



February 28, 2022

Hon. Andrew Perchlik, Vice-Chair
Senate Committee on Transportation
Vermont State Capitol
115 State Street
Montpelier, VT 05633

RE: Proposed Changes to Franchise Law – Section 5, Chapter 63 of the Acts and Resolves of 2021

Dear Vice-Chair Perchlik:

On behalf of the Alliance for Automotive Innovation,¹ I want to thank you, Chairman Mazza, and the members of the Senate Committee on Transportation for the latitude and time you have allocated to discuss our respective associations' views on proposed changes to Vermont's *Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act*.

We fully understand that asking the members of a legislative committee to immerse themselves in the minutia of long-term, contractual relationships between two business entities – so that they can then pick winners and losers – is never an easy request. Appreciating this, our normal course of action in other states has been to meet with the state's dealer association – often before the legislative session has begun – to work out a suitable compromise. Despite this as our normal course of action and the time generously allocated by the Committee, there has regrettably been zero progress made on Chairman Mazza's directive.

As you will see from the attached correspondence, the entirety of the week was squandered while trying to establish the basic framework of the negotiations. In VADA's original letter, they offered to negotiate over a subset of the original staff draft referenced in Chairman Mazza's letter. However, as that draft only contained provisions put forward by VADA to the DMV in accordance with Section 5, of Chapter 63 of the Acts and Resolves of 2021, we explained our desire to have negotiations include all ideas from the report. VADA's response was clear in their rejection of this seemingly simple request, going so far as to repaste and highlight text from Chairman Mazza's letter that said "on sections within DR 22-0589, draft 2.1". While we viewed this as both patently unfair and not in keeping with the Committee's intentions for a robust dialog on the topic – reflected in the DMV report and the delayed effective date on the sections relative to parts/accessories and subscription services – we also recognized that no progress had been made on the Chairman's request for a unified solution. To that end, in our letter from Friday, we offered a plan to VADA that would include the creation of a working group to dig into the issue over the summer, but expanding the dialog to include consumers and other interested parties as appropriate. With their final letter this morning, VADA backtracked on earlier statements – especially those contained in the last paragraph of their letter dated February 23rd – and now, when no time is available to do so, offered to negotiate on our proposed ideas, seemingly implying that this was their intention all along.

¹ The Alliance for Automotive Innovation is the singular, authoritative, and respected voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, the Alliance for Automotive Innovation represents automakers producing nearly 98 percent of cars and light trucks sold in the U.S., original equipment suppliers, as well as other automotive technology companies.

While VADA's letter from earlier today did not provide any response on our idea to create a working group to facilitate a genuine discussion of the issues as envisioned when providing for the DMV report, we take their silence as refusal. Nevertheless, we still believe it would be in the best interest of Vermont consumers to have such a discussion. We therefore suggest the Committee give the idea some consideration. We are envisioning a working group that moves beyond the bilateral discussions that simply pit automakers and dealers in a zero-sum negotiation, by including other parties and perspectives, with the goal to bring a negotiated recommendation to the Legislature for consideration ahead of the 2023 legislative session. Should the Committee see the merit of this idea, we would also suggest a one-year extension of the delayed enactment originally included in Act 63. The goal was to allow for a thorough discussion of the merits of these sections, therefore allowing them to become law absent that due diligence is unjust.

Thank you for your continued interest in this topic and we would be happy to discuss the above topic with the Committee should there be any interest.

Sincerely,



Wayne Weikel
Senior Director, State Affairs

cc: Anthea Dexter-Cooper
Members, Senate Committee on Transportation

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SEN. DICK MAZZA, CHAIR
SEN. ANDREW PERCHLIK, VICE CHAIR
SEN. THOMAS CHITTENDEN, CLERK
SEN. RUSS INGALLS
SEN. JANE KITCHEL

STATE OF VERMONT
GENERAL ASSEMBLY
SENATE COMMITTEE ON
TRANSPORTATION

February XX, 2022

Wayne Weikel
Senior Director of Government Affairs
Alliance of Automotive Innovation
wweikel@autosinnovate.org

Marilyn Miller
Executive Director
Vermont Vehicle and Automotive Distributors Association
mmiller@vermontada.org

Dear Marilyn and Wayne,

On behalf of the Senate Committee on Transportation, I write to thank you, your organizations, and members of your organizations for the time, materials, and testimony you have put into our work on 2021 Acts and Resolves No. 63 (S.47)—including the resulting solicitation of proposed amendments to the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act, 9 V.S.A. chapter 108—and DR 22-0589.

In listening to the testimony over the past few weeks, it has become clear to us that there is disagreement between your organizations with regard to if and how the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act should be amended. We encourage your organizations to meet as soon as possible to discuss your points of disagreement and try to find a way to move forward.

