

State Motor Vehicle Laws

Restrictions on How Consumers Buy and Service New Vehicles *

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** The views expressed here are my own, and do not necessarily reflect the views of any individual manufacturer or group of manufacturers.*

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State Motor Vehicle Laws

- **Discussion over state motor vehicle laws is a sensitive subject**
- **Manufacturers and dealers share important business relationships**
- **But the relationship is highly regulated**
- **State legislation in the last 3 years (including reintroduced/carried over):**
 - **2013 – 37 bills in 27 states**
 - **2014 – 35 bills in 27 states**
 - **2015 – 36 bills in 22 states**
- **Virtually every aspect of the relationship regulated**
- **Includes how manufacturers can sell vehicles and provide warranty service to consumers**

Valued Relationships / Adaptability is Key

- Easy to overlook that relationships between manufacturers and dealers generally are very good
- Newer entrants into auto manufacturing arena have pursued a distribution model that does not include franchised dealers
- For traditional motor vehicle manufacturers, the focus really is not whether or how they can operate without franchised dealers
- Traditional manufacturers generally do want and intend to continue their long history of sales and service through franchised dealers
- Critical point: Manufacturers must be able to adapt when and to the extent consumer and market demands require. Should be no undue restrictions on a manufacturer's ability to meet these demands, now or in the future.

State Law Restraints

➤ So the questions are these:

- ***First, if*** a manufacturer should determine it needs or wants to offer alternative sales or warranty service options in order to meet consumer or market demands, should the power of the state prohibit it from doing so?
- ***Second,*** if the manufacturer who makes such a determination is one with an existing dealer network, should that manufacturer be denied the right to operate under the same legal rules as newer manufacturers who have no dealers?

State Law Restraints

- The question really is not whether dealers can and do serve an important function and help meet the needs of consumers . . . they do.
- At the same time, being free to respond to consumer demand for additional sales and/or service options would serve not only the interests of consumers . . . but also the brand . . . and dealers
- Why would this serve the interests of the brands and dealers?
- Very simple . . .

“He who rejects change is the architect of decay. The only human institution which rejects progress is the cemetery.”

Harold Wilson

*Prime Minister of the United Kingdom,
1964-1970*



State Law Restraints

- **Yet, for traditional manufacturers with existing dealers, the state motor vehicle laws allow no room to adapt as may be needed**
- **The wording of the statutes is different from state to state, but laws restricting sales and service by manufacturers generally fall into 3 basic buckets, with some states having laws in multiple buckets:**
 - **No manufacturer may engage in sales to consumers directly or through any person other than a franchised dealer**
 - **37 states**
 - **No manufacturer may compete with existing dealers**
 - **21 states**
 - **No manufacturer may own, operate, or act in the capacity of a dealer**
 - **18 states**

State Law Restraints

- Regardless of which bucket or buckets apply, for traditional manufacturers, the effect is the same:
 - The sole option for consumers who seek to buy new vehicles or obtain warranty service is through existing dealers
- These same restraints on ownership and direct sales also apply to newer manufacturers who do not have franchised dealers
 - Except in several states, the legislatures have granted exemptions to manufacturers who meet certain criteria, such as:
 - Total sales volume below a certain threshold
 - Total number of stores below a certain threshold
 - Manufacture only electric vehicles
 - Have "grandfathered" retail operations predating new/amended laws

State Law Restraints

➤ And . . .

- In states where the statutory restriction is defined to prohibit a manufacturer from competing against an existing dealer of the same line-make, manufacturers with no franchised dealers are not similarly restrained as compared to traditional manufacturers

State Law Restraints

- So as a practical matter, how do these restraints on manufacturers impact auto distribution and consumers?
 - Remember . . . most manufacturers with franchised dealers value those relationships and recognize the important function they serve
 - But . . . there are and will be times when consumer demands or market needs warrant at least the option to engage in sales or service activity through channels in addition to franchised dealers, and yet that is blanketly prohibited by force of law
 - The only time it is not prohibited by law is when:
 - the manufacturer has a special exemption (low volume, electric only, etc.), or
 - the manufacturer has no franchised dealer network at all

State Law Restraints

- The problem is not the sale or service of vehicles through the franchised dealer model
- The problem is the overreaching motor vehicle laws prohibit traditional manufacturers from having even the option to respond to consumer demands, market needs and competition in any way other than through traditional channels, regardless of the circumstances
- These laws distinguish the auto industry from virtually every other industry

State Law Restraints

- The problem for traditional manufacturers is exacerbated by the fact that they have to compete with newer manufacturers not subject to the same restraints
- This means the newer manufacturers can offer vehicle buying and warranty service options that traditional manufacturers cannot
- Regardless of whether a traditional manufacturer would ever choose to exercise the option or not, they do not have even the option to compete on equal footing

