Georgia Direct Sales Bill Could Be Boon To EV Makers

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The Georgia Legislature is considering a new bill, S.B. 398, that would allow more direct sales in the state by qualified manufacturers of zero-emission motor vehicles. Stakeholders may want to take note and reach out to policymakers about the prospects and scope of the proposed exemption.

As consumers and businesses seek alternatives to gas-powered vehicles and are drawn toward more environmentally friendly options for transportation, makers of electric vehicles seek to fill the growing need. At the same time, state and local governments covet the high-tech jobs and tax revenue that come with new manufacturing facilities and the supporting ecosystem of vendors.

Enter Georgia, fresh from success in attracting the television and movie industry to "Hollywood South" with generous tax incentives and regulatory accommodation.

Already something of an automotive hub, with various vehicle manufacturers, suppliers, remarketers, vendors and investors in the metro Atlanta area, Georgia has now focused its sights on EV makers. In July 2021, the governor announced Georgia's new Electric Mobility and Innovation Alliance to support the growth of the electric mobility industry and foster innovation in the state.[1]

Then, in December 2021, after an aggressive courtship by the state, Rivian Automotive Inc. announced plans to build a $5 billion electric truck plant near Atlanta, which the governor's office has touted as the largest economic development in state history.[2]

Of course, Georgia would be even more attractive to EV makers if they could sell directly to end users in the state. So certain legislators have put forth a bill that would allow that in more cases for manufacturers focused on zero-emission offerings.

But, like most other states, Georgia has long-standing franchise restrictions and a strong dealer lobby likely to take a dim view of the direct competition.[3] At the same time, at least one high-profile challenger in the next governor's race, former Georgia senator David Perdue, has recently announced his opposition to the Rivian plant.[4] Thus, the battle lines are drawn.

The Bill: S.B. 398

Georgia has long-standing franchise laws against vehicle manufacturers selling directly to consumers in the state.[5] In 2015, apparently driven by lobbying from Tesla Inc., a limited exception was adopted for manufacturers that exclusively assemble zero-emission motor vehicles and have never sold vehicles in Georgia through a franchised new motor vehicle dealer. But it was restricted to five sales locations.

The new bill would jettison the five-location cap for EV makers that meet certain modest conditions. Those conditions include maintaining service and repair facilities in Georgia, directly or through an authorized agent, to satisfy consumer duties under the Georgia lemon law; being domiciled in the U.S.; and maintaining a physical location in the U.S. for the direction, control and coordination of activities.

S.B. 398 would potentially allow EV manufacturers like Rivian and Tesla to sell their electric vehicles directly to consumers more broadly throughout Georgia. If adopted, over opposition from franchised dealers, the bill could lure more zero-emission automakers to the state.

S.B. 398 — and a parallel bill with modest technical variations, S.B. 598 — are currently in the Senate for consideration, and should be voted on by the end of the legislative term on April 4. If approved by both the Georgia Senate and the Georgia House, the legislation would then be sent to the governor for signature.[6]

Potential Impacts

Newer U.S.-based EV-only car makers seem to be the most direct targets and potential beneficiaries of the new bill. Companies like Tesla, Rivian, Lucid Motors, Fisker Automotive Holdings, Faraday & Future Inc., Nikola Corp. and Canoo Inc., and their future competitors, may be in a position take advantage of the new law, if it passes, and increase their direct sales in Georgia.

Naturally, various suppliers and vendors would likely spring up in support of any direct sales locations — e.g., parts makers and distributors, transporters, charging services, etc. — along with the need for EV-focused sales, service and managerial employees.

While the requirement to have never sold through a franchise dealer in the state would seem to preclude most legacy vehicle manufacturers and their affiliates, it may be possible, through true spinoffs or other corporate restructuring, for the EV divisions of some traditional carmakers to take advantage of the new bill. Ford Motor Co. recently announced a historic restructuring that splits its company into two units — one for traditional gas-powered vehicles and another for battery-powered models.[7]

It's unclear if moves like that would be enough to fall within the bill's exceptions. It may depend on specific organizational details and corporate formalities going forward. But bills like Georgia's might be one of many factors in future industry spinoff decisions.

