

AMENDED IN ASSEMBLY JUNE 10, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 155

Introduced by Senator Padilla

January 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 amended, 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 to require, among other things, 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 to prohibit a previously approved claim from being charged back to the franchisee except under certain circumstances, including when the claim is false or fraudulent. 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~~, *disapproval and to cure noncompliance*, as provided. The bill would authorize the audit of a franchisee's records for 9 months ~~after~~ *after* a claim is paid or credit is issued, as specified. The bill would give a franchisee 6 months from the date of receipt of a specified written notice 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, and requires the board to determine the reasonableness of the warranty reimbursement schedule or formula if the franchisee files a notice of protest 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 permit the board, in determining the adequacy and fairness of the compensation, to consider published nationally recognized flat-rate time guides. The bill would also require, if the board determines that the warranty reimbursement schedule or formula fails to provide adequate compensation, the franchisor to correct the failure by amending or replacing the warranty reimbursement schedule and implementing the correction as to all franchisees within 30 days after receipt of the board's order.

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, except as specified. The bill would also prohibit the ~~establishing or maintaining~~ *establishment or maintenance* of 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 or establishment of working capital requirements, 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 pursuant to a published export or sale-for-resale prohibition 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 dealer was provided an export or sale-for-resale prohibition policy, in writing, prior to the sale or lease and the dealer knew or should have known 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:

1 (a) The distribution, sale, and service of new motor vehicles in
2 the State of California vitally affect the general economy of this
3 state and the public welfare.

4 (b) The new motor vehicle franchise system, which operates
5 within a strictly defined and highly regulated statutory scheme,
6 assures the consuming public of a well-organized distribution
7 system for the availability and sale of new motor vehicles
8 throughout the state, provides a network of quality warranty, recall,
9 and repair facilities to maintain those vehicles, and creates a
10 cost-effective method for the state to police those systems through
11 the licensing and regulation of private sector franchisors and
12 franchisees.

13 ~~(c) Over the past decade, franchisors have unilaterally and~~
14 ~~gradually reduced the amount of flat-rate labor time allocable to~~
15 ~~warranty repairs by an unreasonable amount, and have failed to~~
16 ~~properly reimburse dealers for repairing vehicles to conform to~~
17 ~~the warranty established by the franchisor. Over this period,~~
18 ~~franchisors have also regularly denied dealer warranty and~~
19 ~~incentive program claims for technical reasons without providing~~
20 ~~any rights to rebut the denial or correct technical errors through~~
21 ~~reasonable appeal processes, which has resulted in dealers not~~
22 ~~being reimbursed when repairing vehicles under the manufacturer~~
23 ~~warranty or applying incentive money to a sale. California~~
24 ~~franchise laws require manufacturers to provide reasonable~~
25 ~~reimbursement to dealers for warranty work, but fail to establish~~
26 ~~guidelines for determining whether a reimbursement is reasonable.~~
27 ~~Unlike many states, California does not require franchisors to~~
28 ~~provide an appeal process where dealers can dispute warranty~~
29 ~~and incentive claim denials or audit chargebacks.~~

30 ~~(d) Franchisors implement punitive policies toward dealers~~
31 ~~when vehicles sold by dealers end up being exported, even when~~
32 ~~the export takes place without dealer knowledge, resulting in~~
33 ~~dealers being charged back for incentive funding that the dealer~~
34 ~~accounted for in making the initial sale. Franchisors sometimes~~
35 ~~establish strict liability export policies where a paid sales incentive~~
36 ~~is subject to being charged back in the event that a vehicle is~~
37 ~~exported, even when the dealership did not know of the intended~~
38 ~~exportation. Unlike many states, California does not prohibit those~~
39 ~~chargebacks in circumstances where the dealer did not have~~
40 ~~knowledge of or reason to know of the intended exportation, such~~

1 *as when the dealer has collected sales tax or the vehicle has been*
2 *registered.*

3 (e) ~~Franchisors~~ *Many franchisors* measure dealership sales,
4 service, and customer service performance against standards ~~that~~
5 ~~are established unilaterally and without dealer input.~~ *Many of these*
6 ~~performance standards~~ *are based upon national or statewide*
7 ~~performance averages that bear no resemblance to~~ *do not take into*
8 ~~account a dealer's local market. Failure to adhere to these standards~~
9 ~~can result in disqualification from incentive programs, imposition~~
10 ~~of unrealistic working capital requirements, and even termination~~
11 ~~of a franchise agreement.~~ *Unlike many states, California does not*
12 *impose any requirement that those standards be reasonable.*

13 (f) ~~Franchisors frequently~~ *sometimes* establish facility models
14 that require dealers to purchase goods or services from specific
15 vendors, ~~many of which are located outside of the United States.~~
16 ~~Those requirements are generally nonnegotiable,~~ *vendors even if*
17 ~~a dealer can obtain substantially similar goods or services from a~~
18 ~~local California vendor.~~ *an alternative local vendor.*

19 (g) It is the intent of this act to ensure that new motor vehicle
20 dealers are treated fairly by their franchisors, that dealers are
21 reasonably compensated for performing warranty repairs on behalf
22 of their franchisor, that dealers are not ~~punished~~ *subject to adverse*
23 *action* when vehicles are exported without dealer knowledge, that
24 performance standards take into account local market conditions,
25 and that dealers be allowed to obtain required goods or services
26 through vendors of their choosing.

27 SEC. 2. Section 3006 of the Vehicle Code is amended to read:

28 3006. The board shall organize and elect a president from
29 among its members for a term of one year at the first meeting of
30 each year. The newly elected president shall assume his or her
31 duties at the conclusion of the meeting at which he or she was
32 elected. Reelection to office during membership is unrestricted.

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

34 3008. (a) All meetings of the board shall be open and public,
35 and all persons shall be permitted to attend any meeting of the
36 board, except that the board may hold executive sessions to
37 deliberate on the decision to be reached upon the evidence
38 introduced in a proceeding conducted in accordance with Chapter
39 5 (commencing with Section 11500) of Part 1 of Division 3 of
40 Title 2 of the Government Code.

1 (b) At all meetings of the board, open or executive, involving
2 an appeal from a decision of the Director of Motor Vehicles, the
3 director or his or her authorized representative may attend, present
4 the position of the department, and then shall absent himself or
5 herself from any executive session at the request of any member
6 of the board.

7 (c) Within the limitations of its powers and authority, and in
8 the event of disagreement between the board and the director
9 regarding the decision to be reached, the decision of the board
10 shall be final.

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

12 3012. Each member of the board shall receive a per diem of
13 one hundred dollars (\$100) for each day actually spent in the
14 discharge of official duties, and he or she shall be reimbursed for
15 traveling and other expenses necessarily incurred in the
16 performance of his or her duties. The per diem and reimbursement
17 shall be wholly defrayed from funds that shall be provided in the
18 annual budget of the department.

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

20 3050. The board shall do all of the following:

21 (a) Adopt rules and regulations in accordance with Chapter 3.5
22 (commencing with Section 11340) of Part 1 of Division 3 of Title
23 2 of the Government Code governing those matters that are
24 specifically committed to its jurisdiction.

25 (b) Hear and determine, within the limitations and in accordance
26 with the procedure provided, an appeal presented by an applicant
27 for, or holder of, a license as a new motor vehicle dealer,
28 manufacturer, manufacturer branch, distributor, distributor branch,
29 or representative when the applicant or licensee submits an appeal
30 provided for in this chapter from a decision arising out of the
31 department.

32 (c) Consider any matter concerning the activities or practices
33 of any person applying for or holding a license as a new motor
34 vehicle dealer, manufacturer, manufacturer branch, distributor,
35 distributor branch, or representative pursuant to Chapter 4
36 (commencing with Section 11700) of Division 5 submitted by any
37 person. A member of the board who is a new motor vehicle dealer
38 may not participate in, hear, comment, advise other members upon,
39 or decide any matter considered by the board pursuant to this
40 subdivision that involves a dispute between a franchisee and

1 franchisor. After that consideration, the board may do any one or
2 any combination of the following:

3 (1) Direct the department to conduct investigation of matters
4 that the board deems reasonable, and make a written report on the
5 results of the investigation to the board within the time specified
6 by the board.

