

1 Introduced by Committee on Transportation

2 Date:

3 Subject: Motor vehicles; motor vehicle dealers; motor vehicle manufacturers;

4 Motor Vehicle Manufacturers, Distributors, and Dealers Franchising

5 Practices Act

6 Statement of purpose of bill as introduced: This bill proposes to amend

7 provisions of the Motor Vehicle Manufacturers, Distributors, and Dealers

8 Franchising Practices Act and create a new motor vehicle direct shipper's

9 license.

10 An act relating to the Motor Vehicle Manufacturers, Distributors, and
11 Dealers Franchising Practices Act and the creation of a new motor vehicle
12 direct shipper's license

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 9 V.S.A. § 4085 is amended to read:

15 § 4085. DEFINITIONS

16 ~~The following words, terms, and phrases when As used in this chapter shall~~

17 ~~have the meanings respectively ascribed to them in this section, except where~~

18 the context clearly indicates a different meaning:

19 * * *

20 (13) "New motor vehicle dealer" or "dealer" means any person who

21 holds, or held at the time a cause of action under this chapter accrued, a valid

1 sales and service agreement, franchise, or contract granted by the manufacturer
2 or distributor for the retail sale of the manufacturer’s or distributor’s new
3 motor vehicles, is not affiliated by ownership or control with a franchisor, and
4 is engaged in the business of any of the following with respect to new motor
5 vehicles or the parts and accessories for those new motor vehicles:

6 (A) selling or leasing;

7 (B) offering to sell or lease;

8 (C) soliciting or advertising the sale or lease; ~~or~~

9 (D) offering through a subscription or like agreement; or

10 (E) offering or selling software and hardware upgrades or changes to
11 vehicle function and features.

12 * * *

13 (19)(A) “Consumer data” means nonpublic personal information, as
14 defined in 15 U.S.C. § 6809(4) on July 1, 2022, that is:

15 (i) collected by a dealer; and

16 (ii) provided by the dealer directly to a manufacturer or third party
17 acting on behalf of a manufacturer.

18 (B) “Consumer data” does not include nonpublic personal
19 information, as defined in 15 U.S.C. § 6809(4), that a manufacturer also
20 obtains from a source other than a dealer or a dealer’s data management
21 system.

1 (20) “Data management system” means a computer hardware or
2 software system, including a system of web-based applications, a dealership
3 management system, and any third-party add-on to a dealer’s website and
4 customer relations management system, that:

5 (A) is owned, leased, or licensed by a dealer;

6 (B) is located at the dealer’s facility or hosted remotely; and

7 (C) stores and provides access to consumer data collected or stored
8 by a dealer.

9 (21) “Subscription” means the conveyance of, or exchange of interest in,
10 a new or used vehicle for use during a period in exchange for compensation,
11 other than as a rental on a short-term basis, as defined in 32 V.S.A. § 8902(9),
12 by a rental company, as defined in 32 V.S.A. § 8902(10).

13 **Sec. 2. 9 V.S.A. § 4086 is amended to read:**

14 § 4086. WARRANTY AND PREDELIVERY OBLIGATIONS TO NEW
15 MOTOR VEHICLE DEALERS

16 (a) Each new motor vehicle manufacturer shall specify in writing to each of
17 its new motor vehicle dealers licensed in this State the dealer’s obligations for
18 predelivery preparation and warranty service on its products, shall compensate
19 the new motor vehicle dealer for such service required of the dealer by the
20 manufacturer, and shall provide the dealer the schedule of compensation to be

1 paid the dealer for parts, work, and service in connection therewith, and the
2 time allowance for the performance of the work and service.

