

P.L.2015, CHAPTER 24, ***approved March 18, 2015***

Assembly, No. 3216

1 **AN ACT** concerning the sale of zero emission motor vehicles,
2 amending R.S.39:10-19 and P.L.1999, c.45, amending and
3 supplementing P.L.1985, c.361, and supplementing P.L.2003,
4 c.266 (C.26:2C-8.15 et al.).

5

6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8

9 1. R.S.39:10-19 is amended to read as follows:

10 39:10-19. No person shall engage in the business of buying,
11 selling or dealing in motor vehicles in this State, nor shall a person
12 engage in activity that would qualify the person as a leasing dealer,
13 as defined in section 2 of P.L.1994, c.190 (C.56:12-61), unless: a.
14 the person is a licensed real estate broker acting as an agent or
15 broker in the sale of mobile homes without their own motor power
16 other than recreation vehicles as defined in section 3 of P.L.1990,
17 c.103 (C.39:3-10.11), or manufactured homes as defined in section
18 3 of P.L.1983, c.400 (C.54:4-1.4); or b. the person is authorized to
19 do so under the provisions of this chapter and P.L.1985, c.361
20 (C.56:10-26 et seq.) .

21 The chief administrator may, upon application in such form as
22 the chief administrator prescribes, license any proper person as such
23 dealer or leasing dealer. A licensed real estate broker shall be
24 entitled to act as an agent or broker in the sale of a mobile or
25 manufactured home as defined in subsection a. of this section
26 without obtaining a license from the chief administrator. For the
27 purposes of this chapter, a "licensed real estate broker" means a real
28 estate broker licensed by the New Jersey Real Estate Commission
29 pursuant to the provisions of chapter 15 of Title 45 of the Revised
30 Statutes. Any sale or transfer of a mobile or manufactured home, in
31 which a licensed real estate broker acts as a broker or agent
32 pursuant to this section, which sale or transfer is subject to any
33 other requirements of R.S.39:10-1 et seq., shall comply with all of
34 those requirements.

35 No person who has been convicted of a crime, arising out of
36 fraud or misrepresentation in the sale, leasing or financing of a
37 motor vehicle, shall be eligible to receive a license. For the
38 purposes of this section, each applicant for a license shall submit to
39 the chief administrator the applicant's name, address, fingerprints,
40 and written consent for a criminal history record background check

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 to be performed. The chief administrator is hereby authorized to
2 exchange fingerprint data with and receive criminal history record
3 information from the State Bureau of Identification in the Division
4 of State Police and the Federal Bureau of Investigation consistent
5 with applicable State and federal laws, rules, and regulations, for
6 purposes of facilitating determinations concerning licensure
7 eligibility. The applicant shall bear the cost for the criminal history
8 record background check, including all costs of administering and
9 processing the check. The Division of State Police shall promptly
10 notify the chief administrator in the event a current holder of a
11 license or prospective applicant, who was the subject of a criminal
12 history record background check pursuant to this section, is arrested
13 for a crime or offense in this State after the date the background
14 check was performed.

15 Each applicant for a license shall at the time such license is
16 issued have established and maintained, or by that application shall
17 agree to establish and maintain, within 90 days after the issuance
18 thereof, a place of business consisting of a permanent building not
19 less than 1,000 square feet in floor space located in the State of
20 New Jersey to be used principally for the servicing and display of
21 motor vehicles with such equipment installed therein as shall be
22 requisite for the servicing of motor vehicles in such manner as to
23 make them comply with the laws of this State and with any rules
24 and regulations made by the board governing the equipment, use,
25 and operation of motor vehicles within the State. However, a
26 leasing dealer, who is not engaged in the business of buying,
27 selling, or dealing in motor vehicles in the State, shall not be
28 required to maintain a place of business with floor space available
29 for the servicing or display of motor vehicles or to have an exterior
30 sign at the lessor's place of business.

