

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN ASSEMBLY MAY 4, 2015

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 287

**Introduced by Assembly Members Gordon, Eggman, and
Mark Stone
(Principal coauthor: Assembly Member Wilk)
(Coauthors: Assembly Members Dababneh, Dodd, Jones, and
Lackey)**

February 11, 2015

An act to amend Sections 3050, 3066, ~~4751~~, ~~4451~~, and 11713.3 of, to add Section 3065.2 to, and to add Article 1.1 (commencing with Section 11750) to Chapter 4 of Division 5 of, the Vehicle Code, relating to vehicle safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 287, as amended, Gordon. Vehicle safety: recalls.

Existing law generally regulates the transfer and registration of motor vehicles. Existing federal law requires a motor vehicle manufacturer to notify the owner or purchaser of a motor vehicle when the manufacturer determines that the vehicle contains a safety-related defect or when the manufacturer is ordered by the federal Secretary of Transportation to notify vehicle owners and purchasers that a vehicle has a safety-related defect. Existing federal law also prohibits a motor vehicle dealer from selling a vehicle if it has been notified of a safety-related defect by the manufacturer, except as specified.

This bill would enact the Consumer Automotive Recall Safety Act, which would be operative on and after July 1, 2016. The act would require a vehicle manufacturer to display notifications of Stop Sale – Stop Drive recalls, as defined, on the manufacturer’s Internet Web site. The act would require a vehicle manufacturer to provide a rental or loaner car for a consumer who seeks to have a vehicle repaired because of a recall but the parts or procedures are not yet available to perform the repair. The act would also require a vehicle manufacturer to compensate its franchisees, as specified, for costs incurred in providing a loaner or rental car and storing a consumer’s vehicle that is subject to recall if the parts or procedures are not yet available to perform the repair.

The act would prohibit a vehicle dealer from displaying or offering for sale at retail a used vehicle, unless the dealer has obtained a recall database report within 30 days of the display or offer. The act would prohibit a vehicle dealer from selling or leasing a vehicle at retail if the used vehicle is subject to a Stop Sale – Stop Drive recall, until the recalled vehicle has been repaired, subject to exception. The act would prohibit a rental car company from renting a vehicle that is subject to a recall, until the recalled vehicle has been repaired, as specified. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.

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 in regard to a dispute with the vehicle manufacturer.

This bill would, commencing July 1, 2016, authorize the board to hear and decide protests by franchisees regarding payments for providing a loaner or rental car and storing a consumer’s vehicle subject to recall if the parts or procedures are not yet available to perform the repair. The bill would make additional conforming changes.

~~Existing law prescribes certain instances when the Department of Motor Vehicles may refuse registration, or renewal or transfer of registration, of a vehicle, including, among others, if the applicant has failed to furnish the department with an odometer disclosure statement, as specified.~~

~~This bill would additionally authorize the department, commencing July 1, 2016, to refuse registration, or renewal or transfer of registration,~~

of a vehicle if the applicant has failed to furnish the department with a recall disclosure statement, as defined.

Existing law requires the Department of Motor Vehicles to issue a certificate of ownership to the legal owner of a vehicle upon registering a vehicle, and requires the certificate of ownership to contain specified information, including the information required upon the face of the registration card.

This bill would additionally require the certificate of ownership to contain a provision for a recall disclosure statement, as specified.

Under existing law, a vehicle manufacturer, manufacturer branch, distributor, and distributor branch are prohibited from engaging in specified practices. Existing law makes a violation of these prohibitions a crime.

This bill would, commencing July 1, 2016, include within those prohibited practices, unfairly discriminating among franchisees with respect to reimbursement for costs incurred in providing a loaner or rental car and storing a consumer's vehicle that is subject to recall if the parts or procedures are not yet available to perform the repair. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The bill would state findings and declarations of the Legislature relative to vehicle recalls.

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. (a) The Legislature finds and declares all of the
2 following:

3 (1) Over the past one-half decade, automakers and the National
4 Highway Traffic Safety Administration have issued more recalls
5 on new and used motor vehicles than ever before. The year 2014
6 set the record for the most recalls on vehicles in United States
7 history with over 63.8 million vehicles recalled. The rate of vehicle
8 recalls has exponentially grown over this past one-half decade as

1 22 million recalls were issued in 2013 and 16.2 million were issued
2 in 2012. The increase of recalls in 2014 is a 190 percent increase
3 from 2013 and a 293.8 percent increase from 2012.