3 (b) A schedule of compensation shall not fail to include reasonable
4 compensation for diagnostic work as well as for repair service and labor. Time
5 allowances for the diagnosis and performance of predelivery and warranty
6 service shall be reasonable and adequate for the work to be performed. The
7 hourly rate paid to a new motor vehicle dealer shall not be less than the rate
8 charged by the dealer to customers for nonwarranty service and repairs. Each
9 manufacturer shall compensate each of its dealers for parts used to fulfill
10 warranty, predelivery, and recall obligations of repair and servicing at amounts
11 not less than the retail amounts customarily charged by the dealer to its retail
12 customers for like parts for nonwarranty work. The amounts established by a
13 dealer to its retail customers for labor and like parts for nonwarranty work are
14 deemed to be fair and reasonable compensation; provided, however, a
15 manufacturer may rebut such a presumption by showing that such amount so
16 established is unfair and unreasonable in light of the practices of at least four
17 other franchised motor vehicle dealers in the vicinity offering the same line-
18 make or a similar competitive line-make. A manufacturer may not otherwise
19 recover all or any portion of its costs for compensating its motor vehicle
20 dealers licensed in this State for warranty parts and service either by reduction

1 in the amount due to the dealer or by separate charge, surcharge, or other
2 imposition.

3 (c)(1) For purposes of this section, the “retail amounts customarily
4 charged” by the franchisee for parts ~~may~~ or labor rate, or both, shall be
5 established by submitting to the manufacturer 100 sequential nonwarranty
6 customer-paid service repair orders or 60 days of nonwarranty customer-paid
7 service repair orders, whichever is less ~~in terms of total cost~~, covering repairs
8 made ~~no~~ not more than 180 days before the submission and declaring the
9 average percentage markup for parts or labor rate, or both. The average
10 percentage markup for parts or labor rate, or both, so declared is the retail
11 amount, which goes into effect 30 days following the declaration, subject to
12 audit of the submitted repair orders by the manufacturer and adjustment of the
13 average percentage markup based on that audit. ~~Only~~ All retail sales ~~not~~
14 involving shall be considered in calculating the average percentage markup,
15 except for:

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

17 (B) State inspections;

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

19 including the replacement of bulbs, fluids, filters, batteries, and belts that are

20 not provided in the course of, or related to, a repair;

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

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

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

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

7 (H) repairs on aftermarket parts;

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

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

12 (K) engine assemblies or transmission assemblies, or both;

13 (L) vehicle reconditioning;

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

16 (N) accessories ~~may be considered in calculating the average~~
17 percentage markup.

18 (2) A manufacturer may not require a new motor vehicle dealer to
19 establish the average percentage markup by an unduly burdensome or time-
20 consuming method or by requiring information that is unduly burdensome or

1 time-consuming to provide, including part-by-part or transaction-by-
2 transaction calculations.

3 (3) If a manufacturer furnishes a part or component to a dealer at less
4 than its normal and customary price, including the price previously reflected in
5 the manufacturer's parts catalogue, to use in performing repairs under a recall,
6 campaign service action, or warranty repair, the manufacturer shall compensate
7 the dealer for the part or component in the same manner as warranty parts
8 compensation under this section by compensating the dealer the average
9 markup on the cost for the part or component as listed in the manufacturer's
10 price schedule less the cost for the part or component.

11 (4) A new motor vehicle dealer may not change the average percentage
12 markup more than two times in one calendar year. Further, the manufacturer
13 shall reimburse the new motor vehicle dealer for any labor performed at the
14 retail rate customarily charged by that franchisee for the same labor when not
15 performed in satisfaction of a warranty, provided the franchisee's rate for labor
16 not performed in satisfaction of a warranty is routinely posted in a place
17 conspicuous to its service customer.

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

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

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

11 (e) All claims made by new motor vehicle dealers pursuant to this section
12 for labor and parts shall be paid within 45 days following their approval;
13 provided, however, that the manufacturer retains the right to audit the claims
14 and to charge back the dealer for fraudulent claims for a period of ~~two years~~
15 one year following payment. All claims shall be either approved or
16 disapproved within 45 days after their receipt on forms and in the manner
17 specified by the manufacturer, and any claim not specifically disapproved in
18 writing within 45 days after the receipt shall be construed to be approved and
19 payment must follow within 45 days. No claim that has been approved and
20 paid may be charged back to the dealer unless it can be shown that the claim
21 was false or fraudulent, that the repairs were not made properly or were

1 unnecessary to correct the defective condition, or that the dealer failed to
2 reasonably substantiate the claim either in accordance with the manufacturer's
3 reasonable written procedures or by other reasonable means.

