

REPORT TO THE LEGISLATURE PURSUANT TO ACT 121 SECTION 22

Vermont Direct to Consumer Vehicle Sales Report

December 14, 2020

Submitted to

Senate Committee on Transportation

House Committee on Transportation

Senate Committee on Economic Development, Housing & General Affairs

House Committee on Commerce & Economic Development

**Vermont Agency of Transportation
Policy, Planning, and Intermodal
Development Division**



REPORT PREPARATION

This report was prepared by Resource Systems Group, Inc. (RSG) for the Vermont Agency of Transportation.

AUTHORIZING LEGISLATION

Sec. 22 Study on Direct-to-Consumer Motor 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.
- (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;
 - (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.
- (c) As used in this section, "direct-to-consumer motor vehicle sales" means sales made by:

(1) motor vehicle manufacturers that sell or lease vehicles they manufacture directly to Vermont consumers and not through dealers registered pursuant to 23 V.S.A. chapter 7, subchapter 4; or

(2) other persons that sell or lease new or used motor vehicles directly to Vermont consumers and not through Vermont licensed dealers registered pursuant to 23 V.S.A. chapter 7, subchapter 4 on websites such as Carvana, Vroom, and TrueCar.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
PURPOSE	1
WHAT ARE DIRECT-TO-CONSUMER MOTOR VEHICLE SALES?	1
WHY ARE DTC SALES RELEVANT TO VERMONT?.....	1
SUMMARY OF ISSUES AND CONSIDERATIONS.....	2
1.0 INTRODUCTION.....	7
AUTHORIZING LEGISLATION.....	7
ISSUE BACKGROUND	8
2.0 SUMMARY OF LITERATURE REVIEW	9
HISTORY OF DTC AND DEALER FRANCHISE LAWS	9
APPROACH TO DTC SALES ACROSS THE UNITED STATES	11
3.0 ISSUES AND CONSIDERATIONS	14
NEW VEHICLE SALES.....	30
USED VEHICLE SALES	34
APPLICABLE FEDERAL LAWS	35
EXCERPTS PERTAINING TO Q1: CONSUMER PROTECTIONS	37
EXCERPTS PERTAINING TO Q3: TAXATION.....	43
REFERENCES.....	46

LIST OF FIGURES AND TABLES

TABLE 1: KEY VERMONT LAWS AND RULES PROVIDING CONSUMER PROTECTION IN MOTOR VEHICLE SALES	2
TABLE 2: MANUFACTURE DTC STORE LIMITS BY STATE	32

EXECUTIVE SUMMARY

Purpose

In June 2020, the Vermont General Assembly enacted Act 121 relating to the Transportation Program and adopting the Agency of Transportation's FY 2021 Transportation Program. In section 22, the Legislature directed the Agency of Transportation (AOT) to complete a study concerning the state's regulation of direct-to-consumer (DTC) motor vehicle sales. AOT is directed to consult with the Attorney General, Department of Financial Services, Vermont Vehicle and Automotive Distributors Association (VADA), and a manufacturer that engages in DTC sales in Vermont. This report fulfills the requirement and reviews implications of DTC sales for consumer protections, financing, taxation, and enforcement. The report includes a review of related laws in other states and potential implications of proposed changes to Vermont law. Implications of companies involved in DTC motor vehicle sales owning, operating, or controlling a vehicle warranty service center in the state are also considered.

What are Direct-to-Consumer motor vehicle sales?

DTC motor vehicle sales include:

- **Manufacturer DTC sales:** New motor vehicle sales or leases made directly by vehicle manufacturers to the consumer.
- **Platform DTC sales:** Other 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 dealers registered pursuant to 23 V.S.A. chapter 7, subchapter 4 and are not vehicle manufacturers. Platform DTC sales including sales to Vermont consumers made by dealers registered in other states when the vehicle is delivered directly to the customer in Vermont.

Tesla is the largest company conducting manufacturer DTC sales today. New entrants Rivian and Lucid Motors have announced they will follow a similar model and plan to begin delivering vehicles in the next year. Carvana and Vroom are both registered dealers in other states and engage in platform DTC sales of used cars with direct delivery to Vermont customers. Cars.com and TrueCar do not sell vehicles themselves and are not registered dealers in any state but provide platforms for registered dealers to sell new and used cars online, including sales from out-of-state dealers delivered to Vermont customers.

Why are DTC sales relevant to Vermont?

Vermont, like all other states, has laws that govern the sale of new and used vehicles in the state and which aim to provide consumer protections for Vermont residents. Included in these laws are requirements that must be followed by registered dealers, and provisions that govern the relationship between registered, franchised dealers and the manufacturers of the vehicles which they sell. The vast majority of these laws were written and enacted when the franchised dealer sales model was effectively the only way in which new vehicles were sold, and when

most sales of new and used vehicle sales occurred at the physical dealer location. In recent years, DTC sales have introduced a new and entirely different business model for selling automobiles, one that is facilitated by the internet and online retail sales.

Summary of Issues and Considerations

Vermont Consumer Protection Laws

The following table of laws and rules constitute the key consumer protections covering vehicle sales in Vermont. These laws and rules include general provisions covering Vermont sales of any goods including motor vehicles (scope: all businesses), provisions specific to sale of motor vehicles regardless of how the vehicle is sold (scope: motor vehicle sales), provisions specific to the role of the manufacture and their relationship with dealers (scope: manufacturer), and provisions specific to registered dealers (scope: registered dealers).

TABLE 1: KEY VERMONT LAWS AND RULES PROVIDING CONSUMER PROTECTION IN MOTOR VEHICLE SALES

LAW OR RULE	SCOPE	COVERS
9 V.S.A. Chapter 63	All Businesses	General consumer protections
CP Rule 103	All Businesses	Bait Advertising
CP Rule 109	All Businesses	Contests and Prizes
CP Rule 110	All Businesses	Deceptive Pricing
CP Rule 113	All Businesses	Telephonic Home Solicitation Sales
9 V.S.A. Chapter 59	Motor Vehicle Sales	Retail Installment Sales Financing
9 V.S.A. Ch. 59 § 2631	Motor Vehicle Sales	Contracts Penalties & Remedies
9 VSA Ch.59 § 2355(f)(1)	Motor Vehicle Sales	Contracts Disclosures
9 V.S.A. Chapter 152	All Businesses	Standard-form Contracts
9 V.S.A. Chapter 115	Motor Vehicle Sales	New Motor Vehicle Arbitration (Lemon Law)
CP Rule 118	Motor Vehicle Sales	Automobile Advertising
CP Rule 108	Motor Vehicle Sales	Odometer Disclosure
9 V.S.A. Chapter 108	Manufacturers	Manufacturers, Distributors and Dealers (overall)
23 V.S.A. Ch. 108 §4086	Manufacturers	Warranty and predelivery obligations

Vermont Direct to Consumer Vehicle Sales Report

<i>23 V.S.A. Ch. 108 §4087</i>	Manufacturers	Transporter Damages
<i>23 V.S.A. Ch. 108 §7097(4)</i>	Manufacturers	Vehicle Pricing
<i>23 V.S.A. Ch. 108 §7097(8)</i>	Manufacturers	Competition between manufacturer and dealer
<i>23 V.S.A. Chapter 7</i>	Registered Dealers	Dealer Registration (overall)
<i>23 V.S.A. Ch. 7 §453</i>	Registered Dealers	Surety Bond
<i>23 V.S.A. Ch. 7 §462</i>	Registered Dealers	Cancellation of Dealer License
<i>23 V.S.A. Ch. 7 §466</i>	Registered Dealers	Record Keeping

Jurisdiction

Currently, all known major DTC sellers (including Tesla, Vroom and Carvana) operate in Vermont by way of wholly owned registered dealerships in other states. Sales contracts generally specify the state where the dealership is located as the point of sale. Vehicles may then be delivered to the customer in Vermont. Contractually, the transactions are treated nearly identically to a Vermont resident purchasing a vehicle from a dealership just over the border in New Hampshire, New York, or Massachusetts.

Contractual points of sale occurring outside Vermont may render legal action by individual consumers more difficult. Although the Consumer Protection Act provides broad jurisdiction for any and all consumer transactions in the State of Vermont, individual consumers may become reliant on the Attorney General's Office to seek remedies on their behalf. However, jurisdictional determination is nuanced and may depend on many factors including whether the vehicle was delivered and if the delivery was by a DTC vendor directly or by a third party, the particular statute in question the physical location of the consumer at time of purchase or other factors. In most cases, however, it is clear that jurisdictional issues are more challenging for individual consumers than if the vehicle were purchased directly from a registered Vermont dealer. If a DTC company were to become a registered dealer (which requires a physical presence by current law), Vermont jurisdiction would be clear.

Financing

Types of financing available to customers purchasing vehicles from DTC sellers is not appreciably different than for vehicles sold by dealers. Carvana and Vroom both offer retail installment contracts (RICs), which they then typically sell on to lending institutions (similar to registered dealers). DTC sellers also may allow or provide options for customers to borrow direction from financial institutions to cover the purchase of the vehicle and may facilitate the process through partner financial firms. Notably Tesla does not currently offer RICs to Vermont customers and instead only offers lending through partners or the customer's personally chosen

lender. Tesla reported that they would most likely offer RICs once they open a sales location in Vermont.

For Vermont consumers, the major difference in vehicle financing is that when financing through a Vermont registered dealer, Vermont's financial laws and regulations apply and loans are provided by financial institutions registered in Vermont. For DTC sellers (or any other dealer registered in another state) financial laws and regulations of the state where the vehicle is sold are followed instead of Vermont laws. This may reduce the ability of the State to enforce consumer protections related to vehicle financing.

Notably, the retail installment contracts issued by Carvana for Vermont customers list Vermont as the state where conflicts would be resolved. This does not appear to be the case for RICs offered by Vroom.

Tesla also leases vehicles to consumers, an option that purchasers may choose for a variety of reasons. It is reported that leases have grown to 9% of sales in Q3 2019 (Forbes, 1/6/2020), despite the fact that its lease APR of 6% is higher than competitors.

Vehicle Purchase and Use Tax

Vermont charges a 6% vehicle purchase and use tax. The State provides credit to consumers for any tax paid in another jurisdiction. For vehicles purchased directly from registered Vermont dealers, the tax is collected directly by the dealer on behalf of the DMV at the time of sale. For other vehicle purchases, including purchases from DTCs, out-of-state dealers, or private transactions, the tax is paid when the vehicle owner registers the vehicle.

It is possible in some cases that another state may collect tax on a vehicle purchased by a Vermont customer through a DTC and that Vermont would lose revenue based on the credit awarded. However, this research was not able to identify any specific instances of tax being collected out of state for DTC sales. Carvana, Vroom, and Tesla all noted that their processes for Vermont customers allow the full tax to be collected in Vermont.

The fact that vehicles purchased from DTCs are self-registered with the tax collected at registration (vs. registered and taxed at a dealership) can also result in individuals delaying registration or registering in another state. This may cause Vermont to lose revenue. Tesla notes that these instances are rare and that the same concern currently exists with purchases of vehicles from out-of-state dealers.

Enforcement

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:

1. Sales and vehicle temporary tag records are harder to locate.
2. Without a physical presence, it may be difficult to identify or talk with representatives of the selling entity or obtain records.
3. The relevant jurisdiction for disputes may be determined to be outside Vermont.

Tesla, Carvana, and Vroom all deliver vehicles with temporary tags from other states. This allows vehicle owners the opportunity to legally drive their vehicle in Vermont until registered in the state. Since most DTC vendors offer a test period during which the purchaser may return the car for a full refund (typically seven days), temporary tags can become problematic for Vermont law enforcement as they cannot run tag number through their computer databases (Tesla no longer has a seven-day return policy). Rather, they have to contact the state in which the tag was issued to verify VIN and owner information.

