

**BACK TO THE FUTURE: WHY SOUTH CAROLINA’S LEGISLATURE SHOULD
NOT MAKE AN EXCEPTION FOR ELECTRIC VEHICLE MANUFACTURERS
TO THE AUTOMOBILE MANUFACTURERS DIRECT SALES BAN**

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I. INTRODUCTION

The process of buying a new vehicle is a unique consumer experience in America.¹ The car buying experience at a dealership is often consumed with negotiations and compromises.² It is unorthodox to enter an American car dealership expecting to pay the full amount listed as the sticker price.³ This process makes many Americans anxious and uncomfortable to a degree that discourages them from going to dealerships.⁴ In fact, more than half of Americans would prefer the ability to purchase cars without ever leaving their home.⁵ As a result, dealerships are changing. Carvana, for example, is an innovative used-car dealer that offers consumers the option to start and finish their car buying process entirely online—even throwing in home delivery of the vehicle.⁶ The trends in purchasing preferences in the automotive industry are consistent with market trends across the board, with Americans becoming increasingly comfortable with the notion of shopping from home for nearly all of their products.⁷ The COVID-19 pandemic made the outlook of automotive dealership visits even more troubling by accelerating the growth of online shopping, decreasing the rate of traditional retail shopping, and increasing the overall time spent at home by incorporating remote work into the schedules of many previously traditional employees.⁸

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1. See Peter Weber, *How Tesla's Direct Sale Model Is Roiling the Car Dealership Industry*, THE WEEK (Jun. 21, 2023), <https://theweek.com/us/1024416/tesla-vs-car-dealerships> [<https://perma.cc/MX9C-UX9S>].

2. See *id.*

3. *Id.*

4. Study: *Americans Feel Taken Advantage of at the Car Dealership*, PRNEWswire (July 21, 2016), <https://www.prnewswire.com/news-releases/study-americans-feel-taken-advantage-of-at-the-car-dealership-300301866.html> [<https://perma.cc/7MLY-JTMH>].

5. *Id.*

6. CARVANA, <https://www.carvana.com/buying-a-car-online-how-it-works> (last visited Nov. 10, 2023).

7. See Maryia Fokina, *Online Shopping Statistics: Ecommerce Trends from 2023*, TIDIO (last updated March 7, 2024), <https://www.tidio.com/blog/online-shopping-statistics/> [<https://perma.cc/JKL9-66W2>].

8. See *Future of Cities: Reenvisioning Retail for Recovery and Resilience*, NAT'L LEAGUE OF CITIES, <https://www.nlc.org/resource/future-of-cities-reenvisioning-retail-for-recovery-and-resilience/> [<https://perma.cc/N5J7-9RKC>].

The challenges to the traditional automotive sales process go further than just a consumer's frustration with purchasing new vehicles in person. Recent downtrends in motor vehicle production make it challenging for ready-to-buy consumers to purchase a car, with most major automobile manufacturers seeing some of the lowest sales in 2022 in many years.⁹ To compensate, manufacturers are significantly raising prices in an effort to maintain profits in this era of high consumer demand.¹⁰ Cultural moves towards efficiency in the buying and selling process, coupled with decreased production rates of new motor vehicles, offer a timely question—Is it time to reform the traditional automobile sales model in the United States?

The traditional American dealership model is largely statutory. State law often requires manufacturers to sell their vehicles through individual franchised dealerships.¹¹ All fifty states have laws in place that require franchises for all new car sales to consumers by placing a direct sales ban on automobile manufacturers in all or most circumstances.¹² These laws come with few, if any, exceptions. South Carolina is among the seventeen states that maintain a total ban.¹³

The rise of purely electric vehicle manufacturers over the past several years has created challenges to franchise requirement laws. Many electric vehicle brands—such as Tesla, Rivian, and Lucid—sell their cars directly to consumers and do not have any franchises.¹⁴ In response, several states created limited statutory exceptions that allow direct sales for manufacturers that distribute only electric vehicles.¹⁵ As a result of this model, electric vehicle manufacturers are shifting the narrative of purchasing a car. Presently, electric vehicle stores can be found on busy street corners or in shopping malls rather than on large vehicle lots.¹⁶

9. Nicole Goodkind, *Auto Sales Are Falling – But Profits Are Surging. Welcome to the New Normal*, CNN BUSINESS (Jan. 12, 2023), <https://www.cnn.com/2023/01/12/investing/premarket-stocks-trading/index.html> [https://perma.cc/SXP4-E6EJ]

10. *Id.*

11. Jerry Ellig & Jesse Martinez, *State Franchise Law Carjacks Auto Buyers* 1, <https://www.mercatus.org/media/51316/download?attachment>. [https://perma.cc/H38E-CGM7].

12. See Kristy Hartman & Laura Shields, *State Laws on Direct Sales*, NAT'L. CONF. OF STATE LEGISLATURES, <https://www.wispolitics.com/wp-content/uploads/2021/08/State-Laws-on-Direct-Sales.pdf>. [https://perma.cc/D9W2-G2MB].

13. *Id.*

14. Devin Pratt, *Can You Buy a Car Directly from an Automaker to Avoid a Dealer Markup*, CONSUMER REPORTS (Jan. 21, 2023), <https://www.consumerreports.org/cars/buying-a-car/buy-a-car-directly-from-an-automaker-to-avoid-dealer-markup-a4445007982/#> [https://perma.cc/8T5Q-SUBA].

15. *See id.*

16. Elon Musk, *The Tesla Approach to Distributing and Servicing Cars*, TESLA (Oct. 22, 2012), <https://www.tesla.com/blog/tesla-approach-distributing-and-servicing-cars> [https://perma.cc/TS63-25SF].

Over the past decade, Tesla has been leading the market of designing and selling purely electric vehicles.¹⁷ Tesla markets its vehicles as more than just cars—owning and driving a Tesla is an experience. Every part of Tesla’s design and marketing strategy seems to point to the idea that the future is coming.¹⁸ The idea of a Tesla being more than a “normal” car marks every part of the journey to owning a Tesla, including the way a Tesla is purchased. Tesla stores are unlike traditional automotive dealerships because they are owned and operated by Tesla, meaning that there are no individual dealers contracting with Tesla to sell its vehicles.¹⁹ Other electric vehicle manufacturers, including Rivian and Lucid, have followed Tesla’s lead and adopted the direct sales model for their vehicles.²⁰

Electric vehicle sales continue to rise significantly in the United States, making this sales model increasingly relevant to state franchise requirement laws. In 2022, year-to-date sales of electric vehicles in the United States topped 1 million units during November, making it the first time that electric vehicle sales were over 1 million in a single sales year.²¹ Even so, the increases in electric vehicle sales and popularity may not be as impactful to the franchise model as electric vehicle companies say. Of these electric vehicle sales, 39.7% were made by franchised dealerships.²²

This Note seeks to answer a timely question—Should the South Carolina Legislature modify the state’s current automobile franchise requirement laws to allow direct sales by electric vehicle manufacturers? Part II of this Note will examine the history of automotive dealer franchise laws in the United States and how they function in their current form. Next, Part III will specifically look at South Carolina’s franchise statute and how the landscape of the automotive industry from the late twentieth century to today informs the statute’s creation. Part IV will consider the general incentives for creating exceptions to franchise requirement laws and examine surrounding states’ decisions to make such exceptions. Part V will discuss several of the key challenges South Carolina currently faces that make it difficult for the state to make an electric vehicle exception in its franchise statute. Finally, Part VI will

17. TESLA, <https://www.tesla.com/> [https://perma.cc/RT8G-QNTW].

18. See Nathan Furr & Jeff Dyer, *Lessons from Tesla’s Approach to Innovation*, HARV. BUS. REV. (Feb. 12, 2020), <https://hbr.org/2020/02/lessons-from-teslas-approach-to-innovation> [https://perma.cc/RGA2-4EBY].