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

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

11 * * *

12 **Sec. 3. 9 V.S.A. § 4096 is amended to read:**

13 § 4096. UNLAWFUL ACTS BY MANUFACTURERS OR DISTRIBUTORS

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

19 * * *

20 (9)(A) To change the location of the dealership or to make any
21 substantial alterations to the dealership premises or facilities in the absence of

1 written assurance from the manufacturer or distributor of a sufficient supply of
2 new motor vehicles commensurate with customer demand in the market to
3 justify the change in location or the alterations and written assurance from the
4 manufacturer or distributor that the new motor vehicle dealer will be able, in
5 the ordinary course of business as conducted by the new motor vehicle dealer,
6 to earn a reasonable return on the total investment in the change in location or
7 the alterations and the full return of the total investment within 10 years.

8 (B) Except as necessary to comply with a health or safety law, or to
9 comply with a technology requirement that is necessary to sell or service a
10 motor vehicle that the new motor vehicle dealer is authorized or licensed by
11 the manufacturer to sell or service, a dealer that completes a facility
12 construction or renovation pursuant to factory requirements shall not be
13 required to construct a new facility or renovate the existing facility for the next
14 10 years during which time the dealer will be considered in compliance with
15 any new facility program for purposes of being entitled to all incentive or
16 bonus payments offered to same line-make dealers.

17 (10) To purchase goods or services for the construction, renovation, or
18 improvement of the new motor vehicle dealer’s facility or essential tools and
19 equipment to service vehicles from a vendor chosen by the manufacturer if
20 goods or services available from other sources are of substantially similar
21 quality and design and comply with all applicable laws; provided, however,

1 that such goods are not subject to the manufacturer’s intellectual property or
2 trademark rights and the new motor vehicle dealer has received the
3 manufacturer’s approval, which approval may not be unreasonably withheld.
4 Nothing in this subdivision shall be construed to allow a new motor vehicle
5 dealer to impair or eliminate a manufacturer’s intellectual property, trademark
6 rights, or trade dress usage guidelines.

7 (11) To purchase essential tools and equipment to service vehicles if the
8 manufacturer cannot demonstrate that the new motor vehicle dealer will
9 receive a reasonable return on investment required to purchase the essential
10 tools and equipment.

11 Sec. 4. 9 V.S.A. § 4097 is amended to read:

12 § 4097. MANUFACTURER VIOLATIONS

13 ~~¶~~ Notwithstanding the terms of any franchise or other agreement with the
14 manufacturer, it shall be a violation of this chapter for any manufacturer
15 defined under this chapter:

16 * * *

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

19 (B) For purposes of this subdivision (8), any manufacturer that is not
20 a non-franchised zero-emission vehicle manufacturer competes with a new
21 motor vehicle dealer if it engages in the business of any of the following with

1 respect to new motor vehicles or the retail sale of parts and accessories to the
2 end user for those new motor vehicles:

3 (i) selling or leasing;

4 (ii) offering to sell or lease;

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

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

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

9 * * *

10 **(16)** To impose unreasonable standards of performance or unreasonable
11 facilities, financial, operating, or other requirements upon a motor vehicle
12 franchisee, whether as part of the franchise or a separate program. It shall be
13 considered unreasonable for a manufacturer to fail to take into account all
14 circumstances relevant to a new motor vehicle dealer's local market when
15 imposing standards of performance.

16 * * *

17 **(25)** (A) To, with respect to consumer data, do any of the following:

18 (i) Fail to comply with, or cause a new motor vehicle dealer to
19 violate, any applicable restrictions on reuse or disclosure of consumer data
20 established by federal or State law.

