

AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN ASSEMBLY JUNE 30, 2011

AMENDED IN ASSEMBLY JUNE 7, 2011

SENATE BILL

No. 642

Introduced by Senator Padilla

February 18, 2011

An act to amend Sections 3050.7 and 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 642, as amended, Padilla. Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified activity. Violation of this law is a crime.

This bill would provide that it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch, directly or indirectly through an affiliate, to engage in this specified activity.

Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability, among other things.

This bill would delete this prohibition and instead would prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from obtaining or enforcing against a dealer an agreement that, among

other things, modifies or disclaims any duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch, or representative, or a right or privilege of a dealer. The bill would also provide that such an agreement would be unenforceable and that these provisions do not affect the enforceability of any stipulated order or other order of the board, or of certain provisions in other contracts or prohibit specified voluntary agreements.

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from competing with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area, with exceptions in limited circumstances, including those circumstances where the manufacturer or distributor owns or operates a dealership for a temporary period, not to exceed one year.

This bill would specify that the above exception applies only at the location of a former dealership of the same line-make that has been out of operation for less than 6 months.

Existing law requires a manufacturer, branch, and distributor branch that owns or operates a dealership for a temporary period, to give written notice to the New Motor Vehicle Board each time it acquires or divests itself of an ownership interest.

This bill would also require a manufacturer, branch, and distributor branch to provide the notice each time it changes an ownership interest.

Existing law requires a manufacturer, branch, and distributor that owns an interest in a dealer, as part of a bona fide dealer development program, to give written notice to the board, annually of the name and location of each dealer in which it has an ownership interest.

This bill would also require the manufacturer, branch, and distributor to give notice regarding the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating in favor of any dealership owned or controlled, in whole or in part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Existing law describes unfair discrimination as, among other things, the furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch, or distributor of certain things, including furnishing a vehicle that is not made available to each franchisee, as provided.

This bill would also include furnishing sales or service incentives, among other things, that are not made available to all California franchisees of the same line-make on an ~~equivalent~~ *equal* basis, as unfair discrimination.

This bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating against a franchisee selling a service contract or debt cancellation agreement, among other things, as provided. The bill would describe unfair discrimination as express or implied statements that the dealer is under an obligation to exclusively sell or offer to sell service contracts, among other things. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 ~~(a) The distribution, sale, and service of new motor vehicles in~~
- 4 ~~this state vitally affects the state's general economy and the public~~
- 5 ~~welfare.~~
- 6 ~~(b)~~
- 7 (a) The new motor vehicle franchise system, which operates
- 8 within a strictly defined and highly regulated statutory scheme,
- 9 ~~ensures consumers of~~ *provides consumers with* a well-organized
- 10 distribution system for the availability and sale of new motor
- 11 vehicles throughout the state; provides a network of quality
- 12 warranty and repair facilities to maintain those vehicles; and creates
- 13 a cost-effective method for the state to police those systems through
- 14 the licensing and regulation of private sector franchisors and
- 15 franchisees.
- 16 ~~(c)~~
- 17 (b) It is the intent of the Legislature, in enacting this act to
- 18 prohibit franchisors from avoiding state franchise protection laws,

1 to ensure fair competition among new motor vehicle dealer
2 franchisees that are independently owned and those owned by their
3 franchisors, and to clarify that the existing prohibition against
4 franchisor ownership of a dealership located within a 10-mile
5 radius of a nonfranchisor-owned dealership of the same line-make
6 is subject only to certain limited exceptions that may not be used
7 to justify any improper purpose, including the operation of a
8 dealership by a sophisticated investor or operator posing as a dealer
9 development candidate.

10 SEC. 2. Section 3050.7 of the Vehicle Code is amended to
11 read:

12 3050.7. (a) The board may adopt stipulated decisions and
13 orders, without a hearing pursuant to Section 3066, to resolve one
14 or more issues raised by a protest or petition filed with the board.
15 Whenever the parties to a protest or petition submit a proposed
16 stipulated decision and proposed order of the board, a copy of the
17 proposed stipulated decision and order shall be transmitted by the
18 executive director of the board to each member of the board. The
19 proposed stipulated decision and order shall be deemed to be
20 adopted by the board unless a member of the board notifies the
21 executive director of the board of an objection thereto within 10
22 days after that board member has received a copy of the proposed
23 stipulated decision and order.

