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Reforming Michigan Vehicle Direct Sales Laws

Thanks to Tesla, the home of the U.S. auto industry could embrace a 21st century business model.

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Most Americans would be surprised to learn that there is an important sector of the economy in which some states' laws prohibit a company from selling its products directly to consumers or providing after-market service for those products.

We are used to buying iPhones from Apple, basketball shoes from Nike, cable services from Comcast, and houses from the builders who make them. But, for many decades, car manufacturers have been prohibited from selling their cars directly to consumers or servicing those cars in the aftermarket. Instead, many states' laws require manufacturers to sell and service through independent franchised dealers.

How did this come about? In the early years of internal combustion vehicles, car manufacturers used a variety of distribution methods, including dealer franchising, traveling salesmen, consignment, direct sales through company-owned stores, and sales through general retailers. Historically, there is nothing inevitable about dealer distribution as the exclusive means of getting cars to customers.

The present dealer-franchise system arose over the period 1930–1950. At that time, the Big Three automakers—General Motors, Ford, and Chrysler—dominated car sales and dealers were mostly “mom-and-pop” local businesses. The dealers complained that the Big Three took unfair advantage of their unequal bargaining power to impose draconian contractual terms on the dealers. For example, Henry Ford allegedly forced dealers to buy Model Ts that they could not sell under threat of not getting any more inventory. The dealers also argued that the Big Three unfairly competed against



their own franchised dealers by offering lower prices at company-owned stores than what independent dealers could match.

The dealers ultimately persuaded most state legislatures to pass laws regulating the automobile dealership relationship to protect the dealers, not consumers. Among the provisions of most of these laws was a prohibition on manufacturers opening their own showrooms and service centers and thereby competing against their franchised dealers. Those direct distribution prohibitions have mostly carried over until the last decade, when some states began to loosen them in light of the changing economic, technological, and social landscape.

Even before coming to the novel distribution issues raised by electric vehicles (EVs), it had become clear in recent decades that the original dealer protection rationales for the direct distribution prohibitions were waning. As noted, the dealers' original arguments for protection from the manufacturers were based on two economic facts creating grossly unequal bargaining power:

- Car manufacturing was a three-firm oligopoly with little

competition among the Big Three on franchising terms.

- Car dealers were local, family-owned, mom-and-pop combinations.

The world is radically different today. First, there has been considerable new entry from foreign competitors, making the car market much, much more competitive than it was in the mid-20th century. Car dealerships can now negotiate with around 15 to 20 different car manufacturers over potential dealership opportunities. Second, many car dealerships are no longer mom-and-pops, but part of multi-billion-dollar dealer groups. The top 10 dealership groups in America have annual revenues around \$100 billion—more than any car company. To put things in perspective, that's about one-fifth of Michigan's gross domestic product. Many of these large dealer groups operate in Michigan. For example, the Suburban Collection, based in Troy, operates 47 dealerships in Michigan and reported \$2.6 billion in revenue in 2019. Based on these economic changes, it would be hard to argue that the inequality of bargaining power between manufacturers and dealers is anything like what it was in the mid-20th century.

TESLA'S ENTRY, NATIONWIDE RESPONSES

When Tesla entered the market in 2013, it announced that it would be selling and servicing its vehicles directly and not employing franchised dealers at all. A customer buying a Tesla buys the car directly *from Tesla* and has the vehicle serviced *by Tesla*.

In testimony before the Federal Trade Commission, Tesla explained that seven factors supported its rationale:

- **Dealership locations:** Dealerships are usually found in out-of-the-way locations. Tesla feels it's important to "bring the new technology to the consumer" in places like shopping malls.
- **Inventory differences:** Large inventory is the lifeblood of traditional dealerships, but Tesla works on a built-to-order model.
- **Longer sales cycles:** The franchised dealer model is based on a high volume of fast-paced sales. EV buyers take longer to educate themselves on EV sales and therefore need to work with salespeople who are working on a commission model.
- **Different profit models:** Traditional dealerships earn low profit margins on new car sales and make it up on service. EVs have a much smaller service com-



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ponent because they don't have service needs like oil changes or engine tune-ups. Traditional dealerships therefore lack much of an incentive to sell EVs.

