

Senate Transportation Committee
1/20/2022
Vermont Vehicle and Automotive Distributors Association

**Proposed Amendments to Title 9, Chapter 108, Motor Vehicle Manufacturers,
Distributors and Dealers Franchising and
Proposal To Add Direct Shippers Permit to Title 23**

Note: These amendments are identical to the ones submitted to DMV on Dec. 1st and are included in DMV's report dated 12/22/21 except for the revisions in red in Sec. 2, New Motor Vehicle Direct Shippers License, which VADA added more recently.

Sec. 1. Title 9, Chapter 108, shall be amended to read:

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§ 4085. Definitions

The following words, terms, and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Board" means the Transportation Board as established in 19 V.S.A. § 3.

(2) "Coerce" means the failure to act in a fair and equitable manner in performing or complying with any terms or provisions of a franchise or agreement; provided, however, that recommendation, persuasion, urging, or argument shall not be synonymous with coerce or lack of good faith.

(3) "Consumer data" means 'nonpublic personal information' as such term is defined in 15 U.S.C. § 6809(4) as it exists on the effective date of this section, that is:

a. Collected by a dealer; and

b. Provided by the dealer directly to a manufacturer or third party acting on behalf of a manufacturer. Such term shall not include the same or similar data obtained by a manufacturer from any source other than the dealer or dealer's data management system.

(4) "Data management system" means a computer hardware or software system that:

a. Is owned, leased, or licensed by a dealer, including a system of web-based applications, computer software, or computer hardware;

b. Is located at the dealership or hosted remotely; and

c. Stores and provides access to consumer data collected or stored by a dealer.

The term shall include, but shall not be limited to, dealership management systems, any third party add-on to the dealership's website and customer relations management systems."

(~~5~~) "Dealership facilities" means the real estate, buildings, fixtures, and improvements that have been devoted to the conduct of business under the franchise by the new motor vehicle dealer.

(64) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of the owner of a new motor vehicle dealer who, in the case of the owner's death, is entitled to inherit the ownership interest in the new motor vehicle dealer under the terms of the owner's will, or who has been nominated in any other written instrument, or who, in the case of an incapacitated owner of a new motor vehicle dealer, has been appointed by a court as the legal representative of the new motor vehicle dealer's property.

(75) "Established place of business" means a permanent, commercial building located within this State easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances.

(86) "Franchise" means all agreements and contracts between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that relate to the operation of the franchise and purport to fix the legal rights and liabilities of the parties to such agreements or contracts, including agreements pursuant to which the dealer purchases and resells the franchise product, performs warranty and other service on the manufacturer's products, leases or rents the dealership premises or agreements concerning the dealership premises, or construction or renovation of the dealership premises.

(A) "Franchisee" means a new motor vehicle dealer who enters into or is currently a party to a franchise with a franchisor.

(B) "Franchisor" means any manufacturer, distributor, distributor branch or factory branch, importer, or other person, partnership, corporation, association, or entity, whether resident or nonresident, that enters into or is currently a party to a franchise with a new motor vehicle dealer.

(97) "Fraud" means, in addition to its common law connotation, the misrepresentation, in any manner, of a material fact; a promise or representation not made honestly and in good faith; and the intentional failure to disclose a material fact.

(108) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade as defined and interpreted in 9A V.S.A. § 1-201(b)(20) of the Uniform Commercial Code.

(119) "Line-make" means motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor or manufacturer of the motor vehicle.

(124)(A) "Manufacturer" means any person, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, that is controlled by the manufacturer.

(B) Additionally, the term manufacturer shall include the following terms:

(i) "Distributor" means any person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle

dealers or who maintains factory representatives or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers.

(ii) "Factory branch" means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, vehicles to a distributor or new motor vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives.

~~(1344)~~ "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways that is self-propelled, not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products.

~~(1442)~~ "New motor vehicle" means a vehicle that has been sold to a new motor vehicle dealer and that has not been used for other than demonstration purposes and on which the original title has not been issued from the new motor vehicle dealer.