Vermont law requires dealers to retain sales records on their premises for six years, facilitating DMV enforcement activity. Since the DTC sellers retain all records at their principal place of business, it is more difficult for DMV to obtain these records.

Finally, if a Vermont resident files a claim against a Vermont dealer, it will be adjudicated locally. A similar claim filed against a DTC company may be heard in the state where they have their principal place of business, making it more difficult for Vermont residents.

These issues are similar for existing DTC companies and other out-of-state dealers. If a DTC were to become a registered Vermont dealer with a physical presence, enforcement processes would be similar to those of existing registered dealers.

Warranty Repair Facilities

Manufacturers (including Tesla and any other manufacturers engage in DTC sales) are prohibited under current law from owning, operating, or controlling a motor vehicle warranty or service facility in Vermont by 9 V.S.A. §4086(i). Considerations for allowing manufacturer warranty repair facilities include:

Alignment of Customer and Service Provider Incentives

Franchised dealers are compensated by the manufacturer for warranty work at full retail price and therefore warranty work represents a source of revenue. For a manufacturer, warranty service is considered an expense. Proponents of current manufacturer DTC restrictions argue that financial incentives for the franchised dealer align with customer interests, and that allowing manufacturer-controlled warranty service centers would incentivize manufacturers to deny or avoid customer claims if possible.

Proponents of allowing manufacturer warranty service centers argue that good customer service is essential for vehicle sales, and therefore manufacturers would be still be incentivized to service warranty claims. Manufacturers are also the focus of product liability lawsuits and therefore incentivized to service warranty claims. They also argue that the retail price audit system by which dealer compensation rates are determined may incentivize dealers to raise retail prices on non-warranty work and that this increases the overall cost to the customer.

Consumer Access to Service

Proponents for allowing manufacturer warranty service centers argue that existing customers are harmed by having to travel outside of Vermont to access warranty service for their vehicles. Proponents of the current restriction argue that DTC manufacturers could easily open a

franchise in Vermont which could provide warranty service. It is noted that Tesla provides mobile service units that travel to the customer's location for all but major repairs.

Best Practices in Other States

Laws governing DTC motor vehicle sales are very different from state to state. No one model has yet become a standard or "best practice", and instead a handful of different approaches have emerged.

Six states (Colorado, Maryland, Nevada, New Jersey, Pennsylvania, and Utah) have carve-outs that allow manufacturers to sell only 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 cars 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".

California, Florida, and Illinois never expressly prohibited manufacturers from making direct sales. These states still have protections in place for franchised dealerships in the state. For 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.

Twelve 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).

There are no known examples of states which restrict sales from platform DTC sellers and since these companies operate as out-of-state dealers and contractually execute sales outside of Vermont, it may be difficult for the state to develop legislation to regulate such sales without running into interstate commerce issues, with the exception of legislation related to the physical delivery of vehicles.

Impact of Proposed Amendments to Vermont Law

Beyond specific concerns discussed in the preceding sections, the primary issue raised by franchise dealers and non-DTC manufacturers is that allowing some companies to operate in a DTC model would create unfair competitive advantages by allowing such companies to bypass certain rules and laws that existing registered dealers must follow (such as requirements for physical presence). Such action would harm existing dealers, their employees, customers, and communities in which they operate.

Tesla noted that if they were to become a registered dealer with a physical presence in the state that they would be subject to the same laws, rules, and regulations.

1.0 INTRODUCTION

Authorizing Legislation

The Vermont General Assembly passed Act 121 in June 2020. Section 22 directs to the Agency of Transportation (AOT) to conduct a study on direct-to-consumer motor vehicle sales. The AOT was further directed to consult with the Attorney General (AG), the Department of Financial Regulation (DFR), a manufacturer that engages in direct-to-consumer motor vehicle sales to Vermont consumers, and the Vermont Vehicle and Automotive Distributors Association (VADA). Section 22 includes the following seven questions, which form the organization of this study report:

- (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;
- (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.

Issue Background

Consumers in Vermont and across the U.S have become accustomed to purchasing goods and services online. Online sales of vehicles began with used cars being advertised on sites like eBay Motors in the 2000s. These sites enabled private buyers and sellers to connect and conduct transactions. Tesla, Inc. was the first vehicle manufacturer to use an online direct-to-consumer business model to sell vehicles. To some, this business model is inconsistent with franchise laws in states which prohibit manufacturers from selling vehicles or operating their own repair service facilities. To others, this argument represents a stretch of franchise laws beyond their original intent in order to stifle competition. These proponents argue that franchise laws were originally intended to prohibit manufacturers with franchised dealers in a state from selling directly.

New car buyers generally bring their vehicle to the dealer for service. This is particularly the case for warranty service claims and NHTSA recalls. Tesla has three approaches for servicing its vehicles. Many issues are addressed through software updates downloaded directly to the vehicle. They also have mobile service vans that can travel to the owner's home to make repairs. Finally, the company operates some service centers to accommodate more significant repairs that require vehicles be placed on a lift. The closest service centers to Vermont are in the Albany, NY and Boston, MA regions, as well as Montreal, Canada.

Non-manufacturer platform DTCs, such as Carvana and Vroom, sell used vehicles through a DTC model from inventory that they purchase. Platform DTCs function similar to out-of-state dealers but with larger inventories and conducting their business online. TrueCar uses a different sales model, essentially acting as a clearinghouse for participating dealers by listing their inventory.

2.0 SUMMARY OF LITERATURE REVIEW

History of DTC and dealer franchise laws

Every state has a dealer franchise law. These laws were enacted to protect dealers from what had been seen as the imbalance of power in the business relationship with manufacturers (LaFontaine, 2010). By the mid-20th century, these laws were commonplace. Vermont dealer franchise laws are detailed in 9 V.S.A Chapter 108. Requirements include:

- Dealers must have a physical place of business in the state.
- Geographic limits on how closely franchise dealers of the same line make may be located.
- Manufacturers cannot raise the price of a vehicle after an order has been placed, nor can they force the dealer to offer discounts or accept vehicles they have not ordered.
- Manufacturers cannot terminate a franchise without cause as spelled out in the law.
- Manufacturers may offer incentives or rebates in order to sell more vehicles and reduce inventory and must do so uniformly.

Proponents of dealer franchise laws specific to vehicle sales point out how different cars are from other products:

- To legally operate a car, a consumer must have a license issued by a state government agency.
- Before driving a car, a customer must have insurance that is regulated by a state government agency.
- Some eighty-five percent of car sales require financing, which is regulated by state and federal government agencies to help ensure that credit is given fairly.
- Sixty percent of new car sales involve trade-ins, and some of these are highly complex transactions that require lenders to pay off liens on other automobiles—sometimes out-of-state liens.
- A car requires maintenance by knowledgeable technicians who are often licensed by state government agencies because of the safety implications of their work.

Introduction of new DTC business models

Manufacturer DTC

The ability of motor vehicle manufacturers to sell their products directly to consumers relies on the internet to support e-commerce business-to-consumer (B2C) sales. As the B2C portion of the retail goods market grew to 9.9% in 2018, and, in part because of the COVID-19 pandemic, to 16.1% in the second quarter of 2020 (Statista, 2020), consumers have become increasingly comfortable making significant online transactions.

Tesla Inc. decided that a DTC business model was preferable to supporting a dealer network for a number of reasons and determined that selling electric vehicles was unique and incongruous with a franchise dealer model. Tesla has no franchise dealers anywhere in the world. Tesla maintains showrooms and galleries in states that permit it to do so. These serve the purpose of educating potential customers about battery-electric vehicles, and about the models that Tesla sells. Unlike a traditional dealership, there is a limited inventory of cars on the lot, but Tesla builds cars as ordered by customers. When a consumer decides to purchase a Tesla, they must still complete the purchase online.

Other distinguishing features of Tesla's business model include standard vehicle prices without negotiations, and less maintenance and service than internal combustion vehicles, where much of the maintenance is related to the drivetrain.

Tesla vehicle servicing takes the form of automatic software downloads that address much of the car's operation, mobile service, where a mechanic travels to the owner's location, and full service at a Tesla facility when mobile service is not sufficient. Tesla does certify auto body shops to perform collision and body work¹. Tesla notes that because they have a central database of all of their new car purchasers, they are able to respond most effectively to NHTSA safety recalls. VADA notes that as a matter of law, every manufacturer must maintain a database of new car purchasers to identify who owns its brands of cars to comply with recall regulations. Ford, for example, has exactly the same information Tesla does. The dealer does not play any role in hindering recall information going to the manufacturer. Where the purchaser recall data can be less complete is in the secondary market where the subsequent purchaser is not recorded and unless Tesla is somehow involved in those transactions, they would not have more (or less) recall data than any other manufacturer.

Other electric vehicle manufacturers are entering the DTC sales market. Rivian is accepting pre-orders for EV pickup truck and SUV models. Lucid Motors is doing the same for its luxury sedan. Lordstown Motors is accepting preorders for a pickup truck model. While none of these vehicles are yet in production, it is an indication that the manufacturer DTC model is likely to grow.

Platform (non-manufacturer) DTC

A number of companies have developed DTC platforms for the sale of used vehicles. People may want access to a greater number and variety of used vehicles than are available in their local market. Early online platforms like eBay Motors and Facebook Marketplace simply facilitate connections between private sellers and buyers without offering a means for delivering the vehicle or consumer protection.

Companies that participate in the used vehicle DTC marketplace include Carvana, TrueCar, and Vroom.

- **Carvana:** Carvana sells from a company-owned inventory. They purchase vehicles primarily at auction, and also accept trade-ins, some of which they may sell. Vehicles

¹ Interview with Zach Kahn, Tesla Inc.

may be picked up at one of their “vending machine” locations or are delivered to the buyer. They provide a 7-day full money back guarantee after delivery. The vehicle is most likely titled in Georgia but may be delivered to a Vermont purchaser with either Georgia or New Jersey temporary license tags.

- **Vroom:** Vroom also sells from a company-owned inventory. Vehicles are delivered throughout the continental U.S. by transport services for a \$599 fee with a temporary tag; the only pickup location is Houston, TX. They offer a 7 day/250-mile money back guarantee with no fee for return delivery. The website does not state where the car is titled. If consumers finance the purchase through Vroom, the company will handle the vehicle registration.
- **TrueCar:** TrueCar coordinates with dealerships and does not own its inventory. It does provide a *Buy From Home* program. Purchasers can pick up their vehicle at the dealer, or have it delivered if the dealer is enrolled in the *Buy From Home* program. Unlike Carvana and Vroom, TrueCar lists both new and used cars for sale.

Approach to DTC sales across the United States

Historically, new motor vehicle dealer franchise laws across the country were designed to limit or prohibit manufacturers from selling directly to consumers. Instead, manufacturers execute franchise agreements with independently owned dealers. Tesla argues that these franchise laws were intended to apply to those manufacturers that had already executed franchise agreements with independently owned dealers.

Tesla elected to use a different business model for the distribution of its vehicles, arguing that the traditional dealer model is not suited for selling electric vehicles due to the differences in their vehicles from conventional internal combustible engine propulsion and lower maintenance requirements. Tesla argues that they represent a new and innovative technology that requires a different sales approach than gas powered vehicles, and a great deal of customer education.

Ten states prohibit DTC sales, including Connecticut, Louisiana, South Carolina, and New Mexico.

Other states have amended their franchise laws to permit DTC sales only by manufacturers of electric vehicles. These sales may be through showroom locations owned by the manufacturer and may either permit or require a service facility.

