



IMPACT ANALYSIS REPORT

These internal research reports were prepared in 2011 in response to a request for information concerning the sales of motor vehicles over the Internet and associated legislation and regulations regarding this activity. Specifically, the requestor asked for information on licensing requirements for motor vehicle dealers and salespersons, and the current position, on a state-by-state basis, of laws that particularly allowed, prohibited, or did not address the activity of Internet motor vehicle sales by dealers within the individual states.

The purpose of this report was to enable Department stakeholders to consider and develop, after internal evaluation and discussion, statutory and/or Departmental policy and procedural language to address dealer sales of vehicles over the Internet in Nevada, if determined to be necessary. The lack of national or uniform state statutory language regarding this type of activity has limited the effectiveness of the Department, as a regulatory body, to oversee the impact that the Internet has had on motor vehicle sales operations and ensure the fair treatment of consumers and dealers alike.

The scope of this research and resulting recommendations is limited to motor vehicle sale activities particular to Nevada and factors relating to use of the Internet as a sales tool for motor vehicles, consumer protection and dealer compliance with statute. Rules or decisions on issues peripheral to these concerns, such as provisions to allow vehicle sales directly by the manufacturer, were outside the scope of this document. The Department has not completed its evaluation or adopted the findings of this research, or accepted or rejected any of its conclusions.



INTRODUCTION

This report responds to your request for information on statutory and regulatory licensing requirements for dealers and salespersons of motor vehicles.

ISSUE

Specifically, you wanted to know if current Department of Motor Vehicles (DMV) policy could be amended to provide for dealers and salespersons that sell automobiles over the Internet only, and to clarify what business, licensing, requirements, bonding and plate provisions would apply to such individuals.

OBJECTIVE

A review of current policy to see to what degree automotive dealers and salespersons are affected by selling vehicles over the Internet and what new provisions, if any, should be enacted to accommodate these types of sales.

FINDINGS

LICENSING AND REGULATION OF AUTO DEALERS AND SALESPERSONS IN NEVADA

Chapter 482 of the Nevada Revised Statutes (NRS) deals with the requirements for the licensing and regulation of manufacturers, rebuilders, distributors, dealers, brokers, salespersons and lessors of motor vehicles in the state. Several key sections within this chapter relate specifically to dealer and salesperson requirements for doing business in the state:

- NRS 482.020 defines “dealer” and “vehicle dealer” as an individual who, for compensation, money or other thing of value sells, exchanges, buys, offers or displays for sale, negotiates or attempts to negotiate a sale or exchange of an interest in a vehicle subject to registration under this chapter or induces or attempts to induce any person to buy or exchange an interest in a vehicle; and who represents that he or she has the ability to sell, exchange, buy or negotiate the sale or exchange of an interest in a vehicle subject to registration under this chapter or in any other state or territory of the United States; further, that they receive or expect to receive a commission, money, brokerage fee, profit or any other thing of value from the seller or purchaser of a vehicle; and lastly is engaged wholly or in part in the business of selling vehicles or buying or taking in trade vehicles for the purpose of resale, selling or offering for sale or consignment to be sold or otherwise dealing in vehicles, whether or not he or she owns the vehicles.
- NRS 482.187 defines “salesperson” as a person employed by a vehicle dealer, under any form of contract or arrangement to sell, exchange, buy, or offer for sale, or exchange an interest in a vehicle to any person, who receives or expects to receive a commission, fee or any other consideration from the seller or purchaser of the vehicle; or a person who exercises managerial control within the business of a dealer or a long-term or short-term lessor, or who supervises salespersons employed by a dealer or a long-term or short-term lessor, whether compensated by salary or by commission, or who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer or a long-term or short-term lessor.
- NRS 482.322- Provides that, in addition to other requirements, a person shall not engage in the activities of a new vehicle dealer, used vehicle dealer, manufacturer, distributor or rebuilder in this State until the person has been issued a license by the Department.
- NRS 482.323- Provides that every vehicle dealer shall maintain an established place of business in this State which: includes a permanent enclosed building, owned in fee or leased, with sufficient space to display one or more vehicles which the dealer is licensed to sell; and is principally used by the dealer to

conduct his or her business. Every used vehicle dealer, trailer dealer or semitrailer dealer shall maintain an established place of business in this State which has: sufficient space to display one or more vehicles; boundaries which are clearly marked; and a permanent enclosed building large enough to accommodate his or her office and provide a safe place to keep the books and other records of the business.

- NRS 482.325- Provides for applications for licensure for manufacturers, distributors, dealers and rebuilders. Among other provisions pursuant to this section, applicants must provide: all necessary proof requested by the Department that the applicant is a distributor, dealer, manufacturer, or rebuilder; application fee; fee for processing fingerprints; full set of fingerprints and authorization to submit to Central Registry; and other required documentation.
- NRS 482.326- Provides that dealers inform the Department of each location at which they conduct any business; also includes language concerning the designation of the principal place of business of the dealer as separate from the branch offices; branches operated under the authority of the license for a principal place of business, dependent upon meeting certain criteria; and provisions regarding change of the business name or location.

