

AMENDED IN ASSEMBLY JUNE 29, 2000

AMENDED IN SENATE MAY 2, 2000

AMENDED IN SENATE APRIL 13, 2000

AMENDED IN SENATE APRIL 3, 2000

SENATE BILL

No. 1819

Introduced by Senator Dunn

February 24, 2000

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1819, as amended, Dunn. Motor vehicles franchises: restriction.

Existing law prohibits any motor vehicle manufacturer, manufacturer branch, distributor, or distributor branch that is licensed under the Vehicle Code from engaging in certain conduct involving a dealer having a franchise for the sale of new vehicles or vehicle parts including prohibiting those manufacturers, branches, and distributors from competing with a dealer, as specified or engaging in unfair discrimination in favor of any dealership owned or controlled by those entities.

This bill would allow these manufacturers, branches, and distributors or any entity that is controlled by a manufacturer, branch, or, distributor to compete under specified limited circumstances and would specify conduct that constitutes unfair discrimination.

The bill would also ~~prohibit the above-described manufacturers, branches, and distributors from failing to provide, in a timely manner, all leads, as defined, or inquiries for the purchase or lease of any vehicle, part, or other product of a particular line-make to any franchisee of that line-make in whose assigned area of responsibility, as defined, the lead or inquiry reasonably appears to have emanated, except as specified.~~ The bill would require those entities *require every manufacturer, branch, and distributor that owns or operates a dealership, as specified,* to give written notice to the board each time a manufacturer, branch, or distributor assumes operation of a dealership or acquires or divests itself of an ownership interest in a dealership.

Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

The bill would also set forth legislative findings and declarations regarding independent, franchised new motor vehicle dealers.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares all of
- 2 the following:
- 3 (a) The distribution, sale, and service of new motor
- 4 vehicles in the State of California vitally affects the
- 5 general economy of this state and the public welfare.
- 6 (b) The new motor vehicle franchise system, which
- 7 operates within a strictly defined and highly regulated
- 8 statutory scheme, assures the consuming public of a well
- 9 organized distribution system for the availability and sale
- 10 of new motor vehicles throughout the state; provides a
- 11 network of quality warranty and repair facilities to



1 maintain those vehicles; and creates a cost-effective
2 method for the state to police those systems through the
3 licensing and regulation of private sector franchisors and
4 franchisees.

5 (c) It is the intent of this act to ensure fair competition
6 among new motor vehicle dealer franchisees that are
7 independently owned and those owned by their
8 franchisors, and to clarify that the prohibition under
9 existing law against franchisor ownership of a dealership
10 located within a 10-mile radius of a nonfranchisor-owned
11 dealership of the same line-make is subject only to certain
12 limited exceptions that may not be used to justify any
13 improper purpose, including the consolidation of
14 privately owned dealerships by a sophisticated investor or
15 operator posing as a dealer development candidate.

16 SEC. 2. Section 11713.3 of the Vehicle Code is
17 amended to read:

18 11713.3. It is unlawful and a violation of this code for
19 any manufacturer, manufacturer branch, distributor, or
20 distributor branch licensed under this code to do any of
21 the following:

22 (a) To refuse or fail to deliver in reasonable quantities
23 and within a reasonable time after receipt of an order
24 from a dealer having a franchise for the retail sale of any
25 new vehicle sold or distributed by the manufacturer or
26 distributor, any new vehicle or parts or accessories to new
27 vehicles as are covered by the franchise, if the vehicle,
28 parts, or accessories are publicly advertised as being
29 available for delivery or actually being delivered. This
30 subdivision is not violated, however, if the failure is
31 caused by acts or causes beyond the control of the
32 manufacturer, manufacturer branch, distributor, or
33 distributor branch.

34 (b) To prevent or require, or attempt to prevent or
35 require, by contract or otherwise, any change in the
36 capital structure of a dealership or the means by or
37 through which the dealer finances the operation of the
38 dealership, provided that the dealer at all times meets any
39 reasonable capital standards agreed to by the dealer and
40 the manufacturer or distributor, and also provided that



1 no change in capital structure shall cause a change in the
2 principal management or have the effect of a sale of the
3 franchise without the consent of the manufacturer or
4 distributor.

5 (c) To prevent or require, or attempt to prevent or
6 require, a dealer to change the executive management of
7 a dealership, other than the principal dealership operator
8 or operators if the franchise was granted the dealer in
9 reliance upon the personal qualifications of such person
10 or persons.

