

Introduced by Senator PadillaJanuary 31, 2013

An act to amend Sections 3006, 3008, 3012, 3050, 3050.7, 3052, 3056, 3057, 3062, 3063, 3064, 3065, 3065.1, 3066, 3067, 3069.1, 11713.3, and 11713.13 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 155, as introduced, Padilla. Vehicles: motor vehicle manufacturers and distributors.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee. Existing law prescribes procedures to be followed by franchisors, franchisees, and the board regarding claims for warranty reimbursement or incentive compensation. Existing law authorizes franchisors to conduct audits of franchisee warranty records and incentive records on a reasonable basis, and authorizes a franchisor to audit the franchisee's incentive records for 18 months, and warranty records for 12 months, after a claim is paid or credit issued. Existing law prohibits the disapproval of franchisee claims except for good cause, as specified, and requires that a notice of disapproval state the specific grounds upon which the disapproval is based. Existing law gives a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the board.

This bill would revise these provisions by, among other things, requiring the franchisor to provide the franchisee with the specific grounds upon which any previously approved claims will be charged back, if the franchisor disapproves of a previously approved claim after an audit, and would prohibit a previously approved claim from being

charged back to the franchisee except for good cause, as specified. The bill would require the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval, as provided. The bill would authorize the audit of a franchisee's records for 6 months after a claim is paid or credit is issued. The bill would give a franchisee one year from the later of the date of receipt of the notice of disapproval or the completion of any franchisor appeal process to file a protest with the board, and would specify that in the protest proceeding the franchisor has the burden of proof.

Existing law requires every vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing. Existing law also requires the franchisor to file a copy of its warranty reimbursement schedule or formula with the board.

This bill would additionally require a franchisor to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostic services under a warranty. The bill would also require, if the warranty reimbursement schedule or formula provides franchisee labor compensation on a flat-rate basis, the franchisor to allow the franchisee to use a published, nationally recognized, flat-rate labor time guide as the basis for determining the amount of time allocable for warranty diagnostics and repairs if the franchisee primarily uses the time guide to compute technician flat-rate compensation and charges for nonwarranty labor.

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 practices, including requiring a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.

This bill would prohibit a required facility alteration, expansion, or addition from being deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor if substantially similar goods or services are available from another vendor. The bill would also prohibit the establishing or maintaining a performance standard,

sales objective, or program for measuring a dealer’s sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer’s right to payment under any incentive or reimbursement program, unless certain requirements are satisfied. The bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from taking or threatening to take any adverse action against a dealer because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle, unless the adverse action is permitted by contractual terms binding on the dealer and the dealer had actual knowledge of the customer’s intent to export or resell the vehicle, as specified. Because a violation of these provisions would be a crime, this 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 the State of California vitally affects the general economy of this
- 5 state and the public welfare.
- 6 (b) The new motor vehicle franchise system, which operates
- 7 within a strictly defined and highly regulated statutory scheme,
- 8 assures the consuming public of a well-organized distribution
- 9 system for the availability and sale of new motor vehicles
- 10 throughout the state, provides a network of quality warranty, recall,
- 11 and repair facilities to maintain those vehicles, and creates a
- 12 cost-effective method for the state to police those systems through
- 13 the licensing and regulation of private sector franchisors and
- 14 franchisees.
- 15 (c) Over the past decade, franchisors have unilaterally and
- 16 gradually reduced the amount of flat-rate labor time allocable to
- 17 warranty repairs by an unreasonable amount, and have failed to

1 properly reimburse dealers for repairing vehicles to conform to
2 the warranty established by the franchisor. Over this period,
3 franchisors have also regularly denied dealer warranty and
4 incentive program claims for technical reasons without providing
5 any rights to rebut the denial or correct technical errors through
6 reasonable appeal processes, which has resulted in dealers not
7 being reimbursed when repairing vehicles under the manufacturer
8 warranty or applying incentive money to a sale.

9 (d) Franchisors implement punitive policies toward dealers
10 when vehicles sold by dealers end up being exported, even when
11 the export takes place without dealer knowledge, resulting in
12 dealers being charged back for incentive funding that the dealer
13 accounted for in making the initial sale.

14 (e) Franchisors measure dealership sales, service, and customer
15 service performance against standards that are established
16 unilaterally and without dealer input. Many of these performance
17 standards are based upon national or statewide performance
18 averages that bear no resemblance to a dealer's local market.
19 Failure to adhere to these standards can result in disqualification
20 from incentive programs, imposition of unrealistic working capital
21 requirements, and even termination of a franchise agreement.

22 (f) Franchisors frequently establish facility models that require
23 dealers to purchase goods or services from specific vendors, many
24 of which are located outside of the United States. Those
25 requirements are generally nonnegotiable, even if a dealer can
26 obtain substantially similar goods or services from a local
27 California vendor.

28 (g) It is the intent of this act to ensure that new motor vehicle
29 dealers are treated fairly by their franchisors, that dealers are
30 reasonably compensated for performing warranty repairs on behalf
31 of their franchisor, that dealers are not punished when vehicles are
32 exported without dealer knowledge, that performance standards
33 take into account local market conditions, and that dealers be
34 allowed to obtain required goods or services through vendors of
35 their choosing.

36 SEC. 2. Section 3006 of the Vehicle Code is amended to read:
37 3006. The board shall organize and elect a president from
38 among its members for a term of one year at the first meeting of
39 each year. The newly elected president shall assume his *or her*

1 duties at the conclusion of the meeting at which he *or she* was
2 elected. Reelection to office during membership is unrestricted.

3 SEC. 3. Section 3008 of the Vehicle Code is amended to read:

4 3008. (a) All meetings of the board shall be open and public,
5 and all persons shall be permitted to attend any meeting of the
6 board, except that the board may hold executive sessions to
7 deliberate on the decision to be reached upon the evidence
8 introduced in a proceeding conducted in accordance with Chapter
9 5 (commencing with Section 11500) of Part 1 of Division 3 of
10 Title 2 of the Government Code.

11 (b) At all meetings of the board, open or executive, involving
12 an appeal from a decision of the Director of Motor Vehicles ~~as~~
13 ~~hereinafter provided for~~, the director or his *or her* authorized
14 representative may attend, present the position of the department,
15 and ~~thereafter~~ *then* shall absent himself *or herself* from any
16 executive session at the request of any member of the board.

17 (c) Within the limitations of its powers and authority ~~as herein~~
18 ~~conferred~~, and in the event of disagreement between the board and
19 the director regarding the decision to be reached ~~as herein provided~~,
20 the decision of the board shall be final.

21 SEC. 4. Section 3012 of the Vehicle Code is amended to read:

22 3012. Each member of the board shall receive a per diem of
23 one hundred dollars (\$100) for each day actually spent in the
24 discharge of official duties, and he *or she* shall be reimbursed for
25 ~~his~~ traveling and other expenses necessarily incurred in the
26 performance of his ~~duties, which~~ *or her duties*. *The* per diem and
27 reimbursement shall be wholly defrayed from funds that shall be
28 provided in the annual budget of the department.

29 SEC. 5. Section 3050 of the Vehicle Code is amended to read:

30 3050. The board shall do all of the following:

31 (a) Adopt rules and regulations in accordance with Chapter 3.5
32 (commencing with Section 11340) of Part 1 of Division 3 of Title
33 2 of the Government Code governing those matters that are
34 specifically committed to its jurisdiction.

35 (b) Hear and determine, within the limitations and in accordance
36 with the procedure provided, an appeal presented by an applicant
37 for, or holder of, a license as a new motor vehicle dealer,
38 manufacturer, manufacturer branch, distributor, distributor branch,
39 or representative when the applicant or licensee submits an appeal

1 provided in this chapter from a decision arising out of the
2 department.

3 (c) Consider any matter concerning the activities or practices
4 of any person applying for or holding a license as a new motor
5 vehicle dealer, manufacturer, manufacturer branch, distributor,
6 distributor branch, or representative pursuant to Chapter 4
7 (commencing with Section 11700) of Division 5 submitted by any
8 person. A member of the board who is a new motor vehicle dealer
9 may not participate in, hear, comment, advise other members upon,
10 or decide any matter considered by the board pursuant to this
11 subdivision that involves a dispute between a franchisee and
12 franchisor. After that consideration, the board may do any one or
13 any combination of the following:

14 (1) Direct the department to conduct investigation of matters
15 that the board deems reasonable, and make a written report on the
16 results of the investigation to the board within the time specified
17 by the board.

