

1 warranty, predelivery, and recall obligations of repair and servicing at amounts
2 not less than the retail amounts customarily charged by the dealer to its retail
3 customers for like parts for nonwarranty work. The amounts established by a
4 dealer to its retail customers for labor and like parts for nonwarranty work are
5 deemed to be fair and reasonable compensation; provided, however, a
6 manufacturer may rebut such a presumption by showing that such amount so
7 established is unfair and unreasonable in light of the practices of at least four
8 other franchised motor vehicle dealers in the vicinity offering the same line-
9 make or a similar competitive line-make. A manufacturer may not otherwise
10 recover all or any portion of its costs for compensating its motor vehicle
11 dealers licensed in this State for warranty parts and service either by reduction
12 in the amount due to the dealer or by separate charge, surcharge, or other
13 imposition.

14 (c)(1) For purposes of this section, the “retail amounts customarily
15 charged” by the franchisee for parts ~~may~~ or labor rate, or both, shall be
16 established by submitting to the manufacturer 100 sequential nonwarranty
17 customer-paid service repair orders or 60 days of nonwarranty customer-paid
18 service repair orders, whichever is less ~~in terms of total cost~~, covering repairs
19 made ~~no~~ not more than 180 days before the submission and declaring the
20 average percentage markup for parts or labor rate, or both. The average
21 percentage markup for parts or labor rate, or both, so declared is the retail

1 amount, which goes into effect 30 days following the declaration, subject to
2 audit of the submitted repair orders by the manufacturer and adjustment of the
3 average percentage markup based on that audit. ~~Only~~ All retail sales ~~not~~
4 ~~involving~~ shall be considered in calculating the average percentage markup,
5 except for:

6 (A) warranty repairs, ~~not involving state inspection, not involving;~~

7 (B) State inspections;

8 (C) routine maintenance ~~such as changing the oil and oil filter,~~

9 including the replacement of bulbs, fluids, filters, batteries, and belts that are
10 not provided in the course of, or related to, a repair;

11 (D) factory special events, specials, or promotional discounts for
12 retail customer repairs;

13 (E) parts sold, or repairs performed, at wholesale;

14 (F) factory-approved goodwill or policy repairs or replacements;

15 (G) repairs with aftermarket parts, when calculating the retail parts
16 rate, but not the retail labor rate;

17 (H) repairs on aftermarket parts;

18 (I) replacement of or work on tires, including alignments and wheel
19 or tire rotations;

20 (J) repairs of motor vehicles owned by the dealer or an employee of
21 the dealer at the time of the repair;

1 (K) engine assemblies or transmission assemblies, or both engine and
2 transmission assemblies;

3 (L) vehicle reconditioning;

4 (M) items that do not have individual part numbers, including nuts,
5 bolts, and fasteners; and not involving

6 (N) accessories may be considered in calculating the average
7 percentage markup.

8 (2) A manufacturer may not require a new motor vehicle dealer to
9 establish the average percentage markup by an unduly burdensome or time-
10 consuming method or by requiring information that is unduly burdensome or
11 time-consuming to provide, including part-by-part or transaction-by-
12 transaction calculations.

13 (3) If a manufacturer furnishes a part or component to a dealer at less
14 than its normal and customary price, including the price previously reflected in
15 the manufacturer's parts catalogue, to use in performing repairs under a recall,
16 campaign service action, or warranty repair, the manufacturer shall compensate
17 the dealer for the part or component in the same manner as warranty parts
18 compensation under this section by compensating the dealer the average
19 markup on the cost for the part or component as listed in the manufacturer's
20 price schedule less the cost for the part or component.

1 (4) A new motor vehicle dealer may not change the average percentage
2 markup more than two times in one calendar year. ~~Further, the manufacturer~~
3 ~~shall reimburse the new motor vehicle dealer for any labor performed at the~~
4 ~~retail rate customarily charged by that franchisee for the same labor when not~~
5 ~~performed in satisfaction of a warranty, provided the franchisee’s rate for labor~~
6 ~~not performed in satisfaction of a warranty is routinely posted in a place~~
7 ~~conspicuous to its service customer.~~

8 (5) A manufacturer shall not require, influence, or attempt to influence a
9 dealer to implement or change the prices for which it sells parts or labor in
10 retail customer repairs.

11 (6) A manufacturer shall not implement or continue a policy, procedure,
12 or program with any of its dealers in this State for compensation that is
13 inconsistent with this subsection.