~~(1543)~~ "New motor vehicle dealer" means any person who holds, or held at the time a cause of action under this chapter accrued, a valid sales and service agreement, franchise, or contract granted by the manufacturer or distributor for the retail sale of the manufacturer's or distributor's new motor vehicles, is not affiliated by ownership or control with a franchisor, and is engaged in the business of any of the following with respect to new motor vehicles or the parts and accessories for those new motor vehicles:

(A) selling or leasing;

(B) offering to sell or lease;

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

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

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

~~(1644)~~ "Owner" means any person holding an ownership interest in the business entity operating as a new motor vehicle dealer or under a franchise as defined in this chapter either as a corporation, partnership, sole proprietorship, or other legal entity. To the extent that the rights of any owner under this chapter conflict with the rights of any other owner, such rights shall accrue in priority order based on the percentage of ownership interest held by each owner, with the owner having the greatest ownership interest having first priority and succeeding priority accruing to other owners in the descending order of percentage of ownership interest.

~~(1745)~~ "Person" means every natural person, partnership, corporation, association, trust, estate, or any other legal entity.

~~(1846)~~ "Relevant market area" means the area within a radius of 25 miles around an existing dealer or the area of responsibility defined in the franchise, whichever is greater; except that, where a manufacturer is seeking to establish an additional new motor vehicle dealer and there are one or more existing new motor vehicle dealers of the same line-make within a 10-mile radius of

the proposed dealer site, the "relevant market area" shall in all instances be the area within a radius of 10 miles around an existing dealer.

(1947) "Motor home" means a motor vehicle that is primarily designed to provide temporary living quarters, built into as an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must contain at least four of the following facilities: cooking; refrigeration or ice box; self-contained toilet; heating or air conditioning, or both; a potable water supply system, including a sink and faucet; separate 110-125 volt electrical power supply or an LP gas supply, or both.

(2018) "Non-franchised zero-emission vehicle manufacturer" means a manufacturer that:

(A) only manufactures zero-emission vehicles, including plug-in electric vehicles as defined in 23 V.S.A. § 4(85);

(B) only sells or leases directly to consumers new or used zero-emission vehicles that it manufactures or vehicles that have been traded in in conjunction with a new zero-emission vehicle sale;

(C) does not currently sell or lease, and has never sold or leased, motor vehicles in Vermont through a franchisee;

(D) has not sold or transferred a combined direct or indirect ownership interest of greater than 30 percent in such non-franchised zero-emission vehicle manufacturer to a franchisor, subsidiary, or other entity controlled by a franchisor or has not acquired a combined direct or indirect ownership interest of greater than 30 percent in a franchisor, subsidiary, or other entity controlled by a franchisor; and

(E) is a dealer registered pursuant to 23 V.S.A. chapter 7, subchapter 4.

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

§ 4086. Warranty and predelivery obligations to new motor vehicle dealers

(a) Each new motor vehicle manufacturer shall specify in writing to each of its new motor vehicle dealers licensed in this State the dealer's obligations for predelivery preparation and warranty service on its products, shall compensate the new motor vehicle dealer for such service required of the dealer by the manufacturer, and shall provide the dealer the schedule of compensation to be paid the dealer for parts, work, and service in connection therewith, and the time allowance for the performance of the work and service.

(b) A schedule of compensation shall not fail to include reasonable compensation for diagnostic work as well as for repair service and labor. Time allowances for the diagnosis and performance of predelivery and warranty service shall be reasonable and adequate for the work to be performed. The hourly rate paid to a new motor vehicle dealer shall not be less than the rate charged by the dealer to customers for nonwarranty service and repairs. Each manufacturer shall compensate each of its dealers for parts used to fulfill warranty, predelivery, and recall obligations of repair and servicing at amounts not less than the retail amounts customarily