18 (2) Undertake to mediate, arbitrate, or otherwise resolve any
19 honest difference of opinion or viewpoint existing between any
20 member of the public and any new motor vehicle dealer,
21 manufacturer, manufacturer branch, distributor branch, or
22 representative.

23 (3) Order the department to exercise any and all authority or
24 power that the department may have with respect to the issuance,
25 renewal, refusal to renew, suspension, or revocation of the license
26 of any new motor vehicle dealer, manufacturer, manufacturer
27 branch, distributor, distributor branch, or representative as that
28 license is required under Chapter 4 (commencing with Section
29 11700) of Division 5.

30 (d) Hear and decide, within the limitations and in accordance
31 with the procedure provided, a protest presented by a franchisee
32 pursuant to Section 3060, 3062, 3064, 3065, ~~or~~ 3065.1, 3070, 3072,
33 3074, 3075, or 3076. A member of the board who is a new motor
34 vehicle dealer may not participate in, hear, comment, advise other
35 members upon, or decide, any matter involving a protest filed
36 pursuant to Article 4 (commencing with Section 3060), unless all
37 parties to the protest stipulate otherwise.

38 (e) Notwithstanding subdivisions (c) and (d), the courts have
39 jurisdiction over all common law and statutory claims originally

1 cognizable in the courts. For those claims, a party may initiate an
2 action directly in any court of competent jurisdiction.

3 SEC. 6. Section 3050.7 of the Vehicle Code is amended to
4 read:

5 3050.7. (a) The board may adopt stipulated decisions and
6 orders, without a hearing pursuant to Section 3066, to resolve one
7 or more issues raised by a protest or petition filed with the board.
8 Whenever the parties to a protest or petition submit a proposed
9 stipulated decision and ~~proposed~~ order of the board, a copy of the
10 proposed stipulated decision and order shall be transmitted by the
11 executive director of the board to each member of the board. The
12 proposed stipulated decision and order shall be deemed to be
13 adopted by the board unless a member of the board notifies the
14 executive director of the board of an objection thereto within 10
15 days after that board member has received a copy of the proposed
16 stipulated decision and order.

17 (b) If the board adopts a stipulated decision and order to resolve
18 a protest filed pursuant to Section 3060 *or* 3070 in which the parties
19 stipulate that good cause exists for the termination of the franchise
20 of the protestant, and the order provides for a conditional or
21 unconditional termination of the franchise of the protestant,
22 paragraph (2) of subdivision (a) of Section 3060 *and* paragraph
23 (2) of subdivision (a) of Section 3070, which ~~requires~~ *require* a
24 hearing to determine whether good cause exists for termination of
25 the franchise, is inapplicable to the proceedings. If the stipulated
26 decision and order provides for an unconditional termination of
27 the franchise, the franchise may be terminated without further
28 proceedings by the board. If the stipulated decision and order
29 provides for the termination of the franchise, conditioned upon the
30 failure of a party to comply with specified conditions, the franchise
31 may be terminated upon a determination, according to the terms
32 of the stipulated decision and order, that the conditions have not
33 been met. If the stipulated decision and order provides for the
34 termination of the franchise conditioned upon the occurrence of
35 specified conditions, the franchise may be terminated upon a
36 determination, according to the terms of the stipulated decision
37 and order, that the stipulated conditions have occurred.

38 SEC. 7. Section 3052 of the Vehicle Code is amended to read:

39 3052. (a) On or before the 10th day after the last day on which
40 reconsideration of a final decision of the department can be ordered,

1 the ~~respondent~~ *applicant or licensee* may file an appeal with the
2 executive director of the board. The appeal shall be in writing and
3 shall state the grounds therefor. A copy of the appeal shall be
4 mailed by the appellant to the department, and the department shall
5 thereafter be considered as a party to the appeal. The right to appeal
6 is not affected by failure to seek reconsideration before the
7 department.

8 (b) An appeal is considered to be filed on the date it is received
9 in the office of the executive director of the board, except that an
10 appeal mailed to the executive director by means of registered mail
11 is considered to be filed with the executive director on the postmark
12 date.

13 (c) The appeal shall be accompanied by evidence that the
14 appellant has requested the administrative record of the department
15 and advanced the cost of preparation of that record. The complete
16 administrative record includes the pleadings, all notices and orders
17 issued by the department, any proposed decision by an
18 administrative law judge, the exhibits admitted or rejected, the
19 written evidence, and any other papers in the case. All parts of the
20 administrative record requested by the appellant may be filed with
21 the appeal together with the appellant's points and authorities. If
22 the board orders the filing of additional parts of the administrative
23 record, the board may order prior payment by the appellant of the
24 cost of providing those additional parts.

25 (d) Except as provided in subdivisions (e) and (f), a decision of
26 the department may not become effective during the period *in*
27 *which* an appeal may be filed, and the filing of an appeal shall stay
28 the decision of the department until a final order is made by the
29 board.

30 (e) When a decision has ordered revocation of a dealer's license,
31 the department may, on or before the last day upon which an appeal
32 may be filed with the board, petition the board to order the decision
33 of the department into effect.

34 (f) With respect to the department's petition filed pursuant to
35 subdivision (e), the department shall have the burden of proof. The
36 board shall act upon the petition within 14 days or prior to the
37 effective date of the department's decision, whichever is later. The
38 board may order oral argument on the petition before the board.
39 ~~Oral argument by telephone conference call with a quorum of the~~

1 ~~board members present, either in person or by telephone, is~~
2 ~~permitted.~~

3 SEC. 8. Section 3056 of the Vehicle Code is amended to read:

4 3056. When the order reverses the decision of the department,
5 the board may direct the ~~reconsideration of~~ *department to*
6 *reconsider* the matter in the light of its order and may direct the
7 department to take ~~such~~ *any* further action as is specially enjoined
8 upon it by law. In all cases the board shall enter its order within
9 60 days after the filing of the appeal, except in the case of
10 unavoidable delay in supplying the administrative record, in which
11 event the board shall make its final order within 60 days after
12 receipt ~~thereof~~ *of the record*.

13 SEC. 9. Section 3057 of the Vehicle Code is amended to read:

14 3057. The board shall fix an effective date for its orders not
15 more than 30 days from the day the order is served upon the parties
16 or remand the case to the department for fixing an effective date.
17 A final order of the board shall be in writing and copies ~~thereof of~~
18 *the order* shall be delivered to the parties personally or sent to
19 them by registered mail. The order shall be final upon its delivery
20 or mailing and no reconsideration or rehearing *by the board* shall
21 be permitted.

22 SEC. 10. Section 3062 of the Vehicle Code is amended to read:

23 3062. (a) (1) Except as otherwise provided in subdivision (b),
24 if a franchisor seeks to enter into a franchise establishing an
25 additional motor vehicle dealership ~~within, or seeks to relocate an~~
26 *existing motor vehicle dealership, having a relevant market area*
27 ~~where within which the same line-make is then represented, or~~
28 ~~seeks to relocate an existing motor vehicle dealership,~~ the
29 franchisor shall, in writing, first notify the board and each
30 franchisee in that line-make in the relevant market area of the
31 franchisor's intention to establish an additional dealership or to
32 relocate an existing dealership ~~within or into that market area~~.
33 Within 20 days of receiving the notice, satisfying the requirements
34 of this section, or within 20 days after the end of an appeal
35 procedure provided by the franchisor, a franchisee required to be
36 given the notice may file with the board a protest to the ~~establishing~~
37 ~~or relocating of the dealership~~ *proposed dealership establishment*
38 *or relocation described in the franchisor's notice*. If, within this
39 time, a franchisee files with the board a request for additional time
40 to file a protest, the board or its executive director, upon a showing

1 of good cause, may grant an additional 10 days to file the protest.
2 When a protest is filed, the board shall inform the franchisor that
3 a timely protest has been filed, that a hearing is required pursuant
4 to Section 3066, and that the franchisor may not establish *the*
5 *proposed dealership* or relocate the ~~proposed~~ *existing* dealership
6 until the board has held a hearing as provided in Section 3066, nor
7 thereafter, if the board has determined that there is good cause for
8 not permitting the *establishment of the proposed dealership or*
9 *relocation of the existing* dealership. In the event of multiple
10 protests, hearings may be consolidated to expedite the disposition
11 of the issue.