As shown from the statutory listing above, no provisions are mentioned regarding use of the Internet in selling vehicles; however, all dealers operating in the state must be in compliance with these key provisions. It is likely that any new provisions that would deal with establishing a new class of license or method of regulation for Internet-only vehicle dealers would require a change to NRS, since statutes declare that, pursuant to Legislative declaration contained in 482.318, the distribution and sale of motor vehicles is a key factor in the general economy of the state and affects the public interest and welfare of the state.

INTERNET VEHICLE SALES AND OTHER STATE'S REQUIREMENTS

General

Most states are similar to Nevada with regard to this issue; motor vehicle dealers are statutorily licensed and regulated, but do not address or contain provisions addressing their Internet sales or marketing activities. A cursory review of motor vehicle dealer licensing statutes in the remaining states in the U.S. appears to indicate that there are no other jurisdictions that specifically license and regulate internet-only auto dealers and salespersons.

I spoke with James Moors, Legal Department (703-827-6867), National Automobile Dealers Association (NADA) on this issue. He informed me that, for nearly all states, the law is largely silent on the specific role of the Internet in motor vehicle sales. According to information that his organization tracks and his own personal knowledge, most states have left the issue of Internet automobile sales unaddressed. Currently, it

is also his understanding that there are no states that have enacted specific laws requiring separate or special licensing requirements for dealers or salesmen that do Internet-only auto sales.

States with Specific Internet Provisions

However, some states have begun to develop statutory language that recognizes the role the Internet may play in motor vehicle sale activities and makes allowance for this method of sales. Below are listed several states (Indiana, Texas, Ohio and South Carolina) that have been found to have limited forms of language that address Internet motor vehicle sales:

Indiana:

IC 9-23-2-15

Sale of motor vehicle through Internet

Sec. 15. A dealer who sells a motor vehicle through the use of the Internet or other computer network shall deliver the motor vehicle to the customer at the place of business of the dealer in Indiana.

As added by P.L.74-2001, SEC.4.

Texas:

Sec. 2301.362. OFFSITE SALES. (a) Except as provided by Subsection (b) and Sections 2301.358(c) and (d), a dealer may only sell or offer to sell a motor vehicle from an established and permanent place of business:

- (1) that is approved by the division; and
- (2) for which a general distinguishing number has

been issued.

(b) A dealer may sell or offer to sell a motor vehicle online through an advertisement on the Internet to a buyer who never personally appears at the dealer's established and permanent place of business.

Added by Acts 2007, 80th Leg., R.S., Ch. [1363](#), Sec. 1, eff. June 15, 2007.

Renumbered from Occupations Code, Section 2301.361 by Acts 2009, 81st Leg., R.S., Ch. [87](#), Sec. 27.001(74), eff. September 1, 2009.

Ohio

4517.59 Prohibited acts.

(B) No franchisor shall discriminate among the franchisor's dealers in any program that provides assistance to the franchisor's dealers, including internet listings, sales leads, warranty policy adjustments, marketing programs, and dealer recognition programs. The franchisor shall not require a franchisee to provide its customer lists or service files to the franchisor, unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, or for the submission to the franchisor for any services supplied by the franchisee for any claim for warranty parts or repairs. Nothing in this division shall limit the franchisor's ability to require or use customer information to satisfy any safety or recall notice obligation.

South Carolina

SECTION 56-15-45. Ownership, operation or control of competing dealerships by manufacturer or franchisor; unfair competition against franchisee; preferential treatment defined; sales or leases to federal government or employees; sales of leased vehicles; manufacturer's e-commerce websites.

(D) Except as may be provided otherwise in subsections (A) and (B) of this section, a manufacturer or franchisor may not sell, 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 vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to the federal government, nor to manufacturer or franchisor leases of new motor vehicles to employees of the manufacturer or franchisor. Nothing in this subsection prohibits a manufacturer or franchisor or any parent, affiliate, wholly or partially owned subsidiary, officer, or representative of a manufacturer or franchisor operating as a motor vehicle lessor from selling a motor vehicle to the lessee at the conclusion of a lease agreement between the two parties. Nothing in this subsection prevents a manufacturer or franchisor from establishing an e-commerce website for the purpose of referring prospective customers to motor vehicle dealers holding a franchise for the same line make of the manufacturer or franchisor.

I also spoke with Cian Cashin, Senior Manager for Government Affairs (703-522-4200) at the American Association of Motor Vehicle Administrators (AAMVA) regarding this issue. He indicated that while his association has not completed any recent research on the topic, AAMVA did hold a roundtable discussion on Internet auto sales and how to treat such transactions approximately seven years ago. From that discussion the association developed model legislative language regarding vehicle sales over the Internet. This model language fell into three categories: (1) advertising of motor

vehicles over the Internet and jurisdiction of state courts; (2) advertising of vehicles over the Internet, and; (3) unfair and deceptive trade practices, fraud, etc., and Internet transactions. A copy of this language has been provided for your reference in the attachment to this report.