New Jersey passed an amended law in 2015:

“STATEMENT This bill allows a manufacturer (“franchisor,” as defined in 6 P.L.1985, c.361 (C.56:10-26 et seq.)) to directly buy from or sell to consumers a zero-emission vehicle (ZEV) at a maximum of four locations in New Jersey. In addition, the bill requires a manufacturer to own or operate at least one retail facility in New Jersey for the servicing of its vehicles. The manufacturer’s direct sale locations are not required to also serve as a retail service facility. The bill amends current law to allow any ZEV manufacturer to directly or indirectly buy from and directly sell, offer to sell, or deal to a consumer a ZEV if the manufacturer was licensed by the New Jersey Motor Vehicle

Commission (MVC) on or prior to January 1, 2014. This bill provides that ZEVs may be directly sold by certain manufacturers, like Tesla Motors, and preempts any rule or regulation that restricts sales exclusively to franchised dealerships. The provisions of the bill would not prevent a licensed franchisor from operating under an existing license issued by the MVC. The bill additionally requires manufacturers and franchisees to annually report to the Division of Taxation the number of ZEVs sold in the State each calendar year. Under current law, these vehicles are exempt from the State's sales and use tax."²

Colorado has an exception that applied only to Tesla, but in 2020 passed an amendment addressing all EV manufacturers. Note that this does not apply to a manufacturer that builds both EVs and internal combustion engine vehicles.

"SB 20-167 Bill Summary

Preexisting law prohibits, with certain exceptions, a motor vehicle manufacturer from owning, operating, or controlling any motor vehicle dealer or used motor vehicle dealer in Colorado. The act creates a new exception that allows a manufacturer to own, operate, or control a motor vehicle dealer if the manufacturer makes only electric motor vehicles and has no franchised dealers of the same line-make."³

Wyoming took a different approach, amending its franchise law to create a new category called "direct sales manufacturer". In doing so, it assured that most of the provisions that apply to franchised dealers also apply to the DTC manufacturer. While not specifying electric vehicles, the classification cannot apply to any line make that is or has been sold in the state.

"(xxx)A "direct sale manufacturer" means a person licensed under W.S. 31-16-104(a)(ix) who is engaged in the business of manufacturing, constructing or assembling new and unused vehicles and who sells and services, at a facility physically located in the state, vehicles of that manufacturer's line make to the general public. A direct sale manufacturer shall not include an affiliate or wholly owned subsidiary of a manufacturer's line make that is presently sold or has previously been sold in this state through a new vehicle dealer."⁴

Utah took similar action in 2020, also creating the definition of a direct sale manufacturer for cars "exclusively propelled through the use of electricity, a hydrogen fuel cell, or another non-fossil fuel source."⁵

Michigan responded to litigation brought by Tesla in 2014 with a settlement in January 2020.

"The settlement 'recognizes that any Michigan resident may lawfully buy a Tesla and have it serviced in Michigan,' Kelly Rossman-McKinney, a spokeswoman for Attorney General Dana Nessel's office, said in a statement. The agreement Wednesday determines existing law does

² New Jersey Assembly Bill 3216 at https://www.njleg.state.nj.us/2014/Bills/A3500/3216_I1.PDF

³ Colorado Senate Bill 20-167 at <https://leg.colorado.gov/bills/sb20-167>

⁴ Wyoming Senate Enrolled Act No. 55 of 2017 at <https://wyoleg.gov/2017/Enroll/SF0057.pdf>

⁵ Utah HB 369 Auto Dealership License Amendments at <https://le.utah.gov/~2018/bills/static/HB0369.html>

not prohibit 'Tesla from delivering vehicles to Michigan residents in Michigan (whether directly, through a subsidiary, using an independent carrier, or otherwise), including assisting them with vehicle trade-ins, so long as legal title for any vehicles sold by Tesla transfers outside the state of Michigan,' according to Wednesday's filing. A Michigan resident could later transfer the title in Michigan." (The Detroit News, 2020) The settlement also permits Tesla to operate a service center through a subsidiary.

Finally, a number of states including New Hampshire have amended their franchise laws as necessary to permit manufacturer DTC vehicle sales in their states. California permits manufacturers to own and operate dealerships as long as they do not compete with existing franchise dealers of the same line make in the market area, defined as a 10-mile radius.

3.0 ISSUES AND CONSIDERATIONS

Q1: 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.

General consumer protections as well as those applying to sales of motor vehicles as a product (1 and 2 above) do not specify how or by whom a vehicle is sold and apply to sales from both registered motor vehicle dealers and companies engaged in DTC motor vehicle sales.

Protections related specifically to sales from registered dealers would not apply to DTC vendors as the law is currently written.

A key concern related to DTC sales is jurisdiction. While the Vermont consumer protection laws in 1 and 2 above would apply to DTC sales taking place in Vermont, the relevant jurisdiction for purchases by Vermont consumers may in fact be another state if vehicle was physically outside the state at time of purchase, based on the physical location of the DTC sales company, or other contractual factors.

The following sections highlight relevant Vermont consumer protection laws and rules and discuss jurisdictional determination.

General Consumer Protections

In addition to federal protections, key general Vermont consumer protection laws and rules (not motor vehicle specific) applicable to both franchised dealer and DTC motor vehicle sales include:

- 9 V.S.A. Chapter 63 (see §2451a (definitions) and §2454): Consumer Protection generally, and specific rules:
 - CP Rule 103: Bait Advertising – protects against solicitation to purchase goods when solicitation is not a bona fide effort to sell goods
 - CP Rule 109: Contests and Prizes – protects against unfair and deceptive trade acts related to sweepstakes, giveaways, and other promotions
 - CP Rule 110: Deceptive Pricing – protects against false or deceptive price comparisons being used in solicitation of goods

- CP Rule 113: Telephonic Home Solicitation sales – grants a three-day right of cancellation for home solicitation sales and requires notice to the consumer of this right.
- 9 V.S.A. Chapter 152: Standard-form contracts
 - §6055: Prohibits “Unconscionable terms” in standard-form contracts including waiver of right to seek damages and requirements to resolve legal claims in an inconvenient venue (for state claims – a venue other than that where the individual resides, or the contract was consummated)

VADA reported the following: 2019 Acts and Resolves No. 74. An act relating to consumer justice enforcement, which is effective October 1, 2020, establishes a rebuttable presumption that certain types of contractual terms are on their face unconscionable in standard form contracts. The presumptively unconscionable terms, as stated in the legislative summary, are: “(1) a requirement that legal claims take place in an inconvenient venue, (2) a waiver of the right to a jury trial or to bring a class action, (3) a waiver of the right to seek punitive damages, (4) a requirement that limits the time in which an individual can bring an action to less than the time allowed by the statute of limitations, and (5) a requirement that the individual pay fees and costs to bring a claim substantially higher than what the courts would require.” This act exempts motor vehicle retail installment sales contracts because the Commissioner of the Department of Financial Regulation (DFR) enforces those, but it does not exempt vehicle leases, GAP, rustproofing or other contracts that are often issued when a consumer purchases or leases a vehicle. This is a new consumer protection in Vermont, which should apply to DTCs.

VADA reported the following: It is worth noting that this rule [CP Rule 113] and the statute were written prior to the creation of the Internet and as such leaves a business exposed if you try to conduct business through the Internet and deliver a car to the customer’s home. Some of the obstacles are the rule does not address electronic commerce, our state’s requirement that wet signatures be affixed to certain DMV forms and odometer readings make it even more difficult to deliver the experience that out-of-state dealers can enjoy by selling a vehicle and delivering it to a consumer’s home. It is much easier to hire a trucker to deliver the vehicle and ensure the sale was not consummated at the home.

Motor Vehicle Sales Protections

Key Vermont consumer protections specific to motor vehicle sales which are applicable to both franchised dealer and DTC motor vehicle sales include:

- 9 V.S.A. Chapter 115: New Motor Vehicle Arbitration (commonly referred to as the Vermont Lemon Law)
- CP Rule 118: Automobile Advertising – protects against unfair, false, or deceptive practices in motor vehicle advertising
- CP Rule 108: Odometer Disclosure - Requires disclosure of odometer readings in vehicle sales

Requirements for Manufacturers, Distributors, and Dealer Franchising

Several Vermont consumer protections apply directly to vehicle manufacturers and / or the relationship between manufacturers and dealers. These protections would apply to both DTC manufacturers and traditional manufacturers and do not differentiate between registered franchised dealers and manufacturer-owned dealers (of which none currently exist in Vermont). However, the sections of law describing the relationship between dealers and manufacturers were not intended to cover DTC business models (for example, requirement for manufacturers to disclose transportation damages to the dealer is confusing if the manufacturer and dealer are the same legal entity).

- 9 V.S.A. chapter 108: Motor Vehicle Manufacturers, Distributors, And Dealer Franchising – defines aspects of the manufacturer – franchise dealer relationship which may be considered to strengthen consumer protections. Key provisions include:
 - §4086: Warranty and predelivery obligations to new motor vehicle dealers – specifies the manufacturer’s obligations to franchise dealers with respect to warranty claims and service
 - §4086(i) expressly prohibits manufacturers from owning, operating, or controlling a motor vehicle warranty or service facility.
 - §4087: Transportation damages – specifies disclosure requirements for damage incurred in transporting a vehicle to the dealership and/or customer.
 - §4097(4): Vehicle pricing – prohibits the manufacturer from increasing the price of a new vehicle after the dealer has signed a sales contract with the customer.
 - §4097(8) Competition – prohibits the manufacturer from competing with its own franchised dealerships.

Consumer Protections Applying Only to Registered Dealers

The following Vermont consumer protection laws and rules apply to dealers registered pursuant to 23 V.S.A chapter 7, subchapter 4. These laws may not apply to DTC sales in Vermont unless the DTC vendor is registered as a dealer in Vermont pursuant to 23 V.S.A. chapter 7, subchapter 4. At the time of this writing, no known national DTC companies are registered dealers in Vermont. DTC companies are not currently allowed to register without first meeting requirements of 23 V.S.A. §450a including a local physical presence and minimum opening days each year. Instead, DTC companies currently operate as out-of-state vendors and are typically registered as dealers in another state.

- 23 V.S.A chapter 7, subchapter 4: Registration of Dealers and Transporters – in addition to defining the registration process, the subchapter includes several sections which could be directly or indirectly be considered consumer protections; key sections include:
 - §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

Key excerpts from the above laws and regulations are included in Appendix B.

Other Considerations

In addition to the above, 23 V.S.A. Chapter 1 provides the definition for “Dealers” in the state including specifying the number of vehicles a business must sell (12 or more per year) to be considered a dealership.

Tesla reported the following: In the scenario that a DTC manufacturer has a sales and service location in Vermont, the DTC seller would be subject to every single requirement, law and regulation that a dealer is subject to in Vermont. In fact, the DTC manufacturer would apply for a dealer’s license and there would be no practical differences between the two.

Vroom reported the following: The only difference between Vroom and any other dealer selling vehicles to an out of state customer is scale. Vroom is engaged in interstate commerce the same way any other dealer would be, and to put a requirement on Vroom for a [Vermont] dealer license would be discriminatory for an out of state company based on the interstate commerce clause. *Vroom is a registered dealer in Texas and focuses on nationwide internet-based sales.*

VADA reported the following: Our understanding of the Commerce Clause is that Vroom needs facts to support that out-of-state actors are being treated differently than in-state actors. That is not the case in requiring a dealer’s license. Each and every entity seeking to retail a car in the state needs a license. Dealer licensing laws serve a legitimate and rational state interest (consumer protection). Vroom would have a steep uphill climb to make a Commerce Clause argument. The Vermont Attorney General’s Office might be the proper entity to weigh in further on this Commerce Clause issue.