12 (2) If a franchisor seeks to enter into a franchise that authorizes
13 a satellite warranty facility to be established at, or relocated to, a
14 proposed location that is within two miles of a dealership of the
15 same line-make, the franchisor shall first give notice in writing of
16 the franchisor's intention to establish or relocate a satellite warranty
17 facility at the proposed location to the board and each franchisee
18 operating a dealership of the same line-make within two miles of
19 the proposed location. Within 20 days of receiving the notice
20 satisfying the requirements of this section, or within 20 days after
21 the end of an appeal procedure provided by the franchisor, a
22 franchisee required to be given the notice may file with the board
23 a protest to the establishing or relocating of the satellite warranty
24 facility. If, within this time, a franchisee files with the board a
25 request for additional time to file a protest, the board or its
26 executive director, upon a showing of good cause, may grant an
27 additional 10 days to file the protest. When a protest is filed, the
28 board shall inform the franchisor that a timely protest has been
29 filed, that a hearing is required pursuant to Section 3066, and that
30 the franchisor may not establish or relocate the proposed satellite
31 warranty facility until the board has held a hearing as provided in
32 Section 3066, nor thereafter, if the board has determined that there
33 is good cause for not permitting the satellite warranty facility. In
34 the event of multiple protests, hearings may be consolidated to
35 expedite the disposition of the issue.

36 (3) The written notice shall contain, on the first page thereof in
37 at least 12-point bold type and circumscribed by a line to segregate
38 it from the rest of the text, the following statement:
39

1 “NOTICE TO DEALER: You have the right to file a protest
2 with the NEW MOTOR VEHICLE BOARD in Sacramento and
3 have a hearing on your protest under the terms of the California
4 Vehicle Code if you oppose this action. You must file your protest
5 with the board within 20 days of your receipt of this notice, or
6 within 20 days after the end of any appeal procedure that is
7 provided by us to you. If within this time you file with the board
8 a request for additional time to file a protest, the board or its
9 executive director, upon a showing of good cause, may grant you
10 an additional 10 days to file the protest.”

11
12 (b) Subdivision (a) does not apply to either of the following:

13 (1) The relocation of an existing dealership to a location that is
14 both within the same city as, and within one mile from, the existing
15 dealership location.

16 (2) The establishment at a location that is both within the same
17 city as, and within one-quarter mile from, the location of a
18 dealership of the same line-make that has been out of operation
19 for less than 90 days.

20 (c) Subdivision (a) does not apply to a display of vehicles at a
21 fair, exposition, or similar exhibit if actual sales are not made at
22 the event and the display does not exceed 30 days. This subdivision
23 may not be construed to prohibit a new vehicle dealer from
24 establishing a branch office for the purpose of selling vehicles at
25 the fair, exposition, or similar exhibit, even though the event is
26 sponsored by a financial institution, as defined in Section 31041
27 of the Financial Code or by a financial institution and a licensed
28 dealer. The establishment of these branch offices, however, shall
29 be in accordance with subdivision (a) where applicable.

30 (d) For the purposes of this section, the reopening of a dealership
31 that has not been in operation for one year or more shall be deemed
32 the establishment of an additional motor vehicle dealership.

33 (e) As used in this section, the following definitions apply:

34 (1) “Motor vehicle dealership” or “dealership” means an
35 authorized facility at which a franchisee offers for sale or lease,
36 displays for sale or lease, or sells or leases new motor vehicles.

37 (2) “Satellite warranty facility” means a facility operated by a
38 franchisee where authorized warranty repairs and service are
39 performed and the offer for sale or lease, the display for sale or

1 lease, or the sale or lease of new motor vehicles is not authorized
2 to take place.

3 SEC. 11. Section 3063 of the Vehicle Code is amended to read:

4 3063. In determining whether good cause has been established
5 for not entering into *a franchise* or relocating an ~~additional~~
6 ~~franchise~~ *for existing dealership* of the same line-make, the board
7 shall take into consideration the existing circumstances, including,
8 but not limited to, all of the following:

9 (a) Permanency of the investment.

10 (b) Effect on the retail motor vehicle business and the consuming
11 public in the relevant market area.

12 (c) Whether it is injurious to the public welfare for an additional
13 franchise to be established *or an existing dealership to be*
14 *relocated*.

15 (d) Whether the franchisees of the same line-make in ~~that~~ *the*
16 relevant market area are providing adequate competition and
17 convenient consumer care for the motor vehicles of the line-make
18 in the market area, which shall include the adequacy of motor
19 vehicle sales and service facilities, equipment, supply of vehicle
20 parts, and qualified service personnel.

21 (e) Whether the establishment of an additional franchise would
22 increase competition and therefore be in the public interest.

23 (f) *For purposes of this section, the terms “ motor vehicle*
24 *dealership” and “dealership” shall have the same meaning as*
25 *defined in Section 3062.*

26 SEC. 12. Section 3064 of the Vehicle Code is amended to read:

27 3064. (a) Every franchisor shall specify to its franchisees the
28 delivery and preparation obligations of ~~such~~ *the* franchisees prior
29 to delivery of new motor vehicles to retail buyers. A copy of the
30 delivery and preparation obligations, which shall constitute the
31 franchisee’s only responsibility for product liability between the
32 franchisee and the franchisor but ~~which~~ shall not in any way affect
33 the franchisee’s responsibility for product liability between the
34 purchaser and either the franchisee or the franchisor, and a schedule
35 of compensation to be paid *to* franchisees for the work and services
36 they shall be required to perform in connection with ~~such~~ *those*
37 delivery and preparation obligations shall be filed with the board
38 by franchisors, and shall constitute the compensation as set forth
39 on ~~such~~ *the* schedule. The schedule of compensation shall be
40 reasonable, with the reasonableness thereof being subject to the

1 approval of the board, ~~providing~~ *if* a franchisee files a notice of
2 protest with the board. In determining the reasonableness of the
3 schedules, the board shall consider all relevant circumstances,
4 including, but not limited to, the time required to perform each
5 function that the dealer is obligated to perform and the appropriate
6 labor rate.

7 (b) Upon delivery of the vehicle, the franchisee shall give a
8 copy of the delivery and preparation obligations to the purchaser
9 and a written certification that ~~he~~ *the franchisee* has fulfilled these
10 obligations.

11 SEC. 13. Section 3065 of the Vehicle Code is amended to read:

12 3065. (a) Every franchisor shall properly fulfill every warranty
13 agreement made by it and adequately and fairly compensate each
14 of its franchisees for labor and parts used to fulfill that warranty
15 when the franchisee has fulfilled warranty obligations of
16 *diagnostics*, repair, and servicing and shall file a copy of its
17 warranty reimbursement schedule or formula with the board. The
18 warranty reimbursement schedule or formula shall be reasonable
19 with respect to the time and compensation allowed *to* the franchisee
20 for the warranty ~~work~~ *diagnostics, repair, and servicing*, and all
21 other conditions of the obligation. *If the warranty reimbursement*
22 *schedule or formula provides compensation for franchisee labor*
23 *on a flat-rate basis, the franchisor shall allow the franchisee to*
24 *use a published, nationally recognized, flat-rate labor time guide*
25 *as the basis for determining the amount of time allocable for*
26 *warranty diagnostics and repairs if the franchisee primarily uses*
27 *the time guide to compute technician flat-rate compensation and*
28 *charges for nonwarranty labor.* The reasonableness of the warranty
29 reimbursement schedule or formula shall be determined by the
30 board if a franchisee files a ~~notice of~~ protest with the board.

31 (b) In determining the adequacy and fairness of the
32 compensation, the franchisee's effective labor rate charged to its
33 various retail customers may be considered together with other
34 relevant criteria.

35 (c) If any franchisor disallows a franchisee's claim for a
36 defective part, alleging that the part, in fact, is not defective, the
37 franchisor shall return the part alleged not to be defective to the
38 franchisee at the expense of the franchisor, or the franchisee shall
39 be reimbursed for the franchisee's cost of the part, at the
40 franchisor's option.