14 (d) It is a violation of this section for any new motor vehicle manufacturer
15 to fail to perform any warranty obligations or to fail to include in written
16 notices of factory recalls to new motor vehicle owners and dealers the expected
17 date by which necessary parts and equipment will be available to dealers for
18 the correction of such defects, or to fail to compensate any of the new motor
19 vehicle dealers in this State for repairs effected by a recall at the rates set forth
20 in subsection (c).

1 (e) All claims made by new motor vehicle dealers pursuant to this section
2 for labor and parts shall be paid within 45 days following their approval;
3 provided, however, that the manufacturer retains the right to audit the claims
4 and to charge back the dealer for fraudulent claims for a period of ~~two years~~
5 one year following payment. All claims shall be either approved or
6 disapproved within 45 days after their receipt on forms and in the manner
7 specified by the manufacturer, and any claim not specifically disapproved in
8 writing within 45 days after the receipt shall be construed to be approved and
9 payment must follow within 45 days. No claim that has been approved and
10 paid may be charged back to the dealer unless it can be shown that the claim
11 was false or fraudulent, that the repairs were not made properly or were
12 unnecessary to correct the defective condition, or that the dealer failed to
13 reasonably substantiate the claim either in accordance with the manufacturer's
14 reasonable written procedures or by other reasonable means.

15 (f) A manufacturer shall retain the right to audit warranty claims for a
16 period of one year after the date on which the claim is paid.

17 (g) A manufacturer shall retain the right to audit all incentive and
18 reimbursement programs and charge back any amounts paid on claims that are
19 false or unsubstantiated for a period of ~~18 months~~ one year from the date on
20 which the claim is paid ~~or one year from the end of a program that gave rise to~~
21 ~~the payment, whichever is later.~~

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Sec. X3. 9 V.S.A. § 4096 is amended to read:

§ 4096. UNLAWFUL ACTS BY MANUFACTURERS OR DISTRIBUTORS

~~It~~ Notwithstanding the terms of any franchise or other agreement between a manufacturer and new motor vehicle dealer, it shall be a violation of this chapter for any manufacturer, as defined under this chapter, to require, attempt to require, coerce, or attempt to coerce any new motor vehicle dealer in this State:

* * *

(9)(A) To change the location of the dealership or to make any substantial alterations to the dealership premises or facilities in the absence of written assurance from the manufacturer or distributor of a sufficient supply of new motor vehicles commensurate with customer demand in the market to justify the change in location or the alterations and written assurance from the manufacturer or distributor that the new motor vehicle dealer will be able, in the ordinary course of business as conducted by the new motor vehicle dealer, to earn a reasonable return on the total investment in the change in location or the alterations and the full return of the total investment within 10 years.

(B) Except as necessary to comply with a health or safety law, or to comply with a technology requirement that is necessary to sell or service a motor vehicle that the new motor vehicle dealer is authorized or licensed by

1 the manufacturer to sell or service, a dealer that completes a facility
2 construction or renovation pursuant to factory requirements shall not be
3 required to construct a new facility or renovate the existing facility for the next
4 10 years during which time the dealer will be considered in compliance with
5 any new facility program for purposes of being entitled to all incentive or
6 bonus payments offered to same line-make dealers.

7 (10) To purchase goods or services for the construction, renovation, or
8 improvement of the new motor vehicle dealer’s facility or essential tools and
9 equipment to service vehicles from a vendor chosen by the manufacturer if
10 goods or services available from other sources are of substantially similar
11 quality and design and comply with all applicable laws; provided, however,
12 that such goods are not subject to the manufacturer’s intellectual property or
13 trademark rights and the new motor vehicle dealer has received the
14 manufacturer’s approval, which approval may not be unreasonably withheld.
15 Nothing in this subdivision shall be construed to allow a new motor vehicle
16 dealer to impair or eliminate a manufacturer’s intellectual property, trademark
17 rights, or trade dress usage guidelines.

18 (11) To purchase essential tools and equipment to service vehicles if the
19 manufacturer cannot demonstrate that the new motor vehicle dealer will
20 receive a reasonable return on investment required to purchase the essential
21 tools and equipment.

1 Sec. X4. 9 V.S.A. § 4097 is amended to read:

2 § 4097. MANUFACTURER VIOLATIONS

3 ~~It~~ Notwithstanding the terms of any franchise or other agreement with the
4 manufacturer, it shall be a violation of this chapter for any manufacturer
5 defined under this chapter:

6 * * *

7 (8)(A) To compete with a new motor vehicle dealer operating under an
8 agreement or franchise from the aforementioned manufacturer in the State.

