

Introduced by Senators Polanco, Leslie, and Rainey

February 25, 1997

An act to amend Sections 3010, 3050, 3065, 3065.1, 3066, and 3067 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 690, as introduced, Polanco. Vehicles: Department of Motor Vehicles: New Motor Vehicle Board.

Existing law creates within the Department of Motor Vehicles a New Motor Vehicle Board, which adjudicates disputes between new motor vehicle franchisees and their respective franchisors and hears appeals on decisions of the department affecting new motor vehicle dealers. The board also mediates disputes between consumers of new motor vehicles and the vehicle dealers, distributors, and manufacturers.

This bill would revise procedures applicable to the board's proceedings.

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

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

- 1 SECTION 1. Section 3010 of the Vehicle Code is
- 2 amended to read:
- 3 3010. Five members of the board shall constitute a
- 4 quorum for the transaction of business, for the
- 5 performance of any duty or the exercise of any power or
- 6 authority of the board, except that three members of the



1 board, who are not new motor vehicle dealers, shall
2 constitute a quorum for the purposes of ~~Article 4~~
3 ~~(commencing with Section 3060)~~ of this chapter *hearing,*
4 *considering, and deciding any matter that involves a*
5 *dispute between a franchisee and franchisor.*

6 SEC. 2. Section 3050 of the Vehicle Code is amended
7 to read:

8 3050. The board shall do all of the following:

9 (a) Adopt rules and regulations in accordance with
10 Chapter 3.5 (commencing with Section 11340) of Part 1
11 of Division 3 of Title 2 of the Government Code
12 governing such matters as are specifically committed to
13 its jurisdiction.

14 (b) Hear and ~~consider~~ *determine*, within the
15 limitations and in accordance with the procedure
16 provided, an appeal presented by an applicant for, or
17 holder of, a license as a new motor vehicle dealer,
18 manufacturer, manufacturer branch, distributor,
19 distributor branch, or representative when the applicant
20 or licensee submits an appeal provided for in this chapter
21 from a decision arising out of the department.

22 (c) ~~Consider~~ *Except as provided herein, consider* any
23 matter concerning the activities or practices of any
24 person applying for or holding a license as a new motor
25 vehicle dealer, manufacturer, manufacturer branch,
26 distributor, distributor branch, or representative
27 pursuant to Chapter 4 (commencing with Section 11700)
28 of Division 5 ~~submitted by~~ *upon the petition of* any
29 person. *No person shall be required to file a petition*
30 *under this subdivision or to pursue or exhaust this*
31 *administrative process or remedy prior to seeking judicial*
32 *relief. Unless stipulated in a written agreement pursuant*
33 *to paragraph (2), no judicial proceeding shall be*
34 *precluded, stayed, or abated on any ground, including the*
35 *doctrine of primary jurisdiction, as a result of the board's*
36 *power or authority under this subdivision.* A member of
37 the board who is a new motor vehicle dealer may not
38 participate in, hear, comment, advise other members
39 upon, or decide any matter considered by the board
40 pursuant to this subdivision that involves a dispute



1 between a franchisee and franchisor, *unless all parties to*
2 *the dispute stipulate otherwise.* After such consideration,
3 the board ~~may~~ *shall* do any one or any combination of the
4 following:

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

9 ~~Undertake to mediate, arbitrate, or otherwise~~
10 ~~resolve any honest difference of opinion or viewpoint~~
11 ~~existing between any member of the public and any new~~
12 ~~motor vehicle dealer, manufacturer, manufacturer~~
13 ~~branch, distributor branch, or representative~~ *Mediate or*
14 *arbitrate, pursuant to the terms of a written agreement*
15 *entered into by the parties after the time the dispute*
16 *arises and within the limitations and in accordance with*
17 *the procedure provided, any dispute between a new*
18 *motor vehicle dealer, manufacturer, manufacturer*
19 *branch, distributor, distributor branch, representative, or*
20 *any person.*