31 A license fee of \$200 shall be paid by an applicant upon the
32 applicant's initial application for a license. The chief administrator
33 may renew an applicant's license upon application for renewal on a
34 form prescribed by the chief administrator and accompanied by a
35 renewal fee of \$200. Every license shall expire 24 months from the
36 date on which it is issued. The chief administrator may, at the chief
37 administrator's discretion and for good cause shown, extend an
38 applicant's license for an additional period not to exceed 12 months
39 from the date on which it is scheduled to expire. The chief
40 administrator may, at the chief administrator's discretion and for
41 good cause shown, issue a license which shall expire on a date fixed
42 by the chief administrator. The fee for licenses with an expiration
43 date fixed by the chief administrator shall be fixed by the chief
44 administrator in an amount proportionately less or greater than the
45 fee established herein.

46 For the purposes of this section, a leasing dealer or an assignee
47 of a leasing dealer whose leasing activities are limited to buying
48 motor vehicles for the purpose of leasing them and selling motor

1 vehicles at the termination of a lease shall not be deemed to be
2 engaged in the business of buying, selling, or dealing in motor
3 vehicles in this State.

4 (cf: P.L.2007, c.335, s.24)

5

6 2. Section 5 of P.L.1999, c.45 (C.56:10-7.4) is amended to read
7 as follows:

8 5. It shall be a violation of P.L.1971, c.356 (C.56:10-1 et seq.)
9 for any motor vehicle franchisor, directly or indirectly, through any
10 officer, agent or employee, to engage in any of the following
11 practices:

12 a. To impose unreasonable standards of performance or
13 unreasonable facilities, financial, operating or other requirements
14 upon a motor vehicle franchisee.

15 b. To base the disapproval of the transfer, sale or assignment of
16 a motor vehicle franchise, or any interest therein, on the ground that
17 the proposed transferee is not a natural person.

18 c. To fail to compensate a motor vehicle franchisee for all
19 reasonable costs incurred by the franchisee in complying with the
20 requirements imposed on the franchisee by the franchisor relating to
21 a product recall.

22 d. To utilize an arbitrary or unreasonable formula or other
23 calculation or process intended to gauge performance as a basis for
24 making any decision or taking any action governed by P.L.1971,
25 c.356 (C.56:10-1 et seq.).

26 e. **【To】** Except as provided pursuant to section 6 of P.L. __,
27 c. (C. __) (pending before the Legislature as this bill), to own or
28 operate or enter into an agreement with a person, other than an
29 existing motor vehicle franchisee, to operate a retail facility for the
30 servicing of motor vehicles, which is authorized to perform
31 warranty service on motor vehicles manufactured or distributed by
32 the motor vehicle franchisor. The establishment, relocation,
33 reopening or reactivation of such a facility pursuant to an agreement
34 with a motor vehicle franchisee shall be subject to the provisions of
35 P.L.1982, c.156 (C.56:10-16 et seq.), except that paragraph (3) of
36 subsection b. of section 8 of that act (C.56:10-23) shall not be
37 applicable. Notice shall be given to motor vehicle franchisees in
38 the same line make or makes within six miles of the proposed retail
39 facility for the servicing of motor vehicles which is authorized to
40 perform warranty service on motor vehicles manufactured or
41 distributed by the motor vehicle franchisor.

42 f. To require an unconditional release from a motor vehicle
43 franchisee without permitting the franchisee to except from the
44 release any claims for outstanding financial obligations of the motor
45 vehicle franchisor to the motor vehicle franchisee for which
46 payment will not be made at or before the giving of the release.

47 g. (1) To require or attempt to require a motor vehicle franchisee
48 to order or purchase a new or used motor vehicle, or any accessory

1 or equipment thereof not required by law; or (2) to require or
2 attempt to require a motor vehicle franchise to accept delivery of
3 any motor vehicle, or any accessory or equipment thereof not
4 required by law, which is not as ordered by the motor vehicle
5 franchisee; or (3) to take or withhold or threaten to take or withhold
6 any action, impose or threaten to impose any penalty, or deny or
7 threaten to deny any benefit, as a result of the motor vehicle
8 franchisee's failure or refusal to purchase, order or accept delivery
9 of any such motor vehicle, accessory or equipment. This subsection
10 shall not prevent a motor vehicle franchisor from requiring that a
11 motor vehicle franchisee carry a representative inventory of models
12 offered for sale by the motor vehicle franchisor.