4 (2) While federal motor vehicle safety standards are more
5 demanding now than at any other point in time and new vehicles
6 sold today are the safest in history, the exponential growth of
7 recalls issued on motor vehicles has caused confusion and apathy
8 for far too many Californians. According to the National Highway
9 Traffic Safety Administration and others, about one-third of all
10 recalled vehicles are never repaired by the vehicle's owner.

11 (3) Federal regulations now require most vehicle manufacturers
12 to provide motor vehicle safety recall information applicable to
13 the vehicles they manufacture on the Internet and to the public.
14 Dealers, rental car companies, and private parties offering vehicles
15 for sale or rent now have greater access to recall information than
16 ever before.

17 (4) Federal law imposes a requirement not to sell a new vehicle
18 subject to a recall, but neither federal nor California law addresses
19 used vehicles subject to a recall. It is the intent of this act to address
20 used vehicles subject to a recall that are not yet repaired.

21 (b) Accordingly, it is the intent of the Legislature in enacting
22 this act to increase consumer awareness of recalls in the car
23 purchasing and rental process, to ensure that consumers have access
24 to loaner and rental vehicles while their recalled vehicles are being
25 repaired at a new motor vehicle dealer, and to ensure that a recalled
26 vehicle that poses a risk of imminent harm is not sold or rented to
27 Californians until the risk is removed and the vehicle is repaired.

28 (c) The Legislature further finds and declares all of the
29 following:

30 (1) The distribution, sale, and service of new motor vehicles in
31 the State of California vitally affects the general economy of this
32 state and the public welfare.

33 (2) The new motor vehicle franchise system, which operates
34 within a strictly defined and highly regulated statutory scheme,
35 assures the consuming public of a well-organized distribution
36 system for the availability and sale of new motor vehicles
37 throughout the state, provides a network of quality warranty, recall,
38 and repair facilities to maintain those vehicles, and creates a
39 cost-effective method for the state to police those systems through

1 the licensing and regulation of private sector franchisors and
2 franchisees.

3 (3) Franchisors sometimes establish programs to reimburse
4 franchisees for loaner or rental cars given to consumers whose
5 vehicles have been recalled, but California franchise laws fail to
6 establish guidelines for rental or loaner vehicle reimbursement.

7 (4) California franchise laws require manufacturers to provide
8 reasonable reimbursement to dealers for warranty and recall work,
9 but fails to establish guidelines for compensating franchisee costs
10 associated with recalled vehicles that cannot be repaired and remain
11 in the franchisee's possession.

12 (d) Accordingly, it is the intent of the Legislature in enacting
13 this act to ensure that new motor vehicle dealer franchisees are
14 treated fairly by their franchisors, that new motor vehicle dealer
15 franchisees are reasonably reimbursed for providing loaner or
16 rental vehicles to consumers who have recalled vehicles when the
17 parts or procedures to make the recall repair are not available, and
18 that new motor vehicle dealer franchisees are reasonably
19 compensated for recalled vehicles at their dealerships that cannot
20 immediately be repaired and must be stored by the franchisee at
21 the dealership.

22 SEC. 2. Section 3050 of the Vehicle Code is amended to read:
23 3050. The board shall do all of the following:

24 (a) Adopt rules and regulations in accordance with Chapter 3.5
25 (commencing with Section 11340) of Part 1 of Division 3 of Title
26 2 of the Government Code governing those matters that are
27 specifically committed to its jurisdiction.

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

35 (c) Consider any matter concerning the activities or practices
36 of any person applying for or holding a license as a new motor
37 vehicle dealer, manufacturer, manufacturer branch, distributor,
38 distributor branch, or representative pursuant to Chapter 4
39 (commencing with Section 11700) of Division 5 submitted by any
40 person. A member of the board who is a new motor vehicle dealer

1 may not participate in, hear, comment, advise other members upon,
2 or decide any matter considered by the board pursuant to this
3 subdivision that involves a dispute between a franchisee and
4 franchisor. After that consideration, the board may do any one or
5 any combination of the following:

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

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

15 (3) Order the department to exercise any and all authority or
16 power that the department may have with respect to the issuance,
17 renewal, refusal to renew, suspension, or revocation of the license
18 of any new motor vehicle dealer, manufacturer, manufacturer
19 branch, distributor, distributor branch, or representative as that
20 license is required under Chapter 4 (commencing with Section
21 11700) of Division 5.

22 (d) Hear and decide, within the limitations and in accordance
23 with the procedure provided, a protest presented by a franchisee
24 pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.2, 3070,
25 3072, 3074, 3075, or 3076. A member of the board who is a new
26 motor vehicle dealer may not participate in, hear, comment, advise
27 other members upon, or decide, any matter involving a protest
28 filed pursuant to Article 4 (commencing with Section 3060), unless
29 all parties to the protest stipulate otherwise.