24 (b) If the board adopts a stipulated decision and order to resolve
25 a protest filed pursuant to Section 3060 in which the parties
26 stipulate that good cause exists for the termination of the franchise
27 of the protestant, and the order provides for a conditional or
28 unconditional termination of the franchise of the protestant,
29 paragraph (2) of subdivision (a) of Section 3060, which requires
30 a hearing to determine whether good cause exists for termination
31 of the franchise, is inapplicable to the proceedings. If the stipulated
32 decision and order provides for an unconditional termination of
33 the franchise, the franchise may be terminated without further
34 proceedings by the board. If the stipulated decision and order
35 provides for the termination of the franchise, conditioned upon the
36 failure of a party to comply with specified conditions, the franchise
37 may be terminated upon a determination, according to the terms
38 of the stipulated decision and order, that the conditions have not
39 been met. If the stipulated decision and order provides for the
40 termination of the franchise conditioned upon the occurrence of

1 specified conditions, the franchise may be terminated upon a
2 determination, according to the terms of the stipulated decision
3 and order, that the stipulated conditions have occurred.

4 SEC. 3. Section 11713.3 of the Vehicle Code is amended to
5 read:

6 11713.3. It is unlawful and a violation of this code for a
7 manufacturer, manufacturer branch, distributor, or distributor
8 branch licensed pursuant to this code to do, directly or indirectly
9 through an affiliate, any of the following:

10 (a) To refuse or fail to deliver in reasonable quantities and within
11 a reasonable time after receipt of an order from a dealer having a
12 franchise for the retail sale of a new vehicle sold or distributed by
13 the manufacturer or distributor, a new vehicle or parts or
14 accessories to new vehicles as are covered by the franchise, if the
15 vehicle, parts, or accessories are publicly advertised as being
16 available for delivery or actually being delivered. This subdivision
17 is not violated, however, if the failure is caused by acts or causes
18 beyond the control of the manufacturer, manufacturer branch,
19 distributor, or distributor branch.

20 (b) To prevent or require, or attempt to prevent or require, by
21 contract or otherwise, a change in the capital structure of a
22 dealership or the means by or through which the dealer finances
23 the operation of the dealership, if the dealer at all times meets
24 reasonable capital standards agreed to by the dealer and the
25 manufacturer or distributor, and if a change in capital structure
26 does not cause a change in the principal management or have the
27 effect of a sale of the franchise without the consent of the
28 manufacturer or distributor.

29 (c) To prevent or require, or attempt to prevent or require, a
30 dealer to change the executive management of a dealership, other
31 than the principal dealership operator or operators, if the franchise
32 was granted to the dealer in reliance upon the personal
33 qualifications of that person.

34 (d) (1) Except as provided in subdivision (t), to prevent or
35 require, or attempt to prevent or require, by contract or otherwise,
36 a dealer, or an officer, partner, or stockholder of a dealership, the
37 sale or transfer of a part of the interest of any of them to another
38 person. A dealer, officer, partner, or stockholder shall not, however,
39 have the right to sell, transfer, or assign the franchise, or a right

1 thereunder, without the consent of the manufacturer or distributor
2 except that the consent shall not be unreasonably withheld.

3 (2) (A) For the transferring franchisee to fail, prior to the sale,
4 transfer, or assignment of a franchisee or the sale, assignment, or
5 transfer of all, or substantially all, of the assets of the franchised
6 business or a controlling interest in the franchised business to
7 another person, to notify the manufacturer or distributor of the
8 franchisee's decision to sell, transfer, or assign the franchise. The
9 notice shall be in writing and shall include all of the following:

10 (i) The proposed transferee's name and address.

11 (ii) A copy of all of the agreements relating to the sale,
12 assignment, or transfer of the franchised business or its assets.

13 (iii) The proposed transferee's application for approval to
14 become the successor franchisee. The application shall include
15 forms and related information generally utilized by the
16 manufacturer or distributor in reviewing prospective franchisees,
17 if those forms are readily made available to existing franchisees.
18 As soon as practicable after receipt of the proposed transferee's
19 application, the manufacturer or distributor shall notify the
20 franchisee and the proposed transferee of information needed to
21 make the application complete.

