

AMENDED IN SENATE APRIL 14, 1997

SENATE BILL

No. 690

Introduced by Senators Polanco, Leslie, and Rainey

February 25, 1997

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

LEGISLATIVE COUNSEL'S DIGEST

SB 690, as amended, 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~~

1 ~~performance of any duty or the exercise of any power or~~
2 ~~authority of the board, except that three members of the~~
3 ~~board, who are not new motor vehicle dealers, shall~~
4 ~~constitute a quorum for the purposes of hearing,~~
5 ~~considering, and deciding any matter that involves a~~
6 ~~dispute between a franchisee and franchisor.~~

7 ~~SEC. 2.—~~

8 *SECTION 1.* Section 3050 of the Vehicle Code is
9 amended to read:

10 3050. The board shall do all of the following:

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

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

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



1 considered by the board pursuant to this subdivision that
2 involves a dispute between a franchisee and franchisor,
3 unless all parties to the dispute stipulate otherwise. After
4 such consideration, the board shall do any one or any
5 combination of the following:

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

10 (2) Mediate or arbitrate, pursuant to the terms of a
11 written agreement entered into by the parties after the
12 time the dispute arises and within the limitations and in
13 accordance with the procedure provided, any dispute
14 between a new motor vehicle dealer, manufacturer,
15 manufacturer branch, distributor, distributor branch,
16 representative, or any person.

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

25 (4) Reject or dismiss the petition.

26 (d) Hear and decide, within the limitations and in
27 accordance with the procedure provided, a protest
28 presented by a franchisee pursuant to Section 3060, 3062,
29 3064, 3065, or 3065.1. A member of the board who is a new
30 motor vehicle dealer may not participate in, hear,
31 comment, advise other members upon, or decide, any
32 matter involving a protest filed pursuant to ~~this~~
33 ~~subdivision—Article 4 (commencing with Section 3060),~~
34 unless all parties to the protest stipulate otherwise.

35 ~~SEC. 3. Section 3065 of the Vehicle Code is amended~~
36 ~~to read:~~

37 ~~3065. (a) Every franchisor shall properly fulfill every~~
38 ~~warranty agreement made by it and adequately and fairly~~
39 ~~compensate each of its franchisees for labor and parts~~
40 ~~used to fulfill that warranty when the franchisee has~~



1 fulfilled warranty obligations of repair and servicing and
2 shall file a copy of its warranty reimbursement schedule
3 or formula with the board. The warranty reimbursement
4 schedule or formula shall be reasonable with respect to
5 the time and compensation allowed the franchisee for the
6 warranty work and all other conditions of the obligation.
7 The reasonableness of the warranty reimbursement
8 schedule or formula shall be determined by the board if
9 a franchisee files a notice of protest with the board.

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

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

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



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

14 ~~SEC. 4. Section 3065.1 of the Vehicle Code is amended~~
15 ~~to read:~~

16 ~~3065.1. (a) All claims made by a franchisee for~~
17 ~~payment under the terms of a franchisor incentive~~
18 ~~program shall be either approved or disapproved within~~
19 ~~30 days after receipt by the franchisor. When any claim~~
20 ~~is disapproved, the franchisee who submits it shall be~~
21 ~~notified in writing of its disapproval within the required~~
22 ~~period, and each notice shall state the specific grounds~~
23 ~~upon which the disapproval is based. Any claim not~~
24 ~~specifically disapproved in writing within 30 days from~~
25 ~~receipt shall be deemed approved on the 30th day.~~
26 ~~Following the disapproval of a claim or chargeback of a~~
27 ~~claim previously paid, a franchisee shall have one year~~
28 ~~from receipt of the notice of disapproval or chargeback~~
29 ~~in which to appeal the disapproval to the franchisor and~~
30 ~~file a protest with the board. All claims made by~~
31 ~~franchisees under this section shall be paid within 30 days~~
32 ~~following approval. Failure to approve or pay within the~~
33 ~~above specified time limits, in individual instances for~~
34 ~~reasons beyond the reasonable control of the franchisor,~~
35 ~~do not constitute a violation of this article.~~

36 ~~(b) Audits of franchisee incentive records may be~~
37 ~~conducted by the franchisor on a reasonable basis, and for~~
38 ~~a period of 18 months after a claim is paid or credit issued.~~
39 ~~Franchisee claims for incentive program compensation~~
40 ~~shall not be disapproved except for good cause, such as~~