7 (2) Undertake to mediate, arbitrate, or otherwise resolve any
8 honest difference of opinion or viewpoint existing between any
9 member of the public and any new motor vehicle dealer,
10 manufacturer, manufacturer branch, distributor branch, or
11 representative.

12 (3) Order the department to exercise any and all authority or
13 power that the department may have with respect to the issuance,
14 renewal, refusal to renew, suspension, or revocation of the license
15 of any new motor vehicle dealer, manufacturer, manufacturer
16 branch, distributor, distributor branch, or representative as that
17 license is required under Chapter 4 (commencing with Section
18 11700) of Division 5.

19 (d) Hear and decide, within the limitations and in accordance
20 with the procedure provided, a protest presented by a franchisee
21 pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072,
22 3074, 3075, or 3076. A member of the board who is a new motor
23 vehicle dealer may not participate in, hear, comment, advise other
24 members upon, or decide, any matter involving a protest filed
25 pursuant to Article 4 (commencing with Section 3060), unless all
26 parties to the protest stipulate otherwise.

27 (e) Notwithstanding subdivisions (c) and (d), the courts have
28 jurisdiction over all common law and statutory claims originally
29 cognizable in the courts. For those claims, a party may initiate an
30 action directly in any court of competent jurisdiction.

31 SEC. 6. Section 3050.7 of the Vehicle Code is amended to
32 read:

33 3050.7. (a) The board may adopt stipulated decisions and
34 orders, without a hearing pursuant to Section 3066, to resolve one
35 or more issues raised by a protest or petition filed with the board.
36 Whenever the parties to a protest or petition submit a proposed
37 stipulated decision and order of the board, a copy of the proposed
38 stipulated decision and order shall be transmitted by the executive
39 director of the board to each member of the board. The proposed
40 stipulated decision and order shall be deemed to be adopted by the

1 board unless a member of the board notifies the executive director
2 of the board of an objection thereto within 10 days after that board
3 member has received a copy of the proposed stipulated decision
4 and order.

5 (b) If the board adopts a stipulated decision and order to resolve
6 a protest filed pursuant to Section 3060 or 3070 in which the parties
7 stipulate that good cause exists for the termination of the franchise
8 of the protestant, and the order provides for a conditional or
9 unconditional termination of the franchise of the protestant,
10 paragraph (2) of subdivision (a) of Section 3060 and paragraph
11 (2) of subdivision (a) of Section 3070, which require a hearing to
12 determine whether good cause exists for termination of the
13 franchise, is inapplicable to the proceedings. If the stipulated
14 decision and order provides for an unconditional termination of
15 the franchise, the franchise may be terminated without further
16 proceedings by the board. If the stipulated decision and order
17 provides for the termination of the franchise, conditioned upon the
18 failure of a party to comply with specified conditions, the franchise
19 may be terminated upon a determination, according to the terms
20 of the stipulated decision and order, that the conditions have not
21 been met. If the stipulated decision and order provides for the
22 termination of the franchise conditioned upon the occurrence of
23 specified conditions, the franchise may be terminated upon a
24 determination, according to the terms of the stipulated decision
25 and order, that the stipulated conditions have occurred.

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

27 3052. (a) On or before the 10th day after the last day on which
28 reconsideration of a final decision of the department can be ordered,
29 the applicant or licensee may file an appeal with the executive
30 director of the board. The appeal shall be in writing and shall state
31 the grounds therefor. A copy of the appeal shall be mailed by the
32 appellant to the department, and the department shall thereafter
33 be considered as a party to the appeal. The right to appeal is not
34 affected by failure to seek reconsideration before the department.

35 (b) An appeal is considered to be filed on the date it is received
36 in the office of the executive director of the board, except that an
37 appeal mailed to the executive director by means of registered mail
38 is considered to be filed with the executive director on the postmark
39 date.

1 (c) The appeal shall be accompanied by evidence that the
2 appellant has requested the administrative record of the department
3 and advanced the cost of preparation of that record. The complete
4 administrative record includes the pleadings, all notices and orders
5 issued by the department, any proposed decision by an
6 administrative law judge, the exhibits admitted or rejected, the
7 written evidence, and any other papers in the case. All parts of the
8 administrative record requested by the appellant may be filed with
9 the appeal together with the appellant's points and authorities. If
10 the board orders the filing of additional parts of the administrative
11 record, the board may order prior payment by the appellant of the
12 cost of providing those additional parts.

13 (d) Except as provided in subdivisions (e) and (f), a decision of
14 the department may not become effective during the period in
15 which an appeal may be filed, and the filing of an appeal shall stay
16 the decision of the department until a final order is made by the
17 board.

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

22 (f) With respect to the department's petition filed pursuant to
23 subdivision (e), the department shall have the burden of proof. The
24 board shall act upon the petition within 14 days or prior to the
25 effective date of the department's decision, whichever is later. The
26 board may order oral argument on the petition before the board.

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

28 3056. When the order reverses the decision of the department,
29 the board may direct the department to reconsider the matter in
30 the light of its order and may direct the department to take any
31 further action as is specially enjoined upon it by law. In all cases
32 the board shall enter its order within 60 days after the filing of the
33 appeal, except in the case of unavoidable delay in supplying the
34 administrative record, in which event the board shall make its final
35 order within 60 days after receipt of the record.

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

37 3057. The board shall fix an effective date for its orders not
38 more than 30 days from the day the order is served upon the parties
39 or remand the case to the department for fixing an effective date.
40 A final order of the board shall be in writing and copies of the

1 order shall be delivered to the parties personally or sent to them
2 by registered mail. The order shall be final upon its delivery or
3 mailing and no reconsideration or rehearing by the board shall be
4 permitted.

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

6 3062. (a) (1) Except as otherwise provided in subdivision (b),
7 if a franchisor seeks to enter into a franchise establishing an
8 additional motor vehicle dealership, or seeks to relocate an existing
9 motor vehicle dealership, that has a relevant market area within
10 which the same line-make is represented, the franchisor shall, in
11 writing, first notify the board and each franchisee in that line-make
12 in the relevant market area of the franchisor's intention to establish
13 an additional dealership or to relocate an existing dealership.
14 Within 20 days of receiving the notice, satisfying the requirements
15 of this section, or within 20 days after the end of an appeal
16 procedure provided by the franchisor, a franchisee required to be
17 given the notice may file with the board a protest to the proposed
18 dealership establishment or relocation described in the franchisor's
19 notice. If, within this time, a franchisee files with the board a
20 request for additional time to file a protest, the board or its
21 executive director, upon a showing of good cause, may grant an
22 additional 10 days to file the protest. When a protest is filed, the
23 board shall inform the franchisor that a timely protest has been
24 filed, that a hearing is required pursuant to Section 3066, and that
25 the franchisor may not establish the proposed dealership or relocate
26 the existing dealership until the board has held a hearing as
27 provided in Section 3066, nor thereafter, if the board has
28 determined that there is good cause for not permitting the
29 establishment of the proposed dealership or relocation of the
30 existing dealership. In the event of multiple protests, hearings may
31 be consolidated to expedite the disposition of the issue.

32 (2) If a franchisor seeks to enter into a franchise that authorizes
33 a satellite warranty facility to be established at, or relocated to, a
34 proposed location that is within two miles of a dealership of the
35 same line-make, the franchisor shall first give notice in writing of
36 the franchisor's intention to establish or relocate a satellite warranty
37 facility at the proposed location to the board and each franchisee
38 operating a dealership of the same line-make within two miles of
39 the proposed location. Within 20 days of receiving the notice
40 satisfying the requirements of this section, or within 20 days after

1 the end of an appeal procedure provided by the franchisor, a
2 franchisee required to be given the notice may file with the board
3 a protest to the establishing or relocating of the satellite warranty
4 facility. If, within this time, a franchisee files with the board a
5 request for additional time to file a protest, the board or its
6 executive director, upon a showing of good cause, may grant an
7 additional 10 days to file the protest. When a protest is filed, the
8 board shall inform the franchisor that a timely protest has been
9 filed, that a hearing is required pursuant to Section 3066, and that
10 the franchisor may not establish or relocate the proposed satellite
11 warranty facility until the board has held a hearing as provided in
12 Section 3066, nor thereafter, if the board has determined that there
13 is good cause for not permitting the satellite warranty facility. In
14 the event of multiple protests, hearings may be consolidated to
15 expedite the disposition of the issue.