- **No advertising:** Traditional dealerships rely on manufacturers to fund their advertising in TV, radio, and print media. Tesla does not advertise.
- **Dealer price mark-ups:** Franchised dealers could not make money selling Teslas because they would have to sell them at a higher price than they bought them from the manufacturers, and therefore could not compete with Teslas sold directly from the company.
- **Conflict of interest:** EV sales cannibalize internal combustion sales, which are the dealers' lifeblood. Dealers therefore lack the motivation to sell EVs.

Tesla's decision to sell direct and bypass dealers was not well-received by the car dealers. Beginning in 2014, the dealers launched a state-by-state battle to block Tesla's entry, arguing that direct sales and service were prohibited by existing law. Over the course of the next several years, these battles played out in state courts, motor vehicle commissions, and legislatures. In some cases, they are still ongoing.

Today, almost half of the states have eased their direct sales restrictions for EVs. This has come about in several ways. Some states have held their existing dealer laws inapplicable to EV companies that do not want to use franchised dealers at all. For example, in holding that the dealers lack standing to challenge Tesla's entry, the Massachusetts Supreme Court held that the state's dealer franchise law was intended to protect dealers in franchise relationships with manufacturers, a circumstance inapplicable to Tesla because it doesn't want to use franchised dealers. Similar interpretations have occurred in Arizona, Minnesota, Missouri, and Rhode Island. Other states, like Colorado, New Hampshire, Utah, and Wyoming, have passed new statutes opening the door to EV direct sales. Other states have allowed direct EV sales on a limited basis. For example, in Ohio in 2014, the dealers and Tesla reached a compromise that allowed Tesla to open three stores in the state. Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, and Virginia similarly allow some direct EV sales. Finally, technologically important states like California have never blocked direct EV sales at all.

Even states that prohibit direct EV sales and service cannot stop their residents from buying EVs directly. Thus, in states like Michigan where direct EV sales have been prohibited until recently, thousands of residents still purchased Teslas. If they were willing to forgo a test drive, they could buy the vehicle online and have it delivered. Or they could drive across the border into Ohio and purchase a Tesla. Servicing has been more challenging. Because Tesla was, until recently, prohibited from opening a service center in Michigan, this meant that Michigan customers either had to wait for a service technician to come to their home or, again, drive to Ohio for service.

Residents of every state are buying EVs directly and having them serviced directly. The question is not whether that happens—

it has, does, and will—but whether customers have the freedom and convenience of having that direct relationship with a manufacturer occur locally or whether they have to drive to another state. A critical mass of states—with the numbers growing every year—has decided to allow local sales and service.

2014 MICHIGAN LEGISLATION

Like most other states, Michigan has long prohibited direct sales and service, with the most recent version of its dealer protection statute dating back to 1977. However, until 2014, the statute was ambiguous as to whether it would apply to a company like Tesla that did not use franchised dealers at all. The statute provided that a manufacturer shall not "sell any new motor vehicle directly to a retail customer other than through *its* franchised dealers." The possessive *its* was potentially significant—the statute assumed that a manufacturer had franchised dealers. If, like Tesla, it did not, the Michigan courts might well have ruled the statute inapplicable.

In the fall of 2014, after the Massachusetts decision holding that state's statute inapplicable to Tesla, the Michigan car dealers' lobby became worried that the Michigan statute might be construed in the same way. They therefore pushed a floor amendment to an unrelated bill that struck "*its*" from the statute. Many members of the Legislature from both sides of the aisle subsequently explained that they had no idea that this was intended to block Tesla—indeed, one member told me that he specifically asked and was told untruthfully that the change had nothing to do with Tesla or direct sales. Unfortunately, subsequent evidence would leave no doubt that this was the amendment's intent and effect. Following the 2014 legislation's signing by then-governor Rick Snyder, Michigan law unequivocally prohibited direct sales and service, effectively blocking Tesla from the state.