Jurisdiction and location of the sale

Vermont consumer protection laws may be difficult to enforce for motor vehicle sales when the contractual point of sale is not located in Vermont. The contractual point of sale for vehicles sold by DTC companies today is usually in a state outside of Vermont where the company is a registered dealer. Contractually this is identical to sales by out of state dealers such as MA, NH or NY dealers just across the border who sell to Vermont residents; however, some jurisdictional rights may be available when the DTC delivers the vehicle to customer in Vermont.

- Example: Contractual point of sale for a vehicle sold by Carvana is generally the state where the vehicle is located at the time the order is made (Carvana locates cars in states where they are registered dealers). For Vroom, the contractual point of sale is Texas where they are headquartered and are a licensed dealer. For Tesla, the contractual point of sale currently will be at a dealership in a state outside of VT where the car is picked up or delivered from (i.e. NY or NJ).
- The laws, and case-law governing whether Vermont consumer protection laws and rules apply to online sales by Vermont consumers are evolving quickly. The decision by the U.S. Supreme Court in *South Dakota vs. Wayfair* (585 US__ (2018)) for example provides that in some cases the customer's physical location at time of purchase is sufficient for some laws to apply. However, even in cases where consumers may be legally protected, it may be difficult or impractical to enforce certain Vermont consumer protection laws (i.e. buy backs, financing) on companies operating only outside the state. In addition, it is unclear what consumer protections would be enforceable in the case of a DTC that declared bankruptcy. Detractors of DTC motor vehicle sales point out that residents should be allowed to sue, serve, and have cases brought against DTCs in Vermont courts and not require consumers to go out of state to settle disputes. In addition, plenty of manufacturers have gone out of business over the years (i.e., Oldsmobile, Pontiac, Saturn, Daiwo and Saab). If the manufacturer is a direct seller and subsequently goes out of business, the consumer may have nowhere to go for parts, service, warranty work, etc. Franchise dealers generally remains in business and provide consumers a place to go for help.
- Contractual structure can improve or lessen protection of Vermont consumers regardless of the contractual point of sale. For example:
 - Tesla and Vroom sales contracts include binding arbitration clauses which prevents customers' ability to address conflicts in Vermont courts. Customers have a choice to opt out of the arbitration clause and must do so within 30 days of purchasing the vehicle.
 - Carvana's retail installment contracts for Vermont customers state that conflicts will be resolved in Vermont.
- While determination of jurisdiction is often nuanced and specific to the unique circumstances of an issue, it is clear that Vermont has the greatest ability to apply

protections to Vermont consumers dealing with entities officially recognized by the state (such as VT registered dealers and VT licensed lending agencies).

- If a DTC manufacturer or platform vendor were to open a sales location in Vermont, the point of sale and thus relevant jurisdiction for vehicles sold through the location would be Vermont.

Q2: 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

Consumers currently obtain financing for DTC motor vehicle sales through:

- Retail Installment Contracts
 - Carvana offers financing through retail installment contracts; the contracts are generally not held by Carvana and instead sold on to a registered lender.
 - Tesla offers retail installment contracts in states where it has a sales location. Tesla does not currently have a sales location in Vermont and therefore does not currently offer retail installment contracts in the state.
 - Vermont limits funding of negative trade-in equity (when a lien or other interest on a trade-in vehicle is more than the trade in value) through retail installment contracts; if a retail installment contract is used to fund negative equity, it is required that the contract is immediately sold on to a lender under Title 8, VS.A, Chapter 73.
VADA reported the following: Vermont law and regulation also requires a form be attached to every RISC regardless of whether negative equity is included in the RISC, which gives consumers notice of the equity they have in the vehicle.
- Third-party registered lending agencies
 - Tesla primarily offers financing through third party registered lending agencies; Tesla has partnerships with preferred lending agencies to help smooth the loan process for customers, but customers are free to use other lenders. Tesla reported that they do not offer financing directly because they do not have a Vermont sales license.
- If they chose, customers could generally secure their own financing through preferred channels (such as their personal bank or credit union).
 - **VADA reported the following:** Vermont consumers have certain protections regarding interest rates, rights of rescission for transactions that happen off-site in certain circumstances. Vermont's Motor Vehicle Retail Installment Sales Contract Law, Chapter 59 of Title 9 also provides consumers significant protections and

significant remedies (see 9 V.S.A. § 2361) against a dealer financing a motor vehicle in Vermont.

- Consumer protections related to DTC financing would be strengthened if lenders were registered and licensed in Vermont.
 - **Tesla reported the following:** If DTC manufacturers open up sales and service locations in Vermont, their lenders would be registered and licensed in Vermont and they would be subject to the same regulations regarding interest rates raised by VADA.

Q3: 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

Vermont collects a Purchase and Use tax of 6% (23 V.S.A. §8903, 8905, 8911 – excerpts provided in Appendix B). If the vehicle is sold by a Vermont licensed dealer, the tax is assessed at the time of sale based on the actual sale price (purchase tax). If the sale is new vehicle DTC sale (such as a new Tesla purchase) 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. If the vehicle sold by any other entity (such as a personal vehicle sale) the tax is collected at registration and based on the NADA bluebook value rather than the sale price. If the vehicle's owner has paid a sales or use tax in another state, a credit is provided up to the full amount of tax paid. The person registering the vehicle must prove the payment in the other state.

A key concern for DTC motor vehicle sales is whether tax is or will be collected by another state based on the location of sale (and a corresponding credit provided to the consumer for this tax paid). At present, the full 6% tax appears to be being collected by Vermont for DTC motor vehicle sales and no examples of tax being first collected by another jurisdiction were identified.

- Six records of new Tesla sales were checked and full 6% tax was collected by Vermont in each case.
- **Tesla reported the following:** Vermont customers and residents who purchase their vehicles out-of-state are typically taxed in the pick-up state unless an out-of-state use exemption is available. In destination-based states, Tesla would not tax the customer if they have a Vermont registration address. Vermont is a self-registration state, so customers register the vehicle and pay the applicable tax at the Vermont DMV. If the customer paid tax to another jurisdiction (i.e. California), then they should receive a credit to offset the tax due. Vermont customers and residents who have the vehicle delivered directly to them are still responsible for self-registering. Because customers are self-registering, Vermont is already set up to maximize the collection of purchase and use tax.

- **Tesla reported the following:** Vermont is missing out on any taxes that could be paid when customers are forced to leave the state for service and maintenance work. If Tesla were permitted to open a service and maintenance location in Vermont, the state would benefit not only from the taxes paid for service and maintenance, but also from any payroll, business or property taxes that Tesla would be sending to the state.
 - **VADA notes:** Tesla customers likely do routine maintenance at third-party repair locations in Vermont (such as tire rotations) and tax would be collected for these sales; additionally, warranty repair parts are not currently taxed in Vermont for repairs done on the manufacturer's behalf, so the state is not missing out on tax revenue for the warranty repairs.
- **VADA reported the following:** With 7-day return policies and other money back offers by some DTC entities, how is the State of Vermont ensuring that Purchase and Use Taxes are paid? A Vermont dealer does not have the ability to cancel a transaction if they take a return. The taxes need to be paid to the state and a tax credit can be applied to the next purchase. With Carvana delivering the vehicles on a 45-day Georgia temporary tag, they may be depriving the state of temporary tag revenue. Also, some states limit the duration of temporary tags that do not align with the 45-day Georgia temp tag.
- **Carvana reported the following:** In lieu of collecting sales tax in the state where a vehicle sale takes place, Carvana provides an affidavit for customers to say that the tax will be paid in the state where the vehicle will first be used (i.e. Vermont in the case of a Vermont customer).

Implications for DTC and dealer vehicle return policies

Vermont registered dealers collect tax at time of sale while taxes for all other vehicle transactions in Vermont are collected at the time of registration. Since the taxes are non-refundable, this results in registered dealers being more limited in offering return policies compared to DTC companies:

- Carvana and Vroom offer 7-day money back return policies – since taxes are not collected at time of sale, the customer may return the vehicle without incurring the tax expense (as long as they do not register the vehicle in Vermont and pay the taxes during the return period).
- Vermont registered dealers collect tax at time of sale and the tax cannot be refunded to the customer if the vehicle is returned; if a vehicle is returned, the customer (not dealer) may apply for a tax credit to be applied to a different vehicle purchase.

Q4: any enforcement issues related to direct-to-consumer motor vehicle sales

Record Keeping and Audits

The primary issue with enforcement for DTC motor vehicle sales is the ability of DMV and law enforcement officers to access data related to the vehicle sales. Requirements which facilitate enforcement for registered dealers which do not apply to DTC motor vehicle sales include:

- Vermont licensed dealers must keep six years of custodial records of all vehicle sales on-site, which facilitates DMV enforcement.
- Vermont licensed dealers keep track of plates issued to consumers by them. This is helpful to enforcement of motor vehicle laws as law enforcement is readily able to ask for and get information about ownership of vehicles based on plate number.
- Vermont licensed dealer sales records are subject to regular state audits.

Tesla reported the following: [The above record keeping requirements] would apply to DTC manufacturers with a VT dealer license.

Vroom reported the following: Vroom keeps records of Texas temp tags, in accordance with Texas law governing dealers registered in Texas, which could be used for enforcement. The records are VIN specific. Vermont DMV would have to work through the Texas DMV.

Technical and system barriers arising from titling and registration data being stored across multiple systems within state DMVs also creates challenges for using such data directly rather than dealership records for enforcement reviews. For example, performing queries across the multiple systems require substantial effort. Finally, proper investigation of any issues arising from DTC sales would require new staff skills including digital audits, reviewing URL data, and computer forensics. Additional training and resources would be needed for enforcement staff to support these efforts.

Jurisdiction

As discussed in Question 1, establishing jurisdiction can present a challenge for enforcement of many laws related to DTC vehicle sales. In addition to the issues related to establishing the location of a sale discussed in Question 1, a physical presence in the state (as provided by a dealership, service center, corporate office, or other facility) can often aid law enforcement officials in both investigation and establishment of jurisdiction to pursue enforcement issues.

The recent decision of *Okulski v. Carvana*, United States District Court for the Eastern District of Pennsylvania, Civil Action No.20-1328, 2020 WL 4934345, <https://casetext.com/case/okulski-v-carvana-llc-1> (E.D. Pa. Aug. 24, 2020) shows how some DTC transactions may divest the state courts of jurisdiction entirely—even when the transaction and the consumer are both within the state. In *Okulski*, the consumer purchased a used vehicle on-line from Carvana, whose principal place of business is in Arizona, and signed a retail installment sales contract (which said it was controlled by PA law) and other documents. He then picked up the vehicle at Carvana's location in Philadelphia. The consumer alleged the used car was known to be defective when sold. He sued Carvana and related parties personally in Pennsylvania state

court. Defendants removed the case to federal court on grounds of complete diversity (no defendants were residents of Pennsylvania). The federal court found complete diversity. The federal district court then ruled that it would refuse to apply Pennsylvania consumer protection laws to the case, because the federal “gist of the action” doctrine meant it was a really a contract case. So, the court looked to the contract to find where jurisdiction should lie. The court then dismissed because the boilerplate contract language stipulated to Georgia jurisdiction. The federal court held that because the contract said the consumer “agree[d] to accept title and ownership of the Vehicle” in Georgia and the contract was with a dealer located in Georgia, there was complete diversity.