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

34 SEC. 3. Section 3065.2 is added to the Vehicle Code, to read:

35 3065.2. (a) A claim made by a franchisee for payment under
36 Section 11760 shall be either approved or disapproved within 30
37 days after receipt by the franchisor. When a claim is disapproved,
38 the franchisee who submits it shall be notified in writing of its
39 disapproval within the required period, and each notice shall state
40 the specific grounds upon which the disapproval is based. Any

1 claim not specifically disapproved in writing within 30 days from
2 receipt shall be deemed approved on the 30th day.

3 (b) Franchisee claims for compensation under Section 11760
4 shall not be disapproved unless the claim is false or fraudulent,
5 the claim is ineligible under the statute, or for material
6 noncompliance with reasonable and nondiscriminatory
7 requirements of the franchisor, including documentation and
8 administrative claims submission requirements.

9 (c) The franchisor shall provide a reasonable appeal process
10 allowing the franchisee at least 30 days after receipt of the written
11 disapproval notice to respond to any disapproval with additional
12 supporting documentation or information rebutting the disapproval.
13 If disapproval is based upon noncompliance with documentation
14 or administrative claims submission requirements, the franchisor
15 shall allow the franchisee at least 30 days from the date of receipt
16 of the written disapproval notice to cure any material
17 noncompliance. If the disapproval is rebutted, and material
18 noncompliance is cured before the applicable deadline, the
19 franchisor shall approve the claim.

20 (d) If the franchisee provides additional supporting
21 documentation or information purporting to rebut the disapproval,
22 attempts to cure noncompliance relating to the claim, or otherwise
23 appeals denial of the claim, and the franchisor continues to deny
24 the claim, the franchisor shall provide the franchisee with a written
25 notification of the final denial within 30 days of completion of the
26 appeal process, which shall conspicuously state “Final Denial” on
27 the first page.

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

35 (f) A claim made by franchisees under this section shall be paid
36 within 30 days following approval. Failure to approve or pay within
37 the time limits specified in this section, in individual instances for
38 reasons beyond the reasonable control of the franchisor, is not a
39 violation of this section.

1 (g) (1) Audits of franchisee records for payment under Section
2 11760 may be conducted by the franchisor on a reasonable basis,
3 and for a period of nine months after a claim is paid or credit
4 issued. A franchisor shall not select a franchisee for an audit, or
5 perform an audit, in a punitive, retaliatory, or unfairly
6 discriminatory manner. A franchisor may conduct no more than
7 one random audit of a franchisee in a nine-month period. The
8 franchisor's notification to the franchisee of any additional audit
9 within a nine-month period shall be accompanied by written
10 disclosure of the basis for that additional audit.

11 (2) Previously approved claims shall not be disapproved and
12 charged back unless the claim is false or fraudulent, the claim is
13 ineligible under the statute, or for material noncompliance with
14 reasonable and nondiscriminatory requirements of the franchisor,
15 including documentation and administrative claims submission
16 requirements. A franchisor shall not disapprove a claim or ~~charge~~
17 ~~back~~ *chargeback* a claim based upon an extrapolation from a
18 sample of claims, unless the sample of claims is selected randomly
19 and the extrapolation is performed in a reasonable and statistically
20 valid manner.

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

35 (4) If the franchisee provides additional supporting
36 documentation or information purporting to rebut the disapproval,
37 attempts to cure noncompliance relating to the claim, or otherwise
38 appeals denial of the claim, and the franchisor continues to deny
39 the claim, the franchisor shall provide the franchisee with a written
40 notification of the final denial within 30 days of completion of the

1 appeal process, which shall conspicuously state “Final Denial” on
2 the first page.

3 (5) The franchisor shall not ~~charge back~~ *chargeback* the
4 franchisee until 45 days after the franchisee receives the written
5 notice described in paragraph (3) or (4), whichever is later. If the
6 franchisee cures any material noncompliance relating to a claim,
7 the franchisor shall not ~~charge back~~ *chargeback* the dealer for that
8 claim. Any chargeback to a franchisee under Section 11760 shall
9 be made within 90 days after the franchisee receives that written
10 notice. If the board sustains the chargeback or the protest is
11 dismissed, the franchisor shall have 90 days following issuance
12 of the final order or the dismissal to make the chargeback, unless
13 otherwise provided in a settlement agreement.