POTENTIAL SOLUTION(S)

1. Conduct further research on a state-by-state basis to determine the status of Internet auto sales in the rest of the country and provide Nevada and the Department with a more informed view of how other jurisdictions have addressed this issue, and potentially provide a model for developing the state's own language. From this basis, adopt new Department procedures that would specifically address dealer sales of vehicles over the Internet; or propose new language for the 2013 Session to amend Chapter 482 to cover this type of activity.

Pro: Would allow the Department to establish precedent for developing Nevada's own set of rules governing Internet auto sales, and allow the Department to see how other states have allowed for this activity and adopt best practices and see what has worked best. Internet sales of vehicles are likely to become only more prevalent in the years to come; action would allow the state and Department to get ahead of the curve in developing language that would regulate this activity before it becomes too prevalent and unwieldy to oversee or administer.

Con: Could be time-consuming to gather additional information from 49 other states and possibly result in an overly diverse array of approaches and language developed by other jurisdictions. Further, motor vehicle franchise laws are a sensitive legislative subject, and any changes without consulting the industry or outside of the current scope of NRS could attract considerable attention and opposition from stakeholders, without sufficient information to support making changes to established statute and regulation.

2. Amend provisions contained in Compliance and Enforcement Division's Policies and Procedures- Chapter 20 (OLBL) to clarify instances where Internet dealer activity is taking place and ensure that their activities, insofar as they operate within the state, comply with current statutory/regulatory requirements.

Pro: Would foster ability to address immediate concerns regarding auto dealers and their Internet activities within existing law and guidelines.

Con: Will need additional review and gathering of information to determine if these changes to PnP are sufficient or require further action.

RECOMMENDATION

Follow through with both recommendations: assign staff to draft new language and amend Chapter 20 of CED Policies and Procedures to cover dealers doing Internet business to ensure compliance with existing dealer licensing requirements; and perform further research on this topic through assignment of a separate Service Request. It was outside the scope of this initial service request, but a closer examination of the way all states in the U.S. address vehicle sales over the Internet may be instructive to determine which steps NV and the Department could take next in further regulating this type of dealer activity, if necessary.



INTRODUCTION

This report responds to your request for information concerning sales of motor vehicles over the Internet and the status of legislation and regulations regarding this activity among all 50 states.

ISSUE

Specifically, you wanted to know the current position, on a state-by-state basis, of laws that particularly allowed, prohibited, or did not address the activity of Internet motor vehicle sales by dealers within the individual jurisdictions.

OBJECTIVE

Based on the information gathered develop, as necessary, statutory and/or Department policy and procedural language to address dealer sales of vehicles over the Internet in Nevada.

FINDINGS

General Overview

Sales of motor vehicles have long been considered a key area of state regulation and an important economic component. As you are aware, per Nevada Revised Statute (NRS) 482.318, the state takes the view that “the distribution and sale of motor vehicles in the State of Nevada vitally affects the general economy of the State and the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate and to license motor vehicle manufacturers, distributors, new and used vehicle dealers, brokers, rebuilders, leasing companies, salespersons, and their representatives doing business in the State of Nevada in order to prevent frauds, impositions and other abuse upon its citizens.” To this end, the state, with the Department acting as its primary regulatory agency, has enacted numerous provisions both within NRS and the Nevada Administrative Code (NAC) to govern these activities. However, it may be questionable if these provisions have kept up with recent technological advances, such as the Internet and the growing use of e-commerce and social media, which may pose a significant challenge to the established practices of conducting the motor vehicle sale business, and how to regulate such activity effectively for protection of business and public interest.

State-by-State Status of Internet Vehicle Sales

The following is a survey of all fifty (50) states to determine what, if any, laws or regulations are currently in force that address the activity of Internet sales of motor vehicles. Information was obtained via two methods: a review of state statutes or legislative code that contained any reference to motor vehicle dealer activity and Internet sales, and; direct telephone or email queries to motor vehicle departments or commissions in all jurisdictions to determine the existence of Internet-related provisions. The information is broken out into three columns; the first one listing the state; the second column indicating whether the state has any statutory language at all addressing Internet vehicle sales activity; and the last column to indicate if Internet sales activities are allowable by the existing language.

State	Statutes or Code Pertaining to Internet Vehicle Sales?	Allowable (Y/N)?
Alabama	Department of Revenue FAQ	Not specifically addressed, but requires dealer license for internet sales
Alaska	Consumer Affairs refers to FTC guidelines on internet sales	Not specifically addressed.
Arkansas	No	Not specifically addressed.
Arizona	<ul style="list-style-type: none"> • ARS §§28-4415, 28-4417, 28-4591; • Arizona Auto Dealer Association Internet Marketing Update; • Arizona Attorney General Advertising Guidelines. 	Not specifically addressed, viewed as advertising medium, sellers still required to be licensed as dealers or brokers.