19. See Meg Thomson, *Tesla Stores: What Are They and How Are They Different Than Dealerships*, THE NEWS WHEEL (Sept. 26, 2017), <https://thenewswheel.com/tesla-stores-what-are-they-and-how-are-they-different-than-dealerships/> [https://perma.cc/Y4LW-T56M].

20. RIVIAN, <https://rivian.com/> [https://perma.cc/2XRX-MNKZ]; LUCID, <https://lucidmotors.com/> [https://perma.cc/C4L6-6YJC].

21. Patrick Manzi, *NADA Market Beat: New Light-Vehicle Inventory Reaches 20-Month High*, NATIONAL AUTOMOBILE DEALERS ASSOCIATION (Nov. 2023), <https://www.nada.org/nada/research-and-data/market-beat> [https://perma.cc/GE7R-3DHW].

22. *Id.*

conclude that South Carolina should not modify its current franchise law to allow for direct sales from electric vehicle manufacturers to consumers because South Carolina is currently incentivized to prioritize electric vehicle production for exporting over electric vehicle sales in the state.

II. BACKGROUND

A. *The Origin of Dealer Franchises*

The traditional car dealership model evolved throughout the entirety of the twentieth century to create its current form. Historically, the automotive industry has experimented with nearly every type of sales model one can imagine. In 1908, William C. Durant formed the General Motors Company.²³ In that same year, Henry Ford announced the Model T.²⁴ These two major ventures led to booming automobile manufacturers that remain prominent in America today.²⁵ The launching of these companies significantly grew the automotive industry and forced manufacturers to discern how they could most efficiently distribute these cars to consumers.²⁶ Domestic automobile sales in the United States went from roughly 130,000 vehicles in 1909 to over 2 million vehicles in 1920.²⁷

The increase in motor vehicle popularity in the United States led to a number of different distribution approaches by these manufacturers. Some manufacturers sold vehicles directly to consumers through the presence of factory stores.²⁸ Other manufacturers sold in a variety of other ways, including by mail order, travelling salesmen, or indirectly through retail department stores.²⁹ However, the most prevalent distribution model during that time was through wholesale distributors that acted as retail outlets for consumers.³⁰ These wholesalers typically operated on short-term contracts with the manufacturers, which were little more than simple market exchange

23. ALFRED SLOAN, MY YEARS WITH GENERAL MOTORS 3 (Doubleday & Co., 1964).

24. *Id.*

25. See generally FORBES, <https://www.forbes.com/companies/general-motors/?sh=59c5b7d64e09> [https://perma.cc/SLZ2-HTKT]; see also Forbes, <https://www.forbes.com/companies/ford-motor/?sh=b777d721dfdf> [https://perma.cc/UKD9-W2V6].

26. See *Automobile History*, HISTORY, https://www.history.com/topics/inventions/automobiles#section_2 [https://perma.cc/K3NW-7LE5].

27. Carl H.A. Dassbach, *The Social Organization of Production, Competitive Advantage and Foreign Investment: American Automobile Companies in the 1920s and Japanese Automobile Companies in the 1980s*, 1 REV. INT'L POL. ECON. 491, 492 (1994).

28. Thomas G. Marx, *The Development of the Franchise Distribution System in the U.S. Automobile Industry*, 59 BUS. HIST. REV. 465, 465–66 (1985).

29. *Id.*

30. *Id.*

agreements that covered prices and quantities.³¹ The services offered by the wholesalers were unlike those offered by most dealerships today. Wholesalers' showrooms or service and repairs facilities were small and offered few services.³² Additionally, there was little provision of financing, low levels of product promotion, and most wholesalers carried limited inventories of vehicles and parts.³³ Further, warranty services often did not extend to any parts of the vehicle that were not directly produced by the manufacturer.³⁴ Even so, the primary challenge that the industry was facing at the time was simply producing enough vehicles to keep up with a steady increase in consumer demand.³⁵ In response to increasing production numbers, the wholesaler model evolved from the 1920s to the 1950s to form a much more complex franchise system of distribution.³⁶ By the 1950s, many existing wholesalers had become franchised retail dealers.³⁷

B. *The Structure of the Franchise Relationships*

The type of franchising relationships in the automobile industry are what economists historically refer to as "traditional" franchising.³⁸ Traditional franchising involves franchised dealers "concentrat[ing] on one company's product line and to some extent identif[ying] their business with that company."³⁹ Automobile dealerships follow this type of franchising model. In a traditional franchising relationship, the franchisor is a manufacturer who sells products that are already finished or parts that are almost finished to

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* ("An Oakland Motor Car Company warranty in 1908 stipulated: 'This agreement does not cover defective tires, rims, coils, radiators, and other equipment not manufactured by the Oakland Motor Car Company. All claims must be made by said dealer on the respective manufacturers of said tires, rims, coils, radiators, and other parts.'")

35. See Sloan, *supra* note 23.

36. Marx, *supra* note 28, at 466.

37. *Id.*

38. Francine Lafontaine & Fiona Scott Morton, *Markets: State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 J. ECON. PERSP. 233, 237 (2010) (Traditional franchise is distinct from business-format franchising. "In business-format franchising, by contrast, the franchisor primarily sells a way of doing business to its franchisees. Probably the best known business-format franchises today are chains like McDonald's and Burger King, but other long-standing examples include Hertz Car Rentals, IGA (independent grocers association), Terminix Termite and Pest Control, Howard Johnson Restaurants, and the Arthur Murray Schools of Dancing.").

39. U.S. DEP'T. OF COM., FRANCHISING IN THE ECONOMY 1986-1988, 1.

franchisee dealers.⁴⁰ The franchisees then resell those products to consumers for a profit.⁴¹

These traditional franchise relationships work in the automobile industry by balancing the competing interests of and differing levels of power between manufacturers and dealers. On one hand, manufacturers are looking for dealers to be creative by finding ways to increase sales and decrease costs without taking advantage of consumers through overcharging.⁴² On the other hand, dealerships need to purchase quality products from the manufacturer while balancing the fear that manufacturers could become opportunistic and hold them up in some way.⁴³ Private contracting, regulation of the relationship, and a mutual desire to maintain the relationship over time, work to protect both manufacturers and dealers in a traditional franchising relationship and find ways to balance interests and control.⁴⁴

Through the formation of these franchise relationships, manufacturers were able to require more from the dealers in terms of services provided.⁴⁵ Manufacturers began to care more about the quality of the dealers than the number of dealerships.⁴⁶ Manufacturers emphasized quality by requiring the dealers make substantial investments in their facilities, service equipment, and on-site inventories of both vehicles and parts.⁴⁷ They also required the dealerships to staff trained personnel capable of repairing and servicing the vehicles they sold.⁴⁸

C. *Franchise Requirement Laws Form*

As the intricacies of these franchise relationships developed, dealers found themselves having little bargaining power with manufacturers and wanted legal support. Dealers made various attempts to lobby Congress with little success.⁴⁹ Most dealers' attempts to seek relief in court for harm from manufacturers resulted in the courts' decision to side with the manufacturer, no matter how one-sided the contract may have been.⁵⁰ In 1956, however, President Eisenhower signed into law what was commonly referred to at the

40. See Lafontaine & Morton, *supra* note 38.

41. See *id.* at 237.

42. See *id.*

43. See *id.*

44. See *id.*

45. Marx, *supra* note 28, at 466.

46. See *id.* ("The total number of dealerships declined from a peak of 53,125 in 1927 to 46,281 in 1950, and continued to drop steadily thereafter, to 20,841 by 1 January 1984.")