1 (d) (1) All claims made by franchisees pursuant to this section
2 shall be either approved or disapproved within 30 days after their
3 receipt by the franchisor. Any claim not specifically disapproved
4 in writing within 30 days from receipt by the franchisor shall be
5 deemed approved on the 30th day. ~~When~~ *All claims made by*
6 *franchisees under this section and Section 3064 for labor and parts*
7 *shall be paid within 30 days after approval.*

8 (2) *A claim may only be disapproved for good cause, including,*
9 *but not limited to, when the claim is false or fraudulent, repairs*
10 *were not properly made, repairs were inappropriate to correct a*
11 *nonconformity with the written warranty due to an improper act*
12 *or omission of the franchisee, or for material noncompliance with*
13 *reasonable and nondiscriminatory documentation and*
14 *administrative claims submission requirements. A franchisor shall*
15 *not disapprove a claim based upon an extrapolation from a sample*
16 *of claims.*

17 (3) *When any claim is disapproved, the franchisee who submits*
18 *it shall be notified in writing of its disapproval within the required*
19 *period, and each notice shall state the specific grounds upon which*
20 *the disapproval is based. ~~All claims made by franchisees under~~*
21 *this section and Section 3064 for labor and parts shall be paid*
22 *within 30 days following approval. Failure* *The franchisor shall*
23 *provide for a reasonable appeal process allowing the franchisee*
24 *at least 30 days after receipt of the written disapproval notice to*
25 *provide additional supporting documentation or information*
26 *rebutting the disapproval. If disapproval is based upon*
27 *noncompliance with documentation or administrative claims*
28 *submission requirements, the franchisee shall have 30 days from*
29 *the date of receipt of the notice to cure the noncompliance. If the*
30 *disapproval is rebutted, or any noncompliance is reasonably cured*
31 *within that 30-day period, the franchisor shall approve the claim.*

32 (4) *Failure to approve or pay within the above specified time*
33 *limits, in individual instances for reasons beyond the reasonable*
34 *control of the franchisor, shall not constitute a violation of this*
35 *article.*

36 (5) *Within one year after either receipt of the written disapproval*
37 *notice or completion of the franchisor's appeal process, whichever*
38 *is later, a franchisee may file a protest with the board for*
39 *determination of whether the franchisor complied with the*

1 *requirements of this subdivision. In any protest pursuant to this*
2 *subdivision, the franchisor shall have the burden of proof.*

3 (e) (1) Audits of franchisee warranty records may be conducted
4 by the franchisor on a reasonable basis, and for a period of 12 6
5 months after a claim is paid or credit issued. ~~Franchisee claims for~~
6 ~~warranty compensation shall not be disapproved except for good~~
7 ~~cause, such as performance of nonwarranty repairs, lack of material~~
8 ~~documentation, or fraud. A reasonable basis for an audit shall~~
9 ~~include, but not be limited to, a recent significant deviation between~~
10 ~~the value or number of warranty claims made by the franchisee~~
11 ~~and the average value or number of warranty claims made by~~
12 ~~similarly sized dealers of the same line-make.~~

13 (2) *Previously approved claims shall not be disapproved and*
14 *charged back to the franchisee except for good cause, including,*
15 *but not limited to, when the claim is false or fraudulent, repairs*
16 *were not properly made, repairs were inappropriate to correct a*
17 *nonconformity with the written warranty due to an improper act*
18 *or omission of the dealer, or for material noncompliance with*
19 *reasonable and nondiscriminatory documentation and*
20 *administrative claims submission requirements. A franchisor shall*
21 *not disapprove or chargeback a claim based upon an extrapolation*
22 *from a sample of claims.*

23 (3) *If the franchisor disapproves of a previously approved claim*
24 *following an audit, the franchisor shall provide to the franchisee,*
25 *within 30 days after the audit, a written disapproval notice stating*
26 *the specific grounds upon which the claim is disapproved. The*
27 *franchisor shall provide a reasonable appeal process allowing*
28 *the franchisee a reasonable period of not less than 45 days after*
29 *receipt of the written disapproval notice to respond to any*
30 *disapproval with additional supporting documentation or*
31 *information rebutting the disapproval, with the period to be*
32 *commensurate with the volume of claims under consideration. If*
33 *the franchisee rebuts any disapproval or reasonably cures any*
34 *noncompliance relating to a claim, the franchisor shall not*
35 *chargeback the franchisee for that claim.*

36 (4) *The franchisor shall not chargeback the franchisee until 45*
37 *days after receipt of the written disapproval notice or completion*
38 *of the appeal process, whichever is later. Any chargeback to a*
39 *franchisee for warranty parts or service compensation shall be*
40 *made within 90 days of receipt of the written disapproval notice*

1 or the completion of the ~~audit~~ franchisor's appeal process,
2 whichever is later.

3 (5) Within one year after either receipt of the written disapproval
4 notice or completion of the franchisor's appeal process, whichever
5 is later, a franchisee may file a protest with the board for
6 determination of whether the franchisor complied with this
7 subdivision. If a false claim was submitted by a franchisee with
8 intent to defraud the franchisor, a longer period for audit and any
9 resulting chargeback may be permitted if the franchisor obtains
10 an order from the board. In any protest pursuant to this subdivision,
11 the franchisor shall have the burden of proof.

12 SEC. 14. Section 3065.1 of the Vehicle Code is amended to
13 read:

14 3065.1. (a) All claims made by a franchisee for payment under
15 the terms of a franchisor incentive program shall be either approved
16 or disapproved within 30 days after receipt by the franchisor. When
17 any claim is disapproved, the franchisee who submits it shall be
18 notified in writing of its disapproval within the required period,
19 and each notice shall state the specific grounds upon which the
20 disapproval is based. Any claim not specifically disapproved in
21 writing within 30 days from receipt shall be deemed approved on
22 the 30th day. ~~Following~~

23 (b) Franchisee claims for incentive program compensation shall
24 not be disapproved except for good cause, including, but not be
25 limited to, when the claim is false or fraudulent, ineligibility under
26 the terms of the incentive program as previously communicated
27 to the franchisee, or material noncompliance with reasonable and
28 nondiscriminatory documentation and administrative claims
29 submission requirements. A franchisor shall not disapprove a
30 claim based upon an extrapolation from a sample of claims.

31 (c) The franchisor shall provide for a reasonable appeal process
32 allowing the franchisee at least 30 days after receipt of the written
33 disapproval notice to respond to any disapproval with additional
34 supporting documentation or information rebutting the
35 disapproval. If disapproval is based solely upon noncompliance
36 with documentation or administrative claims submission
37 requirements, the franchisee shall have 30 days from the date of
38 receipt of the written disapproval notice to cure the noncompliance.
39 If the disapproval is rebutted, or any noncompliance is reasonably

1 *cured within that 30-day period, the franchisor shall approve the*
2 *claim.*

3 *(d) Following the disapproval of a claim, a franchisee shall have*
4 *one year from receipt of the notice of disapproval in which to*
5 *appeal the disapproval to the franchisor and either receipt of the*
6 *written disapproval notice or completion of the franchisor appeal*
7 *process, whichever is later, to file a protest with the board for*
8 *determination of whether the franchisor complied with this*
9 *subdivision. In any hearing pursuant to this subdivision, the*
10 *franchisor shall have the burden of proof.* ~~At~~

11 *(e) All claims made by franchisees under this section shall be*
12 *paid within 30 days following approval. Failure to approve or pay*
13 *within the above specified time limits, in individual instances for*
14 *reasons beyond the reasonable control of the franchisor, do not*
15 *constitute a violation of this article.*

16 ~~(b)~~

17 *(f) Audits of franchisee incentive records may be conducted by*
18 *the franchisor on a reasonable basis, and for a period of 18 6*
19 *months after a claim is paid or credit issued. Franchisee claims for*
20 *incentive program compensation shall not be disapproved except*
21 *for good cause, such as ineligibility under the terms of the incentive*
22 *program, lack of material documentation, or fraud*

23 *(g) Previously approved claims shall not be disapproved and*
24 *charged back except for good cause, including, but not limited to,*
25 *when the claim is false or fraudulent, ineligibility under the terms*
26 *of the incentive program as previously communicated to the*
27 *franchisee, or material noncompliance with reasonable and*
28 *nondiscriminatory documentation and administrative claims*
29 *submission requirements. A franchisor shall not disapprove a*
30 *claim or chargeback a dealer for a claim based upon an*
31 *extrapolation from a sample of claims.*

