

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1178**

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**Introduced by Assembly Member Achadjian**

February 27, 2015

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An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL’S DIGEST

AB 1178, as amended, Achadjian. Vehicles: manufacturers and distributors.

Existing law generally requires a ~~manufacturer~~ *manufacturer*, distributor, 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 ~~unfairly discriminating in favor of a dealership owned or controlled by a manufacturer or distributor, as specified.~~ *taking or threatening to take any adverse action against a dealer pursuant to an 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 in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer’s intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease.* Existing law further provides that if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the

*dealer did not have reason to know of the customer's intent to export or resell the vehicle. A violation of these provisions is a crime.*

*This bill would recast the provisions relating to export and sale-for-resale prohibitions described above to provide that it would be unlawful to take or threaten to take any adverse action against a dealer pursuant to an 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 in violation of the prohibition if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state. By expanding the scope of these provisions, the violation of which is a crime, this bill would impose a state-mandated local program. This bill would make additional technical, nonsubstantive changes to ~~that provision~~ those provisions.*

*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: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

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

1     SECTION 1. Section 11713.3 of the Vehicle Code is amended  
2     to read:  
3     11713.3. It is unlawful and a violation of this code for a  
4     manufacturer, manufacturer branch, distributor, or distributor  
5     branch licensed pursuant to this code to do, directly or indirectly  
6     through an affiliate, any of the following:  
7     (a) To refuse or fail to deliver in reasonable quantities and within  
8     a reasonable time after receipt of an order from a dealer having a  
9     franchise for the retail sale of a new vehicle sold or distributed by  
10    the manufacturer or distributor, a new vehicle or parts or  
11    accessories to new vehicles as are covered by the franchise, if the  
12    vehicle, parts, or accessories are publicly advertised as being  
13    available for delivery or actually being delivered. This subdivision  
14    is not violated, however, if the failure is caused by acts or causes

1 beyond the control of the manufacturer, manufacturer branch,  
2 distributor, or distributor branch.

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

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

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

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

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

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

35 (iii) The proposed transferee's application for approval to  
36 become the successor franchisee. The application shall include  
37 forms and related information generally utilized by the  
38 manufacturer or distributor in reviewing prospective franchisees,  
39 if those forms are readily made available to existing franchisees.

40 As soon as practicable after receipt of the proposed transferee's

1 application, the manufacturer or distributor shall notify the  
2 franchisee and the proposed transferee of information needed to  
3 make the application complete.

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

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

24 (e) To prevent, or attempt to prevent, a dealer from receiving  
25 fair and reasonable compensation for the value of the franchised  
26 business. There shall not be a transfer or assignment of the dealer's  
27 franchise without the consent of the manufacturer or distributor.  
28 The manufacturer or distributor shall not unreasonably withhold  
29 consent or condition consent upon the release, assignment,  
30 novation, waiver, estoppel, or modification of a claim or defense  
31 by the dealer.

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

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

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

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

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

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

26 (2) An agreement, provision, release, assignment, novation,  
27 waiver, or estoppel prohibited by this subdivision shall be  
28 unenforceable and void.

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

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

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

36 (C) Affect the enforceability of any provision in a contract if  
37 the provision is not prohibited under this subdivision or any other  
38 law.

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

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

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

9 (i) Provides that a dealer establish or maintain exclusive  
10 facilities, personnel, or display space or provides that a dealer  
11 make a material alteration, expansion, or addition to a dealership  
12 facility.

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

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

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

25 (I) The approximate address at which the proposed dealership  
26 will be located.

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

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

31 (IV) Whether the franchisor or affiliate will hold an ownership  
32 interest in the proposed dealership or real property of the proposed  
33 dealership, and the approximate percentage of any franchisor or  
34 affiliate ownership interest in the proposed dealership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (2) A manufacturer, branch, or distributor or an entity that  
13 controls or is controlled by, a manufacturer, branch, or distributor,  
14 shall not, however, be deemed to be competing in the following  
15 limited circumstances:

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

23 (B) Owning an interest in a dealer as part of a bona fide dealer  
24 development program that satisfies all of the following  
25 requirements:

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

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

33 (iii) The program requires the dealer development candidate to  
34 manage the day-to-day operations and business affairs of the dealer  
35 and to acquire, within a reasonable time and on reasonable terms  
36 and conditions, beneficial ownership and control of a majority  
37 interest in the dealer and disassociation of any direct or indirect  
38 ownership or control by the manufacturer, branch, or distributor.

39 (C) Owning a wholly owned subsidiary corporation of a  
40 distributor that sells motor vehicles at retail, if, for at least three

1 years prior to January 1, 1973, the subsidiary corporation has been  
2 a wholly owned subsidiary of the distributor and engaged in the  
3 sale of vehicles at retail.

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

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

17 (p) To unfairly discriminate among its franchisees with respect  
18 to warranty reimbursement or authority granted to its franchisees  
19 to make warranty adjustments with retail customers.

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

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

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

35 (t) To exercise a right of first refusal or other right requiring a  
36 franchisee or an owner of the franchise to sell, transfer, or assign  
37 to the franchisor, or to a nominee of the franchisor, all or a material  
38 part of the franchised business or of the assets of the franchised  
39 business unless all of the following requirements are met:

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

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

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

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

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

30 (6) The franchisor shall reimburse the proposed transferee for  
31 expenses paid or incurred by the proposed transferee in evaluating,  
32 investigating, and negotiating the proposed transfer to the extent  
33 those expenses do not exceed the usual, customary, and reasonable  
34 fees charged for similar work done in the area in which the  
35 franchised business is located. These expenses include, but are not  
36 limited to, legal and accounting expenses, and expenses incurred  
37 for title reports and environmental or other investigations of real  
38 property on which the franchisee’s operations are conducted. The  
39 proposed transferee shall provide the franchisor a written  
40 itemization of those expenses, and a copy of all nonprivileged

1 reports and studies for which expenses were incurred, if any, within  
2 30 days of the proposed transferee's receipt of a written request  
3 from the franchisor for that accounting. The franchisor shall make  
4 payment within 30 days of exercising the right of first refusal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) (1) To unfairly discriminate against a franchisee selling a service contract, debt cancellation agreement, maintenance agreement, or similar product not approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor,

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

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

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

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

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

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

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

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

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

“Service Contract Disclosure

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

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Signature of Purchaser”

(y) To take or threaten to take any adverse action against a dealer pursuant to an 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 in violation of the prohibition, ~~unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer’s intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. If~~ if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the dealer did not have reason to know of the customer’s intent to export or resell the vehicle. state.

*SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or*

1 *infraction, eliminates a crime or infraction, or changes the penalty*  
2 *for a crime or infraction, within the meaning of Section 17556 of*  
3 *the Government Code, or changes the definition of a crime within*  
4 *the meaning of Section 6 of Article XIII B of the California*  
5 *Constitution.*

O