47. *Id.*

48. *Id.* at 468.

49. Peter Luu, *Preemptive Federal Legislative for EV Manufacturers to Sell Direct to Consumers*, 2023 J. L. MOB. 5.

50. *Id.*

time as the Automobile Dealer's "Day in Court" Act (ADDCA).⁵¹ This law gave franchise automobile dealers the ability to file suit for damages for the failure of an automobile manufacturer to act in good faith.⁵² The passing of ADDCA was a massive success for dealers by shifting some of the power dynamic in their direction.

Following their success at the federal level through the passage of the ADDCA, automobile dealers began to shift their energies toward lobbying state governments and, over time, states began to increase their regulation of the franchises in an effort to protect dealers.⁵³ These regulations also offer long-term protections to manufacturers by helping to secure longstanding and positive relationships with dealers.⁵⁴ To ensure the continuation of these relationships and their ability to work efficiently, franchise agreements slowly began to change from agreements that some manufacturers simply elected to enter, into mandatory requirements to sell motor vehicles under state law.⁵⁵ States were prompted to regulate these relationships through the recognition that there still existed a significant disparity between the bargaining power of large automobile manufacturers and their dealers.⁵⁶ The United States Supreme Court ruled that states are "constitutionally empowered" to enact general schemes of business regulation that impose "reasonable restrictions" on the manufacturer-dealer relationship.⁵⁷

The extent of franchise requirements today varies by state. The first level of the regulatory scheme is the underlying statutory requirement that manufacturers cannot sell directly to consumers and must utilize the traditional franchising model.⁵⁸ All fifty states ban direct sales in all or most circumstances.⁵⁹ While many states have reformed their franchise requirement laws to make exceptions in certain cases, such as electric vehicle sales, seventeen states—including South Carolina—still prohibit direct sales in any form and require the involvement of a franchised dealer for any new vehicle sale to a consumer.⁶⁰

On top of the direct sales ban, states then employ three distinct types of laws that serve to regulate the required automobile sales franchising: franchise licensing requirements, exclusive territories, and the requirement of dealer

51. Donald P. McHugh, The Automobile Dealer Franchise Act of 1956, 2 ANTITRUST BULL. 353, 353 (1957).

52. *Id.* ("The duty of each party to act in good faith includes the obligation to guarantee the other party freedom from coercion, intimidation or threats of coercion or intimidation.").

53. See Luu, *supra* note 49, at 6.

54. See McHugh, *supra* note 51, at 356.

55. Ellig & Martinez, *supra* note 11.

56. New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co., 439 U.S. 96, 100–01 (1978).

57. *Id.* at 97.

58. See Hartman & Shields, *supra* note 12.

59. See *id.*

60. See *id.*

termination provisions in franchising agreements.⁶¹ Franchise licensing requirements require dealers to have specific licenses to operate within a state.⁶² Exclusive territories laws prevent manufacturers from contracting with too many franchises in a condensed geographic area.⁶³ Finally, the required dealer termination provisions set requirements for manufacturers that prevent them from suddenly terminating contracts with dealers.⁶⁴ All three of these regulations became more common after 1979.⁶⁵ From 1979 to 2014, states enacted a total of thirty-one new laws increasing regulation on the automotive sales franchising relationships.⁶⁶ In 1979, fewer than half of states regulated all three of these aspects of the automotive sales industry, but by 2014 all but one state regulated all three.⁶⁷

All of these laws serve to protect both dealers and manufacturers by leveling the playing field between them.⁶⁸ Dealer organizations, such as the National Automobile Dealers Association, emphasize that cars are unlike other consumer goods—in that they are highly regulated across the board.⁶⁹ The purchasing, maintenance, ownership, and use of motor vehicles is statutorily regulated by state governments.⁷⁰ Cars pose unique financing, maintenance, and safety issues that make it well within reason for states to regulate their sale and use.⁷¹ Further, franchises increase consumer protection by allowing consumers to shop between different dealers that offer the same brand of car.⁷² This increases competition and keeps prices lower and more competitive.⁷³

As previously mentioned, some states have limited exceptions while others maintain a total direct sales ban.⁷⁴ In states with total franchise requirements, some go so far as to ban manufacturers from operating their own maintenance and repair facilities. South Carolina's total ban prevents direct sales and the ownership of maintenance facilities.⁷⁵

61. Ellig & Martinez, *supra* note 11, at 2.

62. *See id.*

63. *Id.* at 1.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 2.

68. *See* NADA, WHY DEALER FRANCHISE LAWS?

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *See* Hartman & Shields, *supra* note 12.

75. S.C. CODE ANN. § 56-15-45(C).

III. SOUTH CAROLINA'S TOTAL DIRECT SALES BAN

South Carolina, like any state, must weigh varying factors considering whether to modify its franchise requirement laws based on the specific needs of differing actors within the state. South Carolina is no exception. To better understand the landscape surrounding the current automotive direct sales law in South Carolina, one must consider the landscape of the automotive industry in the state as a whole. Large, foreign automobile manufacturers and local, family-owned businesses have interests that are vastly different from one another. Given the high export numbers in South Carolina over the past decade, the state's automotive economy is more reliant on automobile production than on intrastate automobile sales. Accordingly, the South Carolina legislature must work to balance the competing interests of manufacturers and dealers within the state.

A. Foreign Manufacturers in South Carolina

South Carolina's need to maintain its relationships with these foreign manufacturers in the state impacts the franchise requirement law by lowering the state's need to emphasize intrastate automobile sales. The presence of foreign manufacturers throughout the state constitutes a major part of the automobile industry in South Carolina.⁷⁶ As a result, South Carolina has consistently been ranked as the number one exporter of completed passenger vehicles in the United States for the past decade.⁷⁷ South Carolina export sales totaled over \$31.5 billion in 2022, reaching over 196 countries, spanning six continents.⁷⁸ As a result, automobile sales to consumers within the state are not the primary driving factor in South Carolina's automotive economic development.⁷⁹ These high export numbers are heavily rooted in South Carolina's long-term relationships with a number of foreign manufacturers. Namely, South Carolina is currently home to large manufacturing plants owned by BMW, Mercedes-Benz, and Volvo.⁸⁰

76. See, *South Carolina's Automotive Industry* SOUTH CAROLINA DEP'T OF COM., <https://www.sccommerce.com/sites/default/files/2023-03/Automotive.31NoCrops.pdf> [https://perma.cc/7YK5-NZ23].

77. Press Release, S.C. Off. Of the Gov., South Carolina Leads the Nation as Top Exporter of Tires and Completed Passenger Motor Vehicles (Feb. 16, 2023), <https://governor.sc.gov/news/2023-02/south-carolina-leads-nation-top-exporter-tires-and-completed-passenger-motor-vehicles> [https://perma.cc/CR8R-TELB].

78. *Id.*

79. See *id.* (discussing export sales to consumers outside South Carolina).

80. DOMINION ENERGY, <https://economicdevelopment.dominionenergy.com/sc/key-industries/automotive/> [https://perma.cc/QYE6-SBDN].