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

19
20 “NOTICE TO DEALER: You have the right to file a protest
21 with the NEW MOTOR VEHICLE BOARD in Sacramento and
22 have a hearing on your protest under the terms of the California
23 Vehicle Code if you oppose this action. You must file your protest
24 with the board within 20 days of your receipt of this notice, or
25 within 20 days after the end of any appeal procedure that is
26 provided by us to you. If within this time you file with the board
27 a request for additional time to file a protest, the board or its
28 executive director, upon a showing of good cause, may grant you
29 an additional 10 days to file the protest.”

30
31 (b) Subdivision (a) does not apply to either of the following:

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

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

39 (c) Subdivision (a) does not apply to a display of vehicles at a
40 fair, exposition, or similar exhibit if actual sales are not made at

1 the event and the display does not exceed 30 days. This subdivision
2 may not be construed to prohibit a new vehicle dealer from
3 establishing a branch office for the purpose of selling vehicles at
4 the fair, exposition, or similar exhibit, even though the event is
5 sponsored by a financial institution, as defined in Section 31041
6 of the Financial Code or by a financial institution and a licensed
7 dealer. The establishment of these branch offices, however, shall
8 be in accordance with subdivision (a) where applicable.

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

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

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

16 (2) “Satellite warranty facility” means a facility operated by a
17 franchisee where authorized warranty repairs and service are
18 performed and the offer for sale or lease, the display for sale or
19 lease, or the sale or lease of new motor vehicles is not authorized
20 to take place.

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

22 3063. In determining whether good cause has been established
23 for not entering into a franchise or relocating an existing dealership
24 of the same line-make, the board shall take into consideration the
25 existing circumstances, including, but not limited to, all of the
26 following:

27 (a) Permanency of the investment.

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

30 (c) Whether it is injurious to the public welfare for an additional
31 franchise to be established or an existing dealership to be relocated.

32 (d) Whether the franchisees of the same line-make in the relevant
33 market area are providing adequate competition and convenient
34 consumer care for the motor vehicles of the line-make in the market
35 area, which shall include the adequacy of motor vehicle sales and
36 service facilities, equipment, supply of vehicle parts, and qualified
37 service personnel.

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

1 (f) For purposes of this section, the terms “motor vehicle
2 dealership” and “dealership” shall have the same meaning as
3 defined in Section 3062.

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

5 3064. (a) Every franchisor shall specify to its franchisees the
6 delivery and preparation obligations of the franchisees prior to
7 delivery of new motor vehicles to retail buyers. A copy of the
8 delivery and preparation obligations, which shall constitute the
9 franchisee’s only responsibility for product liability between the
10 franchisee and the franchisor but shall not in any way affect the
11 franchisee’s responsibility for product liability between the
12 purchaser and either the franchisee or the franchisor, and a schedule
13 of compensation to be paid to franchisees for the work and services
14 they shall be required to perform in connection with those delivery
15 and preparation obligations shall be filed with the board by
16 franchisors, and shall constitute the compensation as set forth on
17 the schedule. The schedule of compensation shall be reasonable,
18 with the reasonableness thereof being subject to the approval of
19 the board, if a franchisee files a notice of protest with the board.
20 In determining the reasonableness of the schedules, the board shall
21 consider all relevant circumstances, including, but not limited to,
22 the time required to perform each function that the dealer is
23 obligated to perform and the appropriate labor rate.

24 (b) Upon delivery of the vehicle, the franchisee shall give a
25 copy of the delivery and preparation obligations to the purchaser
26 and a written certification that the franchisee has fulfilled these
27 obligations.

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

29 3065. (a) Every franchisor shall properly fulfill every warranty
30 agreement made by it and adequately and fairly compensate each
31 of its franchisees for labor and parts used to fulfill that warranty
32 when the franchisee has fulfilled warranty obligations of
33 diagnostics, repair, and servicing and shall file a copy of its
34 warranty reimbursement schedule or formula with the board. The
35 warranty reimbursement schedule or formula shall be reasonable
36 with respect to the time and compensation allowed to the franchisee
37 for the warranty diagnostics, repair, and servicing, and all other
38 conditions of the obligation. The reasonableness of the warranty
39 reimbursement schedule or formula shall be determined by the
40 board if a franchisee files a protest with the board. A franchisor

1 shall not replace, modify, or supplement the warranty
2 reimbursement schedule to impose a fixed percentage or other
3 ~~general~~ reduction in the time and compensation allowed to the
4 franchisee for ~~labor or parts~~. *warranty repairs not attributable to*
5 *a specific repair*. A franchisor may reduce the allowed time and
6 compensation applicable to *a specific* ~~parts or labor operations~~
7 *warranty repair* only upon ~~30~~ 15 days' prior written notice to the
8 franchisee. In any protest challenging a reduction in time and
9 compensation applicable to specific parts or labor operations that
10 is filed within ~~one year~~ *six months* following the franchisee's
11 receipt of notice of the reduction, the franchisor shall have the
12 burden of establishing the reasonableness of the reduction and
13 adequacy and fairness of the resulting compensation.

14 (b) In determining the adequacy and fairness of the
15 compensation, published, nationally recognized flat-rate time
16 guides and the franchisee's effective labor rate charged to its
17 various retail customers may be considered together with other
18 relevant criteria. If in a protest permitted by this section filed by
19 any franchisee the board determines that the warranty
20 reimbursement schedule or formula fails ~~in any manner~~ to provide
21 adequate and fair compensation or fails in whole or in part to
22 conform with the other requirements of this section, within 30 days
23 after receipt of the board's ~~order~~ *order*, the franchisor shall correct
24 the failure by amending or replacing the warranty reimbursement
25 schedule or formula and implementing the correction as to all
26 franchisees of the ~~franchisor~~. *franchisor that are located in this*
27 *state*.

28 (c) If any franchisor disallows a franchisee's claim for a
29 defective part, alleging that the part, in fact, is not defective, the
30 franchisor shall return the part alleged not to be defective to the
31 franchisee at the expense of the franchisor, or the franchisee shall
32 be reimbursed for the franchisee's cost of the part, at the
33 franchisor's option.

34 (d) (1) All claims made by franchisees pursuant to this section
35 shall be either approved or disapproved within 30 days after their
36 receipt by the franchisor. Any claim not specifically disapproved
37 in writing within 30 days from receipt by the franchisor shall be
38 deemed approved on the 30th day. All claims made by franchisees
39 under this section and Section 3064 for labor and parts shall be
40 paid within 30 days after approval.

1 (2) A franchisor shall not disapprove a claim unless the claim
2 is false or fraudulent, repairs were not properly made, repairs were
3 inappropriate to correct a nonconformity with the written warranty
4 due to an improper act or omission of the franchisee, or for material
5 noncompliance with reasonable and nondiscriminatory
6 documentation and administrative claims submission requirements.
7 A franchisor shall not disapprove a claim based upon an
8 extrapolation from a sample of claims.

9 (3) When any claim is disapproved, the franchisee who submits
10 it shall be notified in writing of its disapproval within the required
11 period, and each notice shall state the specific grounds upon which
12 the disapproval is based. The franchisor shall provide for a
13 reasonable appeal process allowing the franchisee at least 30 days
14 after receipt of the written disapproval notice to provide additional
15 supporting documentation or information rebutting the disapproval.
16 If disapproval is based upon noncompliance with documentation
17 or administrative claims submission requirements, the franchisee
18 shall have *at least* 30 days from the date of receipt of the notice
19 to cure the noncompliance. If the disapproval is rebutted, ~~or any~~
20 ~~and noncompliance is reasonably cured within that 30-day period,~~
21 *before the applicable deadline*, the franchisor shall approve the
22 claim.