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

(c) For purposes of this section, the "retail amounts customarily charged" by the franchisee for parts ~~and/or labor shall~~ may be established by submitting to the manufacturer 100 sequential nonwarranty customer-paid service repair orders or 60 days of nonwarranty customer-paid service repair orders, whichever is less ~~in terms of total cost~~, covering repairs made no more than 180 days before the submission and declaring the average percentage markup for parts and/or the labor rate. The average percentage markup and/or labor rate so declared is the retail amount, which goes into effect 30 days following the declaration, subject to audit of the submitted repair orders by the manufacturer and adjustment of the average percentage markup based on that audit. All ~~Only~~ retail sales shall be considered in calculating the average percentage markup, except (i) warranty repairs, (ii) not involving state inspection, (iii) not involving routine maintenance, including, but not limited to, the replacement of bulbs, fluids, filters, batteries, and belts that are not provided in the course of, or related to, a repair such as changing the oil and oil filter, (iv) factory special events, specials, or promotional discounts for retail customer repairs, (v) parts sold, or repairs performed, at wholesale, (vi) factory-approved goodwill or policy repairs or replacements, (vii) repairs with aftermarket parts, when calculating the retail parts rate, but not the retail labor rate, (viii) repairs on aftermarket parts, (ix) replacement of or work on tires, including alignments and wheel or tire rotations, (x) repairs of motor vehicles owned by the dealer or an employee thereof at the time of the repair, (xi) engine and/or transmission assemblies, (xii) vehicle reconditioning, (xiii) items that do not have individual part numbers including, but not limited to, nuts, bolts and fasteners, and (xiv) not involving accessories, may be considered in calculating the average percentage markup. A manufacturer may not require a new motor vehicle dealer to establish the average percentage markup by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including part-by-part or transaction-by-transaction calculations. A new motor vehicle dealer may not change the average percentage markup more than two times in one calendar year. A manufacturer shall not require, influence or attempt to influence a dealer to implement or change the prices for which it sells parts or labor in retail customer repairs. A manufacturer shall not implement or continue a policy, procedure or program to any of its dealers in the state for compensation which is inconsistent with this subsection. Further, the manufacturer shall reimburse the new motor vehicle dealer for any labor performed at the retail rate customarily charged by that franchisee for the same labor when not performed in satisfaction of a warranty, provided the franchisee's rate for labor not performed in satisfaction of a warranty is routinely posted in a place conspicuous to its service customer.

(d) It is a violation of this section for any new motor vehicle manufacturer to fail to perform any warranty obligations or to fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be

available to dealers for the correction of such defects, or to fail to compensate any of the new motor vehicle dealers in this State for repairs effected by a recall at the rates set forth in paragraph (c).

(e) If a manufacturer furnishes a part or component to a dealer, at less than its normal and customary price, including but not limited to the price previously reflected in the manufacturer's parts catalogue, to use in performing repairs under a recall, campaign service action or warranty repair, the manufacturer shall compensate the dealer for the part or component in the same manner as warranty parts compensation under this section by compensating the dealer the average markup on the cost for the part or component as listed in the manufacturer's price schedule less the cost for the part or component.

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

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

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

(ih) Any chargeback resulting from any audit shall not be made until a final order is issued by the Transportation Board if a protest to the proposed chargeback is filed within 30 days of the notification of the final amount claimed by the manufacturer, to be due after exhausting any procedure established by the manufacturer to contest the chargeback, other than arbitration. The manufacturer has the burden of proof in any proceeding filed at the Board under this section.

(ji) It is unlawful for a franchisor, manufacturer, factory branch, distributor branch, or subsidiary to own, operate, or control, either directly or indirectly, a motor vehicle warranty or service facility located in the State except:

(1) on an emergency or interim basis;

(2) if no qualified applicant has applied for appointment as a dealer in a market previously served by a new motor vehicle dealer of that manufacturer's line-make; or

(3) if the manufacturer is a non-franchised zero-emission vehicle manufacturer that directly owns, operates, and controls the warranty or service facility.

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§ 4096. Unlawful acts by manufacturers or distributors

Notwithstanding the terms of any franchise or other agreement with the manufacturer, 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:

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

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

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

§ 4097. Manufacturer violations

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

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[Subdivision (8) effective until July 1, 2022; see also subdivision (8) effective July 1, 2022 .]

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

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

- (i) selling or leasing;
- (ii) offering to sell or lease; or
- (iii) soliciting or advertising the sale or lease.

(C) A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

[Subdivision (8) effective July 1, 2022; see also subdivision (8) effective until July 1, 2022 .]

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

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

- (i) selling or leasing;
- (ii) offering to sell or lease;
- (iii) soliciting or advertising the sale or lease; ~~or~~
- (iv) offering through a subscription or like agreement; or
- (v) offering or selling software and hardware upgrades or changes to vehicle function and features.

(C) A manufacturer shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation that is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions.