In June 1992, BMW Group announced that it would begin building its first manufacturing plant located outside of Germany in Greer, South Carolina.⁸¹ The group's announcement was paired with a pledge to invest \$600 million and offer 2,000 jobs by the year 2000.⁸² This project was unlike anything the United States automotive industry had seen before in terms of financing and size, and it became the fastest factory start-up in the history of the industry—with just twenty-three months from groundbreaking to production.⁸³ Referred to as “BMW Spartanburg,” the plant is still located in Greer today and has manufactured more than 6 million vehicles since its opening in 1994.⁸⁴

BMW's grand entrance into South Carolina in the early 1990s was a launching point for other automobile manufacturers to follow suit. German company Mercedes-Benz began operating in South Carolina in 2006 and launched a new, Sprinter van plant in 2018.⁸⁵ In 2015, Volvo, a Swedish manufacturer, broke ground on its Ridgeville, South Carolina, factory.⁸⁶ These projects are massive and considered cornerstones of economic development in South Carolina.

B. South Carolina Dealers

Franchised automotive dealers also play a large role in the South Carolina automotive industry. The South Carolina Automobile Dealers Association (SCADA) formed in the 1950s in an effort to bring together new car and truck franchised dealers throughout the state.⁸⁷ From its founding to the present day, SCADA has sought to protect, inform, and lobby for local dealers by fostering relationships between those dealers and their local and state representatives.⁸⁸ Dealers are not manufacturers or wholesalers; rather, they are independently owned businesses that enter into contractual agreements with manufacturers to sell new motor vehicles to consumers.⁸⁹ Many of these dealers—as emphasized by SCADA—are family businesses that span generations.⁹⁰

Over the years, SCADA has formed into more than simply an association of franchised automotive dealerships. SCADA works as an activist group,

81. *Our Plant*, BMW GROUP PLANT SPARTANBURG, <https://www.bmwgroup-werke.com/spartanburg/en/our-plant.html> [https://perma.cc/M3MB-C3PH].

82. *Id.*

83. *Id.*

84. *Id.*

85. MBV CHARLESTON, <https://mbvcharleston.com/> [https://perma.cc/TH6X-UCNP].

86. VOLVO CARS, <https://www.volvocars.com/us/l/hometown/> [https://perma.cc/XF4H-2T2H].

87. S.C. AUTO. DEALERS ASS'N., <https://scada.org/about/> [https://perma.cc/M92F-B4N].

88. *Id.*

89. *Id.*

90. *Id.*

providing opportunities like scholarships to students in South Carolina planning to pursue a career in the automotive industry.⁹¹

C. The Total Direct Sales Ban in South Carolina

The interests of manufacturers and dealers in South Carolina are balanced through a traditional statutory scheme. The South Carolina law which currently prohibits all direct sales of automobiles to consumers by manufacturers can be found in Section 56-15-45(D) of the South Carolina Code and reads as follows:

(D) . . . [A] manufacturer or franchisor may not sell, or lease, directly or indirectly, a motor vehicle to a consumer in this State, except through a new motor vehicle dealer holding a franchise for the line make that includes the motor vehicle⁹²

The law functions as a complete ban preventing any type of automobile manufacturers from owning and operating new car dealerships within the state of South Carolina.⁹³ Functionally, the law requires manufacturers to enter into contractual relationships with individual dealers to form franchises in line with the traditional American model.⁹⁴ The statute more specifically prohibits the ownership or operation of a dealership by a manufacturer.⁹⁵ Additionally, the law prohibits the ownership or operation of any maintenance or repair facility by a manufacturer.⁹⁶ The statute comes with minor exceptions, such as selling to the federal government rather than consumers.⁹⁷ The law also allows manufacturers to operate their own e-commerce sites to advertise for their specific dealers.⁹⁸

While the specific intent behind the statute is not clear, certain surrounding historical and modern-day factors serve to inform the legislative timeline. Across the United States from the late 1970s, the continued formation of franchise laws was largely informed by the power struggle between automobile manufacturers and what were often seen as “mom and pop” shops.⁹⁹ South Carolina first enacted the total direct sales ban in early

91. *See id.*

92. S.C. CODE ANN. § 56-15-45(D).

93. *See id.*

94. *See id.*

95. *See* S.C. CODE ANN. § 56-15-45(A).

96. *See* S.C. CODE ANN. § 56-15-45(C).

97. *See* S.C. CODE ANN. § 56-15-45(D).

98. *See id.*

99. Daniel Crane, *Tesla, Dealership Franchise Laws, and the Politics of Crony Capitalism*, 101 IOWA L. REV. 573, 577 (2016).

2000—just eight years after BMW first announced its BMW Spartanburg plant.¹⁰⁰ Large, foreign automobile manufacturers and local, family-owned businesses express interests that are vastly different from one another. Given the relatively short time period between BMW's South Carolina introduction and the passage of Section 56-15-45, those competing interests likely inform the statute.

The total direct sales ban between automobile manufacturers and consumers in South Carolina was introduced to the South Carolina General Assembly by a bipartisan group of state legislators from hometowns across the state in early 2000 and was passed later that year.¹⁰¹

D. Impacts of the Franchise Requirement on Local Dealerships

The model in South Carolina is not unusual and has benefitted many South Carolina dealers and manufacturers. Many automobile franchise regulatory schemes were motivated by a need to balance the power dynamic between massive automobile manufacturers and small local dealerships.¹⁰² Today, the size and scope of dealers varies significantly. While nearly 40% of dealers sell fewer than 300 new cars per year, others generate billions in annual revenue.¹⁰³ Assisted by the protection of a statutory scheme, automobile dealers can go on from small, family-owned businesses to experience massive success in the automobile sales industry. Additionally, South Carolina's statutory protections have also helped dealerships that were already thriving to become even more dominant in the industry. For example, two South Carolina native dealers, Rick Hendrick and Jim Hudson, have seen high levels of success as dealers in South Carolina and beyond.¹⁰⁴

In 1976, Rick Hendrick purchased a struggling Chevrolet franchise located in Bennettsville, South Carolina.¹⁰⁵ In late 1979, he expanded by building the first free-standing Honda dealership in Columbia, South Carolina.¹⁰⁶ Hendrick marketed the dealership as Honda's premiere dealership on the east coast.¹⁰⁷ In 1980, Hendrick Honda expanded to Charleston, South

100. BMW GROUP PLANT SPARTANBURG, *supra* note 81.

101. H.R. 4450, 113th Gen. Assemb., Reg. Sess. (S.C. 1999–2000) (The addition of, “or lease,” following “may not sell,” was added to the statute in 2021.)

102. WHY DEALER FRANCHISE LAWS? *supra* note 68.

103. *Id.*

104. See generally *About Hendrick Automotive Group*, HENDRICK CARS, <https://www.hendrickcars.com/corporate-history.htm> [<https://perma.cc/ZL85-4NYC>]; *Welcome to Jim Hudson Automotive Group*, JIM HUDSON, <https://www.jimhudson.com/about-us/> (last visited Jan. 2, 2023).

105. *About Hendrick Automotive Group*, *supra* note 104.