22 (B) For the manufacturer or distributor, to fail, on or before 60
23 days after the receipt of all of the information required pursuant
24 to subparagraph (A), or as extended by a written agreement
25 between the manufacturer or distributor and the franchisee, to
26 notify the franchisee of the approval or the disapproval of the sale,
27 transfer, or assignment of the franchise. The notice shall be in
28 writing and shall be personally served or sent by certified mail,
29 return receipt requested, or by guaranteed overnight delivery
30 service that provides verification of delivery and shall be directed
31 to the franchisee. A proposed sale, assignment, or transfer shall
32 be deemed approved, unless disapproved by the franchisor in the
33 manner provided by this subdivision. If the proposed sale,
34 assignment, or transfer is disapproved, the franchisor shall include
35 in the notice of disapproval a statement setting forth the reasons
36 for the disapproval.

37 (3) In an action in which the manufacturer's or distributor's
38 withholding of consent under this subdivision or subdivision (e)
39 is an issue, whether the withholding of consent was unreasonable

1 is a question of fact requiring consideration of all the existing
2 circumstances.

3 (e) To prevent, or attempt to prevent, a dealer from receiving
4 fair and reasonable compensation for the value of the franchised
5 business. There shall not be a transfer or assignment of the dealer's
6 franchise without the consent of the manufacturer or distributor,
7 which consent shall not be unreasonably withheld or conditioned
8 upon the release, assignment, novation, waiver, estoppel, or
9 modification of a claim or defense by the dealer.

10 (f) To obtain money, goods, services, or another benefit from
11 a person with whom the dealer does business, on account of, or in
12 relation to, the transaction between the dealer and that other person,
13 other than for compensation for services rendered, unless the
14 benefit is promptly accounted for, and transmitted to, the dealer.

15 (g) (1) Except as provided in paragraph (3), to obtain from a
16 dealer or enforce against a dealer an agreement, provision, release,
17 assignment, novation, waiver, or estoppel that does any of the
18 following:

19 (A) Modifies or disclaims a duty or obligation of a manufacturer,
20 manufacturer branch, distributor, distributor branch, or
21 representative, or a right or privilege of a dealer, pursuant to
22 Chapter 4 (commencing with Section 11700) of Division 5 or
23 Chapter 6 (commencing with Section 3000) of Division 2.

24 (B) Limits or constrains the right of a dealer to file, pursue, or
25 submit evidence in connection with a protest before the board.

26 (C) Requires a dealer to terminate a franchise.

27 (D) Requires a controversy between a manufacturer,
28 manufacturer branch, distributor, distributor branch, or
29 representative and a dealer to be referred to a person for a binding
30 determination. However, this subparagraph does not prohibit
31 arbitration before an independent arbitrator, *provided that whenever*
32 *a motor vehicle franchise contract provides for the use of*
33 *arbitration to resolve a controversy arising out of or relating to*
34 *that contract, arbitration may be used to settle the controversy*
35 *only if, after the controversy arises, all parties to the controversy*
36 *consent in writing to use arbitration to settle the controversy. For*
37 *the purpose of this subparagraph, the terms "motor vehicle" and*
38 *"motor vehicle franchise contract" shall have the same meaning*
39 *as defined in Section 1226 of Title 15 of the United States Code.*
40 *If arbitration is elected to settle a dispute under a motor vehicle*

1 *franchise contract, the arbitrator shall provide the parties to the*
2 *arbitration with a written explanation of the factual and legal basis*
3 *for the award.*

4 (2) An agreement, provision, release, assignment, novation,
5 waiver, or estoppel prohibited by this subdivision shall be
6 unenforceable and void.

7 (3) This subdivision does not do any of the following:

8 (A) Limit or restrict the terms upon which parties to a protest
9 before the board, civil action, or other proceeding can settle or
10 resolve, or stipulate to evidentiary or procedural matters during
11 the course of, a protest, civil action, or other proceeding.

12 (B) Affect the enforceability of any stipulated order or other
13 order entered ~~into~~ by the board.

14 (C) Affect the enforceability of any provision in a contract if
15 the provision is not prohibited under this subdivision or any other
16 law.

17 (D) Affect the enforceability of a provision in any contract
18 entered into on or before December 31, 2011.

19 (E) Prohibit a dealer from waiving its right to file a protest
20 pursuant to Section 3065.1 if the waiver agreement is entered into
21 after a franchisor incentive program claim has been disapproved
22 by the franchisor and the waiver is voluntarily given as part of an
23 agreement to settle that claim.