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

29 (4) *Reject or dismiss the petition.*

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

39 SEC. 3. Section 3065 of the Vehicle Code is amended
40 to read:



1 3065. (a) Every franchisor shall properly fulfill every
2 warranty agreement made by it and adequately and fairly
3 compensate each of its franchisees for labor and parts
4 used to fulfill that warranty when the franchisee has
5 fulfilled warranty obligations of repair and servicing and
6 shall file a copy of its warranty reimbursement schedule
7 or formula with the board. The warranty reimbursement
8 schedule or formula shall be reasonable with respect to
9 the time and compensation allowed the franchisee for the
10 warranty work and all other conditions of the obligation.
11 The reasonableness of the warranty reimbursement
12 schedule or formula shall be determined by the board if
13 a franchisee files a notice of protest with the board.

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

18 (c) If any franchisor disallows a franchisee's claim for
19 a defective part, alleging that the part, in fact, is not
20 defective, the franchisor shall return the part alleged not
21 to be defective to the franchisee at the expense of the
22 franchisor, or the franchisee shall be reimbursed for the
23 franchisee's cost of the part, at the franchisor's option.

24 (d) All claims made by franchisees pursuant to this
25 section shall be either approved or disapproved within 30
26 days after their receipt by the franchisor. Any claim not
27 specifically disapproved in writing within 30 days from
28 receipt by the franchisor shall be deemed approved on
29 the 30th day. When any claim is disapproved, the
30 franchisee who submits it shall be notified in writing of its
31 disapproval within the required period, and each notice
32 shall state the specific grounds upon which the
33 disapproval is based. All claims made by franchisees
34 under this section and Section 3064 for labor and parts
35 shall be paid within 30 days following approval. Failure to
36 approve or pay within the above specified time limits, in
37 individual instances for reasons beyond the reasonable
38 control of the franchisor, shall not constitute a violation
39 of this article. *Following the disapproval of a claim or*
40 *chargeback of a claim previously paid, a franchisee shall*



1 *have one year from receipt of the notice of disapproval or*
2 *chargeback in which to appeal the disapproval to the*
3 *franchisor and file a protest with the board.*

4 (e) Audits of franchisee warranty records may be
5 conducted by the franchisor on a reasonable basis, and for
6 a period of 12 months after a claim is paid or credit issued.
7 Franchisee claims for warranty compensation shall not be
8 disapproved except for good cause, such as performance
9 of nonwarranty repairs, lack of material documentation,
10 or fraud. Any chargeback to a franchisee for warranty
11 parts or service compensation shall be made within 90
12 days of the completion of the audit. If a false claim was
13 submitted by a franchisee with intent to defraud the
14 franchisor, a longer period for audit and any resulting
15 chargeback may be permitted if the franchisor obtains an
16 order from the board.

17 SEC. 4. Section 3065.1 of the Vehicle Code is amended
18 to read:

19 3065.1. (a) All claims made by a franchisee for
20 payment under the terms of a franchisor incentive
21 program shall be either approved or disapproved within
22 30 days after receipt by the franchisor. When any claim
23 is disapproved, the franchisee who submits it shall be
24 notified in writing of its disapproval within the required
25 period, and each notice shall state the specific grounds
26 upon which the disapproval is based. Any claim not
27 specifically disapproved in writing within 30 days from
28 receipt shall be deemed approved on the 30th day.
29 Following the disapproval of a claim *or chargeback of a*
30 *claim previously paid*, a franchisee shall have one year
31 from receipt of the notice of disapproval *or chargeback*
32 in which to appeal the disapproval to the franchisor and
33 file a protest with the board. All claims made by
34 franchisees under this section shall be paid within 30 days
35 following approval. Failure to approve or pay within the
36 above specified time limits, in individual instances for
37 reasons beyond the reasonable control of the franchisor,
38 do not constitute a violation of this article.