23 (4) If the franchisee provides additional supporting
24 documentation or information purporting to rebut the disapproval,
25 attempts to cure noncompliance relating to the claim, or otherwise
26 ~~invokes the appeal process described in paragraph (3);~~ *appeals*
27 *denial of the claim* and the franchisor continues to deny the claim,
28 the franchisor shall provide the franchisee with a written
29 notification of the final denial, ~~which shall contain the following~~
30 ~~statement on the first page, in at least 12-point boldface type and~~
31 ~~circumscribed by a line to segregate it from the rest of the text:~~
32 *denial within 30 days of completion of the appeal process, which*
33 *shall conspicuously state "Final Denial" on the first page.*

34 -
35 ~~"NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT~~
36 ~~TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF~~
37 ~~YOUR WARRANTY CLAIM, OR OTHERWISE APPEAL~~
38 ~~DENIAL OF YOUR WARRANTY CLAIM.~~

39 -

1 ~~“You have the right to file a protest with the NEW MOTOR~~
2 ~~VEHICLE BOARD in Sacramento and have a hearing in which~~
3 ~~you may protest this denial under the provisions of the California~~
4 ~~Vehicle Code. You must file your protest with the board within~~
5 ~~six months after receiving this notice.”~~
6

7 (5) Failure to approve or pay within the above specified time
8 limits, in individual instances for reasons beyond the reasonable
9 control of the franchisor, shall not constitute a violation of this
10 article.

11 (6) Within six months after either receipt of the written notice
12 described in paragraph (3) or (4), whichever is later, a franchisee
13 may file a protest with the board for determination of whether the
14 franchisor complied with the requirements of this subdivision. In
15 any protest pursuant to this subdivision, the franchisor shall have
16 the burden of proof.

17 (e) (1) Audits of franchisee warranty records may be conducted
18 by the franchisor on a reasonable basis for a period of nine months
19 after a claim is paid or credit issued, and only if the franchisor has
20 substantial evidence of a pattern of improper warranty claims,
21 including, but not limited to, a recent significant deviation between
22 the value or number of warranty claims made by the franchisee
23 and the average value or number of warranty claims made by
24 similarly sized dealers of the same line-make.

25 (2) Previously approved claims shall not be disapproved or
26 charged back to the franchisee unless the claim is false or
27 fraudulent, repairs were not properly made, repairs were
28 inappropriate to correct a nonconformity with the written warranty
29 due to an improper act or omission of the franchisee, or for material
30 noncompliance with reasonable and nondiscriminatory
31 documentation and administrative claims submission requirements.
32 A franchisor shall not disapprove or chargeback a claim based
33 upon an extrapolation from a sample of claims.

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

1 with additional supporting documentation or information rebutting
2 the ~~disapproval~~, *disapproval and to cure noncompliance*, with the
3 period to be commensurate with the volume of claims under
4 consideration. If the franchisee rebuts any disapproval ~~or and~~
5 reasonably cures any noncompliance relating to a ~~claim~~, *claim*
6 *before the applicable deadline*, the franchisor shall not chargeback
7 the franchisee for that claim.

8 (4) If the franchisee provides additional supporting
9 documentation or information purporting to rebut the ~~disapproval~~
10 ~~or disapproval~~, attempts to cure noncompliance relating to the
11 ~~claim~~ *claim*, or *otherwise appeals denial of the claim* and the
12 franchisor continues to deny the claim, the franchisor shall provide
13 the franchisee with a written notification of the final ~~denial~~, which
14 shall contain the following statement on the first page, in at least
15 12-point boldface type and circumscribed by a line to segregate it
16 from the rest of the text: *denial within 30 days of completion of*
17 *the appeal process, which shall conspicuously state "Final Denial"*
18 *on the first page.*

19 -

20 ~~“NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT~~
21 ~~TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF~~
22 ~~YOUR WARRANTY CLAIM, OR OTHERWISE APPEAL~~
23 ~~DENIAL OF YOUR WARRANTY CLAIM.~~

24 -

25 ~~“You have the right to file a protest with the NEW MOTOR~~
26 ~~VEHICLE BOARD in Sacramento and have a hearing in which~~
27 ~~you may protest this denial under the provisions of the California~~
28 ~~Vehicle Code. You must file your protest with the board within~~
29 ~~six months after receiving this notice.~~

30 -

31 ~~“WE WILL CHARGE YOU FOR THE DENIED CLAIMS~~
32 ~~WITHIN 45 TO 90 DAYS OF THIS NOTICE UNLESS YOU~~
33 ~~FILE A PROTEST WITH THE BOARD PRIOR TO~~
34 ~~CHARGEBACK.”~~

35
36 (5) The franchisor shall not chargeback the franchisee until 45
37 days after receipt of the written notice described in paragraph (3)
38 or paragraph (4), whichever is later. Any chargeback to a franchisee
39 for warranty parts or service compensation shall be made within
40 90 days of receipt of that written notice. If the franchisee files a

1 protest pursuant to this subdivision prior to the franchisor's
2 chargeback for denied claims, the franchisor shall not offset or
3 otherwise undertake to collect the chargeback until the board issues
4 a final order on the protest. If the board sustains the chargeback
5 or the protest is dismissed with prejudice, the franchisor shall have
6 90 days following issuance of the final order or the dismissal with
7 prejudice to make the chargeback, unless otherwise provided in a
8 settlement agreement.

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

18 SEC. 14. Section 3065.1 of the Vehicle Code is amended to
19 read:

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

29 (b) Franchisee claims for incentive program compensation shall
30 not be disapproved unless the claim is false or fraudulent, the claim
31 is ineligible under the terms of the incentive program as previously
32 communicated to the franchisee, or for material noncompliance
33 with reasonable and nondiscriminatory documentation and
34 administrative claims submission requirements. A franchisor shall
35 not disapprove a claim based upon an extrapolation from a sample
36 of claims.

37 (c) The franchisor shall provide for a reasonable appeal process
38 allowing the franchisee at least 30 days after receipt of the written
39 disapproval notice to respond to any disapproval with additional
40 supporting documentation or information rebutting the disapproval.

1 If disapproval is based upon noncompliance with documentation
2 or administrative claims submission requirements, the franchisee
3 shall have *at least* 30 days from the date of receipt of the written
4 disapproval notice to cure the noncompliance. If the disapproval
5 is rebutted, ~~or any~~ and noncompliance is reasonably cured ~~within~~
6 ~~that 30-day period~~, *before the applicable deadline*, the franchisor
7 shall approve the claim.

8 (d) If the franchisee provides additional supporting
9 documentation or information purporting to rebut the ~~disapproval~~
10 ~~or disapproval~~, attempts to cure noncompliance relating to the
11 ~~claim~~ *claim, or otherwise appeals denial of the claim*, and the
12 franchisor continues to deny the claim, the franchisor shall provide
13 the franchisee with a written notification of the final ~~denial~~, which
14 shall contain the following statement on the first page, in at least
15 12-point boldface type and circumscribed by a line to segregate it
16 from the rest of the text: *denial within 30 days of completion of*
17 *the appeal process, which shall conspicuously state "Final Denial"*
18 *on the first page.*

19 -
20 ~~"NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT~~
21 ~~TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF~~
22 ~~YOUR FRANCHISE INCENTIVE PROGRAM CLAIM, OR~~
23 ~~OTHERWISE APPEAL DENIAL OF YOUR CLAIM.~~

24 -
25 ~~"You have the right to file a protest with the NEW MOTOR~~
26 ~~VEHICLE BOARD in Sacramento and have a hearing in which~~
27 ~~you may protest this denial under the provisions of the California~~
28 ~~Vehicle Code. You must file your protest with the board within~~
29 ~~six months after receiving this notice."~~

30
31 (e) Following the disapproval of a claim, a franchisee shall have
32 six months from either receipt of the written notice described in
33 subdivision (a) or (d), whichever is later, to file a protest with the
34 board for determination of whether the franchisor complied with
35 this subdivision. In any hearing pursuant to this subdivision, the
36 franchisor shall have the burden of proof.

