Financial Regulation, a manufacturer that engages in direct-to-consumer motor vehicle sales to Vermont consumers, and the Vermont Vehicle and Automotive Distributors Association, shall conduct a study and, on or before December 15, 2020, file a written report on the findings of its study, sources reviewed, and recommendations regarding the regulation of direct-to-consumer motor vehicle sales with the Senate Committees on Economic Development, Housing and General Affairs and on Transportation and the House Committees on Commerce and Economic Development and on Transportation.

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- b) The report shall, at a minimum, include a review of:
  - 1) all Vermont consumer protection laws and regulations that currently apply when a consumer purchases a motor vehicle from a dealer registered pursuant to 23 V.S.A. chapter 7, subchapter 4, whether those consumer protections currently apply to direct-to-consumer motor vehicle sales, and, if not, whether those consumer protections should apply to direct-to-consumer motor vehicle sales;
  - 2) how consumers currently obtain financing in direct-to-consumer motor vehicle sales and any proposals that would better protect Vermont consumers who engage in direct-to-consumer motor vehicle sales;
  - 3) how consumers are currently taxed in direct-to-consumer motor vehicle sales and whether there are steps the State can take to maximize the collection of taxes owed on direct-to-consumer motor vehicle sales where the vehicles are operated in Vermont;

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- 4) any enforcement issues related to direct-to-consumer motor vehicle sales;
- 5) what reasons, if any, exist to prohibit manufacturers engaged in direct-to-consumer motor vehicle sales from owning, operating, or controlling a motor vehicle warranty or service facility in the State and a recommendation on whether a sales center should be required if a manufacturer engaged in direct-to-consumer motor vehicle sales is permitted to own, operate, or control a motor vehicle warranty or service facility in the State;
- 6) laws, rules, and best practices from other jurisdictions and any model legislation related to the regulation of direct-to-consumer motor vehicle sales; and
- 7) how any proposed amendments to Vermont law regulating direct-to-consumer motor vehicle sales will affect dealers registered pursuant to 23 V.S.A. chapter 7, subchapter 4; franchisors and franchisees, as defined in 9 V.S.A. § 4085; and other persons who are selling motor vehicles to Vermonters.

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## Consulted Parties:

- Government Agencies - Department of Motor Vehicles, Department of Financial Regulation, Attorney General's Office
- Vehicle Organizations (Vermont Vehicle and Automotive Distributors Association, National Automobile Dealers Association, Alliance for Automotive Innovation)
- Direct to Consumer Vehicle Manufacturers: Tesla
- Direct to Consumer Vehicle Sales Platforms: Carvana, Vroom
- Policy / Academic Experts:
  - Federal Trade Commission, Office of Policy Planning Staff
  - Paul Steier, American Association of Motor Vehicle Administrators
  - Prof. Tara Fitzgerald Urich, Department of Management, Oklahoma State University
  - Prof. Francine Lafontaine, University of Michigan Ross School of Business
  - Prof. Daniel Crane, University of Michigan Law School

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## Approach to Addressing Report Questions

Documenting the perspectives of franchise dealers, DTCs, and other subject matter experts.

### What are Direct-to-Consumer Motor Vehicle Sales (DTC)?

**Manufacturer DTC sales**: New motor vehicle sales or leases made directly by vehicle manufacturers to the consumer. Examples include Tesla (and likely Rivian and Lucid Motors).

**Platform DTC sales**: New or used motor vehicle sales or leases made to Vermont consumers by persons in the regular business of selling cars and who are not licensed registered dealers pursuant to 23 V.S.A. chapter 7, subchapter 4 and are not vehicle manufacturers. Examples include Carvana and Vroom.

**Aggregator Platforms**: Companies that facilitate sales of new or used vehicles online but do not own their own vehicle inventories. Examples include Cars.com and TrueCar.

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**Question #1 - All Vermont consumer protection laws and regulations that currently apply when a consumer purchases a motor vehicle from a dealer registered pursuant to 23 V.S.A. chapter 7, subchapter 4, whether those consumer protections currently apply to direct-to-consumer motor vehicle sales, and, if not, whether those consumer protections should apply to direct-to-consumer motor vehicle sales.**

Numerous laws and regulations are in place in Vermont to protect consumers in the motor vehicles purchasing process. These include:

1. General protections, applicable to sales of all products including motor vehicles.
2. Specific protections applicable to sales of motor vehicles.
3. Specific protections for sales from a registered motor vehicle dealer.