To the extent that you collectively believe that legislation to amend the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act is necessary, please provide one version of draft legislation or documentation of agreement on sections within DR 22-0589, draft 2.1 (enclosed) to Sen. Andrew Perchlik, Vice Chair, Senate Committee on Transportation (aperchlik@leg.state.vt.us) and Anthea Dexter-Cooper (adextercooper@leg.state.vt.us) not later than February 28, 2022, for possible consideration by the Committee on March 8, 2022.

To be clear, it is our preference that your organizations work together to find a resolution that will continue to ensure the distribution and sale of motor vehicles within the State in a way that promotes the public interest and public welfare of Vermonters.

Sincerely,

Senator Richard T. Mazza
Chair, Senate Committee on Transportation
Vermont General Assembly

Enclosure

Cc: Wanda Minoli, Commissioner, Department of Motor Vehicles (wanda.minoli@vermont.gov)
Clare Buckley, Partner, Leonine Public Affairs, LLP (cbuckley@leoninepublicaffairs.com)
Bridget Morris, President, Morris Government Affairs, LLC (bmorris@vtlobbyists.com)



Vermont Vehicle & Automotive Distributors Association

February 21, 2022

Mr. Wayne Weikel
Senior Director of Government Affairs
Alliance of Automotive Innovation
w.weikel@autosinnovate.org

Dear Mr. Weikel:

I write in response to the letter sent to AAI and VADA last Friday on behalf of the Senate Transportation Committee requesting that we work together to resolve our differences and report back with documentation of agreement on sections within DR 22-0589, draft 2.1 by February 28th.

The VADA Board of Directors met and in the interest of time have agreed to and submit for your consideration the following proposal. In exchange for AAI's agreement on the amendments in the remainder of DR 22-0589, draft 2.1, VADA is willing to delete the following three provisions from the bill:

Delete 9 V.S.A. § 4085(13)(E) and 9 V.S.A. § 4097(8)(B)(v) relating to selling software and hardware upgrades or changes to vehicle function and features.

Delete Sec. 7. 23 V.S.A. § 450b NEW MOTOR VEHICLE DIRECT SHIPPER

Please let us know if AAI can agree to this proposal. We look forward to hearing from you.

Sincerely,

Marilyn B. Miller
Executive Director

CC: Bridget Morris

February 22, 2022

Ms. Marilyn B. Miller
Executive Director
Vermont Automobile Dealers Association
1284 US Route 302-Berlin, Suite 2
Barre, VT 05641

Dear Ms. Miller:

We greatly appreciate the opportunity granted to us by Chairman Mazza and the Senate Committee on Transportation, to discuss our two associations' suggested edits to Vermont's *Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act*.

Thank you for your letter dated February 21st, in which you share what is framed as a compromise agreement by Vermont Automobile Dealers Association (VADA). If I read your offer correctly, however, the proposal seems to incorporate five of VADA's suggested edits – out of the seven originally proposed to the Department of Motor Vehicles as provided for in Chapter 63 of the Acts and Resolves of 2021 – but fails to incorporate any of the seven proposed edits offered by the Alliance for Automotive Innovation. Nor does your offer seem to address any of the concerns raised by Consumers for Auto Reliability and Safety or the American Consumer Institute Center for Citizen Research, both of which also submitted to the Department of Motor Vehicles in a timely manner. As you can likely imagine, a “compromise” that incorporates five of your priorities and zero of ours is not agreeable to our membership.

Each of the seven proposed changes offered by the Alliance for Automotive Innovation would directly benefit Vermont consumers –

- *We drafted language to ensure consumers have access to a competitive marketplace for replacement parts, instead of creating a captive market where genuine parts could only be purchased through a dealership.*
- *We added text to grant automakers a key tool in their efforts to increase the percentage of minority-owned and women-owned dealerships.*
- *We included language to safeguard Vermont consumers' access to the widest marketplace for the nascent idea of vehicle-by-subscription.*
- *We made it easier for automakers to ensure consumers have access to clean, modern dealership facilities, ones that are consistent with sales and service facilities found in other states.*
- *We revised the state's warranty reimbursement program to make it more competitive, a balance that is needed more today than ever, given that new market entrants have now been granted special treatment to operate without the encumbrances of the state's vehicle distribution laws.*
- *And finally, we drafted language to allow all automakers selling zero emission vehicles to sell directly to consumers, ensuring equal treatment to all automakers under Vermont law.*

For your convenience, I have attached our original filing to the Department of Motor Vehicles so that you can see our suggested edits in a redline version against existing Vermont law.

Out of respect for Chairman Mazza, the Senate Committee on Transportation, and the latitude they have granted to us on this issue, we would welcome additional dialog on this topic. If we are to move forward in an earnest effort to find compromise, however, both our proposals for changes to the franchise law must be part of the discussion.

If you are amenable to further discussion toward a mutually agreeable outcome before the Chairman's deadline of February 28th, I would suggest our respective lobbyist representatives in Montpelier schedule an initial call to work out necessary logistics for a more substantive call.