24 (F) Prohibit a voluntary agreement supported by valuable
25 consideration, other than granting or renewing a franchise, that
26 does both of the following:

27 (i) Provides that a dealer establish or maintain exclusive
28 facilities, personnel, or display space or provides that a dealer
29 make a material alteration, expansion, or addition to a dealership
30 facility.

31 (ii) Contains no waiver or other provision prohibited by
32 subparagraph (A), (B), (C) or (D) of paragraph (1).

33 (G) Prohibit an agreement separate from the franchise agreement
34 that implements a dealer's election to terminate the franchise if
35 the agreement is conditioned only on a specified time for
36 termination or payment of consideration to the dealer.

37 (H) (i) Prohibit a voluntary waiver agreement, supported by
38 valuable consideration, other than the consideration of renewing
39 a franchise, to waive the right of a dealer to file a protest under
40 Section 3062 for the proposed establishment or relocation of a

1 specific proposed dealership, if the waiver agreement provides all
2 of the following:

3 (I) The approximate address at which the proposed dealership
4 will be located.

5 (II) The planning potential used to establish the proposed
6 dealership's facility, personnel, and capital requirements

7 (III) An approximation of projected vehicle and parts sales, and
8 number of vehicles to be serviced at the proposed dealership

9 (IV) Whether the franchisor or affiliate will hold an ownership
10 interest in the proposed dealership or real property of the proposed
11 dealership, and the approximate percentage of any franchisor or
12 affiliate ownership interest in the proposed dealership.

13 (V) The line-makes to be operated at the proposed dealership.

14 (VI) If known at the time the waiver agreement is executed, the
15 identity of the dealer who will operate the proposed dealership.

16 (VII) The date the waiver agreement is to expire, which may
17 not be more than 30 months after the date of execution of the
18 waiver agreement.

19 (ii) Notwithstanding the provisions of a waiver agreement
20 entered into pursuant to the provisions of this subparagraph, a
21 dealer may file a protest under Section 3062 if any of the
22 information provided pursuant to clause (i) has become materially
23 inaccurate since the waiver agreement was executed. Any
24 determination of the enforceability of a waiver agreement shall be
25 determined by the board and the franchisor shall have the burden
26 of proof.

27 (h) To increase prices of motor vehicles that the dealer had
28 ordered for private retail consumers prior to the dealer's receipt
29 of the written official price increase notification. A sales contract
30 signed by a private retail consumer is evidence of the order. In the
31 event of manufacturer price reductions, the amount of the reduction
32 received by a dealer shall be passed on to the private retail
33 consumer by the dealer if the retail price was negotiated on the
34 basis of the previous higher price to the dealer. Price reductions
35 apply to all vehicles in the dealer's inventory that were subject to
36 the price reduction. Price differences applicable to new model or
37 series motor vehicles at the time of the introduction of new models
38 or series shall not be considered a price increase or price decrease.
39 This subdivision does not apply to price changes caused by either
40 of the following:

1 (1) The addition to a motor vehicle of required or optional
2 equipment pursuant to state or federal law.

3 (2) Revaluation of the United States dollar in the case of a
4 foreign-make vehicle.

5 (i) To fail to pay to a dealer, within a reasonable time following
6 receipt of a valid claim by a dealer thereof, a payment agreed to
7 be made by the manufacturer or distributor to the dealer by reason
8 of the fact that a new vehicle of a prior year model is in the dealer's
9 inventory at the time of introduction of new model vehicles.

10 (j) To deny the widow or heirs designated by a deceased owner
11 of a dealership, the opportunity to participate in the ownership of
12 the dealership or successor dealership under a valid franchise for
13 a reasonable time after the death of the owner.

14 (k) To offer refunds or other types of inducements to a person
15 for the purchase of new motor vehicles of a certain line-make to
16 be sold to the state or a political subdivision of the state without
17 making the same offer to all other dealers in the same line-make
18 within the relevant market area.

19 (l) To modify, replace, enter into, relocate, terminate or refuse
20 to renew a franchise in violation of Article 4 (commencing with
21 Section 3060) of Chapter 6 of Division 2.