32 *(h) If the franchisor disapproves of a previously approved claim*
33 *following an audit, the franchisor shall provide to the franchisee,*
34 *within 30 days after the audit, a written disapproval notice stating*
35 *the specific grounds upon which the claim is disapproved. The*
36 *franchisor shall provide a reasonable appeal process allowing*
37 *the franchisee a reasonable period of not less than 45 days after*
38 *receipt of the written disapproval notice to respond to any*
39 *chargeback with additional supporting documentation or*

1 *information rebutting the disapproval, with the period to be*
 2 *commensurate with the volume of claims under consideration.*

3 *(i) The franchisor shall not chargeback the franchisee until 45*
 4 *days after the franchisee receives the written disapproval notice*
 5 *or completion of the appeal process, whichever is later. If the*
 6 *franchisee reasonably cures any noncompliance relating to a*
 7 *claim, the franchisor shall not chargeback the dealer for that claim.*
 8 *Any chargeback to a franchisee for incentive program compensation*
 9 *shall be made within 90 days of the completion of the audit. If*
 10 *after the franchisee receives the written disapproval notice or*
 11 *completes the franchisor's appeal process, whichever is later.*

12 *(j) Within one year after either receipt of the written disapproval*
 13 *notice or completion of the franchisor appeal process, whichever*
 14 *is later, a franchisee may file a protest with the board for*
 15 *determination of whether the franchisor complied with this*
 16 *subdivision. If a false claim was submitted by a franchisee with*
 17 *the intent to defraud the franchisor, a longer period for audit and*
 18 *any resulting chargeback may be permitted if the franchisor obtains*
 19 *an order from the board. In any protest pursuant to this subdivision,*
 20 *the franchisor shall have the burden of proof.*

21 SEC. 15. Section 3066 of the Vehicle Code is amended to read:

22 3066. (a) Upon receiving a ~~notice of~~ protest pursuant to Section
 23 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076,
 24 the board shall fix a time within 60 days of the order, and place of
 25 hearing, and shall send by registered mail a copy of the order to
 26 the franchisor, the protesting franchisee, and all individuals and
 27 groups that have requested notification by the board of protests
 28 and decisions of the board. Except in a case involving a franchisee
 29 who deals exclusively in motorcycles, the board or its executive
 30 director may, upon a showing of good cause, accelerate or postpone
 31 the date initially established for a hearing, but the hearing may not
 32 be rescheduled more than 90 days after the board's initial order.
 33 For the purpose of accelerating or postponing a hearing date, "good
 34 cause" includes, but is not limited to, the effects upon, and any
 35 irreparable harm to, the parties or interested persons or groups if
 36 the request for a change in hearing date is not granted. The board
 37 or an administrative law judge designated by the board shall hear
 38 and consider the oral and documented evidence introduced by the
 39 parties and other interested individuals and groups, and the board
 40 shall make its decision solely on the record so made. Chapter 4.5

1 (commencing with Section 11400) of Part 1 of Division 3 of Title
2 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7,
3 11511, 11511.5, 11513, 11514, 11515, and 11517 of the
4 Government Code apply to these proceedings.

5 (b) In a hearing on a protest filed pursuant to Section 3060,
6 3062, 3070, or 3072, the franchisor shall have the burden of proof
7 to establish that there is good cause to modify, replace, terminate,
8 or refuse to continue a franchise. The franchisee shall have the
9 burden of proof to establish that there is good cause not to enter
10 into a franchise establishing or relocating an additional motor
11 vehicle dealership.

12 (c) In a hearing on a protest alleging a violation of, or filed
13 pursuant to, Section 3064, 3065, 3065.1, 3074, 3075, or 3076, the
14 franchisee shall have the burden of proof, but the franchisor has
15 the burden of proof to establish that a franchisee acted with intent
16 to defraud the franchisor where that issue is material to a protest
17 filed pursuant to Section 3065, 3065.1, 3075, or 3076.

18 (d) A member of the board who is a new motor vehicle dealer
19 may not participate in, hear, comment, or advise other members
20 upon, or decide, a matter involving a protest filed pursuant to this
21 article unless all parties to the protest stipulate otherwise.

22 SEC. 16. Section 3067 of the Vehicle Code is amended to read:

23 3067. (a) The decision of the board shall be in writing and
24 shall contain findings of fact and a determination of the issues
25 presented. The decision shall sustain, conditionally sustain,
26 overrule, or conditionally overrule the protest. Conditions imposed
27 by the board shall be for the purpose of assuring performance of
28 binding contractual agreements between franchisees and franchisors
29 or otherwise serving the purposes of this article *or Article 5*
30 *(commencing with Section 3070)*. If the board fails to act within
31 30 days after the hearing, within 30 days after the board receives
32 a proposed decision where the case is heard before an
33 administrative law judge alone, or within a period necessitated by
34 Section 11517 of the Government Code, or as may be mutually
35 agreed upon by the parties, then the proposed action shall be
36 deemed to be approved. Copies of the board's decision shall be
37 delivered to the parties personally or sent to them by registered
38 mail, as well as to all individuals and groups that have requested
39 notification by the board of protests and decisions by the board.

1 The board’s decision shall be final upon its delivery or mailing
2 and a reconsideration or rehearing is not permitted.

3 (b) Notwithstanding subdivision (c) of Section 11517 of the
4 Government Code, if a protest is heard by an administrative law
5 judge alone, 10 days after receipt by the board of the administrative
6 law judge’s proposed decision, a copy of the proposed decision
7 shall be filed by the board as a public record and a copy shall be
8 served by the board on each party and his or her attorney.

9 SEC. 17. Section 3069.1 of the Vehicle Code is amended to
10 read:

11 3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a
12 franchise authorizing a dealership, as defined in ~~paragraph (1) of~~
13 ~~subdivision (e)~~ (d) of Section 3072.

14 SEC. 18. Section 11713.3 of the Vehicle Code is amended to
15 read:

16 11713.3. It is unlawful and a violation of this code for a
17 manufacturer, manufacturer branch, distributor, or distributor
18 branch licensed pursuant to this code to do, directly or indirectly
19 through an affiliate, any of the following:

20 (a) To refuse or fail to deliver in reasonable quantities and within
21 a reasonable time after receipt of an order from a dealer having a
22 franchise for the retail sale of a new vehicle sold or distributed by
23 the manufacturer or distributor, a new vehicle or parts or
24 accessories to new vehicles as are covered by the franchise, if the
25 vehicle, parts, or accessories are publicly advertised as being
26 available for delivery or actually being delivered. This subdivision
27 is not violated, however, if the failure is caused by acts or causes
28 beyond the control of the manufacturer, manufacturer branch,
29 distributor, or distributor branch.

30 (b) To prevent or require, or attempt to prevent or require, by
31 contract or otherwise, a change in the capital structure of a
32 dealership or the means by or through which the dealer finances
33 the operation of the dealership, if the dealer at all times meets
34 reasonable capital standards agreed to by the dealer and the
35 manufacturer or distributor, and if a change in capital structure
36 does not cause a change in the principal management or have the
37 effect of a sale of the franchise without the consent of the
38 manufacturer or distributor.

39 (c) To prevent or require, or attempt to prevent or require, a
40 dealer to change the executive management of a dealership, other

1 than the principal dealership operator or operators, if the franchise
2 was granted to the dealer in reliance upon the personal
3 qualifications of that person.

4 (d) (1) Except as provided in subdivision (t), to prevent or
5 require, or attempt to prevent or require, by contract or otherwise,
6 a dealer, or an officer, partner, or stockholder of a dealership, the
7 sale or transfer of a part of the interest of any of them to another
8 person. A dealer, officer, partner, or stockholder shall not, however,
9 have the right to sell, transfer, or assign the franchise, or a right
10 thereunder, without the consent of the manufacturer or distributor
11 except that the consent shall not be unreasonably withheld.

12 (2) (A) For the transferring franchisee to fail, prior to the sale,
13 transfer, or assignment of a franchisee or the sale, assignment, or
14 transfer of all, or substantially all, of the assets of the franchised
15 business or a controlling interest in the franchised business to
16 another person, to notify the manufacturer or distributor of the
17 franchisee's decision to sell, transfer, or assign the franchise. The
18 notice shall be in writing and shall include all of the following:

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

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

22 (iii) The proposed transferee's application for approval to
23 become the successor franchisee. The application shall include
24 forms and related information generally utilized by the
25 manufacturer or distributor in reviewing prospective franchisees,
26 if those forms are readily made available to existing franchisees.
27 As soon as practicable after receipt of the proposed transferee's
28 application, the manufacturer or distributor shall notify the
29 franchisee and the proposed transferee of information needed to
30 make the application complete.