9 (B) For purposes of this subdivision (8), any manufacturer that is not
10 a non-franchised zero-emission vehicle manufacturer competes with a new
11 motor vehicle dealer if it engages in the business of any of the following with
12 respect to new motor vehicles or the retail sale of parts and accessories to the
13 end user for those new motor vehicles:

14 (i) selling or leasing;

15 (ii) offering to sell or lease;

16 (iii) soliciting or advertising the sale or lease; ~~or~~

17 (iv) offering through a subscription or like agreement; or

18 (v) offering or selling software and hardware upgrades or changes
19 to vehicle function and features.

20 * * *

1 The dealer may make such a request not more than once every six months.

2 The list shall indicate the specific fields of consumer data that were provided to
3 each person.

4 (iv) Require that a new motor vehicle dealer grant the
5 manufacturer or a third party acting on behalf of the manufacturer direct or
6 indirect access to the dealer’s data management system to obtain consumer
7 data. A manufacturer or a third party acting on behalf of a manufacturer shall
8 permit a dealer to furnish consumer data in a widely accepted file format, such
9 as comma delimited, and through a third-party vendor selected by the dealer.
10 However, a manufacturer or a third party acting on behalf of a manufacturer
11 may access or obtain consumer data directly from a dealer’s data management
12 system with the express written consent of the dealer. The consent must be in
13 the form of a standalone written document that is executed by a principal or
14 operator of the dealer and may be withdrawn by the dealer upon 30 days’
15 written notice to the manufacturer. Such consent shall not be required as a
16 condition to a new motor vehicle dealer’s participation in an incentive program
17 unless such consent is necessary to obtain consumer data to implement the
18 program.

19 (v) Fail to indemnify the dealer for any third-party claims asserted
20 against or damages incurred by the dealer to the extent caused by access to, use
21 of, or disclosure of consumer data in violation of this section by the

1 manufacturer or a third party to whom the manufacturer has provided
2 consumer data.

3 (vi) Fail to provide any benefit or incentive to a new motor vehicle
4 dealer resulting from the dealer’s refusal to give the manufacturer, or a third
5 party acting on behalf of the manufacturer, access to all or parts of the dealer’s
6 data management system.

7 (B) Nothing contained in subdivision (A) of this subdivision (25)
8 shall limit the ability of the manufacturer to require that the dealer provide, or
9 use in accordance with the law, such customer information related solely to the
10 manufacturer’s own vehicle makes to the extent necessary to do any of the
11 following:

12 (i) satisfy any safety or recall notice obligations or other legal
13 notice obligations on the part of the manufacturer;

14 (ii) complete the sale and delivery of a new motor vehicle to a
15 customer;

16 (iii) validate and pay customer or new motor vehicle dealer
17 incentives; or

18 (iv) submit to the factory claims for any services supplied by the
19 new motor vehicle dealer for any claim for warranty parts or repair.

20 **Sec. X5. 9 V.S.A. § 4099 is amended to read:**

21 § 4099. CIVIL ACTIONS FOR VIOLATIONS

1 Notwithstanding the terms, provisions, or conditions of any agreement or
2 franchise or the terms or provisions of any waiver, any consumer who is
3 injured by a violation of this chapter, or any party to a franchise who is so
4 injured in ~~his or her~~ the party's business or property by a violation of this
5 chapter relating to that franchise, or any person so injured because ~~he or she~~
6 the person refuses to accede to a proposal for an arrangement that if
7 consummated, would be in violation of this chapter, may bring a civil action in
8 a court having jurisdiction to enjoin further violations, and to recover the actual
9 damages sustained by ~~him or her~~ the person together with the costs of the suit,
10 including a reasonable attorney's fee. In any such action, the manufacturer
11 shall have the burden of proof that no violation of this chapter occurred. An
12 action, filed in a court of competent jurisdiction, that gives rise or could give
13 rise to a claim or defense under this chapter must be stayed if, within 60 days
14 after the date of filing of the complaint or service of process, whichever is
15 later, a party to the action files a complaint with the Board asserting the claims
16 or defenses under this chapter.

17 **Sec. X6. 9 V.S.A. § 4100b is amended to read:**

18 § 4100b. ENFORCEMENT; TRANSPORTATION BOARD

19 * * *

20 (c) Except for civil actions filed in Superior Court pursuant to section 4099
21 of this title, the Board shall have the following exclusive powers:

1 Board unless the Board for good cause shown allows the appellant to specify
2 additional grounds. Any party to the proceeding may appeal the final order,
3 including all interlocutory orders or decisions, to the Superior Court within
4 30 days after the date the Board rules on the application for reconsideration of
5 the final order or decision. All findings of the Board upon all questions of fact
6 properly before the court shall be prima facie lawful and reasonable. The order
7 or decision appealed from shall not be set aside or vacated except for errors of
8 law. No additional evidence shall be heard or taken by the Superior Court on
9 appeals from the Board.