Q5: 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

Manufacturers engaged in DTC consumer motor vehicle sales are prohibited under current law from owning, operating, or controlling a motor vehicle warranty or service facility in Vermont by 9 V.S.A. §4086(i)⁶. For manufacturers engaged in DTC consumer motor vehicle sales to have such a warranty repair facility in the state, this law would need to be amended.

Current Warranty Repair Process

- Vehicle is brought to dealer for service – the customer may or may not be aware that the service is covered by warranty.
- Dealer examines the vehicle and, when applicable, approves the service to be conducted as warranty service.
- Dealer completes the warranty service. Dealers typically complete the warranty service in-house but may be may in some instances be allowed to subcontract.
- Dealer submits invoice to OEM for payment of the warranty service.
 - Price is based on typical retail price of service at the dealership and is calculated based on actual non-warranty service jobs conducted by the dealership (pricing process detailed in 9 V.S.A. Chapter 108).
- OEM has right to dispute the warranty coverage. If this occurs, it is generally incumbent on the dealership to explain why the service should reasonably be covered as warranty and the dealer incurs the loss if it is unsuccessful in doing so (i.e. charge is not passed to the consumer if the service was initially approved by the dealer as warranty service).
- OEM is compelled to provide parts to dealers to complete repairs (9 V.S.A. Chapter 108, §4097).

⁶ Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act. (9 V.S.A. Chapter 108)

Consideration: Alignment of Customer and Service Provider Interests

Franchised Dealer Service (current)

Supporters of the current law argue that a franchise approach aligns the interests of the customer and franchise dealership for approval and conduct of the warranty service work because the franchised dealer is fully compensated for the warranty repair and positions the franchised dealership to advocate for the customer in dealing with the manufacturer.

- **VADA reported the following:** Dealers also 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. Because dealers are independent from the manufacturer, they are more likely to bring these safety defects to attention of the public. A recent example in Vermont was the door of a new model truck was not closing in freezing weather in Vermont. A Vermont dealer noticed this pattern and brought it to the attention of the manufacturer well before it became a significant safety recall issue.
- **Tesla reported the following:** In national recalls like the Takata airbag recalls that affected the entire industry, DTC companies had far superior recall completion rates. While most OEMs struggled to reach 60%, Tesla was above 90% in the first year – by directly contacting customers, by having a direct relationship with their customers, and by offering at home driveway service.
- **VADA reported the following:** The statement of the Takata airbag recalls reported by Tesla does not look at the full context of the issues surrounding recalls or the actual recall in question. From research on the Internet, it is reported by Tesla that they have a 90% completion rate on a 14,000 vehicle recall that was issued in January of 2019 for certain Tesla S models built in 2014-2016. It is certainly easier to track down 14,000 customers that are in late model (3-5-year-old vehicles) than the undertaking of this recall by a company like Honda that is reported to have had 20 million Takata airbags to replace, going back to model year 2001 vehicles, of which they have so far replaced 16 million as reported in one article. Many more of these vehicles have been scrapped and will never be counted as repaired. Certainly, while the statement by Tesla could be correct, it is easy to see why contacting customers in 3-5 year old cars, where many people will still be the first owners, is much easier than trying to complete the recall on vehicles that are 19 years old.
- Supporters of changing the law to allow DTC service centers argue that current interests are instead misaligned since 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. These stakeholders further argue that the increased costs to the OEM are passed on to consumers through

higher vehicle prices. In addition, they point out that manufacturers, and not dealers, are generally subject to product liability suits.

- **VADA reported the following:** a) warranty work makes up a minority of the dealer's service work, b) the dealer has to offer convenience and value to its customers or they won't come back and could look for lower cost alternatives, c) warranty reimbursement is based on repair orders for similar type work and pulls out basic maintenance services (this requires the manufacturer to reimburse warranty at a rate commensurate with the higher skilled jobs that are included in the calculation to determine a warranty rate).

DTC Manufacturer Service (proposed, not currently allowed in Vermont)

- Supporters of allowing DTC service centers argue that customer satisfaction with warranty service is an important factor in vehicle purchasing decisions, and DTC manufacturers would therefore have an incentive to approve claims and conduct quality warranty work in order to keep attracting customers for new vehicle sales. They also point out that manufacturers of other high-value products (such as consumer electronics companies) provide their own warranty service. Prohibiting customers from accessing DTC service facilities is unfair and unreasonable to Vermont residents who need to travel out of the state to get their cars serviced and repaired.
- Supporters of the current law argue that a manufacturer-owned warranty service center, unlike a franchised dealer-controlled service center, would not profit from the warranty repair service and instead only incur the expense, creating a financial incentive for the DTC warranty center to conduct as little warranty work as possible and avoid approving warranty claims.

Consideration: Consumer Access to Warranty Service

- The current approach prohibits warranty service centers for vehicles sold through DTC channels. Supporters of allowing DTC service centers argue these prohibitions harm consumers since they are not able to bring their vehicle to a Vermont-based facility for warranty work and instead must travel or have vehicle towed out of state. Tesla notes that DTC manufacturers have chosen this business model, just as the non-DTC manufacturers chose the franchise business model. Tesla has never had a franchised dealer anywhere in the world.
 - Supporters of the current law argue that there is nothing preventing companies currently selling vehicles directly to consumers from switching to a franchise model and offering warranty service through dealerships.

Additional Considerations

- Supporters of the current law argue that franchise laws were established to protect the bargaining power of dealers versus manufacturers. Subjecting all manufacturers to the same set of rules and regulations (including requirements for sales centers and repair

facilities) ensures an even playing field and the consumer protections that come along with the franchise model.

- **Tesla reported the following:** Franchise laws were in fact established in the first half of the 20th century to protect the bargaining power of dealers against manufacturers of the same line-make as those dealers. These laws were created so that a manufacturer with a local dealer would not unfairly compete with that dealer in selling the same product in the same region. The franchise laws were in no way intended to block a manufacturer without a local franchised dealer from entering the market. (Crane, 2016). The automakers who utilize a franchise distribution model chose to go with that business model. Tesla had chosen a different business model that they believe is most appropriate to their product.
- **The Alliance for Automotive Innovation reported the following:** Automobile manufacturers honor their warranties in accordance with the Magnuson-Moss Warranty Act.⁷ They do that through their business partners--franchised dealers. Those dealers offer customer convenience and quality repairs by certified technicians who use Original Equipment Manufacturer (OEM) parts and perform repairs in accordance with the OEM's repair procedures. The arrangement allows manufacturers to serve consumer warranty needs quickly, reliably, and conveniently. For dealers, warranty work is a steady, high volume source of business for which there are no advertising or customer retention costs.

Warranty expenses are of course a cost of doing business for automobile manufacturers. And Vermont law shapes the size of that cost. 9 V.S.A. § 4086(b) requires OEMs to compensate dealers for performing warranty repairs at "amounts not less than the retail amounts customarily charged by the dealer to its retail customers for like parts for non-warranty work." Retail rates factor in things like advertising and customer retention, and they do not account for the benefits of having a steady volume of business from a high-volume purchaser. Paying retail rates instead of the contractually agreed to rates creates an additional cost to OEMs with dealer networks.

That is the law in Vermont, and manufacturers comply with it. If the law were changed to allow DTC manufacturers to own and operate their own service centers, then they would not incur the additional costs that the law imposes upon OEMs with dealer networks. DTC manufacturers should be subject to the same distribution laws that govern other OEMs.

- Supporters of allowing DTC service centers argue that a physical presence provided by a warranty service center would improve law enforcement's ability to enforce Vermont laws and rules by nature of providing a location for the officials to visit and engage the company, even in lieu of a DTC sales location in the state.

⁷ U.S.C. § 2301 et seq.

Q6: laws, rules, and best practices from other jurisdictions and any model legislation related to the regulation of direct-to-consumer motor vehicle sales; and

Laws governing DTC motor vehicle sales are very different from state to state. No one model has yet become a standard or “best practice”, and instead a handful of different approaches have emerged.

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.
 - **VADA** points out that legacy OEMs are all developing their own lines of EV cars and trucks. There is the expectation that there may be as many as 30 EV models for sale within two years. This means that dealers will necessarily become conversant in selling EVs. That will negate the argument DTCs make to justify the carveout for manufacturers of electric vehicles.
 - **Tesla** points out that carve-outs in most states are for manufacturers without independent franchise dealers operating in the state.
 - **Tesla reported the following:** Tesla notes that while legacy OEMs have been developing their own lines of EVs for several years, they are simply not providing them to dealers in VT in insufficient volumes to effectively meet the state’s EV and climate goals. As of January 2019, there were under 3000 electric vehicles registered in Vermont. Estimates for how many EVs must be registered in Vermont to meet the goals set forth in the Energy Plan range from 50,000 to 60,000 vehicles by 2025. According to the Auto Alliance, in its most recent analysis, nearly 43,000 cars were sold in Vermont in 2018. If Vermont is going to meet its goal for 2025, it will need to quickly scale to more than 25% of all new cars purchased being EVs. To meet this ambitious and critical goal, the state needs all hands-on deck, including DTC EV manufacturers which represent nearly 80% of BEV sales in the U.S.
- 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 cars 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”.

Implicitly allow DTC sales

- California, Florida, and Illinois never expressly prohibited manufacturers from making direct 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 (Crane, 2016). These states still have protections in place for franchised dealerships in the state.
- For 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.

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).

Q7: 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.

The concern expressed by VADA and the Alliance for Automotive Innovation is that DTC 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. According to these stakeholders, this would give a set of manufacturers a competitive advantage by permitting bypassing of rules and laws, which would be unfair, and may encourage OEMs to create subsidiaries to bypass current franchise laws.

According to VADA, franchise dealers have invested significant financial resources to establish dealerships. Franchised dealers have a positive economic impact to the state in terms of employment and tax revenue generation, and indirectly through purchases from other Vermont businesses. They also have an impact in their local communities through real estate investment and philanthropic activities.

- **VADA reported the following:** 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.
- **VADA reported the following example:** Volvo, owned by its parent company Geely from China, created Polestar to sell electric vehicles, bypassing the franchised dealers who have spent millions on service, training, tools and sales facilities.

DTC companies note that if they were to open a sales and service location in Vermont they would incur the same costs of compliance since they would be registered as dealers as well.

Tesla reported that this issue has been addressed in other states where manufacturers with affiliates that have independent franchised dealers in the state are prohibited from direct sales operations.

- **The Alliance for Automotive Innovation reported the following:** Changes to Vermont law that would allow DTC manufacturers to own or operate their own service facilities would give those companies an unfair advantage over OEMs with dealer networks because they would not be required to comply with a portion of Chapter 108 that adds cost. The automobile marketplace is very competitive, and consumers benefit from that level of competition. DTC manufacturers should not be governed by a different set of rules than OEMs with dealer networks because that would not be in the interest of a healthy, competitive market with competitors vying for Vermont consumers.
- **Tesla reported the following:** 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. These same positive economic impacts would also come from DTC manufacturers who open sales and service locations in Vermont. Tesla has chosen its business model for distribution of vehicles, just as the other manufacturers had the chance to choose their preferred business model. In terms of impact to Vermont franchised dealers, it is important to look to Massachusetts, where there are no limitations on direct sales locations. In 2012, dealers in Massachusetts called direct sales “a blatant attempt to undermine the dealer franchise system,” and asserted that thousands of jobs were at risk. In 2014, the MA Supreme Court ruled that direct sales were legal, ensuring an uncapped market for EV manufacturers to sell. Franchised dealer sales and employment have grown every year since then. According to National Auto Dealers Association’s NADA Data, in Massachusetts:
 1. Franchised dealerships: 389
 2. Tesla stores: 4 (~1% of total dealerships in MA)
 3. Franchised dealer job growth since 2014: 14%
 4. Franchised dealer sales growth since 2014: 28%
- **Tesla reported the following:** DTC companies note that if they were to open a Vermont sales location, they would be subject to the exact same requirements, rules and laws, and would incur the same costs of compliance since they would be registered as dealers in Vermont.