31 (B) For the manufacturer or distributor, to fail, on or before 60
32 days after the receipt of all of the information required pursuant
33 to subparagraph (A), or as extended by a written agreement
34 between the manufacturer or distributor and the franchisee, to
35 notify the franchisee of the approval or the disapproval of the sale,
36 transfer, or assignment of the franchise. The notice shall be in
37 writing and shall be personally served or sent by certified mail,
38 return receipt requested, or by guaranteed overnight delivery
39 service that provides verification of delivery and shall be directed
40 to the franchisee. A proposed sale, assignment, or transfer shall

1 be deemed approved, unless disapproved by the franchisor in the
2 manner provided by this subdivision. If the proposed sale,
3 assignment, or transfer is disapproved, the franchisor shall include
4 in the notice of disapproval a statement setting forth the reasons
5 for the disapproval.

6 (3) In an action in which the manufacturer's or distributor's
7 withholding of consent under this subdivision or subdivision (e)
8 is an issue, whether the withholding of consent was unreasonable
9 is a question of fact requiring consideration of all the existing
10 circumstances.

11 (e) To prevent, or attempt to prevent, a dealer from receiving
12 fair and reasonable compensation for the value of the franchised
13 business. There shall not be a transfer or assignment of the dealer's
14 franchise without the consent of the manufacturer or distributor,
15 which consent shall not be unreasonably withheld or conditioned
16 upon the release, assignment, novation, waiver, estoppel, or
17 modification of a claim or defense by the dealer.

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

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

27 (A) Modifies or disclaims a duty or obligation of a manufacturer,
28 manufacturer branch, distributor, distributor branch, or
29 representative, or a right or privilege of a dealer, pursuant to
30 Chapter 4 (commencing with Section 11700) of Division 5 or
31 Chapter 6 (commencing with Section 3000) of Division 2.

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

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

35 (D) Requires a controversy between a manufacturer,
36 manufacturer branch, distributor, distributor branch, or
37 representative and a dealer to be referred to a person for a binding
38 determination. However, this subparagraph does not prohibit
39 arbitration before an independent arbitrator, provided that whenever
40 a motor vehicle franchise contract provides for the use of arbitration

1 to resolve a controversy arising out of, or relating to, that contract,
2 arbitration may be used to settle the controversy only if, after the
3 controversy arises, all parties to the controversy consent in writing
4 to use arbitration to settle the controversy. For the purpose of this
5 subparagraph, the terms “motor vehicle” and “motor vehicle
6 franchise contract” shall have the same meaning as defined in
7 Section 1226 of Title 15 of the United States Code. If arbitration
8 is elected to settle a dispute under a motor vehicle franchise
9 contract, the arbitrator shall provide the parties to the arbitration
10 with a written explanation of the factual and legal basis for the
11 award.

12 (2) An agreement, provision, release, assignment, novation,
13 waiver, or estoppel prohibited by this subdivision shall be
14 unenforceable and void.

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

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

20 (B) Affect the enforceability of any stipulated order or other
21 order entered by the board.

22 (C) Affect the enforceability of any provision in a contract if
23 the provision is not prohibited under this subdivision or any other
24 law.

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

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

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

35 (i) Provides that a dealer establish or maintain exclusive
36 facilities, personnel, or display space or provides that a dealer
37 make a material alteration, expansion, or addition to a dealership
38 facility.

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

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

5 (H) (i) Prohibit a voluntary waiver agreement, supported by
6 valuable consideration, other than the consideration of renewing
7 a franchise, to waive the right of a dealer to file a protest under
8 Section 3062 for the proposed establishment or relocation of a
9 specific proposed dealership, if the waiver agreement provides all
10 of the following:

11 (I) The approximate address at which the proposed dealership
12 will be located.

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

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

17 (IV) Whether the franchisor or affiliate will hold an ownership
18 interest in the proposed dealership or real property of the proposed
19 dealership, and the approximate percentage of any franchisor or
20 affiliate ownership interest in the proposed dealership.

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

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

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

27 (ii) Notwithstanding the provisions of a waiver agreement
28 entered into pursuant to the provisions of this subparagraph, a
29 dealer may file a protest under Section 3062 if any of the
30 information provided pursuant to clause (i) has become materially
31 inaccurate since the waiver agreement was executed. Any
32 determination of the enforceability of a waiver agreement shall be
33 determined by the board and the franchisor shall have the burden
34 of proof.

35 (h) To increase prices of motor vehicles that the dealer had
36 ordered for private retail consumers prior to the dealer's receipt
37 of the written official price increase notification. A sales contract
38 signed by a private retail consumer is evidence of the order. In the
39 event of manufacturer price reductions, the amount of the reduction
40 received by a dealer shall be passed on to the private retail

1 consumer by the dealer if the retail price was negotiated on the
2 basis of the previous higher price to the dealer. Price reductions
3 apply to all vehicles in the dealer's inventory that were subject to
4 the price reduction. Price differences applicable to new model or
5 series motor vehicles at the time of the introduction of new models
6 or series shall not be considered a price increase or price decrease.
7 This subdivision does not apply to price changes caused by either
8 of the following:

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

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

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

18 (j) To deny the widow, widower, or heirs designated by a
19 deceased owner of a dealership the opportunity to participate in
20 the ownership of the dealership or successor dealership under a
21 valid franchise for a reasonable time after the death of the owner.

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

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

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

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

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

38 (2) A manufacturer, branch, or distributor or an entity that
39 controls or is controlled by, a manufacturer, branch, or distributor,

1 shall not, however, be deemed to be competing in the following
2 limited circumstances:

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

10 (B) Owning an interest in a dealer as part of a bona fide dealer
11 development program that satisfies all of the following
12 requirements:

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

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

20 (iii) The program requires the dealer development candidate to
21 manage the day-to-day operations and business affairs of the dealer
22 and to acquire, within a reasonable time and on reasonable terms
23 and conditions, beneficial ownership and control of a majority
24 interest in the dealer and disassociation of any direct or indirect
25 ownership or control by the manufacturer, branch, or distributor.

26 (C) Owning a wholly owned subsidiary corporation of a
27 distributor that sells motor vehicles at retail, if, for at least three
28 years prior to January 1, 1973, the subsidiary corporation has been
29 a wholly owned subsidiary of the distributor and engaged in the
30 sale of vehicles at retail.

31 (3) (A) A manufacturer, branch, and distributor that owns or
32 operates a dealership in the manner described in subparagraph (A)
33 of paragraph (2) shall give written notice to the board, within 10
34 days, each time it commences or terminates operation of a
35 dealership and each time it acquires, changes, or divests itself of
36 an ownership interest.

37 (B) A manufacturer, branch, and distributor that owns an interest
38 in a dealer in the manner described in subparagraph (B) of
39 paragraph (2) shall give written notice to the board, annually, of
40 the name and location of each dealer in which it has an ownership

1 interest, the name of the bona fide dealer development owner or
2 owners, and the ownership interests of each owner expressed as a
3 percentage.

4 (p) To unfairly discriminate among its franchisees with respect
5 to warranty reimbursement or authority granted to its franchisees
6 to make warranty adjustments with retail customers.

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

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

15 (s) To dishonor a warranty, rebate, or other incentive offered
16 to the public or a dealer in connection with the retail sale of a new
17 motor vehicle, based solely upon the fact that an autobroker
18 arranged or negotiated the sale. This subdivision shall not prohibit
19 the disallowance of that rebate or incentive if the purchaser or
20 dealer is ineligible to receive the rebate or incentive pursuant to
21 any other term or condition of a rebate or incentive program.

22 (t) To exercise a right of first refusal or other right requiring a
23 franchisee or an owner of the franchise to sell, transfer, or assign
24 to the franchisor, or to a nominee of the franchisor, all or a material
25 part of the franchised business or of the assets of the franchised
26 business unless all of the following requirements are met:

27 (1) The franchise authorizes the franchisor to exercise a right
28 of first refusal to acquire the franchised business or assets of the
29 franchised business in the event of a proposed sale, transfer, or
30 assignment.