39 (b) Audits of franchisee incentive records may be
40 conducted by the franchisor on a reasonable basis, and for



1 a period of 18 months after a claim is paid or credit issued.
2 Franchisee claims for incentive program compensation
3 shall not be disapproved except for good cause, such as
4 ineligibility under the terms of the incentive program,
5 lack of material documentation, or fraud. Any
6 chargeback to a franchisee for incentive program
7 compensation shall be made within 90 days of the
8 completion of the audit. If a false claim was submitted by
9 a franchisee with the intent to defraud the franchisor, a
10 longer period for audit and any resulting chargeback may
11 be permitted if the franchisor obtains an order from the
12 board.

13 SEC. 5. Section 3066 of the Vehicle Code, as amended
14 by Chapter 938 of the Statutes of 1995, is amended to read:

15 3066. (a) Upon receiving a notice of protest pursuant
16 to Section 3060, 3062, 3064, ~~or~~ 3065, *or 3065.1, or if the*
17 *board undertakes to arbitrate a dispute pursuant to the*
18 *terms of a written agreement entered into by the parties*
19 *pursuant to paragraph (2) of subdivision (c) of Section*
20 *3050, the board shall fix a time, which shall be within 60*
21 *days of the order, and place of hearing, and shall send by*
22 *registered mail a copy of the order to the franchisor, the*
23 *protesting franchisee, and all individuals and groups*
24 *which have requested notification by the board of*
25 *protests and decisions of the board. Except in any case*
26 *involving a franchisee who deals exclusively in*
27 *motorcycles, the board or its secretary may, upon a*
28 *showing of good cause, accelerate or postpone the date*
29 *initially established for a hearing, but in no event shall the*
30 *hearing be rescheduled more than 90 days after the*
31 *board's initial order. For the purpose of accelerating or*
32 *postponing a hearing date, "good cause" includes, but is*
33 *not limited to, the effects upon, and any irreparable harm*
34 *to, the parties or interested persons or groups if the*
35 *request for a change in hearing date is not granted. The*
36 *board, or a hearing officer designated by the board, shall*
37 *hear and consider the oral and documented evidence*
38 *introduced by the parties and other interested*
39 *individuals and groups, and the board shall make its*
40 *decision solely on the record so made. Chapter 4.5*



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

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

13 (c) In any hearing on a protest *alleging a violation of*,
14 *or* filed pursuant to, Section 3064 ~~or~~ 3065, *or 3065.1*, the
15 franchisee shall have the burden ~~to establish that the~~
16 ~~schedule of compensation or the warranty~~
17 ~~reimbursement schedule is not reasonable~~ *of proof*.

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

23 SEC. 6. Section 3067 of the Vehicle Code is amended
24 to read:

25 3067. (a) The decision of the board shall be in writing
26 and shall contain findings of fact and a determination of
27 the issues presented. The decision shall sustain,
28 conditionally sustain, overrule, or conditionally overrule
29 the protest. Any conditions imposed by the board shall be
30 for the purpose of assuring performance of binding
31 contractual agreements between franchisees and
32 franchisors or otherwise serving the purposes of this
33 article. If the board fails to act within 30 days after such
34 hearing, within 30 days after the board receives a
35 proposed decision where the case is heard before a
36 hearing officer alone, or within such period as may be
37 necessitated by Section 11517 of the Government Code or
38 as may be mutually agreed upon by the parties, then the
39 proposed action shall be deemed to be approved. Copies
40 of the decision shall be delivered to the parties personally



1 or sent to them by registered mail, as well as to all
2 individuals and groups, which have requested
3 notification by the board of protests and decisions by the
4 board. The decision shall be final upon its delivery or
5 mailing and no reconsideration or rehearing shall be
6 permitted.

7 *(b) The board has no authority to issue monetary*
8 *damage awards, unless the parties grant the board that*
9 *authority under a written agreement entered into under*
10 *paragraph (2) of subdivision (c) of Section 3050.*