14 (6) Within six months after receipt of the written notice
15 described in either paragraph (3) or (4), a franchisee may file a
16 protest with the board for determination of whether the franchisor
17 complied with this subdivision. If the franchisee files a protest
18 pursuant to this subdivision prior to the franchisor’s chargeback
19 for denied claims, the franchisor shall not offset or otherwise
20 undertake to collect the chargeback until the board issues a final
21 order on the protest. In any protest pursuant to this subdivision,
22 the franchisor shall have the burden of proof.

23 (h) If a false claim was submitted by a franchisee with the intent
24 to defraud the franchisor, a longer period for audit and any resulting
25 chargeback may be permitted if the franchisor obtains an order
26 from the board.

27 (i) This section shall become operative on July 1, 2016.

28 SEC. 4. Section 3066 of the Vehicle Code is amended to read:

29 3066. (a) Upon receiving a protest pursuant to Section 3060,
30 3062, 3064, 3065, 3065.1, 3065.2, 3070, 3072, 3074, 3075, or
31 3076, the board shall fix a time within 60 days of the order, and
32 place of hearing, and shall send by registered mail a copy of the
33 order to the franchisor, the protesting franchisee, and all individuals
34 and groups that have requested notification by the board of protests
35 and decisions of the board. Except in a case involving a franchisee
36 who deals exclusively in motorcycles, the board or its executive
37 director may, upon a showing of good cause, accelerate or postpone
38 the date initially established for a hearing, but the hearing may not
39 be rescheduled more than 90 days after the board’s initial order.
40 For the purpose of accelerating or postponing a hearing date, “good

1 cause” includes, but is not limited to, the effects upon, and any
2 irreparable harm to, the parties or interested persons or groups if
3 the request for a change in hearing date is not granted. The board
4 or an administrative law judge designated by the board shall hear
5 and consider the oral and documented evidence introduced by the
6 parties and other interested individuals and groups, and the board
7 shall make its decision solely on the record so made. Chapter 4.5
8 (commencing with Section 11400) of Part 1 of Division 3 of Title
9 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7,
10 11511, 11511.5, 11513, 11514, 11515, and 11517 of the
11 Government Code apply to these proceedings.

12 (b) In a hearing on a protest filed pursuant to Section 3060,
13 3062, 3070, or 3072, the franchisor shall have the burden of proof
14 to establish that there is good cause to modify, replace, terminate,
15 or refuse to continue a franchise. The franchisee shall have the
16 burden of proof to establish that there is good cause not to enter
17 into a franchise establishing or relocating an additional motor
18 vehicle dealership.

19 (c) Except as otherwise provided in this chapter, in a hearing
20 on a protest alleging a violation of, or filed pursuant to, Section
21 3064, 3065, 3065.1, 3065.2, 3074, 3075, or 3076, the franchisee
22 shall have the burden of proof, but the franchisor has the burden
23 of proof to establish that a franchisee acted with intent to defraud
24 the franchisor when that issue is material to a protest filed pursuant
25 to Section 3065, 3065.1, 3065.2, 3075, or 3076.

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

30 ~~SEC. 5.— Section 4751 of the Vehicle Code is amended to read:~~
31 ~~4751. The department may refuse registration, or the renewal~~
32 ~~or transfer of registration, of a vehicle in any of the following~~
33 ~~events:~~

34 ~~(a) If the department is not satisfied that the applicant is entitled~~
35 ~~thereto under this code.~~

36 ~~(b) If the applicant has failed to furnish the department with~~
37 ~~information required in the application or reasonable additional~~
38 ~~information required by the department.~~

1 ~~(e) If the department determines that the applicant has made or~~
2 ~~permitted unlawful use of any registration certificate, certificate~~
3 ~~of ownership, or license plates.~~

4 ~~(d) If the vehicle is mechanically unfit or unsafe to be operated~~
5 ~~or moved on the highways.~~

6 ~~(e) If the department determines that a manufacturer or dealer~~
7 ~~has failed during the current or previous year to comply with the~~
8 ~~provisions of this code relating to the giving of notice to the~~
9 ~~department of the transfer of a vehicle during the current or~~
10 ~~previous year.~~

11 ~~(f) If the department determines that a lien exists, pursuant to~~
12 ~~Section 9800, against one or more other vehicles in which the~~
13 ~~applicant has an ownership interest.~~

14 ~~(g) If the applicant has failed to furnish the department with an~~
15 ~~odometer disclosure statement pursuant to subsection (a) of Section~~
16 ~~32705 of Title 49 of the United States Code.~~