APPENDIX A. DETAILED LITERATURE REVIEW

New Vehicle Sales

E-commerce is starting to transform the conventional distribution model of the automobile industry—the dealer franchise system. Online sales offer numerous benefits for both sellers and consumers, allowing for each to expand their respective market areas and more price transparency, among other benefits. For manufacturers, online sales technically enable bypassing any wholesalers and retailers (i.e., dealerships) and selling products directly to consumers. However, online sales may also reduce states' ability to provide and enforce certain consumer protections. State regulation originally enacted to protect local dealers from unfair treatment by large, powerful auto manufacturers still prohibit manufacturer DTC vehicle sales in many states. Tesla argues that the intent of these regulations was to protect local dealers from auto manufacturers of the same line-make.

Dealer franchise laws limiting manufacturer DTC sales were passed by all 50 states during the 1930s, 1940s and 1950s. At the time, a few large auto manufacturers accounted for the vast majority of new vehicles sold in the U.S. whereas most vehicle dealers were small businesses with limited financial resources.⁸ The differences in bargaining power led many states to impose protections for dealers, for example protections against unjustified franchise terminations, limits on additional franchises in the same geographic areas, and regulation that prevents manufacturers from requiring dealerships to accept unwanted inventory (Crane, 2016). Most importantly in the context of DTC sales, the enacted state statutes prohibited auto manufacturers from selling vehicles directly to consumers to prevent unfair competition and require, instead, that the manufacturer sell through a franchised dealership (Urich, 2018).

Even with considerable changes in the business landscape, dealer franchise laws have been actively defended into the 21st century and extended to online in-state sales. In 1999, General Motors announced plan to shift to online retail sales and factory-direct orders by purchasing 5 to 10 percent of its dealerships (Bradsher, 1999). Arguing that the direct manufacturer sales would hurt customers, the dealerships successfully lobbied state legislatures for protection and succeed on winning state bans on Internet sales by anyone except existing licensed dealers (Lane, 2014).

The debate on direct vehicle sales reignited in in 2008, when Tesla Motors, Inc. started to sell its battery electric vehicles using a DTC business model. The model bypassed dealerships through online sales and owner-operated stores and galleries, where customers can view and learn about vehicles but must still purchase them online. As of September 2020, Tesla has showrooms in 29 states, plus the District of Columbia.⁹ Since opening its first sales location in

⁸ The primary automakers were the Big Three, referring to General Motors, Ford and Chrysler, the largest automakers in the U.S., all headquartered in the Detroit, MI, area.

⁹ Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, and Washington⁹

Los Angeles, California in 2008, Tesla's DTC business plan has been faced with legislative and litigation resistance. Every state regulates the retail sales of new vehicles and requires dealers to have licenses. Tesla has run into difficulty in some states securing the necessary licenses to sell its cars. The restrictions on DTC vehicle sales typically take one of two forms (or both in some states):

- Express prohibitions on direct vehicle sales to consumers; and
- Prohibitions on the ability of the manufacturer to operate a vehicle dealership (Fee, Rowley, & Savrin, 2019).

The majority of states (34) have at least one of these restrictions. 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. A few states (California, Florida, and Illinois) never expressly prohibited Tesla from making direct 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 (Crane, 2016). These states still have protections in place for franchised dealerships in the state. Below is example language from Florida:

Fla. Stat. § 320.645(1) ("No . . . manufacturer . . . shall own or operate . . . a motor vehicle dealership in this state for the sale or service of motor vehicles which have been or are offered for sale under a franchise agreement with a motor vehicle dealer in this state.").

On the federal level, the Federal Trade Commission has been vocal in its support of allowing direct vehicle sales (Lao, Feinstein, & Lafontaine, 2015) arguing that allowing the competition will produce a more efficient market and, as a result, overall financial savings for customers.

The level of restriction on direct vehicle sales vary by state. Currently, 12 states have passed legislation that constitute a total ban on direct vehicle sales, although several of these states have grandfathered existing Tesla stores and sales. The states with a total ban include:

- Alabama (also bans service stations)
- Connecticut
- Louisiana
- Nebraska
- New Mexico (also bans service stations)
- Alabama (also bans service stations)
- New York (Tesla grandfathered)
- Oklahoma

Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, and Washington

- South Carolina (also bans service stations)
- Louisiana
- Michigan (service center ban being lifted, direct sales still banned)
- Texas
- Connecticut
- Washington (Tesla grandfathered)
- West Virginia
- Wisconsin

As noted above, some states also have bans on manufacturer- or distributor-owned service centers. For example, Alabama Code Title 8. Commercial Law and Consumer Protection § 8-20-4, defines the following as constituting unfair and deceptive trade practices:

s. To own an interest in a new motor vehicle dealership, to operate or control a dealership, to make direct sales or leases of new motor vehicles to the public in Alabama, or to own, operate, or control a facility for performance of motor vehicle warranty or repair service work...

In other states, Tesla has managed to negotiate direct vehicle sales with restrictions in terms of a number of stores among other stipulations. The following table shows states that allow limited direct vehicle sales.

TABLE 2: MANUFACTURE DTC STORE LIMITS BY STATE

STATE	YEAR	LEGISLATION	REQUIREMENTS
Georgia	2015	H.B. 393 ¹⁰	4 store limit
Maryland	2015	H.B. 235	4 store limit, only non-fossil fuel vehicles
New Jersey	2015	S.B. 3216 ¹¹	4 store limit, only zero-emission vehicles, at least one service center required
North Carolina	2019	S.B. 384 ¹²	6 store limit
Ohio	2014	S.B. 260 ¹³	3 store limit, only Tesla
Pennsylvania	2014	S.B. 1409 ¹⁴	5 store limit, only battery electric vehicles

¹⁰ <http://www.legis.ga.gov/Legislation/20152016/152539.pdf>

¹¹ https://www.njleg.state.nj.us/2014/Bills/PL15/24_.HTM

¹² <https://www.ncleg.gov/BillLookUp/2019/S384>

¹³ http://archives.legislature.state.oh.us/bills.cfm?ID=130_SB_260

¹⁴ <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2014&sessInd=0&act=125>

Virginia	2016, 2019	NA	2 stores approved for direct sales dealership licenses by the Virginia Department of Motor Vehicles
----------	------------	----	---

The following states allow relatively unrestricted direct vehicle sales. Cases where legislation or litigation intervened to allow for direct vehicle sales are noted. In other states, existing statutory language was interpreted to allow direct vehicle sales for manufacturers that are not competing with a network of franchised dealers. A distinction is made between direct-to-consumer manufacturers like Tesla and traditional OEMs with established dealer networks. Since direct-to-consumer manufacturers do not have franchised dealers, they cannot be deemed to be unfairly competing with them. All of these states still have continued protections for franchised dealerships, and in some cases limit direct to consumer sales to only electric vehicles.

- California
- Colorado (2020 law change)
- Delaware
- Florida
- Hawaii
- Indiana (2017 law change)
- Massachusetts (2014 court ruling)
- Minnesota
- Missouri (2017 court ruling)
- New Hampshire (2013 law change)
- North Carolina
- Oregon
- Rhode Island
- Tennessee
- Utah (2018 law change)
- Wyoming (2017 law change)

The language contained in the California Vehicle Code Section 11713.3(o)(1) is the following:

“It is unlawful and a violation of this code for any manufacturer ... [to] compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer ... in the relevant market area.”

A relevant market area is defined as a 10-mile radius around the retail facility.

Michigan is an interesting example of state that recently lifted its ban on direct sales and manufacture-owned service centers. In January 2020, Michigan and Tesla negotiated a

stipulation that lifted bans on both direct sales and on manufacturer-owned service centers (Rossman-McKinney, 2020). The stipulation acknowledges that Tesla may sell cars to Michigan customers as long as the sales contract indicates the sale took place and the vehicle is titled in a state other than Michigan. The stipulation also states that Tesla may indirectly own service and repair facilities in Michigan through a subsidiary, Tesla Michigan. These changes were the result of a settlement from a long-running lawsuit between Tesla and the state of Michigan; the automaker sued the state in reaction to legislation passed in 2014 that made wording changes to strengthen the statutory prohibitions on manufacturer direct sales (Lao, Feinstein, & Lafontaine, 2015). Notably, the Michigan legislature is actively trying to block other electric vehicle startups, such as Rivian and Lucid, by introducing a new bill banning direct vehicle sales.¹⁵

Other examples of states that have introduced legislation in the last few years include Utah and Colorado. Utah passed H.B. 369 in 2018, which created a direct-sale manufacturer license and, among other provisions, exempted direct-sale manufacturers from its New Automobile Franchise Act.¹⁶ In 2020, Colorado signed S.B. 20-167 into law with support from another direct-to-consumer electric automaker, Rivian.¹⁷ The act allows a manufacturer to own, operate, or control a motor vehicle dealer if the manufacturer makes only electric motor vehicles and has no franchised dealers of the same line-make. Previously, Tesla sales and stores were allowed in the state, but others direct sales were banned by the state legislature in 2010.

Used Vehicle Sales

Manufacturer DTC sales do not apply to used vehicles since the transaction is not a direct line from manufacturer to the consumer. However, within the used car market, many online platforms have mimicked the DTC model by bypassing traditional dealership infrastructure and delivering used vehicles directly to customers. Examples of companies who have adopted this model include Carvana, Vroom, and TrueCar, among others.

Auto dealers, both those dealing in new and used vehicles, are subject to extensive federal and state consumer protections. However, state bans on direct manufacturer car sales do not apply to used vehicles. This distinction has allowed online used car dealers, like Carvana, to grow without encountering the same legislative red tape as Tesla.

Online car dealers must obtain the same state-issued dealer licenses and follow the same regulations state and federal regulations as traditional dealers. For example, on the federal level, the Used Car Rule applies to all car dealers who sell, or offer for sale, more than five used vehicles in a 12-month period. The Rule requires dealers to post a Buyers Guide¹⁸ before displaying a vehicle for sale or letting a customer inspect the vehicle with the intent of purchasing it. The Rule applies to all states except Maine and Wisconsin, which are both

¹⁵

[http://www.legislature.mi.gov/\(S\(us3qurmt43engymugq1e3nov\)\)/mileg.aspx?page=GetObject&objectname=2020-HB-6233](http://www.legislature.mi.gov/(S(us3qurmt43engymugq1e3nov))/mileg.aspx?page=GetObject&objectname=2020-HB-6233)

¹⁶ <https://le.utah.gov/~2018/bills/static/HB0369.html>

¹⁷ <https://leg.colorado.gov/bills/sb20-167>

¹⁸ <https://www.consumer.ftc.gov/articles/pdf-0083-buyers-guide.pdf>

exempt because they have similar regulations that require dealers to post disclosures on used vehicles.

A central issue with online car sales is taxes, specifically sales and use taxes, and who collects them when the vehicle is purchased out-of-state. At present, the Vermont Motor Vehicle Purchase and Use Tax (32 V.S.A. § 8903) will give credit for the purchase and use or sales tax paid on a vehicle to another jurisdiction. This effectively creates a loophole through which Vermont could potentially lose tax revenue on online vehicle purchases. The specific exemption to the Motor Vehicle Purchase and Use Tax (32 V.S.A. § 8911) is as follows:

(9) Motor vehicles on which a state sale or use tax has been paid by the person applying for a registration in Vermont, or paid by a person who, at the time of tax payment to another state, was the spouse of the person now applying for Vermont registration. If the tax paid in another state is less than the Vermont tax, the tax due shall be the difference. An applicant for credit under this subdivision shall bear the burden of proving the amount of tax paid in the other state, and acceptable proof shall include a valid certificate of title from that state and a cancelled check to that Department of Motor Vehicles in an amount at least equal to the total purchase and use tax due to that state.