* * *

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

* * *

(25) With respect to consumer data, to:

A. Fail to comply with, and shall not cause a new motor vehicle dealer to violate, any applicable restrictions on reuse or disclosure of consumer data established by federal or state law;

B. Fail to provide a written statement to the new motor vehicle dealer upon request describing the established procedures adopted by such manufacturer or third party acting on behalf of the manufacturer which meet or exceed any federal or state requirements to safeguard the consumer data, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq.;

C. Fail to, upon the written request of the new motor vehicle dealer, provide a written list of the consumer data obtained from the dealer and all persons to whom any consumer data has been provided by the manufacturer or a third party acting on behalf of a factory during the preceding six months. The dealer may make such a request no more than once every six months. The list must indicate the specific fields of consumer data which were provided to each person;

D. Require that a new motor vehicle dealer grant the manufacturer or a third party acting on behalf of a manufacturer direct or indirect access to such dealer's data management system to obtain consumer data. A manufacturer or a third party acting on behalf of a manufacturer must permit a dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the dealer. However, a manufacturer or a third party acting on behalf of a manufacturer may access or obtain consumer data directly from a dealer's data management system with the express written consent of the dealer. The consent must be in the form of a standalone written document that is executed by the dealer principal/operator, and may be withdrawn by the dealer upon 30 days' written notice to the manufacturer as applicable. Such consent shall not be required as a condition to a new motor vehicle dealer's participation in an incentive program unless such consent is necessary to obtain consumer data to implement the program; and

E. Shall indemnify the dealer for any third-party claims asserted against or damages incurred by the new motor vehicle dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section by the manufacturer or a third party to whom the manufacturer has provided consumer data.

F. Nothing contained in this Section shall limit the ability of the manufacturer to require that the dealer provide, or use in accordance with the law, such customer information related solely to such manufacturer's own vehicle makes to the extent necessary to do any of the following:

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

(2) Complete the sale and delivery of a new motor vehicle to a customer;

(3) Validate and pay customer or new motor vehicle dealer incentives; or

(4) Submit to the factory claims for any services supplied by the new motor vehicle dealer for any claim for warranty parts or repair.

G. Fail to provide any benefit or incentive to a new motor vehicle dealer resulting from the dealership's refusal to give the manufacturer, or a third party acting on behalf of a manufacturer access, to all or parts of the dealer's data management system.

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§ 4099. Civil actions for violations

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

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§ 4100b. Enforcement; Transportation Board

(a) The Transportation Board established in 19 V.S.A. § 3 shall enforce the provisions of this chapter.

(b) The Board shall adopt rules to implement the provisions of this chapter.

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

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

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

(d) The parties to protests shall be permitted to conduct and use the same discovery procedures as are provided in civil actions in the Superior Court.

(e) The Board shall be empowered to determine the location of hearings, appoint persons to serve at the deposition of out-of-state witnesses, administer oaths, and authorize stenographic or recorded transcripts of proceedings before it. Prior to the hearing on any protest, but no later than 45 days after the filing of the protest, the Board

shall require the parties to the proceeding to attend a prehearing conference in which the Chair or designee shall have the parties address the possibility of settlement. If the matter is not resolved through the conference, the matter shall be placed on the Board's calendar for hearing. Settlement communications shall remain confidential, shall be exempt from public inspection and copying under the Public Records Act, shall not be disclosed, and shall not be used as an admission in any subsequent hearing.

(f) Compliance with the discovery procedures authorized by subsection (d) of this section may be enforced by application to the Board. Obedience to subpoenas issued to compel witnesses or documents may be enforced by application to the Superior Court in the county where the hearing is to take place.

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

(h) Any party to any proceeding under this chapter who recklessly or knowingly fails, neglects, or refuses to comply with an order issued by the Board shall be fined a civil penalty not to exceed \$2,500.00. Each day of noncompliance shall be considered a separate violation of such order.