17 ~~(h) Commencing July 1, 2016, if the applicant has failed to~~
18 ~~furnish the department with a recall disclosure statement pursuant~~
19 ~~to Section 11758.~~

20 *SEC. 5. Section 4451 of the Vehicle Code is amended to read:*
21 *4451. (a) The certificate of ownership shall contain all of the*
22 *following:*

23 ~~(a)~~
24 *(1) Not less than the information required upon the face of the*
25 *registration card.*

26 ~~(b)~~
27 *(2) Provision for notice to the department of a transfer of the*
28 *title or interest of the owner or legal owner.*

29 ~~(c)~~
30 *(3) Provision for application for transfer of registration by the*
31 *transferee.*

32 ~~(d)~~
33 *(4) Provision for an odometer disclosure statement pursuant to*
34 *subsection (a) of Section 32705 of Title 49 of the United States*
35 *Code.*

36 *(5) Commencing July 1, 2016, or as soon thereafter as the*
37 *department exhausts its supply of existing certificate of ownership*
38 *forms, provision for a recall disclosure statement pursuant to*
39 *Section 11758.*

1 (b) Notwithstanding paragraph (5) of subdivision (a), a
 2 certificate of ownership previously issued by the department prior
 3 to July 1, 2016, and in the possession of a registered owner remains
 4 valid for the transfer of registration of a vehicle.

5 SEC. 6. Section 11713.3 of the Vehicle Code is amended to
 6 read:

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

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

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

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

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

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

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

- 10 (i) The proposed transferee's name and address.
11 (ii) A copy of all of the agreements relating to the sale,
12 assignment, or transfer of the franchised business or its assets.
13 (iii) The proposed transferee's application for approval to
14 become the successor franchisee. The application shall include
15 forms and related information generally utilized by the
16 manufacturer or distributor in reviewing prospective franchisees,
17 if those forms are readily made available to existing franchisees.
18 As soon as practicable after receipt of the proposed transferee's
19 application, the manufacturer or distributor shall notify the
20 franchisee and the proposed transferee of information needed to
21 make the application complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 specific proposed dealership, if the waiver agreement provides all
 2 of the following:
- 3 (I) The approximate address at which the proposed dealership
 4 will be located.
 - 5 (II) The planning potential used to establish the proposed
 6 dealership’s facility, personnel, and capital requirements.
 - 7 (III) An approximation of projected vehicle and parts sales, and
 8 number of vehicles to be serviced at the proposed dealership.
 - 9 (IV) Whether the franchisor or affiliate will hold an ownership
 10 interest in the proposed dealership or real property of the proposed
 11 dealership, and the approximate percentage of any franchisor or
 12 affiliate ownership interest in the proposed dealership.
 - 13 (V) The line-makes to be operated at the proposed dealership.
 - 14 (VI) If known at the time the waiver agreement is executed, the
 15 identity of the dealer who will operate the proposed dealership.
 - 16 (VII) The date the waiver agreement is to expire, which may
 17 not be more than 30 months after the date of execution of the
 18 waiver agreement.
- 19 (ii) Notwithstanding the provisions of a waiver agreement
 20 entered into pursuant to the provisions of this subparagraph, a
 21 dealer may file a protest under Section 3062 if any of the
 22 information provided pursuant to clause (i) has become materially
 23 inaccurate since the waiver agreement was executed. Any
 24 determination of the enforceability of a waiver agreement shall be
 25 determined by the board and the franchisor shall have the burden
 26 of proof.
- 27 (h) To increase prices of motor vehicles that the dealer had
 28 ordered for private retail consumers prior to the dealer’s receipt
 29 of the written official price increase notification. A sales contract
 30 signed by a private retail consumer is evidence of the order. In the
 31 event of manufacturer price reductions, the amount of the reduction
 32 received by a dealer shall be passed on to the private retail
 33 consumer by the dealer if the retail price was negotiated on the
 34 basis of the previous higher price to the dealer. Price reductions
 35 apply to all vehicles in the dealer’s inventory that were subject to
 36 the price reduction. Price differences applicable to new model or
 37 series motor vehicles at the time of the introduction of new models
 38 or series shall not be considered a price increase or price decrease.
 39 This subdivision does not apply to price changes caused by either
 40 of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (B) Referring a prospective purchaser or lessee to a dealer in
20 which a manufacturer, branch, or distributor has an ownership
21 interest, unless the prospective purchaser or lessee resides in the
22 area of responsibility assigned to that dealer or the prospective
23 purchaser or lessee requests to be referred to that dealer. ~~For~~
24 ~~purposes of this subparagraph, the term “area of responsibility”~~
25 ~~means a geographic area specified in a franchise that is used by~~
26 ~~the franchisor for the purpose of evaluating the franchisee’s~~
27 ~~performance of its sales and service obligations.~~

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

34 (v) (1) To access, modify, or extract information from a
35 confidential dealer computer record, as defined in Section
36 11713.25, without obtaining the prior written consent of the dealer
37 and without maintaining administrative, technical, and physical
38 safeguards to protect the security, confidentiality, and integrity of
39 the information.