37 (f) All claims made by franchisees under this section shall be
38 paid within 30 days following approval. Failure to approve or pay
39 within the above specified time limits, in individual instances for

1 reasons beyond the reasonable control of the franchisor, do not
2 constitute a violation of this article.

3 (g) (1) Audits of franchisee incentive records may be conducted
4 by the franchisor on a reasonable basis, and for a period of nine
5 months after a claim is paid or credit issued.

6 (2) Previously approved claims shall not be disapproved and
7 charged back unless the claim is false or fraudulent, the claim is
8 ineligible under the terms of the incentive program as previously
9 communicated to the franchisee, or for material noncompliance
10 with reasonable and nondiscriminatory documentation and
11 administrative claims submission requirements. A franchisor shall
12 not disapprove a claim or chargeback a claim based upon an
13 extrapolation from a sample of claims.

14 (3) If the franchisor disapproves of a previously approved claim
15 following an audit, the franchisor shall provide to the franchisee,
16 within 30 days after the audit, a written disapproval notice stating
17 the specific grounds upon which the claim is disapproved. The
18 franchisor shall provide a reasonable appeal process allowing the
19 franchisee a reasonable period of not less than 30 days after receipt
20 of the written disapproval notice to respond to any ~~chargeback~~
21 *disapproval* with additional supporting documentation or
22 information rebutting the ~~disapproval~~, *disapproval and to cure*
23 *noncompliance*, with the period to be commensurate with the
24 volume of claims under consideration. *If the franchisee rebuts any*
25 *disapproval and reasonably cures any noncompliance relating to*
26 *a claim before the applicable deadline, the franchisor shall not*
27 *chargeback the franchisee for that claim.*

28 (4) If the franchisee provides additional supporting
29 documentation or information purporting to rebut the disapproval,
30 attempts to cure noncompliance relating to the claim, or otherwise
31 appeals denial of the claim, and the franchisor continues to deny
32 the claim, the franchisor shall provide the franchisee with a written
33 notification of the ~~final denial, which shall contain the following~~
34 ~~statement on the first page, in at least 12-point boldface type and~~
35 ~~circumscribed by a line to segregate it from the rest of the text:~~
36 *final denial within 30 days of completion of the appeal process,*
37 *which shall conspicuously state “Final Denial” on the first page.*

38 -
39 ~~“NOTICE TO DEALER: WE HAVE DENIED YOUR ATTEMPT~~
40 ~~TO CURE NONCOMPLIANCE, REBUT THE DENIAL OF~~

1 ~~YOUR FRANCHISOR INCENTIVE PROGRAM CLAIM, OR~~
2 ~~OTHERWISE APPEAL DENIAL OF YOUR CLAIM.~~

3 -

4 ~~“You have the right to file a protest with the NEW MOTOR~~
5 ~~VEHICLE BOARD in Sacramento and have a hearing in which~~
6 ~~you may protest this denial under the provisions of the California~~
7 ~~Vehicle Code. You must file your protest with the board within~~
8 ~~six months after receiving this notice.~~

9 -

10 ~~“WE WILL CHARGE YOU FOR THE DENIED CLAIMS~~
11 ~~WITHIN 45 TO 90 DAYS OF THIS NOTICE UNLESS YOU~~
12 ~~FILE A PROTEST WITH THE BOARD PRIOR TO~~
13 ~~CHARGEBACK.”~~

14

15 (5) The franchisor shall not chargeback the franchisee until 45
16 days after the franchisee receives the written notice described in
17 paragraph (3) or (4), whichever is later. If the franchisee reasonably
18 cures any noncompliance relating to a claim, the franchisor shall
19 not chargeback the dealer for that claim. Any chargeback to a
20 franchisee for incentive program compensation shall be made
21 within 90 days after the franchisee receives that written notice. If
22 the board sustains the chargeback or the protest is dismissed with
23 prejudice, the franchisor shall have 90 days following issuance of
24 the final order or the dismissal with prejudice to make the
25 chargeback, unless otherwise provided in a settlement agreement.

26 (6) Within six months after either receipt of the written notice
27 described in paragraph (3) or (4), a franchisee may file a protest
28 with the board for determination of whether the franchisor
29 complied with this subdivision. If a false claim was submitted by
30 a franchisee with the intent to defraud the franchisor, a longer
31 period for audit and any resulting chargeback may be permitted if
32 the franchisor obtains an order from the board. If the franchisee
33 files a protest pursuant to this subdivision prior to the franchisor’s
34 chargeback for denied claims, the franchisor shall not offset or
35 otherwise undertake to collect the chargeback until the board issues
36 a final order on the protest. In any protest pursuant to this
37 subdivision, the franchisor shall have the burden of proof.

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

39 3066. (a) Upon receiving a protest pursuant to Section 3060,
40 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the

1 board shall fix a time within 60 days of the order, and place of
2 hearing, and shall send by registered mail a copy of the order to
3 the franchisor, the protesting franchisee, and all individuals and
4 groups that have requested notification by the board of protests
5 and decisions of the board. Except in a case involving a franchisee
6 who deals exclusively in motorcycles, the board or its executive
7 director may, upon a showing of good cause, accelerate or postpone
8 the date initially established for a hearing, but the hearing may not
9 be rescheduled more than 90 days after the board's initial order.
10 For the purpose of accelerating or postponing a hearing date, "good
11 cause" includes, but is not limited to, the effects upon, and any
12 irreparable harm to, the parties or interested persons or groups if
13 the request for a change in hearing date is not granted. The board
14 or an administrative law judge designated by the board shall hear
15 and consider the oral and documented evidence introduced by the
16 parties and other interested individuals and groups, and the board
17 shall make its decision solely on the record so made. Chapter 4.5
18 (commencing with Section 11400) of Part 1 of Division 3 of Title
19 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7,
20 11511, 11511.5, 11513, 11514, 11515, and 11517 of the
21 Government Code apply to these proceedings.

22 (b) In a hearing on a protest filed pursuant to Section 3060,
23 3062, 3070, or 3072, the franchisor shall have the burden of proof
24 to establish that there is good cause to modify, replace, terminate,
25 or refuse to continue a franchise. The franchisee shall have the
26 burden of proof to establish that there is good cause not to enter
27 into a franchise establishing or relocating an additional motor
28 vehicle dealership.

29 (c) ~~In~~ Except as otherwise provided in this chapter, in a hearing
30 on a protest alleging a violation of, or filed pursuant to, Section
31 3064, 3065, 3065.1, 3074, 3075, or 3076, the franchisee shall have
32 the burden of proof, but the franchisor has the burden of proof to
33 establish that a franchisee acted with intent to defraud the
34 franchisor where that issue is material to a protest filed pursuant
35 to Section 3065, 3065.1, 3075, or 3076.

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

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

1 3067. (a) The decision of the board shall be in writing and
2 shall contain findings of fact and a determination of the issues
3 presented. The decision shall sustain, conditionally sustain,
4 overrule, or conditionally overrule the protest. Conditions imposed
5 by the board shall be for the purpose of assuring performance of
6 binding contractual agreements between franchisees and franchisors
7 or otherwise serving the purposes of this article or Article 5
8 (commencing with Section 3070). If the board fails to act within
9 30 days after the hearing, within 30 days after the board receives
10 a proposed decision where the case is heard before an
11 administrative law judge alone, or within a period necessitated by
12 Section 11517 of the Government Code, or as may be mutually
13 agreed upon by the parties, then the proposed action shall be
14 deemed to be approved. Copies of the board's decision shall be
15 delivered to the parties personally or sent to them by registered
16 mail, as well as to all individuals and groups that have requested
17 notification by the board of protests and decisions by the board.
18 The board's decision shall be final upon its delivery or mailing
19 and a reconsideration or rehearing is not permitted.

20 (b) Notwithstanding subdivision (c) of Section 11517 of the
21 Government Code, if a protest is heard by an administrative law
22 judge alone, 10 days after receipt by the board of the administrative
23 law judge's proposed decision, a copy of the proposed decision
24 shall be filed by the board as a public record and a copy shall be
25 served by the board on each party and his or her attorney.