TESLA'S CONSTITUTIONAL CHALLENGE AND SETTLEMENT

At the time he signed the 2014 bill, Snyder publicly stated that the issue of vehicle direct sales needed to be comprehensively studied and reconsidered. Unfortunately, after passing the anti-Tesla amendment, the Legislature never took up the governor's suggestion. In 2016, when it became clear that legislative reform was not forthcoming, Tesla filed a constitutional challenge in the U.S. District Court for the Western District of Michigan to the Michigan Department of State's 2015 denial of its application to operate a new vehicle dealership and a used vehicle dealership, and to register a repair facility. Tesla argued that this denial, occasioned by the 2014 legislative amendment, violated the equal protection clause of the Fourteenth Amendment and the "dormant" or negative commerce clause of Article I, Section 8 of the U.S. Constitution. Over the next few years, discovery progressed in the case and, by 2020, the case was headed for trial.

On January 22, 2020, Michigan Attorney General Dana Nessel announced a settlement with Tesla that essentially gave the automaker a full victory. As Nessel explained, "The stipulation

acknowledges that Tesla may: operate under existing Michigan law; sell cars to Michigan customers as long as the sales contract indicates the sale took place in a state other than Michigan; and, indirectly own service and repair facilities in Michigan through a subsidiary, Tesla Michigan.” Nessel achieved this result by interpreting existing Michigan law narrowly. Michigan Compiled Law § 445.1574, which prohibits manufacturers from owning service centers, does not apply to “indirect” ownership of a service center through a subsidiary. According to the agreement:

- No provision in M.C.L. § 445.1574(1) nor any other provision of Michigan law prohibits Tesla from delivering vehicles to Michigan residents in Michigan (whether directly, through a subsidiary, using an independent carrier, or otherwise), including assisting them with vehicle trade-ins, so long as legal title for any vehicles sold by Tesla transfers outside the state of Michigan, consistent with M.C.L. §§ 440.2106(1) and 440.2401; and
- Neither M.C.L. § 445.1574(1)(h) nor § 445.1574(1)(i) nor any other provision of Michigan law prohibits Tesla from operating one or more galleries in the State to educate customers and facilitate transactions out-of-state so long as Tesla does not transfer legal title to the vehicles within the State consistent with M.C.L. §§ 440.2106(1) and 440.2401. Permissible activities at such a gallery include (but are not limited to) conducting demonstration drives; discussing prices, service, financing, leasing, and trade-ins with potential customers; helping potential customers configure a vehicle; facilitating ordering and purchase of a vehicle for which legal title transfers out-of-state; and facilitating customer transaction paperwork for a sale for which legal title transfers out-of-state.

Stripped of legalese, this settlement means that Tesla is free to do every action associated with selling a car—offering test drives, quoting prices and terms of sale, facilitating trade-ins, configuring the vehicle, facilitating paperwork, and even delivering the car—in Michigan so long as the sale transaction and transfer of title technically occurs outside of the state. A customer can thus go to a Tesla gallery and do everything traditionally associated with the purchase of a car, then transact online to complete the sale with Tesla in California, and then take delivery of the car in Michigan.

THE FAILURE OF H.B. 6233 AND IMPLICATIONS

The Tesla settlement wasn’t a special deal for Tesla, which the attorney general would not have had authority to make. Rather, it was a general interpretation of Michigan law. Under ordinary legal principles, any company situated like Tesla—which would include at least any EV manufacturer not distributing through franchised dealers—could take advantage of the same terms. The Tesla settlement thus opened the door for competing EV companies like Rivian, Lucid, Lordstown, Bollinger, and Nikola to sell and service in Michigan.

The car dealers’ lobby was not happy about the prospect that the new generation of car companies would bypass them entirely. In September of 2020, the Michigan House Government Operations Committee took up H.B. 6233, proposed by the dealers to make sure that no EV company other than Tesla could take advantage of the settlement.