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

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

38 (4) The proposed transferee is neither a family member of an
39 owner of the franchised business, nor a managerial employee of
40 the franchisee owning 15 percent or more of the franchised

1 business, nor a corporation, partnership, or other legal entity owned
2 by the existing owners of the franchised business. For purposes of
3 this paragraph, a “family member” means the spouse of an owner
4 of the franchised business, the child, grandchild, brother, sister,
5 or parent of an owner, or a spouse of one of those family members.
6 This paragraph does not limit the rights of the franchisor to
7 disapprove a proposed transferee as provided in subdivision (d).

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

16 (6) The franchisor shall reimburse the proposed transferee for
17 expenses paid or incurred by the proposed transferee in evaluating,
18 investigating, and negotiating the proposed transfer to the extent
19 those expenses do not exceed the usual, customary, and reasonable
20 fees charged for similar work done in the area in which the
21 franchised business is located. These expenses include, but are not
22 limited to, legal and accounting expenses, and expenses incurred
23 for title reports and environmental or other investigations of real
24 property on which the franchisee’s operations are conducted. The
25 proposed transferee shall provide the franchisor a written
26 itemization of those expenses, and a copy of all nonprivileged
27 reports and studies for which expenses were incurred, if any, within
28 30 days of the proposed transferee’s receipt of a written request
29 from the franchisor for that accounting. The franchisor shall make
30 payment within 30 days of exercising the right of first refusal.

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

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

39 (i) A vehicle that is not made available to each franchisee
40 pursuant to a reasonable allocation formula that is applied

1 uniformly, and a part or accessory that is not made available to all
2 franchisees on an equal basis when there is no reasonable allocation
3 formula that is applied uniformly.

4 (ii) A vehicle, part, or accessory that is not made available to
5 each franchisee on comparable delivery terms, including the time
6 of delivery after the placement of an order. Differences in delivery
7 terms due to geographic distances or other factors beyond the
8 control of the manufacturer, branch, or distributor shall not
9 constitute unfair competition.

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

23 (iv) Sales or service incentives, discounts, or promotional
24 programs that are not made available to all California franchises
25 of the same line-make on an equal basis.

26 (B) Referring a prospective purchaser or lessee to a dealer in
27 which a manufacturer, branch, or distributor has an ownership
28 interest, unless the prospective purchaser or lessee resides in the
29 area of responsibility assigned to that dealer or the prospective
30 purchaser or lessee requests to be referred to that dealer.

31 (2) This subdivision does not prohibit a franchisor from granting
32 a franchise to prospective franchisees or assisting those franchisees
33 during the course of the franchise relationship as part of a program
34 or programs to make franchises available to persons lacking capital,
35 training, business experience, or other qualifications ordinarily
36 required of prospective franchisees.

37 (v) (1) To access, modify, or extract information from a
38 confidential dealer computer record, as defined in Section
39 11713.25, without obtaining the prior written consent of the dealer
40 and without maintaining administrative, technical, and physical

1 safeguards to protect the security, confidentiality, and integrity of
2 the information.

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

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

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

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

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

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

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

18 (x) (1) To unfairly discriminate against a franchisee selling a
19 service contract, debt cancellation agreement, maintenance
20 agreement, or similar product not approved, endorsed, sponsored,
21 or offered by the manufacturer, manufacturer branch, distributor,
22 or distributor branch or affiliate. For purposes of this subdivision,
23 unfair discrimination includes, but is not limited to, any of the
24 following:

25 (A) Express or implied statements that the dealer is under an
26 obligation to exclusively sell or offer to sell service contracts, debt
27 cancellation agreements, or similar products approved, endorsed,
28 sponsored, or offered by the manufacturer, manufacturer branch,
29 distributor, or distributor branch or affiliate.

30 (B) Express or implied statements that selling or offering to sell
31 service contracts, debt cancellation agreements, maintenance
32 agreements, or similar products not approved, endorsed, sponsored,
33 or offered by the manufacturer, manufacturer branch, distributor,
34 or distributor branch or affiliate, or the failure to sell or offer to
35 sell service contracts, debt cancellation agreements, maintenance
36 agreements, or similar products approved, endorsed, sponsored,
37 or offered by the manufacturer, manufacturer branch, distributor,
38 or distributor branch or affiliate will have any negative
39 consequences for the dealer.

1 (C) Measuring a dealer’s performance under a franchise
2 agreement based upon the sale of service contracts, debt
3 cancellation agreements, or similar products approved, endorsed,
4 sponsored, or offered by the manufacturer, manufacturer branch,
5 distributor, or distributor branch or affiliate.

6 (D) Requiring a dealer to actively promote the sale of service
7 contracts, debt cancellation agreements, or similar products
8 approved, endorsed, sponsored, or offered by the manufacturer,
9 manufacturer branch, distributor, or distributor branch or affiliate.

10 (E) Conditioning access to vehicles or parts, or vehicle sales or
11 service incentives upon the sale of service contracts, debt
12 cancellation agreements, or similar products approved, endorsed,
13 sponsored, or offered by the manufacturer, manufacturer branch,
14 distributor, or distributor branch or affiliate.

15 (2) Unfair discrimination does not include, and nothing shall
16 prohibit a manufacturer from, offering an incentive program to
17 vehicle dealers who voluntarily sell or offer to sell service
18 contracts, debt cancellation agreements, or similar products
19 approved, endorsed, sponsored, or offered by the manufacturer,
20 manufacturer branch, distributor, or distributor branch or affiliate,
21 if the program does not provide vehicle sales or service incentives.

22 (3) This subdivision does not prohibit a manufacturer,
23 manufacturer branch, distributor, or distributor branch from
24 requiring a franchisee that sells a used vehicle as “certified” under
25 a certified used vehicle program established by the manufacturer,
26 manufacturer branch, distributor, or distributor branch to provide
27 a service contract approved, endorsed, sponsored, or offered by
28 the manufacturer, manufacturer branch, distributor, or distributor
29 branch.

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

35

36 “Service Contract Disclosure

37 The service contract you are purchasing is not provided or backed
38 by the manufacturer of the vehicle you are purchasing. The
39 manufacturer of the vehicle is not responsible for claims or repairs
40 under this service contract.

1 _____
2 Signature of Purchaser”

3 (y) *Take or threaten to take any adverse action against a dealer*
4 *because the dealer sold or leased a vehicle to a customer who*
5 *either exported the vehicle to a foreign country or resold the*
6 *vehicle, unless the adverse action is permitted by contractual terms*
7 *binding on the dealer and the dealer had actual knowledge of the*
8 *customer’s intent to export or resell the vehicle. If the dealer causes*
9 *the vehicle to be registered in this or any other state, and collects*
10 *or causes to be collected any applicable sales or use tax due to*
11 *this state, a rebuttable presumption is established that the dealer*
12 *did not have actual knowledge of the customer’s intent to export*
13 *or resell the vehicle.*

14 (~~y~~)
15 (z) As used in this section, “area of responsibility” is a
16 geographic area specified in a franchise that is used by the
17 franchisor for the purpose of evaluating the franchisee’s
18 performance of its sales and service obligations.

19 SEC. 19. Section 11713.13 of the Vehicle Code is amended to
20 read:

21 11713.13. It is unlawful and a violation of this code for any
22 manufacturer, manufacturer branch, distributor, or distributor
23 branch licensed under this code to do, directly or indirectly through
24 an affiliate, any of the following:

25 (a) Prevent, or attempt to prevent, by contract or otherwise, a
26 dealer from acquiring, adding, or maintaining a sales or service
27 operation for another line make of motor vehicles at the same or
28 expanded facility at which the dealer currently operates a dealership
29 if the dealer complies with any reasonable facilities and capital
30 requirements of the manufacturer or distributor.

31 (b) Require a dealer to establish or maintain exclusive facilities,
32 personnel, or display space if the imposition of the requirement
33 would be unreasonable in light of all existing circumstances,
34 including economic conditions. In any proceeding under this
35 subdivision or subdivision (a) in which the reasonableness of a
36 facility or capital requirement is an issue, the manufacturer or
37 distributor shall have the burden of proof.