26 SEC. 17. Section 3069.1 of the Vehicle Code is amended to
27 read:

28 3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a
29 franchise authorizing a dealership, as defined in subdivision (d)
30 of Section 3072.

31 SEC. 18. Section 11713.3 of the Vehicle Code is amended to
32 read:

33 11713.3. It is unlawful and a violation of this code for a
34 manufacturer, manufacturer branch, distributor, or distributor
35 branch licensed pursuant to this code to do, directly or indirectly
36 through an affiliate, any of the following:

37 (a) To refuse or fail to deliver in reasonable quantities and within
38 a reasonable time after receipt of an order from a dealer having a
39 franchise for the retail sale of a new vehicle sold or distributed by
40 the manufacturer or distributor, a new vehicle or parts or

1 accessories to new vehicles as are covered by the franchise, if the
2 vehicle, parts, or accessories are publicly advertised as being
3 available for delivery or actually being delivered. This subdivision
4 is not violated, however, if the failure is caused by acts or causes
5 beyond the control of the manufacturer, manufacturer branch,
6 distributor, or distributor branch.

7 (b) To prevent or require, or attempt to prevent or require, by
8 contract or otherwise, a change in the capital structure of a
9 dealership or the means by or through which the dealer finances
10 the operation of the dealership, if the dealer at all times meets
11 reasonable capital standards agreed to by the dealer and the
12 manufacturer or distributor, and if a change in capital structure
13 does not cause a change in the principal management or have the
14 effect of a sale of the franchise without the consent of the
15 manufacturer or distributor.

16 (c) To prevent or require, or attempt to prevent or require, a
17 dealer to change the executive management of a dealership, other
18 than the principal dealership operator or operators, if the franchise
19 was granted to the dealer in reliance upon the personal
20 qualifications of that person.

21 (d) (1) Except as provided in subdivision (t), to prevent or
22 require, or attempt to prevent or require, by contract or otherwise,
23 a dealer, or an officer, partner, or stockholder of a dealership, the
24 sale or transfer of a part of the interest of any of them to another
25 person. A dealer, officer, partner, or stockholder shall not, however,
26 have the right to sell, transfer, or assign the franchise, or a right
27 thereunder, without the consent of the manufacturer or distributor
28 except that the consent shall not be unreasonably withheld.

29 (2) (A) For the transferring franchisee to fail, prior to the sale,
30 transfer, or assignment of a franchisee or the sale, assignment, or
31 transfer of all, or substantially all, of the assets of the franchised
32 business or a controlling interest in the franchised business to
33 another person, to notify the manufacturer or distributor of the
34 franchisee's decision to sell, transfer, or assign the franchise. The
35 notice shall be in writing and shall include all of the following:

- 36 (i) The proposed transferee's name and address.
37 (ii) A copy of all of the agreements relating to the sale,
38 assignment, or transfer of the franchised business or its assets.
39 (iii) The proposed transferee's application for approval to
40 become the successor franchisee. The application shall include

1 forms and related information generally utilized by the
2 manufacturer or distributor in reviewing prospective franchisees,
3 if those forms are readily made available to existing franchisees.
4 As soon as practicable after receipt of the proposed transferee's
5 application, the manufacturer or distributor shall notify the
6 franchisee and the proposed transferee of information needed to
7 make the application complete.

8 (B) For the manufacturer or distributor, to fail, on or before 60
9 days after the receipt of all of the information required pursuant
10 to subparagraph (A), or as extended by a written agreement
11 between the manufacturer or distributor and the franchisee, to
12 notify the franchisee of the approval or the disapproval of the sale,
13 transfer, or assignment of the franchise. The notice shall be in
14 writing and shall be personally served or sent by certified mail,
15 return receipt requested, or by guaranteed overnight delivery
16 service that provides verification of delivery and shall be directed
17 to the franchisee. A proposed sale, assignment, or transfer shall
18 be deemed approved, unless disapproved by the franchisor in the
19 manner provided by this subdivision. If the proposed sale,
20 assignment, or transfer is disapproved, the franchisor shall include
21 in the notice of disapproval a statement setting forth the reasons
22 for the disapproval.

23 (3) In an action in which the manufacturer's or distributor's
24 withholding of consent under this subdivision or subdivision (e)
25 is an issue, whether the withholding of consent was unreasonable
26 is a question of fact requiring consideration of all the existing
27 circumstances.

28 (e) To prevent, or attempt to prevent, a dealer from receiving
29 fair and reasonable compensation for the value of the franchised
30 business. There shall not be a transfer or assignment of the dealer's
31 franchise without the consent of the manufacturer or distributor,
32 which consent shall not be unreasonably withheld or conditioned
33 upon the release, assignment, novation, waiver, estoppel, or
34 modification of a claim or defense by the dealer.

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

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

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

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

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

13 (D) Requires a controversy between a manufacturer,
14 manufacturer branch, distributor, distributor branch, or
15 representative and a dealer to be referred to a person for a binding
16 determination. However, this subparagraph does not prohibit
17 arbitration before an independent arbitrator, provided that whenever
18 a motor vehicle franchise contract provides for the use of arbitration
19 to resolve a controversy arising out of, or relating to, that contract,
20 arbitration may be used to settle the controversy only if, after the
21 controversy arises, all parties to the controversy consent in writing
22 to use arbitration to settle the controversy. For the purpose of this
23 subparagraph, the terms “motor vehicle” and “motor vehicle
24 franchise contract” shall have the same meaning as defined in
25 Section 1226 of Title 15 of the United States Code. If arbitration
26 is elected to settle a dispute under a motor vehicle franchise
27 contract, the arbitrator shall provide the parties to the arbitration
28 with a written explanation of the factual and legal basis for the
29 award.

30 (2) An agreement, provision, release, assignment, novation,
31 waiver, or estoppel prohibited by this subdivision shall be
32 unenforceable and void.

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

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

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

1 (C) Affect the enforceability of any provision in a contract if
2 the provision is not prohibited under this subdivision or any other
3 law.

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

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

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

14 (i) Provides that a dealer establish or maintain exclusive
15 facilities, personnel, or display space or provides that a dealer
16 make a material alteration, expansion, or addition to a dealership
17 facility.

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

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

24 (H) (i) Prohibit a voluntary waiver agreement, supported by
25 valuable consideration, other than the consideration of renewing
26 a franchise, to waive the right of a dealer to file a protest under
27 Section 3062 for the proposed establishment or relocation of a
28 specific proposed dealership, if the waiver agreement provides all
29 of the following:

30 (I) The approximate address at which the proposed dealership
31 will be located.

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

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

36 (IV) Whether the franchisor or affiliate will hold an ownership
37 interest in the proposed dealership or real property of the proposed
38 dealership, and the approximate percentage of any franchisor or
39 affiliate ownership interest in the proposed dealership.

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

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

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

6 (ii) Notwithstanding the provisions of a waiver agreement
7 entered into pursuant to the provisions of this subparagraph, a
8 dealer may file a protest under Section 3062 if any of the
9 information provided pursuant to clause (i) has become materially
10 inaccurate since the waiver agreement was executed. Any
11 determination of the enforceability of a waiver agreement shall be
12 determined by the board and the franchisor shall have the burden
13 of proof.

14 (h) To increase prices of motor vehicles that the dealer had
15 ordered for private retail consumers prior to the dealer's receipt
16 of the written official price increase notification. A sales contract
17 signed by a private retail consumer is evidence of the order. In the
18 event of manufacturer price reductions, the amount of the reduction
19 received by a dealer shall be passed on to the private retail
20 consumer by the dealer if the retail price was negotiated on the
21 basis of the previous higher price to the dealer. Price reductions
22 apply to all vehicles in the dealer's inventory that were subject to
23 the price reduction. Price differences applicable to new model or
24 series motor vehicles at the time of the introduction of new models
25 or series shall not be considered a price increase or price decrease.
26 This subdivision does not apply to price changes caused by either
27 of the following:

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

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

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

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

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

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

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

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

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

17 (2) A manufacturer, branch, or distributor or an entity that
18 controls or is controlled by, a manufacturer, branch, or distributor,
19 shall not, however, be deemed to be competing in the following
20 limited circumstances:

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

28 (B) Owning an interest in a dealer as part of a bona fide dealer
29 development program that satisfies all of the following
30 requirements:

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

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

38 (iii) The program requires the dealer development candidate to
39 manage the day-to-day operations and business affairs of the dealer
40 and to acquire, within a reasonable time and on reasonable terms

1 and conditions, beneficial ownership and control of a majority
2 interest in the dealer and disassociation of any direct or indirect
3 ownership or control by the manufacturer, branch, or distributor.