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

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

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

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

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

11 (ii) Monitor specific data accessed from or written to the dealer’s
12 computer system.

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

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

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

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

38 (C) Measuring a dealer’s performance under a franchise
39 agreement based upon the sale of service contracts, debt
40 cancellation agreements, or similar products approved, endorsed,

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

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

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

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

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

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

32

33 “Service Contract Disclosure

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

38

39 _____
Signature of Purchaser”

40

1 (y) To take or threaten to take any adverse action against a dealer
 2 pursuant to an export or sale-for-resale prohibition because the
 3 dealer sold or leased a vehicle to a customer who either exported
 4 the vehicle to a foreign country or resold the vehicle in violation
 5 of the prohibition, unless the export or sale-for-resale prohibition
 6 policy was provided to the dealer in writing prior to the sale or
 7 lease, and the dealer knew or reasonably should have known of
 8 the customer’s intent to export or resell the vehicle in violation of
 9 the prohibition at the time of sale or lease. If the dealer causes the
 10 vehicle to be registered in this or any other state, and collects or
 11 causes to be collected any applicable sales or use tax due to this
 12 state, a rebuttable presumption is established that the dealer did
 13 not have reason to know of the customer’s intent to export or resell
 14 the vehicle.

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

19 ~~(z)~~

20 (aa) Commencing July 1, 2016, to unfairly discriminate among
 21 its franchisees with respect to reimbursement or authority granted
 22 to its franchisees pursuant to subdivision (c) or (d) of Section
 23 11760.

24 SEC. 7. Article 1.1 (commencing with Section 11750) is added
 25 to Chapter 4 of Division 5 of the Vehicle Code, to read:

26

27 Article 1.1. Consumer Automotive Recall Safety Act

28

29 11750. This article shall be known, and may be cited, as the
 30 Consumer Automotive Recall Safety Act (CARS Act).

31 11752. As used in this article, the following definitions apply:

32 (a) The term “dealer” has the same meaning as in Section 285.

33 (b) (1) A “manufacturer’s recall” is a recall conducted pursuant
 34 to Sections 30118 to 30120, inclusive, of Title 49 of the United
 35 States Code, the National Highway Traffic and Motor Vehicle
 36 Safety Act (49 U.S.C. Sec. 30101, et seq.).

37 (2) A manufacturer’s recall does not include a service campaign
 38 or emission recall when the vehicle manufacturer or the National
 39 Highway Traffic Safety Administration has not issued a recall
 40 notice to owners of affected vehicles, pursuant to Section 30118

1 of Title 49 of the United States Code, the National Highway Traffic
2 and Motor Vehicle Safety Act (49 U.S.C. Sec. 30101, et seq.). A
3 manufacturer’s recall does not include a Stop Sale – Stop Drive
4 recall.

5 (c) The term “new motor vehicle dealer” has the same meaning
6 as in Section 426.

7 (d) A “recall database” is a database from which an individual
8 may obtain vehicle identification number (VIN) specific Stop Sale
9 – Stop Drive recall and manufacturer’s recall information relevant
10 to a specific vehicle.

11 (1) For a vehicle manufacturer that is not subject to the
12 regulations adopted pursuant to Section 31301 of the federal
13 Moving Ahead for Progress in the 21st Century Act (Public Law
14 112-141), a recall database is one of the following:

15 (A) The recall data on a vehicle manufacturer’s Internet Web
16 site for a specific vehicle’s line-make.

17 (B) The recall data in a vehicle manufacturer’s internal system
18 that provides information to its franchisees on vehicles subject to
19 recall.

20 (C) The recall data in subparagraph (A) or (B) that is contained
21 in a commercially available vehicle history system.

22 (2) For a vehicle manufacturer that is subject to the regulations
23 adopted pursuant to Section 31301 of the federal Moving Ahead
24 for Progress in the 21st Century Act (Public Law 112-141), a recall
25 database shall include, at a minimum, the recall information
26 required pursuant to Section 573.15 of Title 49 of the Code of
27 Federal Regulations.