13 h. To fail or refuse to sell or offer to sell to all motor vehicle
14 franchisees in a line make every motor vehicle sold or offered for
15 sale to any motor vehicle franchisee of the same line make, or to
16 fail or refuse to sell or offer to sell such motor vehicles to all motor
17 vehicle franchisees at the same price for a comparably equipped
18 motor vehicle, on the same terms, with no differential in discount,
19 allowance, credit or bonus, and on reasonable, good faith and non-
20 discriminatory allocation and availability terms. However, the
21 failure to deliver any such motor vehicle shall not be considered a
22 violation of this section if the failure is not arbitrary and is due to a
23 lack of manufacturing capacity or to a strike or labor difficulty, a
24 shortage of materials, a freight embargo or other cause over which
25 the franchisor has no control. A motor vehicle franchisor shall not
26 require a motor vehicle franchisee to purchase unreasonable
27 quantities of advertising materials, purchase special tools not
28 required to properly service a motor vehicle or undertake sales
29 person or service person training unrelated to the motor vehicle or
30 meet unreasonable display requirements as a condition of receiving
31 a motor vehicle.

32 i. Unless compelled by law or legal process, (1) if the
33 customer has objected thereto in writing, to require a motor vehicle
34 franchisee to publish, release, convey or otherwise provide
35 information obtained with respect to any customers, contracts,
36 products, services or other transactions of the motor vehicle
37 franchisee which is not necessary for the motor vehicle franchisor
38 to meet its obligations to consumers or the motor vehicle
39 franchisee, including vehicle recalls or other requirements imposed
40 by State or federal law, or for complying with the duties or
41 obligations of the respective parties under the franchise; or (2) to
42 release such information which has been provided to it by the motor
43 vehicle franchisees to any third party.

44 j. To impose or attempt to impose any requirement, limitation
45 or regulation on, or interfere or attempt to interfere with, the
46 manner in which a motor vehicle franchisee utilizes the facilities at
47 which a motor vehicle franchise is operated, including, but not
48 limited to, requirements, limitations or regulations as to the line

1 makes of motor vehicles that may be sold or offered for sale at the
2 facility, or to take or withhold or threaten to take or withhold any
3 action, impose or threaten to impose any penalty, or deny or
4 threaten to deny any benefit, as a result of the manner in which the
5 motor vehicle franchisee utilizes his facilities, except that the motor
6 vehicle franchisor may require that the portion of the facilities
7 allocated to or used for the motor vehicle franchise meets the motor
8 vehicle franchisor's reasonable, written space and volume
9 requirements as uniformly applied by the motor vehicle franchisor.
10 The provisions of this subsection shall not apply if the motor
11 vehicle franchisor and the motor vehicle franchisee voluntarily
12 agree to the requirement and separate and valuable consideration
13 therefor is paid.

14 k. To require or attempt to require a motor vehicle franchisee,
15 or the owner or landlord of property on which a motor vehicle
16 franchise is operated, to give a motor vehicle franchisor or any
17 person under the control of the motor vehicle franchisor an interest
18 in or option with respect to the real property on which the motor
19 vehicle franchise is operated, to restrict the uses to which the
20 facility at which the motor vehicle franchise is operated may be put
21 during or after the term of the franchise, or to take or withhold or
22 threaten to take or withhold any action, impose or threaten to
23 impose any penalty, or deny or threaten to deny any benefit, as a
24 result of the failure or refusal of a motor vehicle franchisee,
25 property owner, or landlord to agree to or comply with any such
26 demand or restriction. Nothing in this subsection shall be deemed
27 to bar a voluntary agreement between a motor vehicle franchisor
28 and a motor vehicle franchisee, or the owner or landlord of property
29 on which a motor vehicle franchise is operated, to give the motor
30 vehicle franchisor or the person under the control of the motor
31 vehicle franchisor an interest in or option with respect to the real
32 property on which a motor vehicle franchise is operated, or to
33 restrict the uses to which the facility at which the motor vehicle
34 franchise is operated is put, provided that separate and valuable
35 consideration is paid for such interest, option or restriction.