1 (ii) Upon request by the new motor vehicle dealer, fail to provide
2 a written statement to the new motor vehicle dealer describing the established
3 procedures adopted by the manufacturer or third party acting on behalf of the
4 manufacturer that meet or exceed any federal or state requirements to
5 safeguard the consumer data, including those established in the Gramm-Leach-
6 Bliley Act, Pub. L. No. 106-102 (portions codified at 15 U.S.C. chapter 94).

7 (iii) Upon written request by the new motor vehicle dealer, fail to
8 provide a written list of the consumer data obtained from the dealer and all
9 persons to whom any consumer data has been provided by the manufacturer or
10 a third party acting on behalf of a factory during the preceding six months.

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

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

14 (iv) Require that a new motor vehicle dealer grant the
15 manufacturer or a third party acting on behalf of the manufacturer direct or
16 indirect access to the dealer’s data management system to obtain consumer
17 data. A manufacturer or a third party acting on behalf of a manufacturer shall
18 permit a dealer to furnish consumer data in a widely accepted file format, such
19 as comma delimited, and through a third-party vendor selected by the dealer.
20 However, a manufacturer or a third party acting on behalf of a manufacturer
21 may access or obtain consumer data directly from a dealer’s data management

1 system with the express written consent of the dealer. The consent must be in
2 the form of a standalone written document that is executed by a principal or
3 operator of the dealer and may be withdrawn by the dealer upon 30 days'
4 written notice to the manufacturer. Such consent shall not be required as a
5 condition to a new motor vehicle dealer's participation in an incentive program
6 unless such consent is necessary to obtain consumer data to implement the
7 program.

8 (v) Fail to indemnify the dealer for any third-party claims asserted
9 against or damages incurred by the dealer to the extent caused by access to, use
10 of, or disclosure of consumer data in violation of this section by the
11 manufacturer or a third party to whom the manufacturer has provided
12 consumer data.

13 (vi) Fail to provide any benefit or incentive to a new motor vehicle
14 dealer resulting from the dealer's refusal to give the manufacturer, or a third
15 party acting on behalf of the manufacturer, access to all or parts of the dealer's
16 data management system.

17 (B) Nothing contained in subdivision (A) of this subdivision (25)
18 shall limit the ability of the manufacturer to require that the dealer provide, or
19 use in accordance with the law, such customer information related solely to the
20 manufacturer's own vehicle makes to the extent necessary to do any of the
21 following:

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

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

5 (iii) validate and pay customer or new motor vehicle dealer
6 incentives; or

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

9 **Sec. 5. 9 V.S.A. § 4099 is amended to read:**

10 § 4099. CIVIL ACTIONS FOR VIOLATIONS

11 Notwithstanding the terms, provisions, or conditions of any agreement or
12 franchise or the terms or provisions of any waiver, any consumer who is
13 injured by a violation of this chapter, or any party to a franchise who is so
14 injured in ~~his or her~~ the party's business or property by a violation of this
15 chapter relating to that franchise, or any person so injured because ~~he or she~~
16 the person refuses to accede to a proposal for an arrangement that if
17 consummated, would be in violation of this chapter, may bring a civil action in
18 a court having jurisdiction to enjoin further violations, and to recover the actual
19 damages sustained by ~~him or her~~ the person together with the costs of the suit,
20 including a reasonable attorney's fee. In any such action, the manufacturer
21 shall have the burden of proof that no violation of this chapter occurred. An

1 action, filed in a court of competent jurisdiction, that gives rise or could give
2 rise to a claim or defense under this chapter must be stayed if, within 60 days
3 after the date of filing of the complaint or service of process, whichever is
4 later, a party to the action files a complaint with the Board asserting the claims
5 or defenses under this chapter.

6 **Sec. 6. 9 V.S.A. § 4100b is amended to read:**

7 § 4100b. ENFORCEMENT; TRANSPORTATION BOARD

8 * * *

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

11 (1) Any person may file a written protest with the Board complaining of
12 conduct governed by and in violation of this chapter. The Board shall hold a
13 public hearing in accordance with the rules adopted by the Board.

14 (2) The Board shall issue written decisions and may issue orders to any
15 person in violation of this chapter.