The bill included a new and expansive definition of “sell” and “selling” that included virtually every activity associated with new vehicle sales transactions, including those that Tesla’s settlement with the state recognizes are not sales under the existing statute. It would have added the phrase “directly or indirectly” to the prohibition on manufacturer ownership of motor vehicle service and repair facilities, which would make it impossible for a new car manufacturer to do what the state agreed that Tesla can do: own a subsidiary performing service in Michigan. The bill would have shut down the possibility of interpreting Michigan law in the way the attorney general interpreted it when settling with Tesla.

In addition to making those substantive amendments to the existing statute, the bill made clear that it applied to all manufacturers, all new dealer agreements, and all existing dealer agreements. But it made a special carve-out for any “manufacturer that entered into a joint stipulation and motion for entry of dismissal” in the Tesla litigation and has not sold a single new motor vehicle in the state through a franchised dealer. Such entities could perform a list of enumerated activities, which corresponded directly to the activities that Tesla and the state agreed that Tesla could perform pursuant to the settlement. In other words, the bill doubled down on the existing restrictions on direct sales and service by manufacturers, but then it would have enacted a single-company carve-out to preserve the terms of Tesla’s settlement with the state.

The bill was vigorously opposed in committee by EV start-ups like Rivian and Lucid, environmental groups like the Sierra Club and the Environmental Council, the Mackinac Center, GM, Ford, and the United Auto Workers. It nonetheless passed the committee on a party-line vote.

H.B. 6233 was almost certainly unconstitutional under Article IV, Section 29 of the Michigan Constitution, which prohibits “special acts” favoring a single company. But what happened next made matters even worse: when the bill reached a floor vote on December 2, 2020, a floor amendment stripped out the Tesla exemption. This moved GM, Ford, and the UAW to neutral on the bill (what they most opposed was carving a special exemption for Tesla into law) and provided enough political cover for the bill to pass in the House. But the bill now doubled down on making Michigan the most restrictive state in the Union on direct sales and service by broadly defining “sales” to include almost any activity an EV company might have taken in the state. Moreover, it blew up the Tesla settlement and would have barred even Tesla from Michigan sales and service. That, in turn, would have re-upped Tesla’s original constitutional challenge, with the very real prospect that a federal court rather than the Legislature would determine how cars could be sold and serviced in Michigan.

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Fortunately, the Senate never took up H.B. 6233 and it died with the expiration of the legislative session. Where that leaves things is exactly as they stood as of January 2020: any EV company similarly situated to Tesla can, in principle, sell and service directly in Michigan, subject to the requirement of executing the sales transaction and titling outside the state and operating service centers through subsidiaries.

COSTS OF THE PRESENT REGULATORY SCHEME

The regulatory status quo in Michigan is considerably better than it was before the January 2020 Tesla settlement, but it is far from optimal. As revealed in the last legislative session, the car dealers are continuing to push for legislative reforms that would blow up the Tesla settlement and destroy the opportunity for direct distribution in Michigan, codifying mid-20th century distribution practices for the 21st century. Moreover, even if the Tesla settlement remains intact, it does not seem to permit direct sales by legacy car companies like GM, Ford, and Chrysler, which could put them at a severe competitive disadvantage in the new world of EVs. Finally, by forcing the formal sales and titling transaction to occur outside of Michigan, the current structure threatens to yield significant economic losses for the state of Michigan.

EV market penetration / As noted earlier, EV companies have made a strong case that traditional dealer distribution is not viable for EVs. Adding to the set of reasons offered earlier by Tesla, Rivian testified at the H.B. 6233 committee hearings that direct sales and servicing are vital to EV companies whose business and technological model relies on a close and ongoing relationship with their customers. For example, Rivian will give its customers the option to have their vehicle's performance continuously monitored over the air by Rivian, with the company able to offer customers immediate feedback and assistance with respect to vehicle performance. That sort of relationship requires a direct and close relationship between the company and its customers. Similarly, much of the servicing for EVs will occur through over-the-air software updates, which again assumes a direct relationship between company and customer.