28 (e) A “recall database report” is a report, specific to a vehicle
29 that is identified by its VIN, containing information obtained from
30 a recall database.

31 (f) A “rental car company” is a person or entity in the business
32 of renting passenger vehicles to the public in California.

33 (g) A “Stop Sale – Stop Drive recall” is a recall notice provided
34 to owners of affected vehicles, pursuant to Sections 30118 to
35 30120, inclusive, of Title 49 of the United States Code, the National
36 Highway Traffic and Motor Vehicle Safety Act (49 U.S.C. Sec.
37 30101, et seq.), when the vehicle manufacturer or the National
38 Highway Traffic Safety Administration informs the dealer to stop
39 the sale of the vehicle or contains ~~pre-remedy~~ *any* precaution advice
40 to the owner to stop operating the vehicle.

1 (h) A “vehicle manufacturer” is a person who manufactures,
2 assembles, or distributes new motor vehicles, sold or leased, that
3 are subject to registration under this code.

4 11754. (a) A dealer shall not display or offer for sale at retail
5 a used vehicle, as defined in Section 665, that is subject to
6 registration under this code, unless the dealer has obtained a recall
7 database report within 30 days of the display or offer.

8 (b) If a recall database report obtained by a dealer indicates that
9 a used vehicle is subject to a Stop Sale – Stop Drive recall, the
10 dealer shall not sell or lease that vehicle at retail until the recall
11 repair has been made.

12 (c) If a recall database report obtained by a dealer indicates that
13 a used vehicle is subject to a manufacturer’s recall and the used
14 vehicle is of the same line-make as the franchise of the new motor
15 vehicle dealer, the dealer shall not sell or lease that vehicle at retail
16 until the recall repair has been made.

17 (d) If a recall database report obtained by a dealer indicates that
18 a used vehicle is subject to a manufacturer’s recall and the used
19 vehicle is not of the same line-make as the franchise of the new
20 motor vehicle dealer or the dealer does not have a franchise, the
21 dealer may sell or lease the vehicle at retail if all of the following
22 are satisfied:

23 (1) The dealer discloses the manufacturer’s recall by providing
24 a copy of the recall database report to the consumer prior to sale
25 or lease.

26 (2) The consumer signs the disclosure acknowledging that the
27 vehicle has a manufacturer’s recall and that the consumer can get
28 the recall repaired at no cost to the consumer at a new motor vehicle
29 dealer of the vehicle’s line-make.

30 (e) To comply with subdivision (d), and notwithstanding Section
31 2981.9 of the Civil Code, a recall database report, that indicates
32 the vehicle is subject to a manufacturer’s recall and the recall repair
33 has not been made, shall be disclosed and the disclosure signed
34 by the consumer in a document separate from the conditional sales
35 contract or other vehicle purchase agreement.

36 (f) The disclosure by a dealer, and receipt and acknowledgment
37 by the consumer, of the information specified in subdivisions (d)
38 and (e) has no legal effect other than to demonstrate compliance
39 by the dealer with the requirements prescribed in those
40 subdivisions. Nothing in this article shall be interpreted to place

1 consumers in a less advantageous legal position for having received
2 or signed the disclosures provided pursuant to this article than if
3 no disclosure had been made.

4 11756. (a) No later than 48 hours after receiving a notice of a
5 recall conducted pursuant to Sections 30118 to 30120, inclusive,
6 of Title 49 of the United States Code, the National Highway Traffic
7 and Motor Vehicle Safety Act (49 U.S.C. Sec. 30101, et seq.), or
8 sooner if practicable, a rental car company is prohibited from
9 renting or offering for rent any vehicle subject to that recall.

10 (b) If a recall notification indicates that the remedy for the recall
11 is not immediately available and specifies actions to temporarily
12 repair the vehicle in a manner to eliminate the safety risk that
13 prompted the recall, the rental car company, after having the repairs
14 completed, may rent the vehicle. Once the remedy for the rental
15 vehicle becomes available to the rental car company, the rental
16 car company may not rent the vehicle until the vehicle has been
17 repaired.