106. *Id.*

107. *Id.*

Carolina.¹⁰⁸ Throughout the 1980s, Hendrick added franchises representing thirteen additional new vehicle brands and began expanding his franchises beyond the Carolinas.¹⁰⁹ Hendrick continued to grow by acquiring new dealerships in a number of states from the 1990s to today.¹¹⁰

Today, Hendrick Automotive Group is the largest privately held automotive retail organization in the United States.¹¹¹ In 2021, Hendrick Automotive Group generated over \$11 billion in revenue, selling over 205,000 vehicles and servicing about 2.3 million cars and trucks.¹¹² The group owns dealerships throughout the country, currently maintaining eleven South Carolina locations.¹¹³

In 1980, Jim Hudson bought his first car dealership in Columbia, South Carolina.¹¹⁴ Since that initial purchase, Hudson has continued to acquire dealerships throughout South Carolina and in Augusta, Georgia. Today, the Jim Hudson Automotive Group sells new vehicles from nine different automotive brands.¹¹⁵

While groups such as those formed by Hendrick and Hudson greatly impact the economy by generating revenue, their contributions to their communities are not limited to economics. Hendrick Cares is Hendrick Automotive Group's corporate social responsibility program which offers support to a number of causes, including hunger and education initiatives.¹¹⁶ The team has given roughly \$1 million to food banks and \$100,000 for STEM education needs across diverse communities.¹¹⁷ Jim Hudson's group has financially supported over 150 local charities in South Carolina.¹¹⁸ Hudson himself was awarded the Order of the Palmetto by Governor Nikki Haley in 2013—the state of South Carolina's highest civilian honor—in recognition of his contributions to the citizens of the state.¹¹⁹

108. *Id.*

109. *See id.*

110. *See id.*

111. *Id.*

112. *Id.*

113. *See id.*

114. Reba Hull Campbell, *The Jim Hudson Automotive Group: A Company Living its Founder's Values*, COLUMBIA METRO. (Apr. 2021), <https://columbiametro.com/article/the-jim-hudson-automotive-group/> [<https://perma.cc/VE2M-XXDV>].

115. *Welcome to Jim Hudson Automotive Group*, *supra* note 104.

116. *Hendrick Cares*, HENDRICK CARS, <https://www.hendrickcars.com/corporate-history.htm> [<https://perma.cc/TZ8N-J6BP>].

117. *Id.*

118. Campbell, *supra* note 114.

119. *Jim Hudson Awarded Order of the Palmetto*, COLUMBIA METRO. (Mar. 2013), <https://columbiametro.com/article/jim-hudson-awarded-order-of-the-palmetto/> [<https://perma.cc/Z6CV-ZHW2>].

Such success could be used to make an argument both for and against the ongoing franchise requirement present in South Carolina. Their financial success shows that the protections are, in many cases, working to ensure that individual dealers are not overpowered by manufacturers. Contrastingly, it raises a question of whether the initial intentions of the law were to protect all dealers or simply to ensure that a select group of families run the local automobile sales market. Nevertheless, the statutory scheme in South Carolina has allowed dealers of many sizes to thrive.

IV. ELECTRIC VEHICLE EXCEPTIONS TO FRANCHISE LAWS

Several electric vehicle manufacturers' decision to deviate from the traditional franchise model presents states with a question of whether they ought to reconsider banning direct sales from all manufacturers. The current sales model for electric vehicles has two distinct paths: purely electric brands, and gasoline brands that also manufacture electric vehicles. Purely electric brands sell directly to consumers. Brands that manufacture both gasoline and electric vehicles, however, continue to operate under the traditional franchise model.

A. Electric Vehicles Sales Models and Their Impact on Franchise Requirement Laws

Leaders of companies that manufacture solely electric vehicles, such as Tesla, Lucid, and Rivian, argue that the historical reasoning behind bans on direct automobile sales is irrelevant and impractical for the modern electric vehicle market.¹²⁰ While these leaders argue fervently in favor of their anti-franchise cause, their views are not universal and often lack evidentiary substance.

The most outspoken of these leaders is Tesla CEO Elon Musk, who insists that a traditional franchise dealership model would be impractical for the brand.¹²¹ Musk's argument on why a Tesla could not be sold by current dealers who sell gasoline brands hinges on his firm belief that electric vehicles are so distinctly different from gasoline cars that it would be impossible for traditional dealerships to promote and sell a Tesla without directly undermining the rest of their business.¹²² This would, Musk argues, rob the

120. See Khristopher J. Brooks, *Florida Bans Direct-to-Consumer Auto Sales But Leaves Carve-Out for Tesla*, CBS NEWS (June 16, 2023, 6:24 PM), <https://www.cbsnews.com/news/florida-auto-sales-ban-ron-desantis-tesla/> [<https://perma.cc/NJ82-PV24>].

121. See Musk, *supra* note 16.

122. *Id.*

electric car of a fair opportunity to make its case to the public.¹²³ For example, he believes that emphasizing the benefits of free travel through the use of Tesla Supercharger systems, as opposed to purchasing gasoline, would then challenge a dealer's ability to continue promoting and selling gasoline cars.¹²⁴

Further, the value that franchise dealer laws add by making sure that manufacturers do not begin to compete with their already existing dealers is a nonissue for major electric vehicle companies.¹²⁵ Tesla has never granted a franchise anywhere in the world.¹²⁶ Resultingly, there is no threat of Tesla as a company harming a preexisting franchised dealer. Finally, Musk asserts that the distinct differences between electric and gasoline vehicles require specifically trained service technicians to work on electric vehicles.¹²⁷ Musk believes that Tesla-only service centers can be more efficient in training and equipping such technicians than a currently existing gasoline car dealership.¹²⁸ Many of Musk's arguments for Tesla apply to Rivian and Lucid all the same.

Additionally, Elon Musk argues that most individuals go to the dealership with an idea in mind of what sort of car they plan to purchase.¹²⁹ As a result, Tesla needed to find unique opportunities to catch consumers' attention in order to educate them about the benefits of purchasing a purely electric vehicle.¹³⁰ As a result of this challenge, Tesla designs its stores to be interactive experiences located in high visibility and high foot traffic areas.¹³¹ Electric vehicle companies make less of a case on why these stores could not be franchises. The case against a Tesla-only, Lucid-only, or even electric-vehicle-only franchise is rarely addressed by electric vehicle companies. Often, the lack of practicality in electric-vehicle-only franchises existing is substantiated only by the fact that they do not currently exist. Such a case, however, is likely rooted in an underlying desire to maximize profits while the manufacturers continue to grow.

While Elon Musk's arguments on behalf of Tesla are echoed by a number of other purely electric vehicle brands, they do not represent the electric vehicle market as a whole. Many successful gasoline automobile manufacturers are launching their own purely electric car lines—ones they are perfectly content to sell on their current dealers' lots. Popular consumer brands such as BMW, Chevrolet, Dodge, and Ford, are among the ever-

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *See id.*

128. *See id.*

129. *Id.*

130. *See id.*

131. *Id.*

growing list of manufacturers to begin producing and selling purely electric vehicles.

Major automobile brands' decision to begin launching their own electric vehicles creates problems for several of the arguments made by purely electric brands. For example, Elon Musk's argument that a salesperson could not adequately sell both an electric vehicle and a gasoline vehicle, does not appear to be a concern of automobile manufacturers who are choosing to sell both types of vehicles. As more brands of electric vehicles become available to consumers, the suggested need for brands such as Tesla, Rivian, and Lucid to sell directly to consumers in South Carolina lessens; consumers are still able to shop electric in the state from existing dealers that own franchises selling electric cars made by other major manufacturers.