11 (d) (1) Except as provided in subdivision (t), to
12 prevent or require, or attempt to prevent or require, by
13 contract or otherwise, any dealer, or any officer, partner,
14 or stockholder of any dealership, the sale or transfer of
15 any part of the interest of any of them to any other person
16 or persons. No dealer, officer, partner, or stockholder
17 shall, however, have the right to sell, transfer, or assign
18 the franchise, or any right thereunder, without the
19 consent of the manufacturer or distributor except that
20 the consent shall not be unreasonably withheld.

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

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

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

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



1 the franchisee and the proposed transferee of any
2 information needed to make the application complete.

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

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

26 (e) To prevent, or attempt to prevent, a dealer from
27 receiving fair and reasonable compensation for the value
28 of the franchised business. There shall be no transfer or
29 assignment of the dealer's franchise without the consent
30 of the manufacturer or distributor, which consent shall
31 not be unreasonably withheld or conditioned upon the
32 release, assignment, novation, waiver, estoppel, or
33 modification of any claim or defense by the dealer.

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



1 (g) To require a dealer to prospectively assent to a
2 release, assignment, novation, waiver, or estoppel which
3 would relieve any person from liability to be imposed by
4 this article or to require any controversy between a
5 dealer and a manufacturer, distributor, or representative,
6 to be referred to any person other than the board, if the
7 referral would be binding on the dealer. This subdivision
8 does not, however, prohibit arbitration before an
9 independent arbitrator.

10 (h) To increase prices of motor vehicles which the
11 dealer had ordered for private retail consumers prior to
12 the dealer's receipt of the written official price increase
13 notification. A sales contract signed by a private retail
14 consumer is evidence of each order. In the event of
15 manufacturer price reductions, the amount of the
16 reduction received by a dealer shall be passed on to the
17 private retail consumer by the dealer if the retail price
18 was negotiated on the basis of the previous higher price
19 to the dealer. Price reductions apply to all vehicles in the
20 dealer's inventory which were subject to the price
21 reduction. Price differences applicable to new model or
22 series motor vehicles at the time of the introduction of
23 new models or series shall not be considered a price
24 increase or price decrease. Price changes caused by
25 either (1) the addition to a motor vehicle of required or
26 optional equipment pursuant to state or federal law, or
27 (2) revaluation of the United States dollar in the case of
28 foreign-made vehicles, are not subject to this subdivision.

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

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



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

7 (l) To modify, replace, enter into, relocate, terminate
8 or refuse to renew a franchise in violation of Article 4
9 (commencing with Section 3060) of Chapter 6 of Division
10 2.

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

14 (n) To deny any dealer the right of free association
15 with any other dealer for any lawful purpose.

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

20 (2) A manufacturer, branch, or distributor or any
21 entity that controls or is controlled by, a manufacturer,
22 branch, or distributor, shall not, however, be deemed to
23 be competing in the following limited circumstances:

24 (A) Owning or operating a dealership for a temporary
25 period, not to exceed one year. However, after a showing
26 of good cause by a manufacturer, branch, or distributor
27 that it needs additional time to operate a dealership in
28 preparation for sale to a successor independent
29 franchisee, the board may extend the time period.

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

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



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

4 (iii) The program requires the dealer development
5 candidate to manage the day-to-day operations and
6 business affairs of the dealer and to acquire, within a
7 reasonable time and on reasonable terms and conditions,
8 beneficial ownership and control of a majority interest in
9 the dealer and disassociation of any direct or indirect
10 ownership or control by the manufacturer, branch, or
11 distributor.

12 (C) Owning a wholly owned subsidiary corporation of
13 a distributor that sells motor vehicles at retail, if, for at
14 least three years prior to January 1, 1973, the subsidiary
15 corporation has been a wholly owned subsidiary of the
16 distributor and engaged in the sale of vehicles at retail.

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

24 (B) Every manufacturer, branch, and distributor that
25 owns an interest in a dealer in the manner described in
26 subparagraph (B) of paragraph (2) shall give written
27 notice to the board, annually, of the name and location of
28 each dealer in which it has an ownership interest.

29 (p) To unfairly discriminate among its franchisees
30 with respect to warranty reimbursement or authority
31 granted its franchisees to make warranty adjustments
32 with retail customers.

33 (q) To sell vehicles to persons not licensed under this
34 chapter for resale.

35 (r) To fail to affix an identification number to any park
36 trailer, as described in subdivision (b) of Section 18010 of
37 the Health and Safety Code, which is manufactured on or
38 after January 1, 1987, and which does not clearly identify
39 the unit as a park trailer to the department. The



1 configuration of the identification number shall be
2 approved by the department.