22 (m) To employ a person as a representative who has not been
23 licensed pursuant to Article 3 (commencing with Section 11900)
24 of Chapter 4 of Division 5.

25 (n) To deny a dealer the right of free association with another
26 dealer for a lawful purpose.

27 (o) (1) To compete with a dealer in the same line-make
28 operating under an agreement or franchise from a manufacturer
29 or distributor in the relevant market area.

30 (2) A manufacturer, branch, or distributor or an entity that
31 controls or is controlled by, a manufacturer, branch, or distributor,
32 shall not, however, be deemed to be competing in the following
33 limited circumstances:

34 (A) Owning or operating a dealership for a temporary period,
35 not to exceed one year at the location of a former dealership of the
36 same line-make that has been out of operation for less than six
37 months. However, after a showing of good cause by a
38 manufacturer, branch, or distributor that it needs additional time
39 to operate a dealership in preparation for sale to a successor
40 independent franchisee, the board may extend the time period.

1 (B) Owning an interest in a dealer as part of a bona fide dealer
2 development program that satisfies all of the following
3 requirements:

4 (i) The sole purpose of the program is to make franchises
5 available to persons lacking capital, training, business experience,
6 or other qualities ordinarily required of prospective franchisees
7 and the dealer development candidate is an individual who is
8 unable to acquire the franchise without assistance of the program.

9 (ii) The dealer development candidate has made a significant
10 investment subject to loss in the franchised business of the dealer.

11 (iii) The program requires the dealer development candidate to
12 manage the day-to-day operations and business affairs of the dealer
13 and to acquire, within a reasonable time and on reasonable terms
14 and conditions, beneficial ownership and control of a majority
15 interest in the dealer and disassociation of any direct or indirect
16 ownership or control by the manufacturer, branch, or distributor.

17 (C) Owning a wholly owned subsidiary corporation of a
18 distributor that sells motor vehicles at retail, if, for at least three
19 years prior to January 1, 1973, the subsidiary corporation has been
20 a wholly owned subsidiary of the distributor and engaged in the
21 sale of vehicles at retail.

22 (3) (A) A manufacturer, branch, and distributor that owns or
23 operates a dealership in the manner described in subparagraph (A)
24 of paragraph (2) shall give written notice to the board, within 10
25 days, each time it commences or terminates operation of a
26 dealership and each time it acquires, changes, or divests itself of
27 an ownership interest.

28 (B) A manufacturer, branch, and distributor that owns an interest
29 in a dealer in the manner described in subparagraph (B) of
30 paragraph (2) shall give written notice to the board, annually, of
31 the name and location of each dealer in which it has an ownership
32 interest, the name of the bona fide dealer development owner or
33 owners, and the ownership interests of each owner expressed as a
34 percentage.

35 (p) To unfairly discriminate among its franchisees with respect
36 to warranty reimbursement or authority granted to its franchisees
37 to make warranty adjustments with retail customers.

38 (q) To sell vehicles to a person not licensed pursuant to this
39 chapter for resale.

1 (r) To fail to affix an identification number to a park trailer, as
2 described in Section 18009.3 of the Health and Safety Code, that
3 is manufactured on or after January 1, 1987, and that does not
4 clearly identify the unit as a park trailer to the department. The
5 configuration of the identification number shall be approved by
6 the department.

7 (s) To dishonor a warranty, rebate, or other incentive offered
8 to the public or a dealer in connection with the retail sale of a new
9 motor vehicle, based solely upon the fact that an autobroker
10 arranged or negotiated the sale. This subdivision shall not prohibit
11 the disallowance of that rebate or incentive if the purchaser or
12 dealer is ineligible to receive the rebate or incentive pursuant to
13 any other term or condition of a rebate or incentive program.

14 (t) To exercise a right of first refusal or other right requiring a
15 franchisee or an owner of the franchise to sell, transfer, or assign
16 to the franchisor, or to a nominee of the franchisor, all or a material
17 part of the franchised business or of the assets of the franchised
18 business unless all of the following requirements are met:

19 (1) The franchise authorizes the franchisor to exercise a right
20 of first refusal to acquire the franchised business or assets of the
21 franchised business in the event of a proposed sale, transfer, or
22 assignment.

23 (2) The franchisor gives written notice of its exercise of the
24 right of first refusal no later than 45 days after the franchisor
25 receives all of the information required pursuant to subparagraph
26 (A) of paragraph (2) of subdivision (d).