Many states have a similar exemption clause in their vehicle tax statutes. For example, Florida has the same exemption as Vermont in that Florida law allows a credit to be given to reduce the tax due when a like tax has been lawfully imposed and paid in another state, District of Columbia, or U.S. territory.¹⁹ Other states will only give credit for sales tax paid to certain other states based on tax reciprocity agreements. For example, New York provides a reciprocal credit for tax paid on a motor vehicle only to Arizona, California, Florida, Hawaii, Massachusetts, Michigan, South Carolina, and Wyoming.²⁰

Applicable Federal Laws

Federal laws related to a vehicle sales transaction include but are not limited to:

- Truth in Lending Act (TILA) and Regulation Z
- Consumer Leasing Act (CLA) and Regulation M
- Equal Credit Opportunity Act and Regulation B
- Fair Debt Collection Practices Act
- Fair Credit Reporting Act
- Gramm Leach Bliley Act
- FTC Act Section 5 (Unfair or Deceptive Acts or Practices)
- FTC Rules:

¹⁹ https://revenue.law.floridarevenue.com/LawLibraryDocuments/2019/01/TIP-122235_TIP_19A01-01_FINAL_RLL.pdf

²⁰ https://www.tax.ny.gov/pdf/current_forms/st/ssf804.pdf

- Used Car Rule
- Holder Rule
- Red Flags Rules
- Magnuson-Moss Federal Warranty Act Rules
- FTC Cooling Off Rule
- NHTSA Odometer Disclosure Rule
- Telephone Consumer Protection Act
- CAN-SPAM Act
- Junk Fax Prevention Act

APPENDIX B. EXCERPTS FROM KEY LAWS AND REGULATIONS

Excerpts pertaining to Q1: Consumer Protections

23 V.S.A §4 - Dealer Definition

(8)(A)(i) "Dealer" means a person, partnership, corporation, or other entity engaged in the business of selling or exchanging new or used motor vehicles, snowmobiles, motorboats, or all-terrain vehicles. A dealer may, as part of or incidental to such business, repair such vehicles or motorboats, sell parts and accessories, or lease or rent such vehicles or motorboats. "Dealer" shall not include a finance or auction dealer or a transporter.

(ii)(I) For a dealer in new or used cars or motor trucks, "engaged in the business" means having sold or exchanged at least 12 cars or motor trucks, or a combination thereof, in the immediately preceding year, or 24 in the two immediately preceding years.

(V) For the purposes of this subdivision (8)(A)(ii), the sale or exchange of vehicles or motorboats owned but not registered by the dealer, or that have been in lease or rental services, shall count as sales or exchanges. Vehicles or motorboats that are to be scrapped, dismantled, or destroyed shall not count as sales or exchanges.

23 V.S.A §473 - When registration is allowed, required; penalties

(a) A person shall not engage in the business of selling or exchanging vehicles or motorboats, as defined in subdivision 4(8) of this title, without a dealer registration and obtaining dealer plates or motorboat registrations in accordance with the provisions of this subchapter and, if applicable, section 3204, 3305, or 3504 of this title. A person may register as a dealer only if he or she is engaged in the business of selling or exchanging vehicles or motorboats, as defined in subdivision 4(8) of this title or, in the case of an initial registration, if the person's reasonable estimate of expected sales or exchanges satisfies the minimum thresholds under subdivision 4(8) of this title. A person who violates this section shall be subject to the penalties established pursuant to section 475 of this title.

(b) A person who misrepresents himself or herself as a dealer in the purchase, sale, or exchange of a vehicle or motorboat without registering as a dealer, or after the cancellation, suspension, or revocation of the dealer's registration, or who makes misrepresentations to the Department in order to qualify for registration, shall be subject to the penalties established pursuant to section 475 of this title. (Added 1965, No. 204, § 7; 1985, No. 12, § 2; amended 1987, No. 190 (Adj. Sess.), § 7; 1989, No. 204 (Adj. Sess.), § 2; 1999, No. 31, § 11; 2015, No. 50, § 2.)

23 V.S.A §453 - Surety Bond

(g) The Commissioner of Motor Vehicles shall not issue a dealer's certificate of registration to a dealer in new or used motor vehicles, unless the dealer has provided the Commissioner with a surety bond, letter of credit, or certificate of deposit issued by an entity authorized to transact business in the same state. The amount of such surety bond, letter of credit, or certificate of deposit shall be between \$20,000.00 and

\$35,000.00 based on the number of new or used units sold in the previous year; such schedule is to be determined by the Commissioner of Motor Vehicles. In the case of a certificate of deposit, it shall be issued in the name of the dealer and assigned to the Commissioner or his or her designee. The bond, letter of credit, or certificate of deposit shall serve as indemnification for any monetary loss suffered by the State or by a purchaser of a motor vehicle by reason of the dealer's failure to remit to the Commissioner any fees collected by the dealer under the provisions of chapters 7 and 21 of this title or by a dealer's failure to remit to the Commissioner any tax collected by the dealer under 32 V.S.A. chapter 219. This State or the motor vehicle owner who suffers such loss or damage shall have the right to claim against the surety upon the bond or against the letter of credit or certificate of deposit. The bond, letter of credit, or certificate of deposit shall remain in effect for the pending registration year and one year thereafter. The liability of any such surety or claim against the letter of credit or certificate of deposit shall be limited to the amount of the fees or tax collected by the dealer under chapters 7 and 21 of this title or 32 V.S.A. chapter 219 and not remitted to the Commissioner.

23 V.S.A §462 - Cancellation, revocation, or suspension of dealer's registration

(a) The Commissioner may cancel, revoke, or suspend the registration of a dealer under the provisions of this chapter or section 3204, 3305, or 3504 of this title, whenever, after the dealer has been afforded the opportunity of a hearing before the Commissioner or upon conviction in any court in any jurisdiction, it appears that the dealer has willfully violated any vehicle or motorboat law of this State or any lawful regulation of the Commissioner, applying to dealers, or when it appears that the dealer has engaged in fraudulent or unlawful practices related to the purchase, sale, or exchange of vehicles or motorboats. A dealer whose registration has been canceled, revoked, or suspended shall forthwith return to the Commissioner the registration certificate and any and all number plates or numbers or decals furnished him or her by the Commissioner, and the privilege to operate, purchase, sell, or exchange vehicles or motorboats under his or her dealer's number shall cease. An application for a new dealer's registration for that dealer will not be considered until a revocation period has been served.

23 V.S.A §466 - Records

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

(1) Every vehicle or motorboat that is bought, sold, or exchanged by the licensee or received or accepted by the licensee for sale or exchange.

(2) Every vehicle or motorboat that is bought or otherwise acquired and dismantled by the licensee.

(3) The name and address of the person from whom such vehicle or motorboat was purchased or acquired, the date thereof, the name and address of the person to whom any such vehicle or motorboat was sold or otherwise disposed of and the date thereof, and a sufficient description of every such vehicle or motorboat by name and identifying numbers thereon to identify the same.

(4) [Repealed.]

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

9 V.S.A §4172 – Enforcement of Warranty (Lemon Law)

(a) Every new motor vehicle as defined in section 4171 of this title sold in this State must conform to all applicable warranties.

(b) It shall be the manufacturer's obligation under this chapter to ensure that all new motor vehicles sold, leased, or registered in this State conform with manufacturer's express warranties. The manufacturer may delegate responsibility to its agents or authorized dealers provided, however, in the event the manufacturer delegates its responsibility under this chapter to its agents or authorized dealers, it shall compensate the dealer for all work performed by the dealer in satisfaction of the manufacturer's responsibility under this chapter in the manner set forth in chapter 108 of this title known as the "Motor Vehicle Manufacturers, Distributors and Dealers' Franchising Practices Act" as that act may be from time to time amended.

(c) If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent, or authorized dealer during the term of the warranty, the manufacturer shall cause whatever repairs are necessary to conform the vehicle to the warranties, notwithstanding the fact that the repairs are made after the expiration of a warranty term.

(d) A manufacturer, its agent, or authorized dealer shall not refuse to provide a consumer with a written repair order and shall provide to the consumer each time the consumer's vehicle is brought in for examination or repair of a defect, a written summary of the complaint and a fully itemized statement indicating all work performed on the vehicle including examination of the vehicle, parts, and labor.

(e)(1) If, after a reasonable number of attempts, the manufacturer, its agent, or authorized dealer or its delegate is unable to conform the motor vehicle to any express warranty by repairing or correcting any defect or condition covered by the warranty that substantially impairs the use, market value, or safety of the motor vehicle to the consumer, the manufacturer shall, at the option of the consumer within 30 days of the effective date of the Board's order, either:

(A) Replace the motor vehicle with a new motor vehicle from the same manufacturer, if available, of comparable worth to the same make and model with all options and accessories with appropriate adjustments being allowed for any model year differences.

(B) Accept return of the vehicle from the consumer and refund to the consumer the full purchase price or to the lessee in the case of leased vehicles, as provided in subsection (i) of this section. [... continues]

9 V.S.A §4173 – Procedure to Obtain Refund or Replacement

(a)(1) After reasonable attempt at repair or correction of the nonconformity, defect, or condition, or after the vehicle is out of service by reason of repair of one or more nonconformities, defects, or conditions for a cumulative total of 30 or more calendar days as provided in this chapter, the consumer shall notify the manufacturer and lessor in writing, on forms to be provided by the manufacturer at the time the new motor vehicle is delivered, of the nonconformity, defect, or condition and the consumer's election to proceed under this chapter. The forms shall be made available by the manufacturer to any public or nonprofit agencies that shall request them. Notice of consumer rights under this chapter shall be conspicuously displayed by all authorized dealers and agents of the manufacturer.

(2) The consumer shall in the notice elect whether to use the dispute settlement mechanism or the arbitration provisions established by the manufacturer or to proceed under the Vermont Motor Vehicle Arbitration Board as established under this chapter. Except in the case of a settlement agreement between a consumer and manufacturer, and unless federal law otherwise requires, any provision or agreement that purports to waive, limit, or disclaim the rights set forth in this chapter or that purports to require a consumer not to disclose the terms of the provision or agreement is void as contrary to public policy.

9 V.S.A §2631 – Motor Vehicle Retail Installment Sales Financing: Penalties

(a) In case of failure of any person to comply with any of the provisions of this chapter, such person or any person who acquires a contract or installment account with knowledge of such noncompliance is barred from recovery of any finance charge or of any delinquency, collection, deferral, or refinance charge imposed in connection with such contract or installment account and the buyer shall have the right to recover from such person an amount equal to any of such charges paid by the buyer with interest thereon from the time of payment and all expenses of collection including reasonable attorney's fees, in a civil action on this statute.

(b) In any case in which a person willfully violates any provision of this chapter, except as provided in subsection (c) of this section, the buyer may recover from such person an amount equal to two times the total of the estimated finance charges and any delinquency, collection, extension, deferral, or refinance charges imposed, contracted for, or received, and the seller shall be barred from the recovery of any such charges. The buyer shall also recover reasonable attorney's fees as determined by the court.

