

**Vermont Vehicle and Automotive Distributors Association (VADA)**  
**Summary of VADA Draft Strike-all Proposal to S.47**  
**Senate Transportation Committee**  
**March 9, 2021**

1. **Non-franchised zero emissions motor vehicle manufacturers** – Sections 4085(13), 4086(j) & 4097(8)
  - A definition of “non-franchised zero emissions motor vehicle manufacturers” is added to address the new category of motor vehicle manufacturers that do not utilize franchised dealers and that manufacture zero emission vehicles. The definition is then used to clarify the permissible operations of a non-franchised zero emissions motor vehicle manufacturer in the State in contrast with the permissible activities of a motor vehicle manufacturer who has contracted with franchised dealers to sell and service their products in the State.
  - A non-franchised zero emissions motor vehicle manufacturer must be registered as a dealer in Vermont to sell vehicles in Vermont and to own and operate directly a warranty and service center.
  - Several states, including New York, have created a definition of a zero emissions motor vehicle manufacturer for this purpose. *NY VTL Article 16, § 415(7)*.
  
2. **Facility requirements and vendor requirements** – Sections 4096(9) & 4096(10)
  - The expense of compliance with manufacturer facility upgrades has grown tremendously. In some cases, the manufacturer’s facility image plans change every few years and failure to comply can cause a dealer to forego per vehicle incentives which create a competitive disadvantage in vehicle pricing. This section places the burden on the manufacturer to demonstrate that the dealer will obtain a return on the facility investment proposed by the manufacturer. If the dealer chooses to move forward with a facility change, the dealer is provided with a 10-year window of time within which the dealer is considered in compliance with the manufacturer’s facility image requirements before being obligated to expend significant capital on a new facility upgrade. New Hampshire has a 15 year grandfather period for facility renovations and New York has 10 year grandfather period for facility renovations. Both states require the manufacturer to demonstrate the reasonableness of any requested facility change. *N.H. Rev. Stat. Ann. § 357-C:3(V)(d); NY VTL Article 16 § 463(2)(c)(3)*.
  - As part of the increasing expense of facility upgrades, the manufacturers require dealers to utilize sole-source suppliers for certain construction materials and renovation items. This requirement substantially raises the cost of the facility upgrade. In many cases, there are other lower cost suppliers, some within the State, for these same products. This section would prohibit a manufacturer from allowing a dealer to utilize a supplier of the dealer’s choosing as long as the product is of like-kind and quality as the product required by the manufacturer. New Hampshire and New York require manufacturers to allow dealers to choose their vendors. *N.H. Rev. Stat. Ann. § 357-C:3(III)(W)(1); NY VTL Article 16 § 463(2)(c)(2)*
  
3. **Warranty and predelivery obligations** – Sections 4086(c), 4086(d), 4086(e) & 4086(h)
  - Since first requiring manufacturers to compensate motor vehicle dealers for warranty work at the equivalent of the market-based retail repair rates charged by the dealer, the manufacturers have made it difficult for dealers to obtain the proper increase to their warranty reimbursement rates. The revisions to section 4086(c) clarify the formula used for establishing the dealer’s retail labor and parts rate. Section 4086(e) address the issue of how a dealer is to be reimbursed for handling the part used in a warranty repair which is provided at no cost to the dealer. NH, NY & MA all use “shall”

instead of “may,” making the statutory method for retail rate calculation mandatory. These states, as most do, provide a list of routine maintenance items which are to be excluded from calculations, address parts shipped at no cost to the dealer. *N.H. Rev. Stat. Ann. § 357-C:5; NY VTL Article 16 § 465; M.G.L.A. Ch. 93B, § 9.*