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

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

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

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

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

30 (4) The proposed transferee is neither a family
31 member of an owner of the franchised business, nor a
32 managerial employee of the franchisee owning 15
33 percent or more of the franchised business, nor a
34 corporation, partnership, or other legal entity owned by
35 the existing owners of the franchised business. For
36 purposes of this paragraph, a “family member” means the
37 spouse of an owner of the franchised business, the child,
38 grandchild, brother, sister, or parent of an owner, or a
39 spouse of one of those family members. Nothing
40 contained in this paragraph limits the rights of the



1 franchisor to disapprove a proposed transferee as
2 provided in subdivision (d).

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

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

31 (u) (1) To unfairly discriminate in favor of any
32 dealership owned or controlled, in whole or part, by a
33 manufacturer or distributor or an entity that controls or
34 is controlled by the manufacturer or distributor. Unfair
35 discrimination includes, but is not limited to the
36 following:

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



1 (i) Any vehicle that is not made available to each
2 franchisee pursuant to a reasonable allocation formula
3 that is applied uniformly, and any part or accessory that
4 is not made available to all franchisees on an equal basis
5 when there is no reasonable allocation formula that is
6 applied uniformly.

7 (ii) Any vehicle, part, or accessory that is not made
8 available to each franchisee on comparable delivery
9 terms, including time of delivery after placement of
10 order. Differences in delivery terms due to geographic
11 distances or other factors beyond the control of the
12 manufacturer, branch, or distributor shall not constitute
13 unfair competition.

14 (iii) Any information obtained from a franchisee by
15 the manufacturer, branch, or distributor concerning the
16 business affairs or operations of any franchisee in which
17 the manufacturer, branch, or distributor does not have an
18 ownership interest. The information includes, but is not
19 limited to, information contained in financial statements
20 and operating reports, the name, address, or other
21 personal information or buying, leasing, or service
22 behavior of any dealer customer, and any other
23 information which if provided to a franchisee or dealer
24 owned or controlled by a manufacturer or distributor
25 would give that franchisee or dealer a competitive
26 advantage. This clause does not apply if the information
27 is provided pursuant to a subpoena or court order, or to
28 aggregated information made available to all franchisees.

29 (B) Referring a prospective purchaser or lessee to a
30 dealer in which a manufacturer, branch, or distributor
31 has an ownership interest unless the prospective
32 purchaser or lessee resides in the area of responsibility
33 assigned to that dealer or the prospective purchaser or
34 lessee requests to be referred to that dealer.

35 (2) Nothing in this subdivision shall be interpreted to
36 prohibit a franchisor from granting a franchise to
37 prospective franchisees or assisting those franchisees
38 during the course of the franchise relationship as part of
39 a program or programs to make franchises available to
40 persons lacking capital, training, business experience, or



1 other qualifications ordinarily required of prospective
2 franchisees.

3 ~~(v) (1) To fail to provide all leads for the purchase or
4 lease of any vehicle of a particular line make to any
5 franchisee of that line make in whose assigned area of
6 responsibility the lead reasonably appears to have
7 emanated. All leads shall be provided in a timely manner
8 without charge and without the imposition of any
9 unreasonable condition.~~

10 ~~(2) This subdivision does not apply if a consumer
11 requests that the lead not be disseminated to a franchisee
12 in whose area of responsibility the lead emanated or
13 specifically requests that the lead be disseminated to
14 another dealer.~~

15 ~~(w) As used in this section, the following definitions
16 shall govern the construction of this section:~~

17 ~~(1) “Area~~

18 ~~(v) As used in this section, “area of responsibility” is a
19 geographic area specified in a franchise that is used by the
20 franchisor for the purpose of evaluating the franchisee’s
21 performance of its sales and service obligations.~~

22 ~~(2) “Lead” is information identifying a person that has
23 contacted a manufacturer, branch, or distributor and has
24 requested information concerning the purchase or lease
25 of a vehicle, part, or accessory manufactured or
26 distributed by that manufacturer, branch, or distributor
27 and that identifying information is disseminated to any
28 dealer or franchisee for solicitation purposes.~~

29 SEC. 3. No reimbursement is required by this act
30 pursuant to Section 6 of Article XIII B of the California
31 Constitution because the only costs that may be incurred
32 by a local agency or school district will be incurred
33 because this act creates a new crime or infraction,
34 eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section
36 17556 of the Government Code, or changes the definition
37 of a crime within the meaning of Section 6 of Article
38 XIII B of the California Constitution.

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