27 (3) The sale, transfer, or assignment being proposed relates to
28 not less than all or substantially all of the assets of the franchised
29 business or to a controlling interest in the franchised business.

30 (4) The proposed transferee is neither a family member of an
31 owner of the franchised business, nor a managerial employee of
32 the franchisee owning 15 percent or more of the franchised
33 business, nor a corporation, partnership, or other legal entity owned
34 by the existing owners of the franchised business. For purposes of
35 this paragraph, a “family member” means the spouse of an owner
36 of the franchised business, the child, grandchild, brother, sister,
37 or parent of an owner, or a spouse of one of those family members.
38 This paragraph does not limit the rights of the franchisor to
39 disapprove a proposed transferee as provided in subdivision (d).

(5) Upon the franchisor's exercise of the right of first refusal, the consideration paid by the franchisor to the franchisee and owners of the franchised business shall equal or exceed all consideration that each of them were to have received under the terms of, or in connection with, the proposed sale, assignment, or transfer, and the franchisor shall comply with all the terms and conditions of the agreement or agreements to sell, transfer, or assign the franchised business.

(6) The franchisor shall reimburse the proposed transferee for expenses paid or incurred by the proposed transferee in evaluating, investigating, and negotiating the proposed transfer to the extent those expenses do not exceed the usual, customary, and reasonable fees charged for similar work done in the area in which the franchised business is located. These expenses include, but are not limited to, legal and accounting expenses, and expenses incurred for title reports and environmental or other investigations of real property on which the franchisee's operations are conducted. The proposed transferee shall provide the franchisor a written itemization of those expenses, and a copy of all nonprivileged reports and studies for which expenses were incurred, if any, within 30 days of the proposed transferee's receipt of a written request from the franchisor for that accounting. The franchisor shall make payment within 30 days of exercising the right of first refusal.

(u) (1) To unfairly discriminate in favor of a dealership owned or controlled, in whole or in part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Unfair discrimination includes, but is not limited to, the following:

(A) The furnishing to a franchisee or dealer that is owned or controlled, in whole or in part, by a manufacturer, branch, or distributor of any of the following:

(i) A vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and a part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

(ii) A vehicle, part, or accessory that is not made available to each franchisee on comparable delivery terms, including the time of delivery after the placement of an order. Differences in delivery terms due to geographic distances or other factors beyond the

1 control of the manufacturer, branch, or distributor shall not
2 constitute unfair competition.

3 (iii) Information obtained from a franchisee by the manufacturer,
4 branch, or distributor concerning the business affairs or operations
5 of a franchisee in which the manufacturer, branch, or distributor
6 does not have an ownership interest. The information includes,
7 but is not limited to, information contained in financial statements
8 and operating reports, the name, address, or other personal
9 information or buying, leasing, or service behavior of a dealer
10 customer, and other information that, if provided to a franchisee
11 or dealer owned or controlled by a manufacturer or distributor,
12 would give that franchisee or dealer a competitive advantage. This
13 clause does not apply if the information is provided pursuant to a
14 subpoena or court order, or to aggregated information made
15 available to all franchisees.

16 (iv) Sales or service incentives, discounts, or promotional
17 programs that are not made available to all California franchises
18 of the same line-make on an ~~equivalent~~ *equal* basis.

19 (B) Referring a prospective purchaser or lessee to a dealer in
20 which a manufacturer, branch, or distributor has an ownership
21 interest, unless the prospective purchaser or lessee resides in the
22 area of responsibility assigned to that dealer or the prospective
23 purchaser or lessee requests to be referred to that dealer.

24 (2) This subdivision does not prohibit a franchisor from granting
25 a franchise to prospective franchisees or assisting those franchisees
26 during the course of the franchise relationship as part of a program
27 or programs to make franchises available to persons lacking capital,
28 training, business experience, or other qualifications ordinarily
29 required of prospective franchisees.

30 (v) (1) To access, modify, or extract information from a
31 confidential dealer computer record, as defined in Section
32 11713.25, without obtaining the prior written consent of the dealer
33 and without maintaining administrative, technical, and physical
34 safeguards to protect the security, confidentiality, and integrity of
35 the information.

36 (2) Paragraph (1) does not limit a duty that a dealer may have
37 to safeguard the security and privacy of records maintained by the
38 dealer.