18 ~~11758. (a) The department may refuse transfer of registration
19 of a motor vehicle under this code unless the transferee, in
20 submitting an application to the department for title, includes with
21 the application a statement signed and dated by the transferor
22 acknowledging that all Stop Sale — Stop Drive recalls and
23 manufacturer's recalls were disclosed to the transferee as provided
24 in subdivision (c).~~

25 ~~(b) If the title to a motor vehicle issued to a transferor is in the
26 possession of a lienholder when the transferor transfers ownership
27 of the vehicle, the transferor may use a written power of attorney
28 in making the recall disclosure required under subdivision (c).~~

29 ~~(c) A transferor transferring registration of a motor vehicle shall
30 disclose, in writing, to the transferee all Stop Sale — Stop Drive
31 recalls and manufacturer's recalls. A person acquiring the vehicle
32 shall not accept a vehicle transfer and reassignment document
33 unless it is complete.~~

34 ~~(d) Subdivisions (a), (b), and (c) do not apply to the transfer of
35 a motor vehicle to a dealer or wholesaler.~~

36 *11758. Commencing July 1, 2016, or as soon thereafter as the
37 department exhausts its supply of existing certificate of ownership
38 forms, the department shall include the following recall disclosure
39 statement on the certificate of ownership and bill of sale form for
40 private transactions:*

1
 2 *“This vehicle may have an unrecalled manufacturer’s recall.*
 3 *Please ask the seller if there is an unrecalled manufacturer’s recall*
 4 *on this vehicle. You can check for any recalls and how to get the*
 5 *recall repaired at the National Highway Traffic Safety*
 6 *Administration’s website.”*

7 11760. (a) A vehicle manufacturer shall clearly and
 8 conspicuously display on its Internet Web site and in all recall
 9 notifications pursuant to Section 30118 of Title 49 of the United
 10 States Code, the National Highway Traffic and Motor Vehicle
 11 Safety Act (49 U.S.C. Sec. 30101, et seq.), whether a vehicle is
 12 subject to a Stop Sale – Stop Drive recall.

13 (b) When a consumer seeks to repair a vehicle subject to a Stop
 14 Sale – Stop Drive recall or manufacturer’s recall as identified in
 15 a recall database report and the parts or procedures for the repair
 16 are not yet available, the vehicle manufacturer shall, upon request
 17 by the consumer, provide a rental or loaner vehicle to the consumer
 18 at no cost to the consumer until the recall repair has been made.
 19 The consumer shall not be provided with a rental or loaner vehicle
 20 that is subject to a Stop Sale – Stop Drive recall or a manufacturer’s
 21 recall.

22 (c) If a vehicle manufacturer requires a franchisee to provide a
 23 rental or loaner vehicle to a consumer under subdivision (b), the
 24 vehicle manufacturer shall adequately and fairly compensate the
 25 franchisee for all costs incurred in providing a loaner or rental
 26 vehicle to a consumer. For purposes of this paragraph, adequate
 27 and fair compensation shall be the average daily rental amount
 28 of _____ dollars (\$_____) for each day a consumer uses a loaner or
 29 rental vehicle.

30 (d) A vehicle manufacturer shall adequately and fairly
 31 compensate each of its franchisees for all costs incurred in storing
 32 vehicles with a Stop Sale – Stop Drive recall or manufacturer’s
 33 recall in the franchisee’s possession if the parts or procedures are
 34 not yet available to repair the recall of the vehicle. For purposes
 35 of this paragraph, adequate and fair compensation shall be the
 36 average daily amount of _____ dollars (\$_____) for each day a
 37 vehicle subject to a Stop Sale – Stop Drive recall or manufacturer’s
 38 recall is in the franchisee’s possession, the parts or procedures are
 39 not yet available to repair the recall of the vehicle, and the recall
 40 repair has not been made.

1 11762. (a) This article shall not create any legal duty upon the
2 dealer, franchisee, rental car company, or private seller related to
3 the accuracy, errors, or omissions contained in a recall database
4 report or any legal duty to provide information added to a recall
5 database after the dealer, franchisee, rental car company, or private
6 seller obtained the recall database report pursuant to Sections
7 11754, 11756, and 11758. Nothing in this article shall affect any
8 legal rights, claims, or remedies otherwise available under law.

9 (b) The provisions of this article are severable. If any provision
10 of this article or its application is held invalid, that invalidity shall
11 not affect other provisions or applications that can be given effect
12 without the invalid provision or application.

13 (c) This article does not apply to the sale of a recreational
14 vehicle, a motorcycle, an off-highway motor vehicle subject to
15 identification under Section 38010, a vehicle sold by a dismantler
16 after being reported for dismantling pursuant to Section 11520, or
17 a vehicle sold by a salvage pool after obtaining a salvage pool
18 certificate pursuant to Section 11515 or a nonrepairable vehicle
19 certificate issued pursuant to Section 11515.2.

20 (d) This article shall become operative on July 1, 2016.

21 SEC. 8. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

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