Kindest regards,



Wayne Weikel
Senior Director, State Government Affairs





Vermont Vehicle & Automotive Distributors Association

February 23, 2022

Mr. Wayne Weikel
Senior Director of Government Affairs
Alliance of Automotive Innovation
w.weikel@autosinnovate.org

Dear Mr. Weikel:

Thank you for your letter of response to VADA's proposed compromise dated February 21st.

Our compromise proposal was submitted in response to the request stated in Senator Mazza's letter as follows: "To the extent that you collectively believe that legislation to amend the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act is necessary, please provide one version of draft legislation or documentation of agreement **on sections within DR 22-0589, draft 2.1** (enclosed) to Sen. Andrew Perchlik, Vice Chair, Senate Committee on Transportation (aperchlik@leg.state.vt.us) and Anthea Dexter-Cooper (adextercooper@leg.state.vt.us) not later than February 28, 2022, for possible consideration by the Committee on March 8, 2022."

VADA's proposal focused on the issues in DR 22-0589 draft 2.1 as Senator Mazza requested. As the response deadline is February 28th, we are interested in your position on the items contained in our letter. We are willing to get together to discuss the issues in DR 22-0589 draft 2.1 as required in the letter so please send us dates and times to meet on those specific issues.

Sincerely,

Marilyn B. Miller
Executive Director

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February 25, 2022

Ms. Marilyn B. Miller
Executive Director
Vermont Automobile Dealers Association
1284 US Route 302-Berlin, Suite 2
Barre, VT 05641

Dear Ms. Miller:

While I am aware our lobbyist in Montpelier has relayed this verbally to your representation, I thought it appropriate to provide a response to your letter dated February 23rd in written form.

Although your last letter was accurate, in that the Chairman's instructions were to work from the committee draft of legislation. We in no way read the instructions as limiting the discussion to only those provisions, or some subset thereof. Automakers presented ideas to the DMV that we wanted to discuss. We did not presuppose the outcome of those discussions, but simply wanted a full discussion of the topic. We have reached out to Senator Perchlick, whom we were asked to report to on the 28th, for clarification whether the Committee's intention was to exclude all of the legislative change requests we submitted in accordance with Act 63. As we have not received additional guidance, we are not able to agree to your restricted vision of negotiations.

A full discussion of the topic was the very basis for the Legislature's unusual decision in 2021 to pass changes to the state's franchise law – relative to the sale of parts and accessories and to vehicle subscription services – but then to delay the enactment date a full year. As stated at the time, the purpose of that delay period was to afford the time to discuss the merit of those very changes. Of the seven topics for consideration that we provided to the DMV, the language relative to the sale of parts and accessories and the language relative to vehicle subscription programs comprised two of them.

Given the lack of progress made on a comprehensive discussion this week, it seems unlikely we will be successful in reconciling our differences by Monday, February 28th. As we still believe it would be in the best interest of Vermont consumers to have this subject vetted through a thorough stakeholder process, we would ask VADA to consider the following proposal. Would VADA consider working with us in a manner in which we explore all of the facets and comments of the Act 63 DMV report? We would envision a working group that incorporates consumer groups, manufacturers, dealers, members of the administration, and any other interested parties the Committee deems appropriate, with a charge to draft make legislative recommendations ahead of the next legislative session. If you are willing to consider this proposal, we would also seek a year extension of the delayed enactment originally included in Act 63.

If you would like to take us up on this offer, please feel free to have your lobbyist reach out to our representative, Bridget Morris, to set up a meeting.

Regards,

A handwritten signature in blue ink that reads "Wayne Weikel".

Wayne Weikel
Senior Director, State Government Affairs



Vermont Vehicle & Automotive Distributors Association

February 28, 2022

Mr. Wayne Weikel
Senior Director of Government Affairs
Alliance of Automotive Innovation
w.weikel@autosinnovate.org

Dear Mr. Weikel:

In response to your letter dated 2/25 but provided to us Saturday, a point of clarification. The Senate Transportation Committee Chair's letter to us both states: "please provide one version of draft legislation or documentation of agreement on sections within DR 22-0589, draft 2.1 (enclosed)."

The Alliance has testified and submitted documents to the Senate Transportation Committee regarding sections that are incorporated within that draft. The Alliance also submitted amendments to DMV's "suggestion box" related to parts, subscriptions, warranty requirements, among other issues, that are within DR 22-0589 draft 2.1. As we have stated since receipt of Chairman Mazza's letter and our original letter to you dated February 21st as well as our follow-up letter dated February 23rd, VADA stands ready to negotiate on any of these issues in DR 22-0589 draft 2.1.

VADA wants to move forward and have these issues addressed legislatively this year. VADA opposes any effort to delay the effective date on the ban of parts or subscriptions.

Respectfully,

Marilyn B. Miller
Executive Director