4 (C) Owning a wholly owned subsidiary corporation of a
5 distributor that sells motor vehicles at retail, if, for at least three
6 years prior to January 1, 1973, the subsidiary corporation has been
7 a wholly owned subsidiary of the distributor and engaged in the
8 sale of vehicles at retail.

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

15 (B) A manufacturer, branch, and distributor that owns an interest
16 in a dealer in the manner described in subparagraph (B) of
17 paragraph (2) shall give written notice to the board, annually, of
18 the name and location of each dealer in which it has an ownership
19 interest, the name of the bona fide dealer development owner or
20 owners, and the ownership interests of each owner expressed as a
21 percentage.

22 (p) To unfairly discriminate among its franchisees with respect
23 to warranty reimbursement or authority granted to its franchisees
24 to make warranty adjustments with retail customers.

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

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

33 (s) To dishonor a warranty, rebate, or other incentive offered
34 to the public or a dealer in connection with the retail sale of a new
35 motor vehicle, based solely upon the fact that an autobroker
36 arranged or negotiated the sale. This subdivision shall not prohibit
37 the disallowance of that rebate or incentive if the purchaser or
38 dealer is ineligible to receive the rebate or incentive pursuant to
39 any other term or condition of a rebate or incentive program.

1 (t) To exercise a right of first refusal or other right requiring a
2 franchisee or an owner of the franchise to sell, transfer, or assign
3 to the franchisor, or to a nominee of the franchisor, all or a material
4 part of the franchised business or of the assets of the franchised
5 business unless all of the following requirements are met:

6 (1) The franchise authorizes the franchisor to exercise a right
7 of first refusal to acquire the franchised business or assets of the
8 franchised business in the event of a proposed sale, transfer, or
9 assignment.

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

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

17 (4) The proposed transferee is neither a family member of an
18 owner of the franchised business, nor a managerial employee of
19 the franchisee owning 15 percent or more of the franchised
20 business, nor a corporation, partnership, or other legal entity owned
21 by the existing owners of the franchised business. For purposes of
22 this paragraph, a “family member” means the spouse of an owner
23 of the franchised business, the child, grandchild, brother, sister,
24 or parent of an owner, or a spouse of one of those family members.
25 This paragraph does not limit the rights of the franchisor to
26 disapprove a proposed transferee as provided in subdivision (d).

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

35 (6) The franchisor shall reimburse the proposed transferee for
36 expenses paid or incurred by the proposed transferee in evaluating,
37 investigating, and negotiating the proposed transfer to the extent
38 those expenses do not exceed the usual, customary, and reasonable
39 fees charged for similar work done in the area in which the
40 franchised business is located. These expenses include, but are not

1 limited to, legal and accounting expenses, and expenses incurred
2 for title reports and environmental or other investigations of real
3 property on which the franchisee's operations are conducted. The
4 proposed transferee shall provide the franchisor a written
5 itemization of those expenses, and a copy of all nonprivileged
6 reports and studies for which expenses were incurred, if any, within
7 30 days of the proposed transferee's receipt of a written request
8 from the franchisor for that accounting. The franchisor shall make
9 payment within 30 days of exercising the right of first refusal.

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

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

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

23 (ii) A vehicle, part, or accessory that is not made available to
24 each franchisee on comparable delivery terms, including the time
25 of delivery after the placement of an order. Differences in delivery
26 terms due to geographic distances or other factors beyond the
27 control of the manufacturer, branch, or distributor shall not
28 constitute unfair competition.

29 (iii) Information obtained from a franchisee by the manufacturer,
30 branch, or distributor concerning the business affairs or operations
31 of a franchisee in which the manufacturer, branch, or distributor
32 does not have an ownership interest. The information includes,
33 but is not limited to, information contained in financial statements
34 and operating reports, the name, address, or other personal
35 information or buying, leasing, or service behavior of a dealer
36 customer, and other information that, if provided to a franchisee
37 or dealer owned or controlled by a manufacturer or distributor,
38 would give that franchisee or dealer a competitive advantage. This
39 clause does not apply if the information is provided pursuant to a

1 subpoena or court order, or to aggregated information made
2 available to all franchisees.

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

6 (B) Referring a prospective purchaser or lessee to a dealer in
7 which a manufacturer, branch, or distributor has an ownership
8 interest, unless the prospective purchaser or lessee resides in the
9 area of responsibility assigned to that dealer or the prospective
10 purchaser or lessee requests to be referred to that dealer.

11 (2) This subdivision does not prohibit a franchisor from granting
12 a franchise to prospective franchisees or assisting those franchisees
13 during the course of the franchise relationship as part of a program
14 or programs to make franchises available to persons lacking capital,
15 training, business experience, or other qualifications ordinarily
16 required of prospective franchisees.

17 (v) (1) To access, modify, or extract information from a
18 confidential dealer computer record, as defined in Section
19 11713.25, without obtaining the prior written consent of the dealer
20 and without maintaining administrative, technical, and physical
21 safeguards to protect the security, confidentiality, and integrity of
22 the information.

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

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

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

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

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

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

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

38 (x) (1) To unfairly discriminate against a franchisee selling a
39 service contract, debt cancellation agreement, maintenance
40 agreement, or similar product not approved, endorsed, sponsored,

1 or offered by the manufacturer, manufacturer branch, distributor,
2 or distributor branch or affiliate. For purposes of this subdivision,
3 unfair discrimination includes, but is not limited to, any of the
4 following:

5 (A) Express or implied statements that the dealer is under an
6 obligation to exclusively sell or offer to sell service contracts, debt
7 cancellation agreements, or similar products approved, endorsed,
8 sponsored, or offered by the manufacturer, manufacturer branch,
9 distributor, or distributor branch or affiliate.

10 (B) Express or implied statements that selling or offering to sell
11 service contracts, debt cancellation agreements, maintenance
12 agreements, or similar products not approved, endorsed, sponsored,
13 or offered by the manufacturer, manufacturer branch, distributor,
14 or distributor branch or affiliate, or the failure to sell or offer to
15 sell service contracts, debt cancellation agreements, maintenance
16 agreements, or similar products approved, endorsed, sponsored,
17 or offered by the manufacturer, manufacturer branch, distributor,
18 or distributor branch or affiliate will have any negative
19 consequences for the dealer.

20 (C) Measuring a dealer's performance under a franchise
21 agreement based upon the sale of service contracts, debt
22 cancellation agreements, or similar products approved, endorsed,
23 sponsored, or offered by the manufacturer, manufacturer branch,
24 distributor, or distributor branch or affiliate.

25 (D) Requiring a dealer to actively promote the sale of service
26 contracts, debt cancellation agreements, or similar products
27 approved, endorsed, sponsored, or offered by the manufacturer,
28 manufacturer branch, distributor, or distributor branch or affiliate.

29 (E) Conditioning access to vehicles or parts, or vehicle sales or
30 service incentives upon the sale of service contracts, debt
31 cancellation agreements, or similar products approved, endorsed,
32 sponsored, or offered by the manufacturer, manufacturer branch,
33 distributor, or distributor branch or affiliate.

34 (2) Unfair discrimination does not include, and nothing shall
35 prohibit a manufacturer from, offering an incentive program to
36 vehicle dealers who voluntarily sell or offer to sell service
37 contracts, debt cancellation agreements, or similar products
38 approved, endorsed, sponsored, or offered by the manufacturer,
39 manufacturer branch, distributor, or distributor branch or affiliate,
40 if the program does not provide vehicle sales or service incentives.

