*A. Dexter-Cooper – updated March 8, 2022 to reflect January 20, 2022 letter from AAI, **SOME** examples of laws from other states, and VADA's 3/7/22 proposal*
*THE NOTES COLUMN DOES **NOT** CONTAIN A COMPREHENSIVE REVIEW OF FRANCHISE LAWS FROM OTHER STATES*

Ensure Equal Treatment Under Law for All Automakers in Selling Vehicles – Alliance for Automotive Innovation (AAI) 1			
Brief Summary: Allow manufacturers that manufacture zero-emission vehicles (in addition to other vehicles that are sold through new motor vehicle dealers) to sell directly to consumers without violating the prohibition on a manufacturer competing with a new motor vehicle dealer.	**Statues Proposed for Amendment:** - 9 V.S.A. § 4085(18); and - 9 V.S.A. § 4097(8).	**Note:** This is not the same as the exemption that was added in 2021 Acts and Resolves No. 63, Sec. 3 to allow zero-emission vehicle manufacturers to own/operate a warranty or service facility center (see AAI 4) because manufacturers without dealers were, and still are, allowed to sell directly to consumers.	
Protecting Consumer Access to Competitive Marketplace for Vehicle Parts – AAI 2			
Brief Summary: Do not allow the prohibition on manufacturers selling parts and accessories at retail to go into effect on July 1, 2022 pursuant to 2021 Acts and Resolves No. 63, Secs. 4a and 6(a).	**Statutes Proposed for Amendment:** - N/A (repeal law before it goes into effect).	**Note:** Review with VADA 6 (only prohibit retail sale of parts and accessories by manufacturers to end users).	

Ensure Consumer Access to Competitive Marketplace on Vehicle Subscriptions – AAI 3			
Brief Summary: Do not allow the prohibition on manufacturers offering vehicles through a subscription or like agreement to go into effect on July 1, 2022 pursuant to 2021 Acts and Resolves No. 63, Secs. 4a and 6(a).	**Statutes Proposed for Amendment:** - N/A (repeal law before it goes into effect).	**Note:** Review with VADA 6 (define "subscription").	
Revise Automaker Warranty Payment Calculations and Audits – AAI 4			
Brief Summary: - Amend statutory calculation for the warranty rate; - Delete language that requires certain language in retail notices (covered by federal regulation); - Extend manufacturer audit windows and expand what claims are covered; and - Allow manufacturers to own, operate, or control a warranty or service facility if it only services zero-emission vehicles.	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4086.	**Note:** Review with VADA 2 and AAI 1.	
Ensure Reasonableness Standard in Facility Renovations – AAI 5			
Brief Summary: Switch to a reasonableness standard for when a manufacturer can require the relocation of a dealership or substantial alterations to the dealership premises or facilities.	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4096(9).	**Note:** Review with VADA 1 (when dealership renovations can be required by manufacturer).	

Fixing System of Vehicle Allocation – AAI 6			
Brief Summary: Delete requirement that vehicle inventory be disbursed with a focus on facility size and sale potential in its area (deviation from the "turn & earn" system, which allows all new motor vehicle dealers to maintain the same number of days of inventory).	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4097(1).		
Delete Existing Right of First Refusal Prohibition – AAI 7			
Brief Summary: Eliminate prohibition on a manufacturer requiring that a new motor vehicle dealer franchisee grant the manufacturer a right of first refusal to purchase the franchise or real estate or business assets of the franchisee.	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4097(15).		

