



February 11, 2021

Hon. Dick Mazza, Chair
Senate Committee on Transportation
Vermont State Capitol
115 State Street
Montpelier, VT 05633

RE: Oppose – Senate Bill 47

Dear Chairs and Members of Committee:

On behalf of the Alliance for Automotive Innovation, I am writing to express our strong opposition to Senate Bill 47, legislation that would establish two different sets of rules within state law for competitors in the same marketplace. Formed in 2020, 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 99 percent of cars and light trucks sold in the U.S., original equipment suppliers, as well as other automotive technology companies.

In Vermont – as in every other state – automakers and dealers operate under a complex scheme of state franchise laws that regulate nearly every facet of the business relationship. Admittedly, some of these laws are onerous for manufacturers. Yet, in a marketplace where competition between brands is fierce, all participants at least engage under the same set of rules. Nothing within the state’s current laws precludes Tesla Motors or any other company from competing in the Vermont automobile market tomorrow under the same rules as every other auto manufacturer. These automakers do not want to play by the same rules, however, they want special treatment.

This legislation would permanently cleave the marketplace in two, maintaining an old set of rules for existing manufacturers and establishing a different set of rules for new market entrants. It is patently unfair for a government body to pick winners and losers in a competitive marketplace through its policymaking.

When Tesla first came to market, some state legislatures opted to grant the start-up a discrete exemption to the state’s franchise laws, believing it was deserved since they were so small and selling a different technology than most automakers at that time. But now, small? Tesla now has the highest market capitalization of any automaker, at nearly \$800 billion dollars, almost four times the valuation of the next most valuable automaker. In terms of volume of sales, Tesla sold more vehicles in the U.S. last year than Volvo and Porsche, combined. Tesla is no longer so small to warrant special treatment. More to the point, Tesla sells electric vehicles. While unique 10 years ago, there is nothing unique about that today. Just about every automaker has a full battery electric vehicle for sale today, and that number will only grow. Based on publicly reported product plans, our members have committed to release 130 electric vehicle models by 2025. In fact, our members will have spent a quarter trillion dollars by 2023 to develop, produce, and bring electric vehicles to market. The whole industry is shifting to electric vehicles; Tesla is not special in this area either.

Automakers have long held that the biggest problem with granting a special exemption to allow one company to operate outside the state's existing franchise model is not that first company, but all the new market entrants that will follow. In the intervening years, this concern has been proven to be fully justified. In New York, for example, where in 2014 Tesla was granted special dispensation to open 5 retail points in the state, Tesla is now working with two start-ups, Rivian and Lucid Motors, to change that law so that any new market entrant could sell electric vehicles directly to consumers, just like SB 47. To be clear, it will not stop with these three companies. There are approximately two dozen automakers that presently sell in other parts of the world, but not in the U.S. If passed, SB 47 would allow each of these well-established companies to also skirt the state's franchise laws and sell directly.

Your predecessors in the General Assembly established the rules under which automakers have built their businesses. Automakers have entered into contractual agreements with their authorized dealers based on these legal requirements. Therefore, it would be patently unfair for the state to have a long-established set of laws governing how certain manufacturers must distribute their products, but then let new manufacturers enjoy a competitive advantage by being exempted from those restrictive and complex laws. For your information, I have attached to this testimony a brief summary of the advantages a manufacturer would gain selling directly.

To be clear, our members do not shrink from added competition. Our automaker members have developed modern vehicles that are safer, cleaner, and more advanced than ever and they welcome new competitors to try and keep up. Our members simply believe that state laws that govern the sale of vehicles should provide a fair and level playing field for all, and not grant special privileges to new market entrants.

Thank you for your consideration of the Auto Innovators' position. Please do not hesitate to contact me, should I be able to provide any additional information.