To be clear, no one is arguing that it is *impossible* to sell EVs through traditional dealers. At the hearings on H.B. 6233, several lawmakers related that they had purchased an EV from a dealer. However, that a highly motivated customer may be able to purchase an EV from a franchised dealer does not mean that dealer distribution will be nearly as *effective* at advancing EV market penetration or providing customers with optimal sales and service experiences. To the contrary, there is empirical evidence that most dealers are not highly motivated to sell EVs. *Consumer Reports* sent secret shoppers to 85 dealerships that did stock some EVs. It found that 13 of the dealers actively discouraged customers from buying an EV and 35 more recommended buying an internal combustion car instead. The dealers seemed uniformed about EVs, had few

in stock, and had few options or choices on the ones they had. "A sales manager at Manhattan Ford in New York City, the only Ford dealership actually owned by the automaker, at first denied there was a Focus EV, and then said it couldn't be leased. Both statements are incorrect," *Consumer Reports* noted. At another dealership, the dealer wouldn't even show the secret shopper an EV, despite there being one in stock. Given the economic disincentives dealers have to sell EVs (discussed above), none of this should be surprising. Recently, 150 Cadillac dealers accepted buyouts instead of agreeing to start selling EVs.

That the current franchised dealer model is ill-suited for EV sales does not mean that dealers cannot be effective players in the world of EV sales and service. However, for them to do so requires a fundamental change in their business model. Some dealerships are wisely beginning to understand this and look for new ways to interact with car companies and their customers to provide value in the very different EV world. In that world, car distribution and service will look little like it did in 1950. Trying to lock EV distribution in the 1950s model will only serve to slow EV market penetration, to the disadvantage of Michigan's consumers and society at large. It will also disadvantage American car companies trying to compete with EV manufacturers around the world—the sorts of distribution limitations at issue in the United States are not usually seen in the rest of the world.

Environmental effects / Slowing the market penetration of EVs also has undesirable environmental consequences. Internal combustion engine cars and trucks account of one-fifth of carbon emissions in the United States. The faster the transition to EVs, the faster the reduction in the automotive sector's contribution to carbon emissions. For that reason, a coalition of environmental organizations, including the Sierra Club, Environmental Council, Electrification Coalition, Ecology Center, E2, Plugin America, and Cleanfuels Michigan are actively working to promote EV direct distribution. These organizations understand that laws restricting direct distribution are major impediments to more people driving EVs and have therefore made removing these restrictions a policy priority.

Consumer choice and consumer protection / Although the dealers' lobby has tried to advance a consumer protection rationale for direct distribution prohibitions, that argument has no support in the history of the dealer franchise laws or in economics. The direct distribution laws were passed to protect dealers, not consumers. Every consumer advocacy organization that has weighed in on the issue—including the staff of the Federal Trade Commission, *Consumer Reports*, Consumer Action, Consumers for Auto Reliability and Safety, and the American Antitrust Institute—has taken the position that bans on direct sales are bad for consumers and that direct sales should be allowed. Economists and academic experts on competition policy have uniformly taken the same position. There is no consumer-protection reason to

ban direct sales and every reason to permit consumers to make up their own minds about how they buy their cars.

In the last legislative session, the dealers argued that preventing other companies from taking advantage of the Tesla settlement was necessary from a consumer protection perspective because, otherwise, vehicle sales would go “unregulated.” What they apparently meant was that, since the sales transaction would occur outside of Michigan, the sales entity would not be a dealer licensed in Michigan and subject to Michigan consumer protection regulations. That argument is perverse. The only reason that the sales transaction has to be sent outside of Michigan is that the dealers themselves procured the 2014 legislative amendments that prevented Tesla from getting a Michigan dealer’s license. While it’s not true that the sales transaction is unregulated (the transaction is regulated in the state where it occurs), the EV companies would be very happy to get a Michigan dealer’s license and be fully regulated in Michigan, just like any other dealer. The appropriate response to this fabricated problem of “unregulated sales” is not to ban direct sales but to allow EV companies to get a dealer license—exactly what they are asking for.