California	No	Not specifically addressed, viewed as an advertising medium, sellers required to comply with disclosure requirements and vehicle sale not deemed completed until buyer pays purchase price and takes possession.
Colorado	Possible pending bill on dealer licensing	Not specifically addressed.
Connecticut	<ul style="list-style-type: none"> Dept. Consumer Protection Auto Ad Regulations; CARA Bulletin (12/29/12) 	Not specifically addressed, but dealers are ultimately responsible for all advertising and brokers are required to be licensed.
Delaware	No	Not specifically addressed, permissible if dealer complies with all other requirements and sale transacted at dealer place of business.
Florida	No	Not specifically addressed, permissible as long as the dealer complies with all other requirements.
Georgia	Governor's Office of Consumer Protection, Auto Advertising and Sales Policies	Not specifically addressed, however, internet sales permitted and governed by the requirements set forth by the Office of Consumer Protection.
Hawaii	No	No; state DMV indicates that the laws regarding the requirement for dealers to have a physical premises and business location to transact vehicle purchases at serve as a barrier to Internet sales of vehicles, otherwise dealer websites function as advertising.
Idaho	No	Not specifically addressed, no outright prohibitions, as long as the dealer is licensed and transaction takes place at dealer's place of business, Internet advertising and sales ok.
Illinois	IADA Bulletin (1/3/12)	Pending review by AG's office regarding whether an online lead generation service violates IL advertising regulations.
Indiana	Yes; Indiana Code Sec. 9-23-2-15	Yes; provides that a dealer that sells a vehicle through the use of the Internet will deliver the vehicle to the customer at the dealer's place of business in IN. Brokering is prohibited.
Iowa	No	Not specifically addressed, no outright prohibitions, as long as the dealer is licensed and complies with all other aspects of related statutes and advertising regulations.
Kansas	<ul style="list-style-type: none"> KSA 2010 Supp. 8-2401(x) Kansas Dept. of Rev. Dealer Bulletin re Prohibitions on Brokering Vehicle Sale Transactions (12/20/11) 	Brokers must be licensed whether conducting sales in person or over the Internet. Internet marketing and sales remains under investigation and development by the Department of Revenue.
Kentucky	<ul style="list-style-type: none"> KADA Dealer Bulletin (1/5/12) KRS 190.030 KRS 186A.220 	Internet sales not specifically addressed. Brokering prohibited and pending investigations by the KADA, Kentucky Motor Vehicle Commission and the Attorney General office to see if internet sales lead programs violate KY laws.
Louisiana	<ul style="list-style-type: none"> La Rev. Stat. 32:781. La Rev. Stat. 32:1252(5). 32:1254(8) 	Brokers must be licensed in LA and must comply with all licensing/advertising regulations. Online sales permissible but must comply with licensing and advertising regulations.
Maine	Maine AG Consumer Law Guide §8.15. A.	Not specifically addressed, however DMV staff note that they do attempt to control Internet vehicle sales by requiring that dealers be licensed to sell in Maine, maintain a physical location in the state and the licensee must always be present. Dealers must comply with advertising regulations, however, which address internet sales.
Maryland	<ul style="list-style-type: none"> MADA Bulletin (1/4/12) 	Not specifically addressed, dealers must otherwise be in compliance with all other requirements, activity is

	<ul style="list-style-type: none"> • <u>Detroit Automotive Purchasing v. Lee</u>, 463 F.Supp. 954 (1978) 	<p>permissible.</p> <p>MADA Bulletin (1/4/12): An online vehicle referral program requiring a dealer to pay a fee upon the sale of a vehicle violates Maryland's dealer licensing law. MD's licensing law requires a physical location and unexpired franchise agreement to be a licensed dealer. Sale of vehicles must be by a licensed salesperson employed by a licensed dealer.</p>
Massachusetts	No	Not specifically addressed but dealers must comply with advertising regulations.
Michigan	No	Not specifically addressed, dealers must otherwise be in compliance with all other requirements, activity permissible.
Minnesota	No	Not specifically addressed, however DMV staff noted that sales should be taking place at the dealer's physical place of business.
Mississippi	No	Not specifically addressed, provisions regarding the Internet included in with advertising language and treated in a similar manner. Mississippi prohibits brokering.
Missouri	No	Not specifically addressed, sales must be transacted at the dealership premises and dealer must be in compliance with all other requirements. Brokers must be licensed.
Montana	No	Not specifically addressed. Montana licenses brokers.
Nebraska	No	Not specifically addressed. Nebraska prohibits brokering and regulates dealer advertising. Dealer Licensing Board historically has expressed concerns re internet lead generation model.
Nevada	No	Not specifically addressed.
New Hampshire	No	Not specifically addressed.
New Jersey	Yes, Sec. 39:10-19.1	Dealers are allowed to advertise on the Internet regarding their vehicles; however the purchase transaction has to be completed at the dealer's physical business location.
New Mexico	No	Not specifically addressed, technically allowable if dealer is licensed and complies with all other requirements including advertising regulations. However, having issues with amounts of activity currently taking place over the Internet especially with regard to unlicensed private sellers.
New York	<ul style="list-style-type: none"> • Attorney General Advertising Guidelines • GNYADA Bulletin (12/29/11) • NYSADA Bulletin (1/5/12) 	Not specifically addressed. The Attorney General regulates dealer advertising but the state of NY does not prohibit brokering.
North Carolina	<ul style="list-style-type: none"> • NCADA email (12/27/11) 	Not specifically addressed, permissible as long as the dealer is licensed and complies with all other requirements. North Carolina prohibits brokering and regulates advertising.
North Dakota	No	Not specifically addressed, allowable if dealer is licensed and complies with all other requirements.
Ohio	<p>Yes;</p> <ul style="list-style-type: none"> • Ohio Rev. Code §4516.59 • Ohio Rev. Code §4517.20 	<p>Referenced as a part of OH's franchise law regarding prohibited acts; provides that franchisors cannot discriminate among dealers in any program that provides assistance, including Internet listings. Otherwise no other restrictions against dealers maintaining Internet sites for vehicle sales.</p> <p>Ohio prohibits brokering and requires sales to take place through licensed sales people.</p>
Oklahoma	<ul style="list-style-type: none"> • 47 O.S. §579.1 (brokering) • OMVC Advertising Rules 	<p>Not specifically addressed, sales through the Internet by dealers governed under the same laws as sales from their licensed location.</p> <p>Oklahoma prohibits brokering unless a licensed manufacturer, distributor or franchised dealer, and regulates</p>