Sincerely,



Wayne Weikel
Senior Director, State Affairs

cc: Senate Committee on Transportation

Advantages of Direct Vehicle Sales

Creating new retail locations

Vermont Law: State law governs where and how traditional manufacturers can add a new dealership. An existing dealer can file a protest against a manufacturer, if that manufacturer wants to create a new dealership within 10 miles of the existing dealer. If an existing dealer protests, the decision will likely find its way into the court system, where the burden of proof is on the manufacturer to show that “good cause” exists to create the new dealership. [9 §§ 4085(15) and 4097(22)]

Direct Sale Advantage: A manufacturer that did not need to comply with this law would be able to have a higher concentration of dealerships than a traditional manufacturer could have. It also would have much more flexibility to react to marketplace changes than a traditional manufacturer. A manufacturer free from this law would be able to better position itself against its competitors. It would also be able to do all of this without being exposed to the time and financial costs of court challenges.

Closing a dealership

Vermont Law: Current law makes it difficult for a manufacturer to terminate/close a franchisee. A manufacturer must prove that it has “good cause” to terminate or not renew a franchise agreement. Closing dealerships also requires several payments from the manufacturer to the dealer. If a manufacturer does succeed in closing a dealership, it must pay the dealer for its vehicle and parts inventory, and pay for relevant tools and signs. Additionally, if a manufacturer wishes to discontinue a line-make, then it must pay dealers for the value of their franchise before the discontinuation was announced. In some cases, the manufacturer may also have to pay the rental value of the property for a year. [9 §§ 4089, 4090, 4092, and 4096(4)]

Direct Sale Advantage: A manufacturer that did not need to comply with this law would avoid these considerable system costs when it needs to close a retail store, not to mention the opportunity time lost in resolution of current process.

Exclusivity

Vermont Law: Traditional manufacturers cannot prohibit dealers from selling vehicles from competing manufactures at the same locations so long as the dealer continues to comply with reasonable franchise requirements. [9 § 4096(6)]

Direct Sale Advantage: A manufacturer that does not need to comply with this law could have exclusive stores and not risk its customers being lured away to competing products, even when the customers may have been brought to the store by the first manufacturer’s advertising.

Incentives

Vermont Law: Traditional manufacturers use various forms of incentive programs to encourage dealers to do any number of things – sell vehicles, renovate a facility, achieve good customer satisfaction ratings, use manufacturer’s preferred advertising models, promote manufacturer financial services arms, etc.

Direct Sale Advantage: A company operating as both the manufacturer *and* retail outlet would not need to make such payments to incentivize behavior that was in the company’s best interests, unlike the current model.

Remodeling

Vermont Law: Traditional manufacturers cannot require dealers to expand or remodel a facility unless the manufacturer provides written assurance of a sufficient supply of vehicles to justify the change. The law also allows dealers to challenge the reasonability of alterations. [9 § 4096(8)-(9)]

Direct Sale Advantage: A manufacturer that does not need to comply with this law would have freedom from needing to justify its business strategies and branding to courts and independent dealers. Such a manufacturer would also be able to make facilities decisions without the worry that the law attaches those decisions to the manufacturer's vehicle production and allocation decisions. That would grant such a manufacturer the freedom to adjust the look of its stores, the presentation of its brand to the consumer, and make other adjustments to the purchasing experience at any time and without any fear of its decisions being second guessed by dealers or courts.

Warranty

Vermont Law: Traditional manufacturers are required to pay dealers to perform work on consumers' vehicles under the manufacturer's warranty. The law requires manufacturers to pay the dealers at the same rate that the dealer charges the public for retail service work. This occurs despite the manufacturer being a captive, high volume customer that provides this stream of work to the dealer without any investment in advertising to obtain or retain this work. That law adds additional costs for manufacturers. Yet Vermont law also prohibits manufacturers from using a surcharge to recover that added cost. [9 § 4086]

Direct Sale Advantage: A manufacturer that does not need to comply with this law would avoid this extra cost added to every warranty repair.