(c) A person shall not knowingly or willfully make any retail installment contract under this chapter which directly or indirectly calls for the payment of any finance charges in excess of the legal rate as set forth in this chapter. A contract violating this section shall

be unenforceable and a person shall have no right to collect any principal, finance, or other charges.

(d) Notwithstanding the provisions of this section, any failure to comply with any provision of the chapter may be corrected by the holder in accordance with the provisions of this section, provided that a willful violation may not be corrected, and a correction which will increase the amount owed by the owner or the amount of any payment shall not be effective unless the buyer concurs in writing to the correction. If a violation is corrected by the holder in accordance with the provisions of this section, neither the seller nor the holder shall be subject to any penalty under this section. The correction shall be made by delivering to the buyer a corrected copy of the contract within 60 days of the execution of the original contract by the buyer. Any amount improperly collected from the buyer shall be credited against the indebtedness evidenced by the contract.

(e) Any person who shall willfully and intentionally violate any provisions of this chapter shall be fined not more than \$100.00 for the first offense. Upon conviction for violating this section in any transaction entered into or consummated after a first conviction hereunder, the offender shall be fined not more than \$1,000.00 or imprisoned for not more than one year, or both. (Added 1961, No. 227, § 11, eff. Jan. 1, 1962; amended 1973, No. 185 (Adj. Sess.), § 1; 1989, No. 122, § 11, eff. June 30, 1989.)

9 V.S.A §2355(f)(1) – Motor Vehicle Retail Installment Sales Financing: Penalties

(f)(1) The retail installment contract shall contain the following items:

(A) The cash price of the motor vehicle.

(B) The amount of the buyer's down payment, if any, specifying the amounts paid in money and in goods traded in.

(C) The difference between items (A) and (B) of this subdivision.

(D) The amount, if any, paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien interest, or lease interest on the traded-in motor vehicle, the amount, if any, for insurance including the cost of credit life insurance at a rate authorized by rate schedules then in effect and on file with the Commissioner of Financial Regulation, the cost, if any, of physical damage insurance specifying the type or types and the term of coverage, the cost, if any, for service contracts as defined in 8 V.S.A. § 4247, and the reasonable cost, if any, for a debt protection agreement as set forth in 8 V.S.A. § 10405.

(E) The amount of all official fees and a separate identified charge shall be shown therefor.

(F) The principal balance, which is the sum of items (C), (D), and (E) of this subsection.

(G) The amount of the finance charge.

(H) The sum of items (F) and (G) of this subsection, which is the balance to be paid by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof and notice to the borrower as to the effect of early or late payments.

(I) The total time price, which is the sum of items (A), (D), (E), and (G) of this subsection.

(J) A disclosure form completed by the automobile dealership containing at least the allowance for the trade-in, amount owed on the trade-in, or lease, cash price, amount financed on the motor vehicle retail installment contract, the amount financed on the motor vehicle retail installment contract as a percentage of the cash price of the vehicle and signature blocks for the buyer will be provided to the buyer who finances a motor vehicle utilizing a motor vehicle retail installment sales contract at the dealership. The unexecuted disclosure form will be provided to the buyer prior to consummation of the transaction and will be signed by the buyer at the time the buyer signs the motor vehicle retail installment contract. The disclosure will be on a form prescribed by the Commissioner on or before July 1, 2006 and as thereafter amended by the Commissioner by rule.

(2) The above items need not be stated in the sequence or order set forth; additional items may be included but only to explain the calculations involved in determining the balance to be paid by the buyer as set forth above. No other charges shall be made by the seller.

DMV Rules: Dealer License Requirements – Place of Business

Building Requirements:

1. The building shall be at least 1200 square feet in size. Measurements of the building shall be around the exterior of the building if single level. A multi-level or multi-use building shall be measured on the inside perimeter of all space to be used by the dealership.
2. The space occupied by a dealer within a building shall be used primarily for the dealer business.
3. The building shall contain a heated dealer office area, which shall be separate from any unrelated business quarters and must contain reasonable accommodations to conduct business with the public. Dealer records must be housed and maintained in the dealer office area. The Commissioner may grant written approval for records to be housed and maintained in a building other than the dealer's office if located on the dealer's premises. The dealer license certificate must be displayed in the office area and be visible to the public.
4. If the building is multilevel or multiuse, the dealership must have an entrance that is easily recognizable by the public.

Outside Display Area Requirements:

The outside display area must be located in the immediate proximity of the approved building and maintained for display purposes. Dealers owning property on both sides of a public highway located opposite the approved building may use the property for display purposes.

Sign Requirements:

A sign, visible to the public, displaying the business or trade name of the dealership must be in place prior to the first anniversary of the licensed dealership.

Hours of Operation Requirements:

The dealership shall be open for business a minimum of one hundred and forty-six (146), six (6) hour days during each registration year. The days and hours of business, some portion of which shall contain a minimum of four (4) consecutive hours between 6 AM and 6 PM, shall be posted in a place visible to the consumer.

Excerpts pertaining to Q3: Taxation

32 V.S.A §8903 – Tax Imposed

(a) (1) There is hereby imposed upon the purchase in Vermont of a motor vehicle by a resident a tax at the time of such purchase, payable as hereinafter provided. The amount of the tax shall be six percent of the taxable cost of a:

(A) Pleasure car as defined in 23 V.S.A. § 4;

(b) (1) There is hereby imposed upon the use within this state a tax of six percent of the taxable cost of a:

(A) Pleasure car as defined in 23 V.S.A. § 4;

(c) The Vermont registration, transfer of Vermont registration or the issuance of a Vermont certificate of title of a motor vehicle shall be conclusive evidence that the purchase and use tax applies except as provided in section 8911 of this title

(f) There is hereby imposed a tax at the rate prescribed in subsection (a) of this section on any amount charged at the end of a motor vehicle lease contract resulting from excess wear and tear or excess mileage.

32 V.S.A §8905 – Collection of Tax

(a) Every purchaser of a motor vehicle subject to a tax under subsection (a) of section 8903 of this title shall forward such tax form to the commissioner, together with the amount of tax due at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

(b) Every person subject to a use tax under subsection (b) of section 8903 of this title shall forward such tax form and the tax due to the commissioner with the registration application or transfer, as the case may be, and fee at the time of first registering or

transferring a registration to such motor vehicle as a condition precedent to registration thereof.

(e) Every lessor of a motor vehicle shall collect the tax imposed by subsection 8903(a) or (b) of this title from the lessee and remit it to the Commissioner at the time of registration of the motor vehicle, in the case of the first lease of a motor vehicle, and within 30 days after any extension of the lease or any subsequent lease of the motor vehicle. Every lessor of a motor vehicle shall collect the tax imposed by subsection 8903(f) of this title from the lessee and remit it to the Commissioner within 30 days after the end of the motor vehicle lease contract. If the lessor fails to collect the tax imposed by subsections 8903(a), (b) or (f) of this title, the lessee shall pay the tax directly to the Commissioner within the time prescribed for payment.

32 V.S.A §8911 – Exceptions

(9) Motor vehicles on which a state sales or use tax has been paid by the person applying for a registration in Vermont, or paid by a person who, at the time of tax payment to another state, was the spouse of the person now applying for Vermont registration. If the tax paid in another state is less than the Vermont tax the tax due shall be the difference. An applicant for credit under this subdivision shall bear the burden of proving the amount of tax paid in the other state, and acceptable proof shall include a valid certificate of title from that state and a cancelled check to that department of motor vehicles in an amount at least equal to the total purchase and use tax due to that state;

APPENDIX C. INTERVIEWS CONDUCTED

The following experts and stakeholders were interviewed for this report. Stakeholders who also provided written response are marked with an asterisk (*).

Stakeholders:

- *Alliance for Automotive Innovation: 9/16/2020
- *Vermont Vehicle and Automotive Distributors Association (VADA):9/17/2020
- National Automobile Dealers Association (NADA): 9/17/2020
- *Tesla: 9/17/2020
- Carvana: 10/1/2020
- Vroom: 10/20/2020

Experts:

- Federal Trade Commission, Office of Policy Planning
- 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
- Paul Steier, Law Enforcement Program Manager, American Association of Motor Vehicle Administrators

REFERENCES

- Blackwell, J. (2019, June 21). *Judge affirms DMV decision to allow Tesla to operate automotive store in Henrico*. Retrieved from Richmond Times-Dispatch: https://richmond.com/business/local/judge-affirms-dmv-decision-to-allow-tesla-to-operate-automotive/article_3089658d-4817-5d3f-8bf3-57691899cb96.html
- Bradsher, K. (1999, October 13). *Fight Is Promised Over G.M. Plan to Buy Dealerships*. Retrieved from The New York Times: <https://www.nytimes.com/1999/10/13/business/fight-is-promised-over-gm-plan-to-buy-dealerships.html>
- Crane, D. (2016). Tesla, Dealer Franchise Laws, and the Politics of Crony Capitalism. *Iowa Law Review*, 101(2), 573-607.
- Edmunds. (2019, June 13). *Where Does the Car Dealer Make Money?* Retrieved from Edmunds: <https://www.edmunds.com/car-buying/where-does-the-car-dealer-make-money.html>
- Fee, B., Rowley, S., & Savrin, D. (2019, June 19). *Distribution of Vehicles in the U.S. and the Impact of State Law*. Retrieved from Morgan Lewis.
- Gavil Andy, D. F. (2014, April 24). Who Decides How Consumers Should Shop? *Federal Trade Commission blog-Competition Matters*.
- LaFontaine, F. a. (2010, Summer). State Franchise Laws, Dealer Terminations, and the Auto Crisis. *Journal of Economic Perspectives, Volume 24* (Number 3), pp.233-250.
- Lane, C. (2014, March 12). *Tesla takes on car dealerships in a fight to the death*. Retrieved from The Washington Post: https://www.washingtonpost.com/opinions/charles-lane-tesla-takes-on-car-dealerships-in-a-fight-to-the-death/2014/03/12/2956a9f2-a9ff-11e3-8599-ce7295b6851c_story.html
- Lao, M., Feinstein, D., & Lafontaine, F. (2015, May 11). *Direct-to-consumer auto sales: It's not just about Tesla*. Retrieved from Federal Trade Commission: <https://www.ftc.gov/news-events/blogs/competition-matters/2015/05/direct-consumer-auto-sales-its-not-just-about-tesla>
- Marquis, E. (2020, January 22). *Tesla Finally Cracks A Ban On Direct-To-Consumer Sales On The Big Three's Home Turf*. Retrieved from Jalopnik: <https://jalopnik.com/tesla-finally-cracks-a-ban-on-direct-to-consumer-sales-1841155463>
- NADA. (2020, October 28). *NADA DATA 2020: MIDYEAR REPORT*. NADA.
- Rossman-McKinney, K. (2020, January 22). *MI AG's Office Issues Statement on Tesla Lawsuit*. Retrieved from Michigan.gov: https://www.michigan.gov/ag/0,4534,7-359-92297_92299-517800--,00.html
- Statista. (2020). *Quarterly share of e-commerce sales of total U.S. retail sales from 1st quarter 2010 to 2nd quarter 2020*. Retrieved from Statista: <https://www.statista.com/statistics/187439/share-of-e-commerce-sales-in-total-us-retail-sales-in-2010/>
- The Detroit News. (2020, January 22). *Michigan settles lawsuit and allows Tesla to sell, fix vehicles*. Retrieved from <https://www.detroitnews.com/story/business/autos/2020/01/22/michigan-settles-lawsuit-allows-tesla-sell-fix-vehicles/4540903002/>
- Urich, T. F. (2018). Tesla and the Policy behind Its Long Haul to Selling Cars in the U.S. *Journal of Business & Economic Policy*, 5(2), 7-12.