		dealer advertising.
Oregon	<ul style="list-style-type: none"> • Or. Admin. R. § 137-020-0020, et seq. • Or. Admin. R. 137-020-0050 • Or. Rev. Stat. § 822.047(1)(b) 	<p>Not specifically addressed, they interpret their current dealer sales and advertising guidelines to take the Internet into account.</p> <p>Oregon requires brokers to be licensed and regulates dealer advertising, including online advertising.</p>
Pennsylvania	<ul style="list-style-type: none"> • PAA Bulletin (1/6/12) • 63 Pa. Stat § 818.2 • 63 Pa. Stat § 818.5 	<p>Not specifically addressed.</p> <p>PA prohibits brokering and regulates dealer advertising.</p>
Rhode Island	<ul style="list-style-type: none"> • Rhode Island General Laws 31-5-5 • RI Administrative Code 47-1-38: IX 	<p>Not specifically addressed, permissible as long as the dealer is licensed and complies with all other requirements.</p> <p>RI requires brokers to be licensed as dealers and regulates dealer advertising.</p>
South Carolina	SC Code §37-2-308	<p>Not specifically addressed, dealer must be in compliance with all other requirements for permissible Internet activity. However state statute Sec. 56-15-45 allows for manufacturers or franchisors to establish an e-commerce website for the purpose of referring prospective customers to franchised dealers.</p> <p>SC regulates dealer advertising, which by definition includes Internet advertising. (SC Code §37-2-308)</p>
South Dakota	<p>No</p> <ul style="list-style-type: none"> • S.D. Codified Laws § 32-6B-1(3) • S.D. Codified Laws § 32-6B-4.1 • S.D. Codified Laws § 32-6B-63 	<p>Not specifically addressed.</p> <p>South Dakota prohibits brokering and regulates dealer advertising.</p>
Tennessee	<p>No</p> <p>Tenn. MV Comm. Rule 0960-1-.12</p>	<p>Not specifically addressed, however vehicle sales transactions should be completed at the dealer's physical location.</p> <p>TN regulates dealer advertising through its motor vehicle commission.</p>
Texas	<p>Yes; Sec. 2301.362</p> <p>Tex. Occ. Code § 2301.006, See Tex. Att'y Gen., Op. MW-356.</p> <p>43 Tex. Admin. Code § 215.242</p>	<p>Yes; law makes allowance for a licensed dealer to sell or offer to sell a vehicle over the Internet if the buyer never personally appears at the dealer's place of business.</p> <p>Texas prohibits brokering and regulates dealer advertising, which by definition includes online advertising. 43 Tex. Admin. Code § 215.244...</p>
Utah	<p>No</p> <p>Utah Code Ann. § 41-3-201.5, Utah Code Ann. § 41-3-210.</p> <p>Utah Admin. Code R877-23V-7</p>	<p>Not specifically addressed, permissible as long as the dealer is licensed and doesn't violate advertising laws.</p> <p>Utah prohibits brokering without a license and regulates dealer advertising.</p>
Vermont	No	Not specifically addressed, is a permissible activity as long as dealer is in compliance with all other requirements, advertising regulations and dealer report of sale