1 (3) This subdivision does not prohibit a manufacturer,
2 manufacturer branch, distributor, or distributor branch from
3 requiring a franchisee that sells a used vehicle as “certified” under
4 a certified used vehicle program established by the manufacturer,
5 manufacturer branch, distributor, or distributor branch to provide
6 a service contract approved, endorsed, sponsored, or offered by
7 the manufacturer, manufacturer branch, distributor, or distributor
8 branch.

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

14

15 “Service Contract Disclosure

16 The service contract you are purchasing is not provided or backed
17 by the manufacturer of the vehicle you are purchasing. The
18 manufacturer of the vehicle is not responsible for claims or repairs
19 under this service contract.

20

21 _____
Signature of Purchaser”

22

23 (y) To take or threaten to take any adverse action against a dealer
24 pursuant to ~~a published~~ *an* export or sale-for-resale prohibition
25 because the dealer sold or leased a vehicle to a customer who either
26 exported the vehicle to a foreign country or resold the vehicle in
27 violation of the prohibition, unless *the export or sale-for-resale*
28 *prohibition policy was provided to the dealer in writing prior to*
29 *the sale or lease, and* the dealer knew or reasonably should have
30 known of the customer’s intent to export or resell the vehicle in
31 violation of the prohibition at the time of sale or lease. If the dealer
32 causes the vehicle to be registered in this or any other state, and
33 collects or causes to be collected any applicable sales or use tax
34 due to this state, a rebuttable presumption is established that the
35 dealer did not have reason to know of the customer’s intent to
36 export or resell the vehicle.

37 (z) 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
40 performance of its sales and service obligations.

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

3 11713.13. It is unlawful and a violation of this code for any
4 manufacturer, manufacturer branch, distributor, or distributor
5 branch licensed under this code to do, directly or indirectly through
6 an affiliate, any of the following:

7 (a) Prevent, or attempt to prevent, by contract or otherwise, a
8 dealer from acquiring, adding, or maintaining a sales or service
9 operation for another line-make of motor vehicles at the same or
10 expanded facility at which the dealer currently operates a dealership
11 if the dealer complies with any reasonable facilities and capital
12 requirements of the manufacturer or distributor.

13 (b) Require a dealer to establish or maintain exclusive facilities,
14 personnel, or display space if the imposition of the requirement
15 would be unreasonable in light of all existing circumstances,
16 including economic conditions. In any proceeding under this
17 subdivision or subdivision (a) in which the reasonableness of a
18 facility or capital requirement is an issue, the manufacturer or
19 distributor shall have the burden of proof.

20 (c) Require, by contract or otherwise, a dealer to make a material
21 alteration, expansion, or addition to any dealership facility, unless
22 the required alteration, expansion, or addition is reasonable in light
23 of all existing circumstances, including economic conditions.

24 (1) A required facility alteration, expansion, or addition shall
25 not be deemed reasonable if it requires that the dealer purchase
26 goods or services from a specific vendor when substantially similar
27 goods or services are available from another vendor. This paragraph
28 does not authorize a dealer to impair or eliminate the intellectual
29 property rights of the manufacturer, manufacturer branch,
30 distributor, or distributor branch, or to permit a dealer to erect or
31 maintain signs that do not conform to the intellectual property
32 usage guidelines of the manufacturer, manufacturer branch,
33 distributor, or distributor branch. This paragraph shall not apply
34 to a specific good or service if the manufacturer, manufacturer
35 branch, distributor, or distributor branch provides the dealer with
36 a lump-sum payment of a substantial portion of the cost of that
37 good or service.

38 (2) In any proceeding in which a required facility alteration,
39 expansion, or addition is an issue, the manufacturer, manufacturer

1 branch, distributor, distributor branch, or affiliate shall have the
2 burden of proof.

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

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

15 (B) The dealer cost for all unused and undamaged supplies,
16 parts, and accessories listed in the manufacturer's current parts
17 catalog and in their original packaging, except that sheet metal
18 may be packaged in a comparable substitute for the original
19 package.

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

25 (D) The fair market value of all special tools, computer systems,
26 and equipment that were required or made a condition of
27 participation in an incentive program by the manufacturer or
28 distributor that are in usable condition, excluding normal wear and
29 tear.

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

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

36 (3) This subdivision does not apply to a termination that is
37 implemented as a result of the sale of substantially all of the
38 inventory and fixed assets or stock of a franchised dealership if
39 the dealership continues to operate as a franchisee of the same
40 line-make.

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

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

24 (C) Damaged recreational vehicles shall be repurchased by the
25 manufacturer provided there is an offset in value for damages,
26 except recreational vehicles that have or had material damage, as
27 defined in Section 9990, may be repurchased at the manufacturer's
28 option provided there is an offset in value for damages.

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

33 (A) The dealer cost for all unused and undamaged supplies,
34 parts, and accessories listed in the manufacturer's current parts
35 catalog and in their original packaging, except that sheet metal
36 may be packaged in a comparable substitute for the original
37 package.

38 (B) The fair market value of each undamaged sign owned by
39 the motor vehicle dealer and bearing a common name, trade name,
40 or trademark of the manufacturer or distributor if acquisition of

1 the sign was required or made a condition of participation in an
2 incentive program by the manufacturer or distributor.

3 (C) The fair market value of all special tools, computer systems,
4 and equipment that were required or made a condition of
5 participation in an incentive program by the manufacturer or
6 distributor that are in usable condition, excluding normal wear and
7 tear.

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

11 (f) (1) Fail, upon demand, to indemnify any existing or former
12 franchisee and the franchisee's successors and assigns from any
13 and all damages sustained and attorney's fees and other expenses
14 reasonably incurred by the franchisee that result from or relate to
15 any claim made or asserted by a third party against the franchisee
16 to the extent the claim results from any of the following:

17 (A) The condition, characteristics, manufacture, assembly, or
18 design of any vehicle, parts, accessories, tools, or equipment, or
19 the selection or combination of parts or components manufactured
20 or distributed by the manufacturer or distributor.

21 (B) Service systems, procedures, or methods the franchisor
22 required or recommended the franchisee to use if the franchisee
23 properly uses the system, procedure, or method.

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

27 (D) Any act or omission of the manufacturer or distributor for
28 which the franchisee would have a claim for contribution or
29 indemnity under applicable law or under the franchise, irrespective
30 of and without regard to any prior termination or expiration of the
31 franchise.

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

35 (g) (1) Establish or maintain a performance standard, sales
36 objective, or program for measuring a dealer's sales, service, or
37 customer service performance that may materially affect the dealer,
38 including, but not limited to, the dealer's right to payment under
39 any incentive or reimbursement program or establishment of

1 working capital requirements, unless both of the following
2 requirements are satisfied:

3 (A) The performance standard, sales objective, or program for
4 measuring dealership sales, service, or customer service
5 performance is reasonable in light of all existing circumstances,
6 including, but not limited to, the following:

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

8 (ii) Geographical and market characteristics ~~that affect vehicle~~
9 ~~shopping patterns and vehicle preferences~~ in the dealer's area of
10 responsibility.

11 (iii) The availability and allocation of vehicles and parts
12 ~~inventory available to and provided to the dealer and the number~~
13 ~~of units in operation of the line-make in the dealer's area of~~
14 ~~responsibility.~~ *inventory.*

15 (iv) ~~Local, statewide, and national~~ *Local and regional* economic
16 circumstances.

17 (v) Historical sales, service, and customer service performance
18 of the ~~dealership and of the line-make~~ within the dealer's area of
19 responsibility, including vehicle brand preferences of consumers
20 in the dealer's area of responsibility.

21 (B) Within 30 days after a request by the dealer, the
22 manufacturer, manufacturer branch, distributor, distributor branch,
23 or affiliate provides a written summary of the methodology and
24 ~~all studies, reports, minutes, and other data used or considered in~~
25 establishing the performance standard, sales objective, or program
26 for measuring dealership sales or service performance. The
27 summary shall be in detail sufficient to permit the dealer to
28 determine how the standard was ~~established.~~ *established and*
29 *applied to the dealer.*

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

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

39 SEC. 20. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O