While the electric vehicle market is growing across the United States, only purely electric brands are calling for alterations to current state law.¹³² Many states have sought to accommodate purely electric brands by creating exceptions to the direct sales laws in their state that allow electric vehicle manufacturers to bypass the traditional dealership model.¹³³ Such accommodation seems unavoidable in some states where electric vehicle demand is incredibly high. Further, support for direct sales of electric vehicles is bipartisan. Individuals and politicians from all over the political spectrum support exceptions to the direct sales ban.¹³⁴ Both of South Carolina's neighboring states, Georgia and North Carolina, have created limited statutory exceptions.¹³⁵

In 2015, Georgia altered its franchise law to provide a statutory exception for exclusively electric vehicle manufacturers.¹³⁶ Georgia's exception allows any manufacturer that distributes solely zero-emission vehicles to sell directly to consumers.¹³⁷ Following this decision, Rivian Automotive announced in late 2021 that it has decided to build a \$5 billion electric vehicle factory just outside of Atlanta, Georgia.¹³⁸

Similarly, North Carolina made a statutory exception in 2019 that allows for Tesla to sell directly to consumers.¹³⁹ North Carolina's exception is even

132. *Trends in Electric Light-Duty Vehicles*, IEA, <https://www.iea.org/reports/global-ev-outlook-2023/trends-in-electric-light-duty-vehicles> [https://perma.cc/28S5-SCEA].

133. See Hartman & Shields, *supra* note 12.

134. Aebra Coe, Koch Brothers, Sierra Club Join Law Prof to Support Tesla, LAW 360, Feb. 18, 2015, <https://www.law360.com/articles/622433/koch-brothers-sierraclub-join-law-prof-to-support-tesla> [https://perma.cc/NGW6-VT3H].

135. See Hartman & Shields, *supra* note 12.

137. See GA CODE ANN. § 10-1-664.1(a)(8) (2020)

137. See *id.*

138. *Rivian Signs Agreements with Georgia to Start Building EV Factory*, REUTERS (Nov. 14, 2023), <https://www.reuters.com/business/autos-transportation/rivian-raise-nearly-15-bl-debt-ev-plant-georgia-2023-11-14/> [https://perma.cc/JPW7-JLA8].

139. See N.C. GEN. STAT. § 20.305.2 (a)(4a).

more narrow than the exception in Georgia because it was designed specifically for Tesla.¹⁴⁰ An electric vehicle manufacturer may operate no more than six motor vehicle dealership locations within the state of North Carolina.¹⁴¹ Further, all sales must be purely electric and the vehicles manufactured and sold cannot rely on anything but an electric charge to power them.¹⁴² Additionally, it allows Tesla alone to sell directly in the state, excluding other electric vehicle manufacturers such as Rivian, Lucid, or Arrival.¹⁴³ The exclusion of other manufacturers has created problems in North Carolina's economic development—even playing a role in Rivian's decision to choose Georgia over North Carolina for its manufacturing facility.¹⁴⁴ In the time since this statutory change, Tesla has only opened two stores in North Carolina.¹⁴⁵

Alongside these statutory amendments in nearby states, a challenge from a consumer arose in South Carolina asking for similar changes in the state. In 2019, Tesla owner and South Carolinian Austin Meyer filed suit against the South Carolina government, alleging that the state's direct sales ban violated the Fourteenth Amendment of the United States Constitution.¹⁴⁶ Meyer based his claim on the fact that he was significantly inconvenienced by what he dubbed the "Anti-Tesla bill."¹⁴⁷ He alleged that being forced to drive out of state to have his vehicle serviced or repaired was a significant burden.¹⁴⁸

The court found Meyer's argument to simply constitute a "generalized grievance" against the government because any South Carolina citizen could bring this same claim and it was, therefore, insufficient to establish standing.¹⁴⁹ Essentially, the court concluded by acknowledging that a change in the law would not ensure that Tesla would choose to open a store or service location in South Carolina; therefore, a revision of the law would not in itself provide any relief for Meyer.¹⁵⁰

Due to complaints from citizens like Meyer who were frustrated that they could not purchase their choice of electric vehicles in South Carolina, several South Carolina Representatives from Charleston have proposed an exemption

140. *Freedom to Buy Vehicles in North Carolina*, ELECTRIFICATION COALITION, <https://electrificationcoalition.org/work/state-ev-policy/north-carolina-ev-policy/freedom-to-buy-vehicles-in-north-carolina/> [<https://perma.cc/TCB8-G4P7>].

141. N.C. GEN. STAT. § 20.305.2 (a)(4a).

142. *Id.*

143. *Freedom to Buy Vehicles in North Carolina*, *supra* note 140.

144. *Id.*

145. *S Tesla Stores & Galleries*, TESLA, <https://www.tesla.com/findus/list/stores/United%20States> [<https://perma.cc/V365-KSDR>].

146. *Meyer v. McMaster*, 394 F. Supp. 3d 550, 555 (D.S.C. 2019).

147. *Id.*

148. *Id.* at 556.

149. *Id.* at 560.

150. *Id.* at 563.

to the franchise requirement that would only allow manufacturers of all-electric vehicles to sell directly to consumers in South Carolina.¹⁵¹ Currently, the proposal has not gained much traction and has not been enacted.¹⁵²

B. Opposition to Exceptions

Opposition to electric vehicle exceptions today are similar to the arguments that initially formed the franchise requirements. Dealers maintain many of the claims discussed in Part II that led to the formation of the current regulation.¹⁵³ Many major manufacturers also oppose the proposal of exceptions to direct sales laws.¹⁵⁴ Legacy manufacturers, such as Ford and GM, often oppose direct sales because they claim it would give electric vehicle companies an unfair advantage.¹⁵⁵ GM went so far as to write to Ohio Governor John Kasich, claiming that a statutory exception for direct sales in Ohio would create a “distinct competitive advantage” for Tesla by allowing it to avoid restrictions that all other manufacturers face.¹⁵⁶ Manufacturers face difficulty, however, because by making the claim that an exception would give electric vehicles companies an advantage in some way, they seem to be implicitly claiming that the current franchise model is less advantageous to manufacturers than a direct sales model; even though history reveals that the direct sales model was less efficient for the market overall.¹⁵⁷

V. WHY AN ELECTRIC VEHICLE EXCEPTION TO § 56-15-45 IS NOT TIMELY

Due to the reality that the majority of electric vehicle exceptions to franchise requirement laws were only enacted within the last decade, the long-term impact of these changes has yet to be realized. There are a few distinct ways that the current electric vehicle landscape in South Carolina reveals why such an exception is not timely in the state. First, an exception to the statute for electric vehicle manufacturers would create new concerns over time as current manufacturers of gasoline vehicles become increasingly electric. Second, electric vehicle economic development in South Carolina is currently

151. *BIG STORY: Effort to Break Direct Car Sales Ban Stalls at Statehouse*, STATEHOUSE REPORT (Sep. 2, 2022), <https://www.statehousereport.com/2022/09/02/big-story-effort-to-break-direct-car-sale-ban-stalls-at-statehouse/> [<https://perma.cc/C6CL-UXBX>].

152. *Id.*

153. See Luu, *supra* note 49, at 15–18 (Dealer opposition includes, among other things, the imbalance of power between dealers and manufacturers and the need for regulation due to cars being unique from other products on the market).

154. *Id.* at 18.

155. *Id.*

156. *Id.*; see also Hartman & Shields, *supra* note 12 (Ohio enacted a direct-sales exception for Tesla in 2014, allowing Tesla to own and operate three stores in the state).