Virginia	<p>Yes.</p> <ul style="list-style-type: none"> • Internet Task Force • Motor Vehicle Board Bulletin (1/11/12) • VA Code §46.2-1537 	<p>documentation completed.</p> <p>The Internet Task Force supports the idea that an unlicensed third-party vendor may establish a website that includes the inventory of different dealers, so long as consumers must visit the dealer where a vehicle is located to purchase the vehicle. This situation includes, but is not limited to “referrals” sent to dealers from the unlicensed third-party. However, the ITF limits support of this model to situations where payment for this service from the motor vehicle dealer to the unlicensed third-party vendor is not “transactional.” The ITF supports the idea that licensed motor vehicle dealers may only compensate an unlicensed third-party vendor by a flat payment structure (e.g. per month) rather than per sale, per referral or any other transactional basis.</p> <p>www.mvdb.virginia.gov.</p> <p>Virginia does not license brokers and regulates dealer advertising. It is unlawful to compensate anyone who is not a licensed salesperson or dealer for the sale of a motor vehicle.</p>
Washington	Yes; WAC 308-66-250	<p>Yes; state DMV requires that an Internet vehicle sales business with no physical presence in the state must have a dealer’s license if the business brings together a WA state customer with a dealer in the state, and if the business receives compensation from the customer or dealer, or otherwise acts as a dealer currently defined by WA statute.</p>
West Virginia	No	Not specifically addressed, permissible if dealer is licensed and in compliance with all other requirements.
Wisconsin	<p>Yes</p> <ul style="list-style-type: none"> • Wis. Admin. Code § Trans. 139.035 • Wis. Admin. Code § Trans. 138.03(6) • WATDA Bulletin (12/20/11) 	<p>Wisconsin prohibits bird dog fees.</p> <p>A motor vehicle dealer who is <i>not located in this state</i>, who accepts vehicle purchase orders or lease agreements placed by fax, telephone, the <u>Internet</u>, mail, or some other remote means from persons within this state, and who delivers vehicles to persons within this state is <i>exempt from the dealer business facilities requirements</i> of sub. (1), provided that the dealer maintains a business office in another jurisdiction at which the books, records and files pertaining to vehicle sales or leases to persons in this state are maintained and the dealer makes these documents available to the department for inspection upon demand. Nothing in this section shall be construed to exempt the dealer from the license requirement of s. 218.0114 (1), Stats. Wis. Admin. Code § Trans. 138.03(6) (2011).</p>

From the information gathered, several results can be noted:

- A large majority (43) of states do not address the issue at all, either in their statutes or regulation, concerning selling of motor vehicles through the Internet;
- A handful (7) of states have begun to address the topic of Internet sales by enacting legislation that speaks specifically to dealer Internet sales activity;
- One state (Hawaii), despite not having language that directly addresses Internet vehicle sales, nevertheless interprets their law as not allowing such Internet

activity to take place. Dealer websites, while they do exist, function as advertising only, all vehicle transactions and purchases must take place at the dealer's physical location or premises;

- One state (Washington) has taken the step of addressing the issue of Internet motor vehicle sale businesses that have no presence in the state and how they should be regulated;
- Of the majority of states that do not address the issue at all, nearly all the regulatory bodies indicated that, providing the dealer was licensed in good standing with the Department and complied with all other dealer requirements for doing business, that Internet sales activities could be permissible;
- Three states (California, Colorado and Missouri) noted that their legislative and/or regulatory bodies are in the process of considering legislation currently or in the near future to address specifically Internet vehicle sale activity in their states, and;
- Concerns that some states noted regarding Internet vehicle sales were: unlicensed sale activity by members of the general public selling excessive amounts of vehicles without registering or reporting tax; and lack of buyer remedies in the case of fraudulent or unethical sales of bad vehicles.

Additional Related Issues

Demand for Internet Vehicle Sales

Recent poll data, conducted within the last decade, has shown that there is strong consumer demand for Internet vehicle sales. Data taken from a 2001 Consumer Federation of America poll stated that 78% of respondents indicated that they thought that consumers should have the ability to purchase cars directly from manufacturers or third parties using the Internet, and 51% indicated that they felt "strongly so" of that statement; only 16% disagreed. Furthermore, 78% of respondents to the poll indicated that they oppose laws that require all car sales to go through car dealerships, and 59% felt "strongly so" about the statement; 19% disagreed.

A number of factors are influencing Internet involvement in the vehicle buying process. According to a 2011/2012 Caronline survey report from Capgemini, findings showed that:

- Nearly 95% of polled consumers said they use Internet as a source during the vehicle buying process, and the use of social media and other online tools among consumers is growing at a rapid pace;
- Reasons cited as primary drivers for purchasing vehicles over the Internet were- expected price discounts (35%), and ease and speed of transaction (29%);

- 42% of consumers indicated that they were likely to purchase a vehicle over the Internet. As further evidence of the growing use of the Internet in vehicle sales, eBay recently noted in a news release to investors that the two millionth passenger vehicle was sold through their eBay Motors website. This segment of the market is likely to continue to evolve and expand with the passage of time and consumer demand increases.