Threats to the free market / The coalition of groups supporting a car company’s right to sell and service its cars directly includes the strange bedfellows of environmental, consumer, and free market groups like the Mackinac Center, Americans for Prosperity, and the Institute for Justice. Free market groups oppose direct sales bans on principle: why should government tell a willing car company and a willing consumer that they cannot transact directly? Such bans may serve the dealers’ economic interests, but protecting some special interest group from competition is not a sound basis for law. Indeed, according to the Sixth Circuit’s 2002 ruling in *Craigmiles v. Giles*, it is unconstitutional.

Threats to Michigan / The state of Michigan would experience several harms from again imposing the old dealership model on the sale of EVs. Among them:

- **Lost sales tax revenue:** The state collects a 6% sales tax on vehicle sales. If a Michigan resident purchases a vehicle outside the state and brings it back to Michigan, whether Michigan collects a sales tax—and in what amount—depends on whether it has a tax reciprocity agreement with the other state. If there is an agreement, there is no loss of tax revenue to Michigan because the other state remits either the full 6% tax to Michigan or, if the other state collects a lower sales tax amount, it remits the amount collected and Michigan collects the balance upon the car’s registration in Michigan. However, if the other state collects a sales tax on the sale and does not have a reciprocity agreement with Michigan, “credit is given for any sales or use tax that is legally due and paid in another state at the time of purchase,” according to Michigan government.

At present, a quarter of other states do not have reciprocity agreements with Michigan. This means that Michigan stands to lose significant vehicle sales tax revenues if residents are forced to buy and title EVs out of state. Annually, Michigan new vehicle sales taxes account for around \$1 billion, or about 10% of the state’s tax revenues. EV sales are bound to grow significantly as a share of the market in coming years. As a back-of-the-envelope exercise, consider the quickly approaching year in which out-of-state EV sales hit 20% of the market. If Michigan lost sales tax revenues in proportion to the number of states without reciprocity agreements, this would mean a loss of 25% of \$200 million, or \$50 million in tax revenues. At 40% EV market penetration, the number would grow to \$100 million in lost tax revenues.

Those assumptions may be understated because they assume other states continue to maintain reciprocity agreements with Michigan. It is far from certain that they will if Michigan remains an outlier on direct sales. The instinct behind reciprocity agreements is that, on average, equal numbers of non-residents buy cars in the compacting states so that, on average, the reciprocity agreements are revenue neutral. But, as EV sales grow, if Michigan maintains a prohibition on direct distribution, other states will find it to their advantage to encourage titling in their own state and associated collection of sales taxes. Unless Michigan updates its vehicle sales laws, it could soon find itself with significantly dwindling motor vehicle tax revenues and a serious hit to its sales tax revenue base.

- **Lost franchise fees, property taxes, local investment, and employment:** By requiring car companies wishing to make direct EV sales to locate their sales facilities out of state, Michigan’s regulatory scheme will reduce the physical presence of sales centers in Michigan. That, in turn, will deprive the state and local governments from collecting a variety of other taxes and fees such as franchise registration fees and property taxes. Prohibiting car companies from locating sales operations in Michigan will lead to a loss of local investment and jobs. A company selling EVs to Michigan residents would be forced to locate all of its operations supporting those transactions in another state. So, for example, an employee handling titling and financing for Michigan residents might be located in California rather than Michigan. That would represent the loss of a Michigan job and all that goes with it: the physical office space (real estate investments or leasing), local spending supporting that employee’s activities, income taxes paid by the employee, and the economic and social benefits that come from bringing productive people to the state.

- **Michigan’s reputation:** A final factor is less tangible, but perhaps more significant in the long run. For many years, Michigan has been fighting negative publicity and popular

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impressions about its car industry, in the hope of restoring its reputation as the car capital of the world. Gov. Gretchen Whitmer has called for the state to play a leading role in bold and transformative thinking about automobiles and mobility technology. The Governor's Office of Future Mobility seeks to reaffirm "Michigan's position as the global leader in producing and developing the next-generation of transportation technologies." Among the state's goals are increasing mobility investment in Michigan, engaging more mobility startups, accelerating EV adoption in Michigan, and bolstering Michigan's mobility manufacturing core.