1 ~~ineligibility under the terms of the incentive program,~~
2 ~~lack of material documentation, or fraud. Any~~
3 ~~chargeback to a franchisee for incentive program~~
4 ~~compensation shall be made within 90 days of the~~
5 ~~completion of the audit. If a false claim was submitted by~~
6 ~~a franchisee with the intent to defraud the franchisor, a~~
7 ~~longer period for audit and any resulting chargeback may~~
8 ~~be permitted if the franchisor obtains an order from the~~
9 ~~board.~~

10 ~~SEC. 5.—~~

11 *SEC. 2.* Section 3066 of the Vehicle Code, as amended
12 by Chapter 938 of the Statutes of 1995, is amended to read:

13 3066. (a) Upon receiving a notice of protest pursuant
14 to Section 3060, 3062, 3064, 3065, or 3065.1, or if the board
15 undertakes to arbitrate a dispute pursuant to the terms of
16 a written agreement entered into by the parties pursuant
17 to paragraph (2) of subdivision (c) of Section 3050, the
18 board shall fix a time, which shall be within 60 days of the
19 order, and place of hearing, and shall send by registered
20 mail a copy of the order to the franchisor, the protesting
21 franchisee, and all individuals and groups which have
22 requested notification by the board of protests and
23 decisions of the board. Except in any case involving a
24 franchisee who deals exclusively in motorcycles, the
25 board or its secretary may, upon a showing of good cause,
26 accelerate or postpone the date initially established for a
27 hearing, but in no event shall the hearing be rescheduled
28 more than 90 days after the board's initial order. For the
29 purpose of accelerating or postponing a hearing date,
30 "good cause" includes, but is not limited to, the effects
31 upon, and any irreparable harm to, the parties or
32 interested persons or groups if the request for a change
33 in hearing date is not granted. The board, or a hearing
34 officer designated by the board, shall hear and consider
35 the oral and documented evidence introduced by the
36 parties and other interested individuals and groups, and
37 the board shall make its decision solely on the record so
38 made. Chapter 4.5 (commencing with Section 11400) of
39 Part 1 of Division 3 of Title 2 of the Government Code and
40 Sections 11507.3, 11507.6, 11507.7, 11511, 11513, 11514,



1 11515, and 11517 of the Government Code apply to these
2 proceedings.

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

11 (c) In any hearing on a protest alleging a violation of,
12 or filed pursuant to, Section 3064 , 3065, or 3065.1, the
13 franchisee shall have the burden of proof.

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

19 ~~SEC. 6. Section 3067 of the Vehicle Code is amended~~
20 ~~to read:~~

21 ~~3067. (a) The decision of the board shall be in writing~~
22 ~~and shall contain findings of fact and a determination of~~
23 ~~the issues presented. The decision shall sustain,~~
24 ~~conditionally sustain, overrule, or conditionally overrule~~
25 ~~the protest. Any conditions imposed by the board shall be~~
26 ~~for the purpose of assuring performance of binding~~
27 ~~contractual agreements between franchisees and~~
28 ~~franchisors or otherwise serving the purposes of this~~
29 ~~article. If the board fails to act within 30 days after such~~
30 ~~hearing, within 30 days after the board receives a~~
31 ~~proposed decision where the case is heard before a~~
32 ~~hearing officer alone, or within such period as may be~~
33 ~~necessitated by Section 11517 of the Government Code or~~
34 ~~as may be mutually agreed upon by the parties, then the~~
35 ~~proposed action shall be deemed to be approved. Copies~~
36 ~~of the decision shall be delivered to the parties personally~~
37 ~~or sent to them by registered mail, as well as to all~~
38 ~~individuals and groups, which have requested~~
39 ~~notification by the board of protests and decisions by the~~
40 ~~board. The decision shall be final upon its delivery or~~



1 ~~mailing and no reconsideration or rehearing shall be~~
2 ~~permitted.~~
3 ~~(b) The board has no authority to issue monetary~~
4 ~~damage awards, unless the parties grant the board that~~
5 ~~authority under a written agreement entered into under~~
6 ~~paragraph (2) of subdivision (c) of Section 3050.~~

O