Facility Requirements and Vendor Requirements – Vermont Vehicle and Automotive Distributors Association (VADA) 1 – AMENDED IN VADA'S 3/7/22 PROPOSAL			
Brief Summary: Amend statute to prohibit a manufacturer from requiring a new motor vehicle dealer to: - relocate a dealership or to make substantial alterations to the dealership premises/facilities without written assurance from the manufacturer that the relocation or alterations will yield certain returns on investments (full within 10 years) ***[DELETED FROM VADA'S 3/7/22 PROPOSAL]***; - construct a new dealership facility or renovate an existing dealership facility during the 10 years following a required facility construction or renovation unless it is necessary to comply with a health or safety law or a technology requirement that is necessary to sell or service a particular motor vehicle; - purchase goods or services for the construction, renovation, or improvement of a dealership facility from a vendor chosen	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4096.	**Notes:** - Review with AAI 5. - Probably do not need the "notwithstanding" language at the beginning because of 9 V.S.A. §§ 4100a and 4097(19). - CA[1] only allows the manufacturer to require material alterations, expansions, and additions to dealership facilities that are reasonable in light of all existing circumstances (does not limit dealer obligations to comply with health or safety laws). *See* Cal. Veh. Code § 11713.13(c). - CA deems modifications that require goods or services to be purchased from a specific vendor when comparable goods or services are available from another vendor to be unreasonable. *See* Cal. Veh. Code § 11713.13(c)(1).	**Brief Summary of Response from AAI:** This would allow a dealer that is within the presumptive compliance window of 10 years to still receive incentives from manufacturers to make improvements to dealership facilities even though they would not be required to make the improvements.

[1] California's dealer franchise laws were recently amended through Assembly Bill No. 179, approved October 12, 2019.

by the manufacturer in certain instances; and - purchase specific tools and equipment to service motor vehicles without demonstrating that the new motor vehicle dealer will receive a reasonable return on investment from purchasing the specific tools and equipment ***[DELETED FROM VADA'S 3/7/22 PROPOSAL]***.		- CA has a presumptive compliance window based on time (10 years) and cost ($250k), but it is not applicable for modifications to sell/service ZEVs or to comply with a health or safety law. *See* Cal. Veh. Code § 11713.13(c)(3). - NH[2] only allows manufacturers to require relocation of modifications to dealership facilities if they are reasonable and justifiable in light of the current and reasonably foreseeable conditions. *See* N.H. Rev. Stat. § 357-C:3, V(a) and (b). - NH has a presumptive compliance window of 15 years, except as necessary to comply with health or safety laws or technology requirements, but the modifications can be required if the manufacturer offers substantial reimbursement (greater than 65% of the cost) for the changes. *See* N.H. Rev. Stat. § 357-C:3, V(d) and (e). - NH prohibits a manufacturer from requiring a dealer to purchase goods or	

[2] New Hampshire's dealer franchise laws were amended in 2013 by Senate Bill 126, signed June 25, 2013. This is the bill that amended New Hampshire's law to allow direct to consumer manufacturers to operate in New Hampshire. *See* N.H. Rev. Stat. § 357-C:3, III(k)(4) ("A manufacturer or distributor that sells and services motor vehicles in New Hampshire and is licensed as a dealer in New Hampshire shall not be deemed to be competing with any dealer if no dealer or other franchisee sells and services the same line make in New Hampshire.").

		services from a selected vendor without allowing for the dealer to us a different vendor that is approved by the manufacturer. *See* N.H. Rev. Stat. § 357-C:3, III(w)(1).	
Warranty and Predelivery Obligations – VADA 2 – PRESERVED IN VADA'S 3/7/22 PROPOSAL			
Brief Summary: Amend statute, with regards to how a new motor vehicle dealer is compensated for certain work, to: - make the calculation of the retail amounts customarily charged by the new motor vehicle dealer mandatory; - specify what shall be considered in calculating the average percentage markup; - prohibit a manufacturer from requiring/influencing a new motor vehicle dealer to implement or change the prices it charges retail customers for parts/labor; - require a manufacturer to compensate a new motor vehicle dealer for parts/components based on the average markup on the cost if the part/component is furnished to the new	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4086.	**Notes:** - Review with AAI 4. - CA sets the warranty reimbursement rates through formula but allows for the dealers and manufacturers to enter into a voluntary written agreement to use different rates for compensation. *See* Cal Veh. Code §§ 3065(b) and 3065.2. - CA has a nine-month audit window for most reimbursements for warranty work. *See* Cal. Veh. Code. § 3065(e)(1). - CA addresses a markup for parts provided to the dealer at no cost or a reduced cost. *See* Cal. Veh. Code. § 3065.2(g)(1) and (g)(2). - NH has a statutory formula for setting reimbursement rates that is applicable if	**Brief Summary of Response from AAI:** - Amendments to 9 V.S.A. § 4086(c)(1) would force dealers to follow the statutory formula to calculate the retail rate even if the dealer would prefer to say on the manufacturer's standard reimbursement plan. - New 9 V.S.A. § 4086(c)(3) could yield an unrealistically high reimbursement rate for large parts that are not typically kept in stock by the dealer.