(i) Within 20 days after any order or decision of the Board, any party to the proceeding may apply for a rehearing with respect to any matter determined in the proceeding or covered or included in the order or decision. The application for rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the Board shall be taken unless the appellant makes an application for rehearing as provided in this subsection, and when the application for rehearing has been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by the Board unless the Board for good cause shown allows the appellant to specify additional grounds. Any party to the proceeding may appeal the final order, including all interlocutory orders or decisions, to the Superior Court within 30 days after the date the Board rules on the application for reconsideration of the final order or decision. All findings of the Board upon all questions of fact properly before the court shall be prima facie lawful and reasonable. The order or decision appealed from shall not be set aside or vacated except for errors of law. No additional evidence shall be heard or taken by the Superior Court on appeals from the Board.

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

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NOTE: This section is the only one with further amendments (made in red below) to VADA's 12/1/21 Proposal included in DMV's 12/22/21 Report.

Sec. 2. 23 V.S.A. § 450b is added to read:

§ 450b. New Motor Vehicle Direct Shipper

A. A person who is licensed or registered in their state of domicile as a franchised new motor vehicle dealer, and which is not affiliated by ownership or control with a manufacturer, distributor, factory branch, factory representative, distributor branch or distributor representative as defined in section 4085 of title 9, may register for a new motor vehicle direct shipper license which will permit that person to sell and ship a new motor vehicle directly to any person, ~~association or entity~~ who is a resident of this State. The commissioner shall develop an application, which may require any information the Commissioner deems necessary, including an attestation from the applicant that it is a licensed new motor vehicle dealer in another state in good standing and is operating a physical dealership facility in another state. Only a person holding a new motor vehicle direct shipper license may ship a new motor vehicle from out of the State to a person, ~~association or entity~~ who is a Vermont resident. A motor vehicle dealer or a non-franchised zero emissions motor vehicle manufacturer, registered in this State under 23 V.S.A. chapter 7, subchapter 4, shall not be required to obtain a new motor vehicle direct shipper license to ship a new motor vehicle to a person, ~~association or entity~~ who is a Vermont resident. Any person who ships less than 12 new motor vehicles per year from out of the State to a person, ~~association or entity~~ who is a Vermont resident shall not be required to obtain a new motor vehicle direct shipper license. ~~The new motor vehicle direct shipper shall provide the Commissioner with a surety bond, letter of credit, or certificate of deposit issued by an entity authorized to transact business in this state that meets the requirements set for a new motor vehicle dealer in this state pursuant to 23 V.S.A. § 453(g). The registration fee for a new motor vehicle direct shipper shall be no more than the same as any fee required to register as a new motor vehicle dealer in this State pursuant to 23 V.S.A. § 453(a)(1) but no dealer plates shall be issued to a new motor vehicle direct shipper.~~

B. A holder of a new motor vehicle direct shippers license granted pursuant to this section shall comply with all of the following:

(1) Retain a copy of each record of sale of a new motor vehicle to a person who is a Vermont resident for a minimum of five years from the date of shipping.

(2) Report at least once per year to the Department all the following information:

(A) the total amount of new motor vehicles shipped into or within the State during the preceding 12 months;

(B) the names and addresses of the purchasers to whom the new motor vehicles were shipped; and

(C) the date purchased, the type and value of the new motor vehicle, and, if applicable, the name of the common carrier used to make each delivery.

(3) Permit the Department of Motor Vehicle, the Department of Taxes, or any other State agency or official, separately or jointly, upon request, to perform an audit of its records, including the requirement that the licensee shall be required to bring or deliver all documents requested by any state agency or official to Vermont.

(4) Be deemed to have consented to the jurisdiction of the Department of Motor Vehicles, the Department of Taxes, or any other State agency and the Vermont State courts concerning enforcement of this or other applicable laws and rules.

(5) Comply with all applicable laws and Department rules.

CB. It shall be unlawful for common or permit carriers, operators of trucks, buses or other conveyances or out-of-state manufacturers or suppliers to make delivery of any new motor vehicle from outside of this State to any person, ~~association or entity~~ within the state unless the delivery is made by a person registered ~~with the Department in this state~~ as a motor vehicle dealer or a new motor vehicle direct shipper.

DC. A person that sells and ships a new motor vehicle directly to any person, ~~association or entity~~ who is a resident of this State without holding a new motor vehicle direct shipper license shall be subject to the penalties ~~CITE RELEVANT DMV PENALTIES HERE in 23 V.S.A. § 475~~. The commissioner may also seek an injunction to prevent the person from shipping motor vehicles into the state.