

1 S.47

2 Introduced by Senators Perchlik, Baruth, Cummings, Pollina and Ram

3 Referred to Committee on Transportation

4 Date: January 27, 2021

5 Subject: Motor vehicles; motor vehicle dealers; motor vehicle manufacturers

6 Statement of purpose of bill as introduced: This bill proposes to allow certain
7 motor vehicle manufacturers to own, operate, or control a motor vehicle
8 warranty or service facility located in the State.

9 ~~An act relating to motor vehicle manufacturers and motor vehicle warranty~~
10 ~~or service facilities.~~

*An act relating to motor vehicle manufacturers, dealers, and warranty or
service facilities*

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 ~~Sec. 1, 9 V.S.A., § 4086(i) is amended to read:~~

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

16 (1) on an emergency or interim basis; ~~or~~

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

20 ~~(3) if the manufacturer.~~

1 ~~(A) exclusively manufactures or assembles zero emissions vehicles;~~

2 ~~(B) is a dealer registered pursuant to 23 V.S.A. chapter 7,~~

3 ~~subchapter 4;~~

4 ~~(C) directly owns the motor vehicle warranty or service facility;~~

5 ~~(D) operates a dealership that meets the requirements of 23 V.S.A.~~

6 ~~§ 450a(a)(4) and (c) at the same location as the motor vehicle warranty or~~

7 ~~service facility; and~~

8 ~~(E) does not currently have or had not previously had a valid sales~~

9 ~~and service agreement, franchise, or contract with a new motor vehicle dealer,~~

10 ~~as defined under 9 V.S.A. § 4085(13), operating in the State.~~

11 Sec. 2. EFFECTIVE DATE

12 ~~This act shall take effect on passage.~~

Sec. 1. 9 V.S.A. § 4085(13) is amended to read:

(13) "New motor vehicle dealer" means any person engaged in the business of 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 said 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) of new motor vehicles and 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 said manufacturer's or distributor's new motor vehicles offering through a subscription or like agreement.~~

Sec. 2. 9 V.S.A. § 4085(18) is added to read:

(18) "Non-franchised ~~zero-emissions~~ zero-emission vehicle manufacturer" means a manufacturer that:

(A) only manufacturers 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-emissions~~ 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.

Sec. 3. 9 V.S.A. § 4086(i) is amended to read:

(i) 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 ~~or~~;

(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-emissions~~ zero-emission vehicle manufacturer that directly owns, operates, and controls the warranty or service facility.

~~Sec. 4. 2 V.S.A. § 4097 is amended to read:~~

~~§ 4097. MANUFACTURER VIOLATIONS~~

~~It shall be a violation of this chapter for any manufacturer defined under this chapter:~~

~~***~~

~~(8)(A) To compete with a new motor vehicle dealer in the same line-make operating under an agreement or franchise from the aforementioned manufacturer in the relevant market area 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 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.~~

~~(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.~~

Sec. 4. 9 V.S.A. § 4097 is amended to read:

§ 4097. MANUFACTURER VIOLATIONS

It shall be a violation of this chapter for any manufacturer defined under this chapter:

(8)(A) To compete with a new motor vehicle dealer in the same line-make operating under an agreement or franchise from the aforementioned manufacturer in the relevant market area 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.

* * *

Sec. 4a. 9 V.S.A. § 4097(8) is amended to read:

(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 for those new motor vehicles:

(i) selling or leasing;

(ii) offering to sell or lease; ~~or~~

(iii) soliciting or advertising the sale or lease; or

(iv) offering through a subscription or like agreement.

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Sec. 5. AMENDMENTS TO THE MOTOR VEHICLE
MANUFACTURERS, DISTRIBUTORS, AND DEALERS
FRANCHISING PRACTICES ACT; CREATION OF A DIRECT
SHIPPER LICENSE; REPORT

(a) It is the intent of the General Assembly to amend the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act, 9 V.S.A. chapter 108, in the 2021 Adjourned Session. Amendments may address facility requirements as regulated under 9 V.S.A. § 4096, warranty and pre-delivery obligations under 9 V.S.A. § 4086, potentially unreasonable standards contained in franchise agreements, and the protection of consumer data.

(b) Any persons that are interested in proposing amendments to the Motor Vehicle Manufacturers, Distributors, and Dealers Franchising Practices Act, 9 V.S.A. chapter 108, shall provide them to the Department of Motor Vehicles not later than December 1, 2021 through an e-mail address to be posted on the

website for the Department of Motor Vehicles. Persons may also file proposals on the establishment of a direct shipper license to be administered by the Department of Motor Vehicles with the Department of Motor Vehicles not later than December 1, 2021, through the same e-mail address that is posted on the website for the Department of Motor Vehicles. To the extent practicable, entities should cooperate and file joint proposals.

(c) The Department of Motor Vehicles shall file a written report containing any proposals it receives under subsections (a) and (b) of this section and its own proposal, if it so chooses, on the creation and implementation of a direct shipper license with the House and Senate Committees on Transportation, the House Committee on Commerce and Economic Development, and the Senate Committee on Economic Development, Housing and General Affairs not later than January 15, 2022.

~~Sec. 6. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

Sec. 6. EFFECTIVE DATES

(a) Sec. 4a (9 V.S.A. § 4097(8); manufacturer violations) shall take effect on July 1, 2022.

(b) All other sections shall take effect on passage.