Maintaining a set of prohibitions on innovation in automobile distribution that are badly out of step with emerging standards around the country does not project a good image for Michigan. In 2014, the legislative efforts to stop Tesla from selling in the state received plenty of negative publicity in the media across the country and around the world. For example, the *Wall Street Journal* ran a national editorial condemning Michigan for technological backwardness and the Information Technology & Innovation Foundation named Michigan one of four winners of its dreaded "Ludite Award."

Already, several EV start-ups have made significant investments in Michigan, with Rivian's headquartered in Plymouth perhaps the most salient example. Attracting continuing investments by these and other companies requires projecting a positive environment for innovation in the way cars are designed, built, sold, and serviced. Restricting the right of a manufacturer to sell and service its vehicles in ways that meet its business needs sends exactly the wrong signal. American EV start-ups like Tesla, Rivian, Lordstown, Lucid, and Bollinger have made it clear that they view the right to transact directly with their customers as being critical to the success of their products. Michigan should be leading the way in fostering an environment in which car manufacturers can experiment with varied distribution and servicing models.

POTENTIAL LEGISLATIVE REFORMS

If there's one thing that almost everyone on all sides of the issue agrees on, it's that the status quo on vehicle direct sales and service in Michigan is not optimal. It's time for the issue to be considered systematically, openly, and with input from all stakeholders. Legislative reform is needed, not just to slap a patch on the problem, but to lay the foundation for a fair, rational, and successful system of vehicle sales and service in the car industry's incipient technological and economic revolution.

For those favoring reforms to allow direct EV sales and service, there are two potential flavors of reform legislation:

- **Model 1:** EV-only manufacturers can be licensed as dealers.

- **Model 2:** Any automaker manufacturer that produces EVs can be licensed as a dealer for purposes of EV sales and service.

Model 1, which is similar to legislation adopted in Colorado, would essentially codify the Tesla settlement by allowing EV start-ups to sell and service directly, with the important caveat that they would be licensed as dealers in Michigan. That would obviate the need to conduct the sales and titling transaction out of state, with all of the associated economic costs to Michigan. However, this model would not permit legacy companies like GM, Ford, and Chrysler to conduct direct sales and service.

Model 2 would allow the legacy companies to join the EV start-ups in selling and servicing EVs directly, even while maintaining dealer distribution for internal combustion vehicles. While there is no plausible dealer protection objection to Model 1 since it would not implicate any dealer in an existing franchise relationship, the dealers might have some standing to complain that allowing their franchising manufacturers to sell EVs directly would be unfair. Any such argument would be weak. The legacy companies have sold relatively few EVs to date, and the dealers could protect themselves contractually against egregious exploitation or find new ways to add value in a hybrid distribution system.

In my view, Model 2 is preferable to Model 1 because it would allow the legacy companies to compete on a level playing field with the EV start-ups. In 2014, when Tesla and the dealers negotiated the previously mentioned legislative deal allowing Tesla to open three stores in Ohio, GM wrote a letter to then-governor John Kasich complaining that Tesla "would gain a distinct competitive advantage" from being able to sell direct. Unfortunately, GM's demand was to close the door to direct sales for Tesla, not to open it for GM. GM was right that direct sales represent a competitive advantage; this article has argued that, for EV sales, it is not just an advantage—it is critical. The law should not pick winners and losers. Direct sales and service should be available for any company selling EVs.

CONCLUSION

Michigan has an opportunity to show its leadership on the future of car distribution and automotive technology. To do this, it should pass reform legislation that protects the car dealers' legitimate reliance interests in the distribution system for internal combustion vehicles but also recognizes the very different demands of EV distribution. It's time to allow EV manufacturers and consumers to experiment with new distribution models that allow greater flexibility and freedom in how cars are sold and serviced.

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READINGS

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