38 (c) Require, by contract or otherwise, a dealer to make a material
39 alteration, expansion, or addition to any dealership facility, unless
40 the required alteration, expansion, or addition is reasonable in light

1 of all existing circumstances, including economic conditions. A
2 *required facility alteration, expansion, or addition shall not be*
3 *deemed reasonable if it requires that the dealer purchase goods*
4 *or services from a specific vendor when substantially similar goods*
5 *or services are available from another vendor. In any proceeding*
6 *in which a required facility alteration, expansion, or addition is an*
7 *issue, the manufacturer ~~or distributor~~, manufacturer branch,*
8 *distributor, distributor branch, or affiliate shall have the burden*
9 *of proof.*

10 (d) (1) Fail to pay to a dealer, within 90 days of termination,
11 cancellation, or nonrenewal of a franchise, all of the following:

12 (A) The dealer cost, plus any charges made by the manufacturer
13 or distributor for vehicle distribution or delivery and the cost of
14 any dealer-installed original equipment accessories, less any
15 amount invoiced to the vehicle and paid by the manufacturer or
16 distributor to the dealer, for all new and undamaged vehicles with
17 less than 500 miles in the dealer's inventory that were acquired
18 by the dealer from the manufacturer, distributor, or another new
19 motor vehicle dealer franchised to sell vehicles of the same
20 line-make, in the ordinary course of business, within 18 months
21 of termination, cancellation, or nonrenewal of the franchise.

22 (B) The dealer cost for all unused and undamaged supplies,
23 parts, and accessories listed in the manufacturer's current parts
24 catalog and in their original packaging, except that sheet metal
25 may be packaged in a comparable substitute for the original
26 package.

27 (C) The fair market value of each undamaged sign owned by
28 the motor vehicle dealer and bearing a common name, trade name,
29 or trademark of the manufacturer or distributor if acquisition of
30 the sign was required or made a condition of participation in an
31 incentive program by the manufacturer or distributor.

32 (D) The fair market value of all special tools, computer systems,
33 and equipment that were required or made a condition of
34 participation in an incentive program by the manufacturer or
35 distributor that are in usable condition, excluding normal wear and
36 tear.

37 (E) The dealer costs of handling, packing, loading, and
38 transporting any items or inventory for repurchase by the
39 manufacturer or distributor.

1 (2) This subdivision does not apply to a franchisor of a dealer
2 of new recreational vehicles, as defined in subdivision (a) of
3 Section 18010 of the Health and Safety Code.

4 (3) This subdivision does not apply to a termination that is
5 implemented as a result of the sale of substantially all of the
6 inventory and fixed assets or stock of a franchised dealership if
7 the dealership continues to operate as a franchisee of the same
8 line-make.

9 (e) (1) (A) Fail to pay to a dealer of new recreational vehicles,
10 as defined in subdivision (a) of Section 18010 of the Health and
11 Safety Code, within 90 days of termination, cancellation, or
12 nonrenewal of a franchise for a recreational vehicle line-make, as
13 defined in Section 3072.5, the dealer cost, plus any charges made
14 by the manufacturer or distributor for vehicle distribution or
15 delivery and the cost of any dealer-installed original equipment
16 accessories, less any amount invoiced to the vehicle and paid by
17 the manufacturer or distributor to the dealer, for a new recreational
18 vehicle when the termination, cancellation, or nonrenewal is
19 initiated by a recreational vehicle manufacturer. This paragraph
20 only applies to new and unused recreational vehicles that do not
21 currently have or have had in the past, material damage, as defined
22 in Section 9990, and that the dealer acquired from the
23 manufacturer, distributor, or another new motor vehicle dealer
24 franchised to sell recreational vehicles of the same line-make in
25 the ordinary course of business within 12 months of the
26 termination, cancellation, or nonrenewal of the franchise.

27 (B) For those recreational vehicles with odometers, paragraph
28 (1) shall apply to only those vehicles that have no more than 1,500
29 miles on the odometer, in addition to the number of miles incurred
30 while delivering the vehicle from the manufacturer's facility that
31 produced the vehicle for delivery to the dealer's retail location.

32 (C) Damaged recreational vehicles shall be repurchased by the
33 manufacturer provided there is an offset in value for damages,
34 except recreational vehicles that have or had material damage, as
35 defined in Section 9990, may be repurchased at the manufacturer's
36 option provided there is an offset in value for damages.

37 (2) Fail to pay to a dealer of new recreational vehicles, as
38 defined in subdivision (a) of Section 18010 of the Health and
39 Safety Code, within 90 days of termination, cancellation, or
40 nonrenewal of a franchise, all of the following:

1 (A) The dealer cost for all unused and undamaged supplies,
2 parts, and accessories listed in the manufacturer's current parts
3 catalog and in their original packaging, except that sheet metal
4 may be packaged in a comparable substitute for the original
5 package.

6 (B) The fair market value of each undamaged sign owned by
7 the motor vehicle dealer and bearing a common name, trade name,
8 or trademark of the manufacturer or distributor if acquisition of
9 the sign was required or made a condition of participation in an
10 incentive program by the manufacturer or distributor.

11 (C) The fair market value of all special tools, computer systems,
12 and equipment that were required or made a condition of
13 participation in an incentive program by the manufacturer or
14 distributor that are in usable condition, excluding normal wear and
15 tear.

16 (D) The dealer costs of handling, packing, loading, and
17 transporting any items or inventory for repurchase by the
18 manufacturer or distributor.

19 (f) (1) Fail, upon demand, to indemnify any existing or former
20 franchisee and the franchisee's successors and assigns from any
21 and all damages sustained and attorney's fees and other expenses
22 reasonably incurred by the franchisee that result from or relate to
23 any claim made or asserted by a third party against the franchisee
24 to the extent the claim results from any of the following:

25 (A) The condition, characteristics, manufacture, assembly, or
26 design of any vehicle, parts, accessories, tools, or equipment, or
27 the selection or combination of parts or components manufactured
28 or distributed by the manufacturer or distributor.

29 (B) Service systems, procedures, or methods the franchisor
30 required or recommended the franchisee to use if the franchisee
31 properly uses the system, procedure, or method.

32 (C) Improper use or disclosure by a manufacturer or distributor
33 of nonpublic personal information obtained from a franchisee
34 concerning any consumer, customer, or employee of the franchisee.

35 (D) Any act or omission of the manufacturer or distributor for
36 which the franchisee would have a claim for contribution or
37 indemnity under applicable law or under the franchise, irrespective
38 of and without regard to any prior termination or expiration of the
39 franchise.

1 (2) This subdivision does not limit, in any way, the existing
2 rights, remedies, or recourses available to any person who
3 purchases or leases vehicles at retail.

4 (g) (1) *Establish or maintain a performance standard, sales
5 objective, or program for measuring a dealer's sales, service, or
6 customer service performance that may materially affect the dealer,
7 including, but not limited to, the dealer's right to payment under
8 any incentive or reimbursement program, unless both of the
9 following requirements are satisfied:*

10 (A) *The performance standard, sales objective, or program for
11 measuring dealership sales, service, or customer service
12 performance is reasonable in light of all existing circumstances,
13 including but not limited to the following:*

14 (i) *Demographics in the dealer's area of responsibility.*

15 (ii) *Geographical characteristics that affect vehicle shopping
16 patterns in the dealer's area of responsibility.*

17 (iii) *The availability and allocation of vehicles and parts
18 inventory available to and provided to the dealer and the number
19 of units in operation of the line-make in the dealer's area of
20 responsibility.*

21 (iv) *Local, statewide, and national economic circumstances.*

22 (v) *Historical sales, service, and customer service performance
23 of the dealership and of the line-make within the dealer's area of
24 responsibility, including vehicle brand preferences of consumers
25 in the dealer's area of responsibility.*

26 (B) *The manufacturer, manufacturer branch, distributor,
27 distributor branch, or affiliate provides all information used in
28 establishing the performance standard, sales objective, or program
29 for measuring dealership sales or service performance within 20
30 days upon request by the dealer.*

31 (2) *In any proceeding under this subdivision in which the
32 reasonableness of a performance standard, sales objective, or
33 program for measuring dealership sales, service, or customer
34 service performance is an issue, the manufacturer, manufacturer
35 branch, distributor, distributor branch, or affiliate shall have the
36 burden of proof.*

37 (3) *As used in this subdivision, "area of responsibility" shall
38 have the same meaning as defined in subdivision (z) of section
39 11713.3.*

1 SEC. 20. 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.

O