39 (w) (1) To use electronic, contractual, or other means to prevent
40 or interfere with any of the following:

1 (A) The lawful efforts of a dealer to comply with federal and
2 state data security and privacy laws.

3 (B) The ability of a dealer to do either of the following:

4 (i) Ensure that specific data accessed from the dealer's computer
5 system is within the scope of consent specified in subdivision (v).

6 (ii) Monitor specific data accessed from or written to the dealer's
7 computer system.

8 (2) Paragraph (1) does not limit a duty that a dealer may have
9 to safeguard the security and privacy of records maintained by the
10 dealer.

11 (x) (1) To unfairly discriminate against a franchisee selling a
12 service contract, debt cancellation agreement, maintenance
13 agreement, or similar product not approved, endorsed, sponsored,
14 or offered by the manufacturer, manufacturer branch, distributor,
15 or distributor branch or affiliate. For purposes of this subdivision,
16 unfair discrimination includes, but is not limited to, any of the
17 following:

18 (A) Express or implied statements that the dealer is under an
19 obligation to exclusively sell or offer to sell service contracts, debt
20 cancellation agreements, or similar products approved, endorsed,
21 sponsored, or offered by the manufacturer, manufacturer branch,
22 distributor, or distributor branch or affiliate.

23 (B) Express or implied statements that selling or offering to sell
24 service contracts, debt cancellation agreements, maintenance
25 agreements, or similar products not approved, endorsed, sponsored,
26 or offered by the manufacturer, manufacturer branch, distributor,
27 or distributor branch or affiliate, or the failure to sell or offer to
28 sell service contracts, debt cancellation agreements, maintenance
29 agreements, or similar products approved, endorsed, sponsored,
30 or offered by the manufacturer, manufacturer branch, distributor,
31 or distributor branch or affiliate will have any negative
32 consequences for the dealer.

33 (C) Measuring a dealer's performance under a franchise
34 agreement based upon the sale of service contracts, debt
35 cancellation agreements, or similar products approved, endorsed,
36 sponsored, or offered by the manufacturer, manufacturer branch,
37 distributor, or distributor branch or affiliate.

38 (D) Requiring a dealer to actively promote the sale of service
39 contracts, debt cancellation agreements, or similar products

1 approved, endorsed, sponsored, or offered by the manufacturer,
2 manufacturer branch, distributor, or distributor branch or affiliate.

3 (E) Conditioning access to vehicles or parts, or vehicle sales or
4 service incentives upon the sale of service contracts, debt
5 cancellation agreements, or similar products approved, endorsed,
6 sponsored, or offered by the manufacturer, manufacturer branch,
7 distributor, or distributor branch or affiliate.

8 (2) Unfair discrimination does not include, and nothing shall
9 prohibit a manufacturer from, offering an incentive program to
10 vehicle dealers who voluntarily sell or offer to sell service
11 contracts, debt cancellation agreements, or similar products
12 approved, endorsed, sponsored, or offered by the manufacturer,
13 manufacturer branch, distributor, or distributor branch or affiliate,
14 if the program does not provide vehicle sales or service incentives.

15 (3) This subdivision does not prohibit a manufacturer,
16 manufacturer branch, distributor, or distributor branch from
17 requiring a franchisee that sells a used vehicle as “certified” under
18 a certified used vehicle program established by the manufacturer,
19 manufacturer branch, distributor, or distributor branch to provide
20 a service contract approved, endorsed, sponsored, or offered by
21 the manufacturer, manufacturer branch, distributor, or distributor
22 branch.

23 (4) Unfair discrimination does not include, and nothing shall
24 prohibit a franchisor from requiring a franchisee to provide, the
25 following notice prior to the sale of the service contract if the
26 service contract is not provided or backed by the franchisor and
27 the vehicle is of the franchised line-make:

28
29 “Service Contract Disclosure

30 The service contract you are purchasing is not provided or backed
31 by the manufacturer of the vehicle you are purchasing. The
32 manufacturer of the vehicle is not responsible for claims or repairs
33 under this service contract.

34
35 _____
36 Signature of Purchaser”

37 (y) As used in this section, “area of responsibility” is a
38 geographic area specified in a franchise that is used by the
39 franchisor for the purpose of evaluating the franchisee’s
performance of its sales and service obligations.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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