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- 23 V.S.A chapter 7, subchapter 4: Registration of Dealers and Transporters:
  - §453: Surety Bond – requires registered dealers to provide a surety bond, letter of credit, or certification of deposit for a bond amount of \$20,000-35,000 (depending on number of vehicles sold) which may be claimed against for certain fees and taxes.
  - §462: Dealer Registration Cancellation – allows the Commissioner of Motor Vehicles to cancel, revoke, or suspend a dealer’s registration if the dealer violates relevant law or regulation.
  - §466: Records – sets requirements for dealer record keeping for vehicle sales; these records may later be sought for a variety of purposes including resolving disputes, providing information in consumer protection claims, and enforcement.
- DMV Rules (Code of Vermont Rules 14-050-050): provides dealer license requirements which may support consumer protection by way of ensuring access to dealers, as well as provide a standard of service for consumers; for example: building area requirements, signage requirements, hours of operation requirements.



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Enforcing laws for vehicles sold by entities outside the state is generally more challenging than enforcing laws on vehicles sold by registered Vermont dealers for three reasons:

- Sales and vehicle temporary tag records are harder to locate.
- Without a physical presence, it may be difficult to identify or talk with representatives of the selling entity or obtain records.
- The relevant jurisdiction for disputes may be determined to be outside Vermont (if a Vermont resident files a claim against a Vermont dealer, it will be adjudicated locally).

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**Question #2 - How consumers currently obtain financing in direct-to-consumer motor vehicle sales and any proposals that would better protect Vermont consumers who engage in direct-to-consumer motor vehicle sales?**

- Retail Installment Contracts (Carvana, Tesla in states where it has sales locations)
- Third-party registered lending agencies (Tesla in states where it does not have sales locations)
- Customers secure their own financing (i.e., bank, credit union).

Vermont's Motor Vehicle Retail Installment Sales Contract Law, Chapter 59 of Title 9 provides consumer protections and remedies (9 V.S.A. § 2361) against a dealer financing.

Consumer protections related to DTC financing would be strengthened if lenders were registered and licensed in Vermont.

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**Question #3 - How consumers are currently taxed in direct-to-consumer motor vehicle sales and whether there are steps the State can take to maximize the collection of taxes owed on direct-to-consumer motor vehicle sales where the vehicles are operated in Vermont.**

- Purchase and Use tax of 6% is assessed at the time of sale based on the actual sale price (purchase tax) when the vehicle is sold by a Vermont licensed dealer.
- If the sale is new vehicle DTC manufacturer sale (i.e., Tesla) or sold by a dealer registered outside of Vermont (such as Carvana, which is a registered dealer in several states), the tax is collected at time of registration and is based on the sales price.
- Risk factors:
  - P&U credit if tax is collected by another state based on the location of sale.
  - Temporary tag revenue
  - Lost sales tax revenue when customers go out of state for DTC vehicle service work.

Unclear implications of changing rules on P&U credit for out of state transactions

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## Question #4 – Any enforcement issues related to direct-to-consumer motor vehicle sales.

- Vermont licensed dealers are responsible for several record keeping and audit requirements which facilitate investigation and enforcement of laws. These do not apply for DTC sales.
  - Must keep six years of custodial records of all vehicle sales on-site.
  - Keep track of plates issued to consumers by them.
  - Subject to regular state audits.
- Establishing jurisdiction can present a challenge for enforcement of many laws related to DTC vehicle sales – (*Okulski v. Carvana*)
- Risk factor: Enforcement of laws, including consumer protections, become more challenging outside Vermont.

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**Question #5 – What reasons, if any, exist to prohibit manufacturers engaged in direct-to-consumer motor vehicle sales from owning, operating, or controlling a motor vehicle warranty or service facility in the State and a recommendation on whether a sales center should be required if a manufacturer engaged in direct-to-consumer motor vehicle sales is permitted to own, operate, or control a motor vehicle warranty or service facility in the State.**

## **Dealers Perspective:**

- Current statutory prohibition of vehicle manufacturers from owning, operating, or controlling a motor vehicle warranty or service facility in Vermont by 9 V.S.A. §4086(i).
- Approval and conduct of the warranty service (dealer serves as advocate for customer).
- Financial incentive for DTC warranty centers to conduct as little warranty work as possible and avoid approving warranty claims.
- Dealers provide early warnings for safety recall issues as they often notice when there is a pattern in certain defects with vehicles in performing service work.