Internet Vehicle Sales Directly by Manufacturers

The selling of cars by manufacturers directly to consumers via the Internet is considered a highly controversial topic, and was not considered as a part of this report mainly because such a proposal would run directly contrary to established dealer and franchise law in Nevada and all other states, and could not be permitted as the law exists now. The general precept underpinning these laws is that no auto manufacturer can directly compete against its franchisees in the sales of vehicles. Dealers contend that such laws are necessary to protect their substantial, long-term investment in fixed assets and inventory from exploitation or abuse by manufacturers. Yet it is important to note that this issue is a key one that is driving the national conversation of Internet vehicle sales and will most likely need to be addressed in the future; in the Capgemini report referenced above, it was noted that many consumers anticipate more direct contact with vehicle manufacturers in an online car sales model. Over the past several years, as also referenced above, polls and surveys of auto consumers have shown a consistent and increasing willingness to purchase vehicles online, due in part to the increasing improvement of Internet communications (both in terms of speed and Internet availability), consumer comfort and familiarity with the Internet, and an increased variety of product offerings. Restrictive barriers enacted by franchise law have kept this segment of the market from growing and will continue to do so as long as they remain in place; however consumer desire to purchase vehicles over the Internet will continue to keep this issue alive and germane.

Examples of Dealer Internet Sales Activity

This report reviewed AutoNation, which, through numerous subsidiaries and franchises, operates the largest retail dealership in the United States. The company, based in Florida, operates approximately 350 dealerships in several states, including Nevada (under the Desert dealership marque in Las Vegas). I spoke with Guillermo Pernas, legal counsel for the company (954-769-2347) concerning their Internet sales business model. He informed me that AutoNation Direct, their Internet sales arm, is a subsidiary of the AutoNation parent, and offers an online means of researching, locating and acquiring a new or used vehicle with very little or in certain circumstances no contact with a salesman or physical dealership. Potential customers call or email AutoNation Direct and are contacted by a Personal Auto Consultant (who operate out of several call/Internet center hubs across the country) and talk with the customer to determine what the customer is looking for, locate vehicles among all their affiliated dealer's inventory, provide pricing and trade in value information, arrange credit applications,

and can arrange for the customer to take delivery of the car, either at the dealership or delivered to the customer's home or office.

Mr. Pernas indicated that while this is the basic model, mainly their representatives try to have the customer go into the dealership to finish most sales once the vehicle has been found (either to an AutoNation dealer where the customer is, or delivered to an affiliated dealership in the customer's location). On their website, while credit applications and financing can be processed, customers will still mainly need to come into the dealership to transact the actual sale. Mr. Pernas noted that this segment of their business continues to grow, and has been primarily driven by customers that are seeking a more "Amazon-like" buying experience for cars, referring to the ease, success and model of Amazon.com selling and delivering consumer goods to their online customers.

Mr. Pernas did indicate that AutoNation Direct has run into obstacles with their business model, such as coming up against prohibitions or restrictions in various states regarding car brokering, Internet/call center staff licensing as salesmen, and reimbursement for referrals or sales leads. Furthermore, he stated that if states or jurisdictions were seeking to facilitate increased Internet vehicle sales, regulatory authorities may want to consider such actions as: loosening restrictions on broker licensing by not requiring a physical location, signage, etc...; removing prohibitions on payments for referrals or sales leads; and possibly easing restrictions on salesman licensing requirements to allow for call center or Internet center setups to be established without physical inventory locations.

Potential Legislation for Nevada

As mentioned in the chart above, Nevada has no specific provisions within Chapter 482 of NRS dealing with Internet motor vehicle sales; statute has been largely silent on this and in the absence of any direct prohibitions, dealers and members of the public have been engaged in varying levels of Internet activity regarding car sales.

Given all the information listed above and taking into account the increasing use and popularity of the Internet for e-commerce, if the state and the Department wish to address this topic as a regulatory issue, several potentially conflicting items will need to be balanced:

- Facilitating consumer desire for an easier, price-friendly and convenient way of purchasing vehicles through use of the Internet to the point where car buying may become as simple as purchasing a DVD or computer online;
- Protecting consumers from fraudulent activity, whether from dealers or individual members of the public;

- Maintaining clear and vigilant regulatory oversight of the motor vehicle industry and ensuring that entities doing business within the state are doing business in accordance with statute and regulation;
- Protecting established dealers within the existing framework of franchise law and from unfair competition, and;
- Enhancing the Department and the state's position as a business-friendly area that encourages innovation and utilization of technologies to benefit residents and customers.

Nevada legislative language for addressing Internet vehicle sales may take the following shape, based on the statutory models that have been enacted in other jurisdictions. Chapter 482 of NRS, in the section relating to dealers and their licensing requirements, would likely be the most appropriate area to include the following language (new language to be included is in blue):

Chapter 482.323 of the Nevada Revised Statutes is revised to read as follows-

Sec. 482.323- Established place of business required for dealers, short-term lessors and brokers; notification of Department of branches by short-term lessors.