10 ~~(i)~~(j) In cases where the Board finds that a violation of this chapter has
11 occurred or there has been a failure to show good cause under section 4089 or
12 4098 of this title, the Superior Court, upon petition, shall determine reasonable
13 attorney's fees and costs and award them to the prevailing party.

14 Sec. X7. 23 V.S.A. § 450b is added to read:

15 § 450b. NEW MOTOR VEHICLE DIRECT SHIPPER

16 (a) License required.

17 (1) Only a person holding a new motor vehicle direct shipper license or
18 exempted under subdivision (2) of this subsection shall ship a new motor
19 vehicle from out of this State to a person who is a Vermont resident. It shall be
20 unlawful for common or permit carriers; operators of trucks, buses, or other
21 conveyances; or out-of-state manufacturers or suppliers to make delivery of

1 any new motor vehicle from outside this State to any person within this State
2 unless the shipper is licensed in this State as a new motor vehicle direct shipper
3 or exempted under subdivision (2) of this subsection.

4 (2) Dealers and non-franchised zero-emission vehicle manufacturers, as
5 defined in 9 V.S.A. § 4085(18), registered in this State under 23 V.S.A.
6 chapter 7, subchapter 4, and persons who ship fewer than 12 new motor
7 vehicles per year from out of this State to a person who is a Vermont resident
8 shall not be required to obtain a new motor vehicle direct shipper license to
9 ship a new motor vehicle to a person who is a Vermont resident.

10 (b) Eligibility for a license. A person who is licensed or registered in the
11 person's state of domicile as a franchised new motor vehicle dealer, and who is
12 not affiliated by ownership or control with a manufacturer, distributor, factory
13 branch, factory representative, distributor branch, or distributor representative,
14 as those terms are defined in section 9 V.S.A. § 4085, may register for a new
15 motor vehicle direct shipper license.

16 (c) Application for license.

17 (1) The Commissioner of Motor Vehicles shall develop an application
18 that requires an attestation from the applicant that the applicant is a licensed
19 new motor vehicle dealer in another state in good standing and is operating a
20 physical dealership facility in another state, and any other information the
21 Commissioner deems necessary.

1 (2) The new motor vehicle direct shipper shall provide the
2 Commissioner with a surety bond, letter of credit, or certificate of deposit
3 issued by an entity authorized to transact business in this State that meets the
4 requirements set for a dealer in this State pursuant to subsection 453(g) of this
5 title.

6 (3) The registration fee for a new motor vehicle direct shipper license
7 shall be the same as any fee required to register as a dealer in this State
8 pursuant to subdivision 453(a)(1) of this title, but no dealer plates shall be
9 issued to a new motor vehicle direct shipper.

10 (d) Requirements of a new motor vehicle direct shipper. A holder of a new
11 motor vehicle direct shippers license granted pursuant to this section shall:

12 (1) retain a copy of each record of sale of a new motor vehicle to a
13 person who is a Vermont resident for a minimum of five years from the date of
14 shipping;

15 (2) report all of the following information to the Department of Motor
16 Vehicles once every 12 months for the preceding 12 months:

17 (A) the total number of new motor vehicles shipped into or within
18 this State;

19 (B) the names and addresses to whom the new motor vehicles were
20 shipped; and

1 (C) the date of purchase, type, and value of each new motor vehicle
2 shipped into or within this State and, if applicable, the name of the common
3 carrier used to make the delivery;

4 (3) permit, upon request, any of the following to perform an audit of the
5 new motor vehicle shipper’s records, which may require that the holder of a
6 new motor vehicle direct shippers license provide copies of its records to the
7 person performing the audit:

8 (A) the Department of Motor Vehicles,

9 (B) the Department of Taxes; or

10 (C) any other State agency or official;

11 (4) consent to the jurisdiction of the Department of Motor Vehicles, the
12 Department of Taxes, any other State agency; and State courts concerning
13 enforcement of this section and other applicable laws and rules; and

14 (5) comply with all applicable laws and rules of the Department of
15 Motor Vehicles.

16 (e) Penalties and injunction. A person that sells and ships a new motor
17 vehicle directly to any person who is a resident of this State without holding a
18 new motor vehicle direct shipper license or being exempt under subdivision

19 (a)(2) of this section shall be subject to the applicable penalties authorized
20 under chapter 7, subchapter 4 of this title or rules adopted pursuant to chapter
21 7, subchapter 4 of this title. The Commissioner of Motor Vehicles may also

- 1 seek an injunction to prevent the person from shipping new motor vehicles into
- 2 this State.