36 l. To require or attempt to require a motor vehicle franchisee
37 to relocate his franchise or to implement any facility or operational
38 modification or to take or withhold or threaten to take or withhold
39 any action, impose or threaten to impose any penalty, or deny or
40 threaten to deny any benefit as a result of the failure or refusal of
41 such motor vehicle franchisee to agree to any such relocation or
42 modification, unless the motor vehicle franchisor can demonstrate
43 that: (1) funds are generally available to the franchisee for the
44 relocation or modification on reasonable terms; and (2) the motor
45 vehicle franchisee will be able, in the ordinary course of business as
46 conducted by such motor vehicle franchisee, to earn a reasonable
47 return on his total investment in such facility or from such
48 operational modification, and the full return of his total investment

1 in such facility or from such operational modifications within 10
2 years; or (3) the modification is required so that the motor vehicle
3 franchisee can effectively sell and service a motor vehicle offered
4 by the motor vehicle franchisor based on the specific technology of
5 the motor vehicle. This subsection shall not be construed as
6 requiring a motor vehicle franchisor to guarantee that the return as
7 provided in paragraph (2) of this subsection will be realized.

8 m. Directly, or through any financial institution having any
9 commonality of ownership with the motor vehicle franchisor, to
10 require or attempt to require, or to take or withhold or threaten to
11 take or withhold any action, impose or threaten to impose any
12 penalty, or deny or threaten to deny any benefit, as a result of the
13 failure or refusal of a motor vehicle franchisee to maintain working
14 capital, equity, floor plan financing or other indications of financial
15 condition, greater than the lesser of (1) the minimum required to
16 operate the motor vehicle franchise based on the operations of the
17 franchise over the prior 12-month period; or (2) an increase of no
18 more than 5% over the prior calendar year, unless the motor vehicle
19 franchisor, or the financial institution having any commonality of
20 ownership with a motor vehicle franchisor, can establish that such
21 failure or refusal prevents the franchisee from operating the
22 franchise in the ordinary course of business. This subsection shall
23 not apply if the working capital, equity, floor plan financing or
24 other indication of financial condition is the result of an
25 accommodation by the motor vehicle franchisor, or financial
26 institution with a commonality of ownership with the motor vehicle
27 franchisor, to the motor vehicle franchisee, containing specific
28 terms and deadlines for the restoration of the motor vehicle
29 franchisee's working capital, inventory, floor plan financing or
30 other indication of financial condition, which accommodation is
31 agreed to in writing by the motor vehicle franchisee.

32 n. To impose or attempt to impose any conditions on the
33 approval of the transfer of a motor vehicle franchise, except as
34 provided in section 6 of P.L.1971, c.356 (C.56:10-6).

35 o. To amend or modify the franchise of a motor vehicle
36 franchisee, or any lease or agreement ancillary or collateral to such
37 franchise, including in connection with the renewal of a franchise, if
38 such amendment or modification is not in good faith, is not for good
39 cause, or would adversely and substantially alter the rights,
40 obligations, investment or return on investment of the motor vehicle
41 franchisee.

42 p. To take or withhold or threaten to take or withhold any
43 action, impose or threaten to impose any penalty, or deny or
44 threaten to deny any benefit, because the motor vehicle franchisee
45 sold or leased a motor vehicle to a customer who exported the
46 vehicle to a foreign country or who resold the vehicle, unless the
47 motor vehicle franchisor can establish that the motor vehicle
48 franchisee knew or reasonably should have known, prior to the sale

1 or lease, that the customer intended to export or resell the motor
2 vehicle; provided, however, that it shall be presumed that the motor
3 vehicle franchisee did not know or should not have reasonably
4 known that the vehicle would be exported if the vehicle is titled or
5 registered in any state or the District of Columbia.

6 q. To require a motor vehicle franchisee, at the time of entering
7 into a franchise arrangement, any lease or agreement ancillary or
8 collateral to a motor vehicle franchise, or any amendment,
9 modification, renewal or termination thereof, to assent to a release,
10 assignment, novation, waiver or estoppel, which would relieve any
11 person from liability imposed by P.L.1971, c.356 (C.56:10-1 et
12 seq.); provided that nothing in this subsection shall be deemed to
13 prohibit a voluntary agreement between the motor vehicle
14 franchisor and the motor vehicle franchisee which contains a
15 release, assignment, novation, waiver or estoppel for which separate
16 and valuable consideration is paid by the motor vehicle franchisor
17 to the motor vehicle franchisee.