157. Luu, *supra* note 49, at 18.

focused on areas other than electric vehicle intrastate sales that better serve the state's economy.

A. The Long-Term Impact of an Electric Vehicle Exception on Dealerships

The current trend across the United States to provide exceptions for manufacturers that distribute solely electric vehicles may temporarily increase consumer choice, but may create a massive long-term problem for current automotive dealerships by providing a route for legacy manufacturers to sell directly to consumers in the future.

A broad exception for all electric vehicle manufacturers, such as the one proposed in South Carolina in 2019, would open the door to difficulties with other manufacturers down the line. Many of the major automobile manufacturers that are beginning to manufacture electric vehicles are not only adding electric vehicles to their catalog, but reforming their entire brand to become purely electric. For example, General Motors is planning to solely distribute electric vehicles by 2035.¹⁵⁸ Buick, Cadillac, Lexus, Mercedes-Benz, and Volvo are among the brands pledging to be fully electric by 2030.¹⁵⁹ While not sure when they will be fully electric, BMW is ahead of schedule on its goal to be 50% electric by 2030.¹⁶⁰ The electrification of automobile manufacturers that currently maintain franchised dealers make electric vehicle exceptions to the direct sales ban a potentially problematic response to the current purely electric brand problem.

Once they become fully electric, manufacturers such as General Motors would become eligible for an electric vehicle exception to the franchise requirement. The so called "exception" to the direct sales ban would no longer be an exception but, over time, would become the general standard. Such a scenario would allow manufacturers to compete with their current franchises and reignite the difficulties that the automotive industry faced before the franchise requirement laws were in place. Further, there is no guarantee that Tesla or similar companies would even choose to open stores in South Carolina. Neighboring states are already offering these stores relatively easy access to South Carolinians, meaning electric vehicle companies might not be incentivized to open new locations simply because they are permitted.

158. Jonathan Lopez, *GM Still Planning Fully Electric Vehicle Lineup By 2035*, GM AUTHORITY (Dec. 6, 2023), <https://gmauthority.com/blog/2023/12/gm-still-planning-fully-electric-vehicle-lineup-by-2035/> [https://perma.cc/D8Z6-QPTB].

159. Tyler Duffy, *When Every Car Brand Plans to Go Electric*, GEAR PATROL (Oct. 10, 2023), <https://www.gearpatrol.com/cars/g38986745/car-brands-going-electric/> [https://perma.cc/MHA7-GH2N].

160. *Id.*

Accordingly, South Carolina should prioritize the long-term preservation of the franchise model over a short-term opportunity to attract electric vehicle manufacturers' stores. Protecting the franchise model will reduce the risk of reigniting the inefficiency and imbalance of the former direct sales model.

B. Current Electric Vehicle Economic Development Outlook

While South Carolina is looking to expand its electric vehicle presence, this is a phased process that requires considering the whole of the automobile industry in South Carolina's economy. Accordingly, South Carolina is right not to focus its electric vehicle development on attempts to increase access to electric vehicles sales in South Carolina, but instead on increasing electric vehicle exports. In 2022, Governor McMaster established the state's "Electric Vehicle Economic Development Initiative" as a part of an ongoing plan to respond to the expanding electric vehicle market.¹⁶¹ The initiative focuses on the state's goals of attracting electric vehicle manufacturers, building up the electric vehicle workforce, and increasing electric vehicle infrastructure.

1. Electric Vehicle Manufacturing in South Carolina

Economic development efforts by the state of South Carolina have already attracted a high number of electric vehicle manufacturers to the state in recent years. Perhaps the most newsworthy development is the arrival of Scout Motors, Inc. (Scout). In March 2023, the South Carolina Office of the Governor announced that Scout had selected Blythewood, South Carolina, as the production site for its first manufacturing plant.¹⁶² Scout is an American automotive company that operates as an independent subsidiary of the Germany-based Volkswagen Group.¹⁶³ Offering a modern take on the original Scout vehicles of the late-twentieth century, Scout will exclusively manufacture electric vehicles.¹⁶⁴ Distinct from most previous South Carolina plants, the Scout facility will manufacture solely all-electric trucks and sport utility vehicles.¹⁶⁵ The current investment commitment on the project reaches

161. See S.C. Executive Order 2022-31.

162. Press Release, S.C. Off. of the Gov., Scout Motors Selects South Carolina for Production Site; Plans to Create 4,000 Jobs (Mar. 3, 2023), <https://governor.sc.gov/news/2023-03/scout-motors-selects-south-carolina-production-site-plans-create-4000-jobs> [<https://perma.cc/5XZP-6VHL>].

163. SCOUT MOTORS, <https://www.scoutmotors.com/> [<https://perma.cc/L3KZ-EVWU>].

164. *Scout Motors Selects South Carolina for Production Site; Plans to Create 4,000 Jobs*, *supra* note 162.

165. *Id.*

new heights, with Scout spending \$2 billion and preparing to provide nearly 4,000 jobs.¹⁶⁶

Scout is not alone in this endeavor to enhance the electric vehicle market in South Carolina. BMW, Mercedes-Benz Vans, and Volvo are all expanding their current South Carolina manufacturing facilities to create areas solely for electric vehicle production.¹⁶⁷ BMW has broken ground on an electric vehicle battery facility that will be located in Woodruff, South Carolina.¹⁶⁸ The expansion comes in preparation to produce fully electric BMW X model vehicles to export worldwide.¹⁶⁹

Smaller electric vehicle companies, Oshkosh and Proterra, have set up their own operations in the Upstate.¹⁷⁰ Specifically, Oshkosh is building electric trucks to be used by the U.S. Postal Service.¹⁷¹ Additionally, this electric vehicle economic development includes projects and facilities that are not strictly limited to manufacturers of electric vehicles.¹⁷² A number of electric vehicle battery companies are setting up shop in South Carolina.¹⁷³ The state even has several electric vehicle battery recyclers building reclamation facilities in Berkeley and Richland counties.¹⁷⁴

South Carolina's status as the top vehicle exporter in the United States provides the state with a potentially massive economic development opportunity with respect to electric vehicle manufacturing. However, carrying out this increase in electric vehicle manufacturing within the state is an undertaking that goes far beyond agreements with manufacturers.¹⁷⁵ The growth of electric vehicle manufacturing in South Carolina will be both transformative to the state's economy and pose a number of distinct challenges.¹⁷⁶ To raise the number of electric vehicles built in South Carolina, the state must maintain positive relationships with current manufacturers.

166. *Id.*

167. S.C. DEP'T OF EMP. AND WORKFORCE, EVALUATION AND ANALYSIS OF THE ELECTRIC VEHICLE WORKFORCE IN SOUTH CAROLINA 3 (2023).

168. BMW Group Breaks Ground on New High-Voltage Battery Assembly Factory in South Carolina, BMW GROUP PLANT SPARTANBURG, <https://www.bmwgroup-werke.com/spartanburg/en/news/2023/BMW-Group-Breaks-Ground-on-New-High-Voltage-Battery-Assembly-Factory-in-South-Carolina1.html> [<https://perma.cc/ZB2U-TPD7>].

169. *Id.*

170. S.C. DEP'T OF EMP. AND WORKFORCE, *supra* note 167.

171. *Id.*

172. *See id.*

173. *Id.*

174. *Id.*

175. *See generally* S.C. Exec. Order, *supra* note 161.