- The revision to section 4086(h) is to reduce the audit look-back period for a manufacturer from 18 to 12 months for incentive and reimbursement programs. This is to protect both the manufacturer and the dealer from an audit of incentive monies paid which results in such a large chargeback that it devastates the financial position of the dealership. Sales and other incentives have become such a large part of the compensation paid by manufacturers to dealers that if a mistake has been made as to an eligible incentive claim, a manufacturer’s discovery of the dealer’s mistake for potentially hundreds of claims over an 18 month period can result in a charge back which could destroy the financial viability of the dealership. Reducing the look-back period to 12 months will allow the manufacturer and dealer to discover errors in the claims submission process before the incentive amounts at issue become too great. New Hampshire limits audit and charge back to a nine-month period, New York and Massachusetts limit it to one year. *N.H. Rev. Stat. Ann. § 357-C:5(III)(d)(2-3); NY VTL Article 16 § 465; M.G.L.A. Ch. 93B, § 9(c).*
4. **Unreasonable Standard** – Section 4097(16)
- The revisions to this section clarify that the prohibition on unreasonable standards applied to a motor vehicle dealer by a manufacturer include standards applied in relation to compliance with the franchise agreement as well as any manufacturer program. The revisions to this section also make clear that failing to take into consideration a dealer’s individual market circumstances in applying those standards is considered unreasonable.
  - New York prohibits the application of unreasonable standards to a dealer. *NY VTL Article 16 § 463(2)(gg).*
5. **New Motor Vehicle Direct Shippers License** – Proposed new section of law
- The requirements in Vermont associated with a registered dealer selling vehicles to residents of this State apply only to dealers selling from a physical location within the State. The purpose of the registration process is to ensure that the dealer is educated and trained to complete the proper documentation for the sale and financing of new motor vehicles, has no criminal background, has adequate dealership sales and service facilities and is authorized by a new motor vehicle manufacturer to perform the pre-delivery preparation of the vehicle. With the advent of the sale of new motor vehicles over the Internet from entities located outside of the State, the State can no longer only regulate the sale of new motor vehicles through its dealership registration process to achieve these goals.
  - In order to continue to ensure the health, safety and financial well-being of the residents of this State, this new section would require that any entity delivering a new vehicle to a resident within this State demonstrate that they are a properly licensed new motor vehicle dealer, in good standing, in another state. The properly licensed dealers seeking a direct shipper’s license would also demonstrate that they are not affiliated with a franchised motor vehicle manufacturer so as to prevent a franchised motor vehicle manufacturer from engaging in the activities of a franchised new motor vehicle dealer and competing directly with its own franchised dealers within the State in violation of Vermont law. A non-franchised zero emission motor vehicle manufacturer would not be required to obtain a new motor vehicle direct shippers license because they would be registered as a dealer in Vermont. We are not aware of other states that are currently doing this.

6. **Consumer Data** – Sections 4085(3) & 4097(25)

- New motor vehicle dealers gather data from both potential customers and actual sales and service customers which includes non-public personal information as well as sensitive information related to the purchase and financing of the vehicle. This proposal creates a definition of “consumer data” and places limitations on a manufacturer’s access and use of consumer data obtained from a dealer. It further requires the manufacturer to indemnify the dealer for any damage or penalties sought from the dealer for a violation of the law by the manufacturer or its vendors in using consumer data.
- A number of states have enacted similar provisions including Arizona, California, Florida, Georgia, Missouri, Oregon and Virginia.

7. **Competition with dealers** - Sections 4085(16) & 4097(8)

- Over time, franchised motor vehicle manufacturers have used their economic advantage over their franchised motor vehicle dealers to insert themselves directly into the relationship with the retail purchaser of a vehicle. The definition of New Motor Vehicle Dealer is revised to clarify the activities that are reserved for licensed new motor vehicle dealers including the sale, lease, subscription programs and the sale of parts to the retail consumer.
- The bill also clarifies that a franchised motor vehicle manufacturer shall not engage in the activities reserved to a licensed motor vehicle dealer and makes clear that this prohibition does not apply to non-franchised zero-emission motor vehicle manufacturers.
- Both New Hampshire and Massachusetts address leases, “engaging in the business of selling”, and subscription programs in their respective definition provisions. *N.H. Rev. Stat. Ann. § 357-C:1(VIII, XII, XXVII); M.G.L.A. Ch. 93B, § 1.*