18 r. To provide any term or condition in any motor vehicle
19 franchise, in any lease or other agreement ancillary or collateral to a
20 motor vehicle franchise or in any renewal, amendment or
21 modification thereof, which term or condition directly or indirectly
22 violates P.L.1971, c.356 (C.56:10-1 et seq.).

23 s. To allocate vehicles to or evaluate the performance of a
24 motor vehicle franchise based on, or offer any discount, incentive,
25 bonus, program, allowance or credit that differentiates between
26 vehicle sales by a motor vehicle franchisee within a territory or
27 geographic area assigned to the motor vehicle franchisee and
28 vehicle sales outside of such territory or geographic area.

29 (cf: P.L.2011, c.66, s.2)

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31 3. Section 1 of P.L.1985, c.361 (C.56:10-26) is amended to
32 read as follows:

33 1. As used in this act:

34 **【a.】**"Consumer" means the purchaser, other than for resale, of a
35 motor vehicle **【;】**.

36 **【b.】** "Franchise" means a written arrangement for a definite or
37 indefinite period in which a motor vehicle franchisor grants a right
38 or license to use a trade name, trademark, service mark or related
39 characteristics and in which there is a community of interest in the
40 marketing of new motor vehicles at retail, by lease, agreement or
41 otherwise **【;】**.

42 **【c.】**"Motor vehicle" means and includes all vehicles propelled
43 otherwise than by muscular power, and motorcycles, trailers and
44 tractors, excepting: (1) those vehicles as run only upon rails or
45 tracks, motorized bicycles, and buses, including school buses; and
46 (2) those motor vehicles not designed or used primarily for the

1 transportation of persons or property and only incidentally operated
2 or moved over a highway **【;】** .

3 **【d.】** "Motor vehicle franchisee" means a person to whom a
4 franchise is granted by a motor vehicle franchisor and who or which
5 holds a current valid motor vehicle dealer's license issued pursuant
6 to R.S.39:10-19 and has an established place of business **【;】** .

7 **【e.】**"Motor vehicle franchisor" means a person engaged in the
8 business of manufacturing, assembling or distributing new motor
9 vehicles, or importing into the United States new motor vehicles
10 manufactured or assembled in a foreign country, who will under
11 normal business conditions during the year, manufacture, assemble,
12 distribute or import at least 10 new motor vehicles **【;】** .

13 **【f.】** "Place of business" means a fixed geographical location at
14 which the motor vehicle franchisor's motor vehicles are offered for
15 sale and sold, but shall not include an office, a warehouse, a place
16 of storage, a residence or a vehicle;

17 **g.】** "New motor vehicle" means a newly manufactured motor
18 vehicle **【;】** .

19 **【h.】** "Person" means a natural person, corporation,
20 partnership, trust, or other entity and, in the case of an entity, it
21 shall include any other entity which has a majority interest in that
22 entity or effectively controls that other entity as well as the
23 individual officers, directors, and other persons in active control of
24 the activities of each such entity.

25 "Place of business" means a fixed geographical location at which
26 the motor vehicle franchisor's motor vehicles are offered for sale
27 and sold, but shall not include an office, a warehouse, a place of
28 storage, a residence or a vehicle.

29 "Zero emission vehicle" means a motor vehicle certified as a
30 zero emission vehicle pursuant to the California Air Resources
31 Board zero emission vehicle standards for the applicable model
32 year, but shall not include an advanced technology partial zero
33 emission vehicle, a partial zero emission vehicle, or a hybrid
34 electric vehicle.

35 (cf: P.L.1991, c.409, s.1)

36

37 4. Section 2 of P.L.1985, c.361 (C.56:10-27) is amended to
38 read as follows:

39 2. **【It】** Except as provided pursuant to section 6 of P.L. ,
40 c. (C.) (pending before the Legislature as this bill), it shall be a
41 violation of this act for any motor vehicle franchisor, directly or
42 indirectly, through any officer, agent, employee, broker or any
43 shareholder of the franchisor, except a shareholder of 1% or less of
44 the outstanding shares of any class of securities of a franchisor
45 which is a publicly traded corporation, or other person, to offer to
46 sell or sell motor vehicles, to a consumer, other than an employee of

1 the franchisor, except through a motor vehicle franchisee.
2 (cf: P.L.1985, c.361, s.2)