1. Except as otherwise provided in subsections 2 and 3, every vehicle dealer shall maintain an established place of business in this State which:

- (a) Includes a permanent enclosed building, owned in fee or leased, with sufficient space to display one or more vehicles which the dealer is licensed to sell; and*
- (b) Is principally used by the dealer to conduct his or her business.*

2. Every used vehicle dealer, trailer dealer or semitrailer dealer shall maintain an established place of business in this State which has:

- (a) Sufficient space to display one or more vehicles;*
- (b) Boundaries which are clearly marked; and*
- (c) A permanent enclosed building large enough to accommodate his or her office and provide a safe place to keep the books and other records of the business.*

3. A dealer or vehicle dealer, as defined in NRS 482.020, may sell or offer to sell motor vehicles through the use of the Internet or other computer network:

- a. If they are licensed with the Department in accordance with the requirements as contained in NRS 482.319 to 482.363105;*
- b. Online through an advertisement on the Internet;*
- c. Through the dealer's established website, up to and including payment and transaction of the sale;*
- d. Through acceptance of referrals from their brand manufacturers website;*
- e. To a buyer or customer who never personally appears at the dealer's established and permanent place of business;*

- f. Or may deliver the motor vehicle to the buyer or customer at the dealer's established and permanent place of business in the state of Nevada.
4. A broker, as defined in NRS 482.0127, may offer to sell motor vehicles through the use of the Internet or other computer network:
 - a. If they are licensed with the Department in accordance with the requirements as contained in NRS 482.319 to 482.363105;
 - b. Through forwarding of referrals or leads to licensed dealers in the state of Nevada.
 5. The Department will require a Nevada dealer's license for an Internet business that has no physical presence in the state if that business:
 - a. Brings together a customer that resides in the state of Nevada with a Nevada licensed dealer;
 - b. Receives compensation from the customer or the dealer resulting from the sale of the vehicle;
 - c. In any event acts as a vehicle dealer as defined in NRS 482.020.
 6. A short-term lessor shall:
 - (a) Designate his or her principal place of business as the short-term lessors established place of business and each other location where the short-term lessor conducts business as a branch that is operated pursuant to the license for the principal place of business.
 - (b) Notify the Department of each branch at which he or she conducts business by filing, on forms provided by the Department, such information pertaining to each branch as required by the Department.
 7. Every broker shall maintain an established place of business in this State which is in a permanent building with sufficient space to accommodate his or her office.

Potential Departmental Regulatory or Procedural Language

In order to address the Internet sales activities of dealers in a more timely fashion, the Department may wish to consider modifying existing OBL policies and procedures to begin outlining acceptable activities. CED 20.11.8 (Business License Change) of the Department's Policies and Procedures could be amended to include the following language (new language to be included is in blue):

H. Dealer Internet Sales Activities

1. Motor vehicle dealers have the ability to engage in the advertising, marketing and/or sale of vehicles through the Internet if:
 - a. The dealer holds a valid license issued by the Department;
 - b. The dealer is in good standing with the Department;
 - c. The dealer complies in all other respects with the licensing provisions for dealers as contained in NRS and NAC 482;

2. Sales of motor vehicles that are transacted wholly or in part through the Internet must be finalized at the dealer's physical location, and provide that:
 - a. If the vehicle is to be picked up at the dealer's location, all title and required documentation must be completed at that time to provide the buyer with all documents necessary for registration with the Department;
 - b. If the vehicle is to be shipped to the buyer (either within the state or outside of the state), the buyer assumes all responsibility for obtaining the proper documentation for the registration and proof of ownership of the vehicle.

3. The practice of "curbstoning" (the sale of motor vehicles by unlicensed dealers posing as private parties) on vacant lots, parking lots or other area of land not identified as a dealer's place of business, is strictly prohibited. Per NRS 482.020, a dealer is defined, in part, as any person who sells more than three (3) vehicles per year. All motor vehicle dealers and salespersons must be licensed by the Department, and principal and branch locations for the dealer must be identified. The Department does not monitor the Internet or its associated sites for unlicensed dealer motor vehicle sales activity or unethical sales behavior; however consumers, if they are the victim of unethical sales activity, are encouraged to perform the following actions:
 - a. Contact their local law enforcement agency to file a complaint and retain a copy of the report;
 - b. Contact the Department's Occupational and Business Licensing (OBL) Division and file a complaint about the unethical activity and the dealer, using the CED-20 Complaint form and following the procedures outlined in the CED-02 "What You Should Know, Before Filing a Complaint" information sheet. Please attach copies of all available information regarding the sales, including dealer name(s), web addresses, phone numbers, location where vehicle was delivered or picked up, and any other relevant information.

4. The Department, when it receives a complaint regarding fraudulent or unethical Internet vehicle sales activity, will take the following actions upon the receipt of a complaint:
 - a. Open or maintain a file with the dealer or person with whom the complaint was filed against;
 - b. Forward the complaint and file to the Compliance Enforcement Division (CED) for further evaluation and action. The Division will take the following factors into account before determining the necessity for investigation:

- i. Current caseload of investigators;
 - ii. Severity of complaint and criminal activity committed (if any);
 - iii. Prior history (if any) of complaints, and;
 - iv. Available resources for investigation.
- c. Investigations into these types of activity will be determined and assigned by the CED supervisors in conjunction with the OBL supervisor.