The requirement for a selling EV maker to maintain, "itself or through an authorized agent," service and repair facilities in the state to satisfy Georgia lemon law obligations may also be an opportunity for third-party repair companies and fleet servicers. Such businesses might step in and meet this repair requirement for out-of-state EV makers, achieving economies of scale that the manufacturers cannot achieve directly or immediately with limited sales in Georgia.

Conversely, whether or not they pursue direct physical sales in the state, certain EV makers selling online or remotely may be interested in offering branded service and repair locations in Georgia. In addition to sales centers, the proposed bill would continue to allow "any facilities that engage exclusively in the repair of line make motor vehicles" of the zero-emission manufacturer or its affiliates.

Makers of other types of zero-emission vehicles might benefit from the bill. Under Georgia law, a "motor vehicle" is every self-propelled vehicle intended primarily for use and operation on the public highways, except farm tractors and other machines and tools used in the production, harvesting and care of farm products; construction equipment; and certain recreational vehicles.[8]

While highway-ready motorcycles would generally qualify, manufacturers of motorcycles and motor homes were already separately exempted by the Georgia franchise law.[9]

Of course, Georgia's existing franchised dealers are largely on the other side of this equation. They would like to avoid the additional local competition and fulfill the local dealer role for EV makers themselves and will likely invoke consumer protection concerns in the lobbying process.

State Context

In addition to this bill and the state's new Electric Mobility and Innovation Alliance, Georgia already has various incentives that can subsidize certain EV-related activities. These include business tax credits for alternative fuel and advanced vehicle job creation, and for installation of electric vehicle supply equipment; high-occupancy vehicle lane privileges; and private utility rebates.[10]

It remains to be seen whether environmental concerns and existing supply chain constraints, coupled with rising oil prices and Russia sanctions, will cause expansion of these incentives in the future — and more support for S.B. 398 in the present.

In any case, as it has done with television and movies, Georgia seems to be focused on attracting EV makers to the state through direct incentives, and through policies accommodative of EV ownership. We will see if S.B. 398 passes and can add to that.

In the meantime, EV makers, dealers and service providers, as well as vendors to those groups, may wish to reach out to their legislators and lobbyists to help shape the proposed exemption.

[1] See https://www.georgia.org/mobility.

[2] Electric vehicle maker Rivian to bring 7,500 jobs to Georgia, Axios Atlanta (12.17.21).

[3] According to a Rivian executive: "Dealerships and their lobbyists stand against this effort by blocking a fair and open EV market that empowers Georgia consumers." See Bill would let Rivian sell electric vehicles directly to Georgians, The Atlanta-Journal Constitution (01.28.22).

[4] Former Sen. Perdue takes on Rivian plant, Axios Atlanta (03.02.22).

[5] See O.C.G.A. § 10-1-660 et seq. (Motor Vehicle Fair Practices Act).

[6] At the time of writing, the bill is before the Senate Economic Development and Tourism Committee. The bill would need to pass the Senate by March 15 (Crossover Day). With no related hearings set for this week, its prospects for passage this session do not seem high. You can track the progress of S.B. 398 here: https://www.legis.ga.gov/legislation/61445. S.B. 598 can be tracked here: https://www.legis.ga.gov/legislation/62563.

[7] See Ford announces a historic restructuring as it pivots to an electric future, NPR (03.02.22).

[8] See O.C.G.A. § 10-1-622(10).

[9] See O.C.G.A. § 10-1-664.1(a)(4).

[10] See U.S. Department of Energy, Alternative Fuels Data Center, Georgia Laws and Incentives: https://afdc.energy.gov/laws/state_summary?state=GA.