motor vehicle dealer at less than its normal price; and - decrease manufacturer audit windows.		the dealer and manufacturer cannot agree. *See* N.H. Rev. Stat. § 357-C:5, II(a) and (b). - NH has a one-year audit window on warranty claims and incentive or reimbursement programs. N.H. Rev. Stat. § 357-C:5, II(d)(2) and (3).	
Unreasonable Standard – VADA 3 – PRESERVED IN VADA'S 3/7/22 PROPOSAL			
Brief Summary: Expand the prohibition on a manufacturer imposing unreasonable standards of performance to standards that are prescribed under a separate program in addition to a franchise and to require that manufacturers take into account all circumstances relevant to a new motor vehicle dealer's local market circumstances when imposing standards of performance.	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4097(16).	**Note:** - The terms of the Franchise Act apply to "[a]ll written agreements between a manufacturer or distributor and a new motor vehicle dealer shall be subject to the provisions of this chapter . . .." 9 V.S.A. § 4100a(a); *see also* 9 V.S.A. §§ 4097(19) and 4100a(b). - CA requires performance standards to be reasonable in light of all circumstances (including specific ones that are listed) and a written methodology to be provided by the manufacturer to the dealer. *See* Cal. Veh. Code § 11713.13(g)(1).	**Brief Summary of Response from AAI:** - It will be difficult for a manufacturer to determine what all the circumstances relevant to a new motor vehicle dealer's local market are in advance and, coupled with VADA 7 (burden of proof), this could place a significant burden on manufacturers when a dealer disagrees with what circumstances the manufacturer determines are relevant. - While other states may have similar requirements on unreasonable standards the example given by VADA (NY) is limited to the franchise and not voluntary programs. *See* N.Y. Veh. & Traf. Law § 463(2)(gg) ("It shall be unlawful for any franchisor . . . [t]o use an unreasonable, arbitrary or unfair sales or other performance standard in determining a franchised motor vehicle dealer's

			compliance with a franchise agreement. . . .”).
Consumer Data – VADA 4 – DELETED FROM VADA'S 3/7/22 PROPOSAL			
Brief Summary: Define “consumer data” and “data management system,” require manufacturers to indemnify their new motor vehicle dealers for claims asserted against or damages incurred by a new motor vehicle dealer related to the disclosure of consumer data in certain instances, and prohibit a manufacturer from: - failing to comply with or causing a new motor vehicle dealer to violate any restrictions on reuse or disclosure of consumer data; - failing to provide, upon request, a new motor vehicle dealer with a written statement on procedures to safeguard consumer data that meet or exceed State and federal requirements adopted by the manufacturer or a third-party acting on behalf of the manufacturer; - failing to provide, upon request, a new motor vehicle dealer with a written list of consumer data obtained from the new motor	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4085; and - Add 9 V.S.A. § 4097(25).	**Note:** - CA requires indemnification by manufacturer for claims resulting from the improper disclosure of nonpublic personal information obtained by the dealer. *See* Cal. Veh. Code § 11713.13(f)(1)(C). - CA has adopted the very expansive California Consumer Privacy Act, which has some carveouts for dealers. *See* Article in DealerSocket; Cal. Civ. Code §§ 1798.100–1798.199.100.	**Brief Summary of Response from AAI:** Other states that have enacted language regulating when manufacturers may require data from dealers permit manufacturers to request data in more instances than just the four proposed by VADA in 9 V.S.A. § 4097(25)(B)(i)–(iv). *See* Ariz. Rev. Stat. § 28-4651(8)(b)(v)–(x).