16 * * *

17 (g) Any manufacturer that is a party to a proceeding under this chapter
18 shall have the burden of proof that no violation of this chapter occurred.

19 (h) Any party to any proceeding under this chapter who recklessly or
20 knowingly fails, neglects, or refuses to comply with an order issued by the

1 Board shall be fined a civil penalty not to exceed \$2,500.00. Each day of
2 noncompliance shall be considered a separate violation of such order.

3 ~~(h)~~(i) Within 20 days after any order or decision of the Board, any party to
4 the proceeding may apply for a rehearing with respect to any matter
5 determined in the proceeding or covered or included in the order or decision.

6 The application for rehearing shall set forth fully every ground upon which it is
7 claimed that the decision or order complained of is unlawful or unreasonable.

8 No appeal from any order or decision of the Board shall be taken unless the
9 appellant makes an application for rehearing as provided in this subsection,

10 and when the application for rehearing has been made, no ground not set forth
11 in the application shall be urged, relied on, or given any consideration by the

12 Board unless the Board for good cause shown allows the appellant to specify
13 additional grounds. Any party to the proceeding may appeal the final order,

14 including all interlocutory orders or decisions, to the Superior Court within
15 30 days after the date the Board rules on the application for reconsideration of

16 the final order or decision. All findings of the Board upon all questions of fact
17 properly before the court shall be prima facie lawful and reasonable. The order

18 or decision appealed from shall not be set aside or vacated except for errors of
19 law. No additional evidence shall be heard or taken by the Superior Court on

20 appeals from the Board.

1 ~~(i)~~(j) In cases where the Board finds that a violation of this chapter has
2 occurred or there has been a failure to show good cause under section 4089 or
3 4098 of this title, the Superior Court, upon petition, shall determine reasonable
4 attorney’s fees and costs and award them to the prevailing party.

5 Sec. 7. 23 V.S.A. § 450b is added to read:

6 § 450b. NEW MOTOR VEHICLE DIRECT SHIPPER

7 (a) License required.

8 (1) Only a person holding a new motor vehicle direct shipper license or
9 exempted under subdivision (2) of this subsection shall ship a new motor
10 vehicle from out of this State to a person who is a Vermont resident. It shall be
11 unlawful for common or permit carriers; operators of trucks, buses, or other
12 conveyances; or out-of-state manufacturers or suppliers to make delivery of
13 any new motor vehicle from outside this State to any person within this State
14 unless the shipper is licensed in this State as a new motor vehicle direct shipper
15 or exempted under subdivision (2) of this subsection.

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

1 (b) Eligibility for a license. A person who is licensed or registered in the
2 person’s state of domicile as a franchised new motor vehicle dealer, and who is
3 not affiliated by ownership or control with a manufacturer, distributor, factory
4 branch, factory representative, distributor branch, or distributor representative,
5 as those terms are defined in section 9 V.S.A. § 4085, may register for a new
6 motor vehicle direct shipper license.

7 (c) Application for license.

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

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

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

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

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

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

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

10 (B) the names and addresses to whom the new motor vehicles were
11 shipped; and

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

15 (3) permit, upon request, any of the following to perform an audit of the
16 new motor vehicle shipper's records, which may require that the holder of a
17 new motor vehicle direct shippers license provide copies of its records to the
18 person performing the audit:

19 (A) the Department of Motor Vehicles;

20 (B) the Department of Taxes; or

21 (C) any other State agency or official;

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

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

6 (e) Penalties and injunction. A person that sells and ships a new motor
7 vehicle directly to any person who is a resident of this State without holding a
8 new motor vehicle direct shipper license or being exempt under subdivision
9 (a)(2) of this section shall be subject to the applicable penalties authorized
10 under chapter 7, subchapter 4 of this title or rules adopted pursuant to chapter
11 7, subchapter 4 of this title. The Commissioner of Motor Vehicles may also
12 seek an injunction to prevent the person from shipping new motor vehicles into
13 this State.

14 Sec. 8. EFFECTIVE DATE

15 This act shall take effect on July 1, 2022.