176. *See id.*; S.C. DEP'T OF EMP. AND WORKFORCE, *supra* note 167.

2. *Electric Vehicle Workforce*

Current and projected workforce shortage issues in South Carolina make it difficult to recruit additional electric vehicle manufacturers to the state. Governor McMaster’s “Electric Vehicle Economic Development Initiative” effectively assigned the issue of developing and enhancing the electric vehicle workforce in South Carolina to the Department of Employment and Workforce (DEW).¹⁷⁷ Under this order, DEW is evaluating the state’s current electric vehicle-related workforce availability and forecasting the anticipated workforce needs over the next several years.¹⁷⁸

As part of its duties outlined by Governor McMaster, DEW has conducted a comprehensive supply-gap analysis of the workforce surrounding the electric vehicle ecosystem.¹⁷⁹ The formation of this report involved heavy consultation with state governmental agencies, as well as the business community, stakeholders in the electric vehicle industry, and educational providers.¹⁸⁰ DEW’s analysis includes an evaluation of electric vehicle-specific occupations and the projected demand for their relevant educational requirements.¹⁸¹

On the bright side, increased electric vehicle production will create a lot of jobs for the state.¹⁸² Alternatively, the state needs to have a willing and prepared workforce to fill these jobs—a standard it is not currently meeting. DEW has identified four key jobs for which there is currently a significant supply gap: software developers, industrial engineers, automotive service technicians and mechanics, and logisticians.¹⁸³ To conduct this supply gap analysis, DEW compared the number of program completers for each of these respective positions to the projected number of job openings in 2030.¹⁸⁴

South Carolina’s ability to supplement this supply gap by increasing the number of qualified electric vehicle workers in the state is multifaceted. The first problem is that all four of these identified positions require some level of postsecondary education.¹⁸⁵ For example, software developers currently maintain the one of the largest identified supply gaps, with a supply deficit of about 844 workers.¹⁸⁶ While a number of programs throughout the state provide the education necessary to fill these roles, enrollment and graduation

177. S.C. Exec. Order, *supra* note 161.

178. *Id.*

179. *Id.*; S.C. DEP’T OF EMP. AND WORKFORCE, *supra* note 167, at 6.

180. S.C. Exec. Order, *supra* note 161.

181. *See* S.C. DEP’T OF EMP. AND WORKFORCE, *supra* note 167, at 6–7.

182. *See id.* at 5.

183. *Id.* at 8.

184. *See id.* at 7.

185. *Id.*

186. *Id.* at 8.

rates do not currently match the need, and public knowledge and promotion of these career paths is relatively low.¹⁸⁷ Schools in the state are seeking to combat this issue by developing existing programs and starting new programs to accommodate the rapid growth of the electric vehicle industry.¹⁸⁸ For example, Clemson University has chosen to launch the nation's first undergraduate Bachelor of Science degree program in automotive engineering.¹⁸⁹

It is vital that South Carolina can meet the workforce needs of electric vehicle manufacturers that it has already committed to filling. Currently, the largest identified workforce supply gap is that of automotive service technicians and mechanics with a projected deficit of 869 workers.¹⁹⁰ An electric vehicle exception to Section 56-15-45 could unnecessarily frustrate the South Carolina electric vehicle workforce deficit and impact the state's current plan to bridge the gap.

3. *Electric Vehicle Infrastructure Growth*

South Carolina currently has a long road ahead to install the necessary infrastructure that increased electric vehicle production will require. As a part of Governor McMaster's Electric Vehicle Economic Development Initiative, an Interagency Electric Vehicle Working Group was formed to pursue some of the major electric infrastructure problems that the state currently faces.¹⁹¹ A top priority of this group is to identify placements for the installation of passenger car electric vehicle charging equipment, especially along interstate highways.¹⁹² There are a number of considerations when identifying such placements. Ideally these placements would be in areas that maximize the public benefit by providing easy access; including rural areas of the state that might typically have reduced access to such resources.¹⁹³

An increase in electric vehicle production increases South Carolina's need for this infrastructure. For example, Georgia has about one electric

187. *See id.* at 8–10.

188. *See id.* at 13.

189. *Id.*

190. *Id.* at 8.

191. *See* S.C. Exec. Order, *supra* note 161 (The Interagency EV Working Group is directed and coordinated by the SC Department of Transportation and includes representatives from the Office of Regulatory Staff, the Department of Commerce, the Department of Employment and Workforce, the SC Department of Motor Vehicles, the SC Department of Health and Environmental Control, and the State Fiscal Accountability Authority).

192. *Id.*

193. *Id.*

vehicle charging station per 7,100 people.¹⁹⁴ Likewise, North Carolina has about one electric vehicle charging station per 9,700 people.¹⁹⁵ South Carolina currently has one electric vehicle charging station per 13,340 people.¹⁹⁶

With the Interagency Electric Vehicle Working Group's efforts, this is an attainable goal over time but will take several years to implement.¹⁹⁷ South Carolina's work to increase this infrastructure is a positive goal in its electric vehicle development plan.

VI. CONCLUSION

The electric vehicle market is growing. Alongside that growth comes a question of whether the current direct sales ban in South Carolina remains best. At its inception, Section 56-15-45 sought to protect the interests of South Carolina automobile dealerships from being overtaken by large, overseas manufacturers. The law's purpose is maintained in the law today by continuing to protect the interests of manufacturers and dealers in South Carolina by safeguarding their relationships with one another.

The South Carolina General assembly should not amend Section 56-15-45 to provide a direct sales exception for electric vehicle manufacturers. Such a change would be untimely for several reasons. First, major automobile manufacturers are beginning to offer electric vehicle sales under the current model and do not request or require a statutory amendment. The arguments made by electric vehicle companies regarding the impracticality of franchised dealers for their companies is insufficient to establish that the law will stunt electric vehicle sales in South Carolina moving forward.

Second, while some argue that a statutory amendment is inevitable with the constantly growing electric vehicle market, the presumed need for this amendment is likely short-lived. As more manufacturers move toward selling solely electric vehicles, the alteration of the direct sales ban to provide this exception of this change may negatively impact current dealerships. When companies like GM or BMW become purely electric over the next several years, it is almost guaranteed that an electric vehicle exception would have to be repealed to prevent those companies from competing with their current franchises.

194. See Dan Avery, *Which States Have the Most EV Charging Stations?*, CNET (Mar. 17, 2023), <https://www.cnet.com/roadshow/news/how-many-ev-charging-stations-are-there-in-the-us/> [https://perma.cc/8PUK-XWU4]; *Population Estimate for 2023*, STATSAMERICA, https://www.statsamerica.org/sip/rank_list.aspx?rank_label=pop1&ct=S18 [https://perma.cc/9AYN-TRZK].

195. See *id.*

196. See *id.*

197. See S.C. Exec. Order, *supra* note 161.

Finally, the state's current focus on electric vehicle development through increased manufacturing, workforce, and infrastructure is sufficient to accommodate the nation's moves towards increased electric vehicle ownership while protecting South Carolina's longstanding relationships with foreign manufacturers and its dealers.

Any level of potential consumer frustration within South Carolina over the lack of an electric vehicle exception is insignificant when compared to the much larger need for positive outcomes for current South Carolina manufacturers and dealers. The risk of reverting back to the former direct sales model could be costly for manufacturers, dealers, and consumers. Accordingly, South Carolina's best course of action at this time is to maintain the current total direct sales ban for the protection of its long-term interests in the industry.