3

4 5. Section 3 of P.L.1985, c.361 (C.56:10-28) is amended to
5 read as follows:

6 3. **【It】** Except as provided pursuant to section 6 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill), it shall be a
8 violation of this act for a motor vehicle franchisor, directly or
9 indirectly, through any officer, agent, employee, broker or any
10 shareholder of the franchisor, except a shareholder of 1% or less of
11 the outstanding shares of any class of securities of a franchisor
12 which is a publicly traded corporation, or other person, to own or
13 operate a place of business as a motor vehicle franchisee, except
14 that this section shall not prohibit the ownership or operation of a
15 place of business by a motor vehicle franchisor for a period, not to
16 exceed 24 consecutive months, during the transition from one motor
17 vehicle franchisee to another; or the investment in a motor vehicle
18 franchisee by a motor vehicle franchisor if the investment is for the
19 sole purpose of enabling a partner or shareholder in that motor
20 vehicle franchisee to acquire an interest in that motor vehicle
21 franchisee and that partner or shareholder is not otherwise
22 employed by or associated with the motor vehicle franchisor and
23 would not otherwise have the requisite capital investment funds to
24 invest in the motor vehicle franchisee, and has the right to purchase
25 the entire equity interest of the motor vehicle franchisor in the
26 motor vehicle franchisee within a reasonable period of time not to
27 exceed 10 years.

28 (cf: P.L.1993, c.189, s.4)

29

30 6. (New section) Notwithstanding the provisions of any law,
31 rule or regulation to the contrary, a motor vehicle franchisor
32 licensed pursuant to R.S.39:10-19 on or prior to January 1, 2014
33 and exclusively manufacturing zero emission vehicles may buy
34 from and sell, offer to sell, or deal to a consumer a zero emission
35 vehicle, provided that the franchisor owns or operates, directly or
36 indirectly:

37 (1) no more than four places of business in the State; and

38 (2) at least one retail facility for the servicing, including
39 warranty servicing, of zero emission vehicles sold, offered for sale,
40 or otherwise distributed in this State. This facility shall be
41 furnished with all the equipment required to service a zero emission
42 vehicle.

43 A franchisor shall not be required to establish or operate a place
44 of business at a retail facility for the servicing of zero emission
45 vehicles.

46

47 7. (New section) Before March 1 annually, all motor vehicle
48 franchisors and motor vehicle franchisees in the State, as defined

1 pursuant to section 1 of P.L.1985, c.361 (C.56:10-26), shall report
2 to the Division of Taxation the number of zero emission vehicles
3 sold in the State each calendar year and exempt from the tax
4 imposed under the "Sales and Use Tax Act," P.L.1966, c.30
5 (C.54:32B-1 et seq.) pursuant to section 11 of P.L.2003, c.266
6 (C.54:32B-8.55).

7
8 8. This act shall take effect immediately.

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11 STATEMENT

12
13 This bill allows a manufacturer ("franchisor," as defined in
14 P.L.1985, c.361 (C.56:10-26 et seq.)) to directly buy from or sell to
15 consumers a zero emission vehicle (ZEV) at a maximum of four
16 locations in New Jersey. In addition, the bill requires a
17 manufacturer to own or operate at least one retail facility in New
18 Jersey for the servicing of its vehicles. The manufacturer's direct
19 sale locations are not required to also serve as a retail service
20 facility.

21 The bill amends current law to allow any ZEV manufacturer to
22 directly or indirectly buy from and directly sell, offer to sell, or deal
23 to a consumer a ZEV if the manufacturer was licensed by the New
24 Jersey Motor Vehicle Commission (MVC) on or prior to January 1,
25 2014. This bill provides that ZEVs may be directly sold by certain
26 manufacturers, like Tesla Motors, and preempts any rule or
27 regulation that restricts sales exclusively to franchised dealerships.
28 The provisions of the bill would not prevent a licensed franchisor
29 from operating under an existing license issued by the MVC.

30 The bill additionally requires manufacturers and franchisees to
31 annually report to the Division of Taxation the number of ZEVs
32 sold in the State each calendar year. Under current law, these
33 vehicles are exempt from the State's sales and use tax.

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38 Permits certain zero emission vehicle manufacturers to directly
39 sell motor vehicles to consumers and requires them to operate
40 service facilities.