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**Question #5 – What reasons, if any, exist to prohibit manufacturers engaged in direct-to-consumer motor vehicle sales from owning, operating, or controlling a motor vehicle warranty or service facility in the State and a recommendation on whether a sales center should be required if a manufacturer engaged in direct-to-consumer motor vehicle sales is permitted to own, operate, or control a motor vehicle warranty or service facility in the State.**

## **DTC Perspective**

- Pricing based on audited full retail repair prices creates an incentive for dealers to overcharge customers for non-warranty work in order to increase the price / profit margin they can charge OEMs for warranty work – costs then passed onto consumers.
- Manufacturers, and not dealers, are generally subject to product liability suits.
- Customer satisfaction with warranty service is an important factor in vehicle purchasing decisions, and DTC manufacturers have an incentive to approve claims and conduct quality .
- Manufactures of other high-value products (such as consumer electronics companies) provide their own warranty service.
- The State is losing tax revenue to out-of-state DTC warranty and service.

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**Question #6 – Laws, rules, and best practices from other jurisdictions and any model legislation related to the regulation of direct-to-consumer motor vehicle sales.**

## **Explicitly allow DTC sales**

- Six states (Colorado, Maryland, Nevada, New Jersey, Pennsylvania, and Utah) have carve-outs that allow manufacturers to sell electric or zero-emission vehicles directly to consumers.
- Wyoming allowed DTC motor vehicle sales through amendment to their franchise law in 2017 to create a broad Direct Sale Manufacturer's license; the license permits manufacturers to sell vehicles directly to consumers and maintain a showroom.
- Michigan settled a suit brought by Tesla by permitting residents to purchase a Tesla with the provision that the car be titled in another state. The company also may operate service and repair facilities in the state, but it must be through a subsidiary, identified as "Tesla Michigan".

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**Question #6 – Laws, rules, and best practices from other jurisdictions and any model legislation related to the regulation of direct-to-consumer motor vehicle sales.**

## **Implicitly allow DTC sales**

- California, Florida, and Illinois have not expressly prohibited manufacturers from making direct vehicle sales, arguing that statutes restricting direct vehicle sales are meant to prevent auto manufactures from selling their cars directly to consumers in competition with their franchised dealers, not to prohibit pure direct distribution. These states still have protections in place for franchised dealerships in the state.
  - Example - Florida permits sales from DTC companies but in order to protect established dealerships it limits the right of manufacturers to own a dealership if there is an existing network of franchised dealerships in the state.



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**Question #6 – Laws, rules, and best practices from other jurisdictions and any model legislation related to the regulation of direct-to-consumer motor vehicle sales.**

## **Explicit DTC prohibitions**

- 12 states, including New York and Connecticut have passed legislation that constitute a total ban on direct vehicle sales (although some states including New York have grandfathered existing Tesla stores and sales).

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**Question #7 – How any proposed amendments to Vermont law regulating direct-to-consumer motor vehicle sales will affect dealers registered pursuant to 23 V.S.A. chapter 7, subchapter 4; franchisors and franchisees, as defined in 9 V.S.A. § 4085; and other persons who are selling motor vehicles to Vermonters.**

## **Dealers / Non-DTC Auto Manufacturers Perspective:**

- Concern expressed that DTC vehicle manufacturers will have an unfair competitive advantage because they will not have the costs of complying with dealer requirements, including requirements for facilities and consumer protections. This effectively permits bypassing of rules and laws, which would be unfair, and may encourage other vehicle manufacturers to create subsidiaries in order to bypass current franchise laws.
  - Example cited by VADA - Volvo, owned by its parent company Geely from China, created Polestar to sell electric vehicles, bypassing the franchised dealers who have made significant investments in service, training, tools and sales facilities.

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## **Dealers / Non-DTC Auto Manufacturers Perspective:**

- Franchise dealers have invested significant financial resources to establish dealerships. They have a positive economic impact through employment and tax revenue generation, purchases from other Vermont businesses, and local communities through real estate investment and philanthropic activities.
- According to the National Automobile Dealers Association (NADA), the 2019 Annual Contribution of Vermont's New-Car Dealers shows Vermont's 79 new-car dealers created a total of 10,423 jobs in the state, including 3,237 direct jobs, with average annual earnings of \$56,433 and with a payroll of \$182 million. Vermont new-car dealers generated a total of \$2.6 billion in sales and paid \$156 million in state sales taxes in 2019, according to NADA.

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## **DTC Perspective:**

- There would be no significant effect on franchised dealers if Vermont law was amended to allow for direct sale manufacturers to open service or warranty centers in the State. Direct sales are already permitted in the state and dealers have not been negatively affected in any demonstrable way.
- The same positive economic impacts [cited by franchise dealers] would also come from DTC manufacturers who would open sales and service locations in Vermont. DTCs have chosen a business model for distribution of vehicles, just as non-DTC manufacturers had the chance to choose their preferred business model.

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**Questions / Comments?**