State Law Restraints

- This means the newer manufacturers have unique flexibility in how and where they sell and service their vehicles
- Even more importantly, this means newer manufacturers also are exempt from all of the other state laws that limit a manufacturer's ability to meet consumer and market needs.
- Examples:
 - Restrictions on ability to require meaningful and prompt action to improve serious performance deficiencies
 - Restrictions on the ability to terminate relationships with dealers who are not effectively representing the brand for consumers in the market

State Law Restraints

- Restrictions on adding or relocating dealers, regardless how significant the interest of consumers, or how meritless a protest
- Restrictions on the ability to inspect and audit warranty work for reasonable periods of time to confirm that recalls and other warranty repairs are done and done properly

State Law Restraints

- **In my view, it is these kinds of overreaching restrictions that have led us here today**
- **Newer entrants to the auto manufacturing arena know how these laws can and do restrict the ability to respond to consumer demands and market needs**
- **Many decades ago, when these laws first proposed, dealers argued abuse and imbalance of power between dealers and manufacturers**
- **At that time, dealers were almost all small, local "mom and pop" type businesses with far fewer resources**

State Law Restraints

- **Whether or not these early laws restraining competition (and other business decisions) by manufacturers were justified, two important things have happened since:**
 - **The restraints on manufacturers have expanded far beyond their original scope to now regulate virtually every aspect of the manufacturer/dealer relationship**
 - **The auto retail world, and those who own dealerships, have changed dramatically**

State Law Restraints

- **Today, auto dealerships are increasingly owned by very successful operators with significant resources, including large and powerful public and private corporations**
- **The top 150 publicly and privately owned groups own nearly 3,500 of the 17,500 dealerships in the U.S., and that number increases almost every day**
- **The top 8 groups own more than 1,000 of the 17,500 dealerships**
- **44 of the top 50 dealer groups had revenues ranging from \$1 billion to \$19 billion**

State Law Restraints

- **The assertion that these overreaching laws are necessary today to protect dealers from competition by manufacturers, whether through direct sales or otherwise, is a fiction**
 - **A very large and increasing number of dealerships simply do not fall into the small “mom and pop” local business category**
 - **Smaller dealers can and do compete effectively with large billion dollar companies, it’s just that those companies are their fellow dealers**
 - **Like all businesses, good and effective dealers can and should thrive based on the bona fide value they bring to consumers and the brands they represent, not through overreaching legislation**

State Law Restraints

- Likewise, the notion that manufacturers would not protect the interest of consumers through whatever sales and/or service option it might choose to offer (direct or otherwise) is baseless
- Manufacturers can succeed and thrive only if they are able to:
 - Provide the products consumers want to buy
 - Make sure consumers can get fair value and pricing
 - Make sure consumers are able to buy their products where and how they want
 - Stand behind those products with good and readily accessible warranty service
- Any suggestion that manufacturers would not protect these important consumer interests unless forced by law to do so is absurd

Summary

➤ In summary . . .

- **Good and effective dealers who represent the brand well and meet consumer demands and market needs can, should and will remain a valued part of the distribution model for traditional manufacturers**
- **Overreaching dealer laws that use the power of the state to stifle competition and prevent consumers from having whatever sales and service options they want or demand do more harm than good**

Summary

- Circumstances in certain times, or markets, or competitive situations, may warrant offering consumers the option to obtain sales and/or service directly, or through other channels
 - Example (Sales) — Establishing a flagship store in a high-cost market where presence is for the good of the brand and consumer convenience, even if not profitable
 - Example (Service) — Safety recalls where temporary repair facilities would help accomplish high-volume recalls quickly and cost effectively

Summary

- **These and other options that serve the interests of consumers and the brand should not be foreclosed as a matter of law**
- **Whether by:**
 - **statutory restriction on direct sales or service, *or***
 - **prohibition on sales or service through any entity other than a franchised dealer, *or***
 - **prohibition against owning a dealership; or**
 - **prohibition against competing with existing dealers ...**
- ... states should either regulate or not regulate all manufacturers in the same way**
- **To the extent a state grants exemptions, the exemptions should be as limited as possible**

The Bottom Line

➤ **The bottom line is this:**

- **The consumer is king (queen)**
- **Every person and company in this industry (whether dealer, traditional manufacturers, or newer entrant into the manufacturing arena) is dependent on the consumer**
- **If consumers demand additional options for sales or service, and auto manufacturers and dealers either cannot or will not give them those options, then everyone who plays a part in that is an architect of their own decay**