vehicle dealer and to whom it has been provided; and - requiring that a new motor vehicle dealer grant direct or indirect access to its data management system instead of permitting the new motor vehicle dealer to furnish consumer data in a widely accepted file format.			
New Motor Vehicle Direct Shippers License – VADA 5 – DELETED FROM VADA'S 3/7/22 PROPOSAL			
Brief Summary: Create a new motor vehicle direct shipper license to regulate persons selling motor vehicles over the Internet from outside the State and ensure that the dealer is: educated and trained to complete the proper documentation for the sale and financing of motor vehicles; has no criminal background; has adequate dealership sales and service facilities; is authorized by a manufacturer to perform predelivery preparation of the motor vehicle; and is not affiliated with a manufacturer that is a franchisor.	**Statutes Proposed for Amendment:** - Add 23 V.S.A. § 450b.		

Competition with Dealers – VADA 6 – DELETED FROM VADA'S 3/7/22 PROPOSAL			
Brief Summary: Define "subscription," which manufacturers will be prohibited from offering motor vehicles through starting on July 1, 2022; only prohibit manufacturers from selling parts and accessories at retail to the end user as opposed to just at retail; and prohibit manufacturers from offering or selling software and hardware upgrades or changes to vehicle function and features.	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4085; and - 9 V.S.A. § 4097(8).	**Note:** Review with AAI 2 and AAI 3. Background information in this J.D. Power article on "Over the Air Updates for Cars."	**Brief Summary of Response from AAI:** Requiring that the owners of vehicles go to dealerships to get software and hardware upgrades or changes to vehicle functions and features is extraordinary, unreasonable, and harms consumers. Draws the comparison to someone needing to go to a retailer to update the software on a telephone.
Civil Actions for Violations – VADA 7 – DELETED FROM VADA'S 3/7/22 PROPOSAL			
Brief Summary: Specify that in allegations of a violation of the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act (Franchise Act), the manufacturer has the burden to show that the Franchise Act was not violated.	**Statutes Proposed for Amendment:** - 9 V.S.A. § 4099; and - 9 V.S.A. § 4100b.	**Note:** - NY has the burden of proof lie with the manufacturer for actions involving the termination of a franchise, the addition or relocation of a dealer in a relevant market area, and the modification of a franchise, *see* N.Y. Veh. & Traff. Law § 463(2)(e)(2), (cc)(1), and (ff)(3), but not all actions. *See* N.Y. Veh. & Traff. Law § 463(2)(v) (party making a claim related to the use of a customer satisfaction index has the burden of proof).	**Brief Summary of Response from AAI:** Disagrees with the assertion that it is customary in virtually all states for the manufacturer to have the burden of proof in all instances. Some states, like Vermont, have the burden of proof lie with the manufacturer in some instances, like when a franchise has been terminated. *See* 9 V.S.A. § 4089(d). It would be contrary to the norms of American law to require the defendant to bear the burden of proof.

		- CA has the burden of proof lie with the manufacturer for certain challenges to warranty reimbursements, *see* Cal. Veh. Code §§ 3065(a) and (e)(6) and 3065.4(a), performance standards, *see* Cal. Veh. Code §§ 3065.3 and 3066(d), and when a franchise is terminated, *see* Cal. Veh. Code. § 3066(b), but the dealer has the burden of proof for failures to enter into a franchise, *see* Cal. Veh. Code. § 3066(b), and all challenges under certain sections of the franchise law unless otherwise specified. *See* Cal. Veh. Code § 3066(c). - A search for the word "burden" in N.H. Rev. Stat. chapter 357-C only yields specified burdens of proof on manufacturers.	