

Introduced by Senator Padilla

February 18, 2011

An act to amend ~~Section~~ *Sections 3050.7 and 11713.3* of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 642, as amended, Padilla. Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, 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 activity. Violation of this law is crime.

This bill would provide that it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch, directly or indirectly through an affiliate, to engage in this specified activity.

Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability, among other things.

This bill would delete this prohibition and instead would prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from obtaining or enforcing, ~~or attempting to obtain or enforce,~~ against a dealer an agreement that, among other things, modifies or disclaims any duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch, or representative, ~~among other things or~~

a right or privilege of a dealer. The bill would also provide that such an agreement would be unenforceable *and that these provisions do not affect the enforceability of any stipulated order or other order of the board or prohibit a specified voluntary agreement.*

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from competing with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area, with exceptions in limited circumstances, including those circumstances where the manufacturer or distributor owns or operates a dealership for a temporary period, not to exceed one year.

This bill would specify that the above exception applies only at the location of a former dealership of the same line-make that has been out of operation for less than 6 months.

Existing law requires a manufacturer, branch, and distributor branch that owns or operates a dealership for a temporary period, to give written notice to the New Motor Vehicle Board each time it acquires or divests itself of an ownership interest.

This bill would also require a manufacturer, branch, and distributor branch to provide the notice each time it changes an ownership interest.

Existing law requires a manufacturer, branch, and distributor that owns an interest in a dealer, as part of a bona fide dealer development program, to give written notice to the board, annually of the name and location of each dealer in which it has an ownership interest.

This bill would also require the manufacturer, branch, and distributor to give notice regarding the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating in favor of any dealership owned or controlled, in whole or in part, by a manufacturer or distributor or an entity that controls or is controlled by the manufacturer or distributor. Existing law describes unfair discrimination as, among other things, the furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch, or distributor of certain things, including furnishing a vehicle that is not made available to each franchisee, as provided.

This bill would also include furnishing sales or service incentives, among other things, that are not made available to all California

franchisees of the same line-make on an equivalent basis, as unfair discrimination.

This bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating against a franchisee selling a service contract or debt cancellation agreement, among other things, as provided. The bill would describe unfair discrimination as express or implied statements that the dealer is under an obligation to exclusively sell or offer to sell service contracts, among other things. By creating a new crime, the bill would impose a state-mandated local program.

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 the
2 following:

3 (a) The distribution, sale, and service of new motor vehicles in
4 this state vitally affects the state’s general economy and the public
5 welfare.

6 (b) The new motor vehicle franchise system, which operates
7 within a strictly defined and highly regulated statutory scheme,
8 assures consumers of a well-organized distribution system for the
9 availability and sale of new motor vehicles throughout the state;
10 provides a network of quality warranty and repair facilities to
11 maintain those vehicles; and creates a cost-effective method for
12 the state to police those systems through the licensing and
13 regulation of private sector franchisors and franchisees.

14 (c) It is the intent of the Legislature, in acting this act to prohibit
15 franchisors from avoiding state franchise protection laws, to ensure
16 fair competition among new motor vehicle dealer franchisees that
17 are independently owned and those owned by their franchisors,
18 and to clarify that the existing prohibition against franchisor
19 ownership of a dealership located within a 10-mile radius of a
20 nonfranchisor-owned dealership of the same line-make is subject

1 only to certain limited exceptions that may not be used to justify
2 any improper purpose, including the operation of a dealership by
3 a sophisticated investor or operator posing as a dealer development
4 candidate.

5 *SEC. 2. Section 3050.7 of the Vehicle Code is amended to read:*

6 3050.7. (a) The board may adopt stipulated decisions and
7 orders, without a hearing pursuant to Section 3066, to resolve one
8 or more issues raised by a protest or petition filed with the board.
9 Whenever the parties to a protest or petition submit a proposed
10 stipulated decision and proposed order of the board, a copy of the
11 proposed stipulated decision and order shall be transmitted by the
12 executive director of the board to each member of the board. The
13 proposed stipulated decision and order shall be deemed to be
14 adopted by the board unless a member of the board notifies the
15 executive director of the board of an objection thereto within 10
16 days after that board member has received a copy of the proposed
17 stipulated decision and order.

18 (b) If the board adopts a stipulated decision and order to resolve
19 a protest filed pursuant to Section 3060 in which the parties
20 stipulate that good cause exists for the termination of the franchise
21 of the protestant, and the order provides for a conditional or
22 unconditional termination of the franchise of the protestant,
23 *paragraph (2) of subdivision (b) (a) of Section 3060, which*
24 *requires a hearing to determine whether good cause exists for*
25 *termination of the franchise, is inapplicable to the proceedings. If*
26 *the stipulated decision and order provides for an unconditional*
27 *termination of the franchise, the franchise may be terminated*
28 *without further proceedings by the board. If the stipulated decision*
29 *and order provides for the termination of the franchise, conditioned*
30 *upon the failure of a party to comply with specified conditions,*
31 *the franchise may be terminated upon a determination, according*
32 *to the terms of the stipulated decision and order, that the conditions*
33 *have not been met. If the stipulated decision and order provides*
34 *for the termination of the franchise conditioned upon the occurrence*
35 *of specified conditions, the franchise may be terminated upon a*
36 *determination, according to the terms of the stipulated decision*
37 *and order, that the stipulated conditions have occurred.*

38 ~~SEC. 2.~~

39 *SEC. 3. Section 11713.3 of the Vehicle Code is amended to*
40 *read:*

1 11713.3. It is unlawful and a violation of this code for a
2 manufacturer, manufacturer branch, distributor, or distributor
3 branch licensed pursuant to this code to do, directly or indirectly
4 through an affiliate, any of the following:

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

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

24 (c) To prevent or require, or attempt to prevent or require, a
25 dealer to change the executive management of a dealership, other
26 than the principal dealership operator or operators, if the franchise
27 was granted to the dealer in reliance upon the personal
28 qualifications of that person.

29 (d) (1) Except as provided in subdivision (t), to prevent or
30 require, or attempt to prevent or require, by contract or otherwise,
31 a dealer, or an officer, partner, or stockholder of a dealership, the
32 sale or transfer of a part of the interest of any of them to another
33 person. A dealer, officer, partner, or stockholder shall not, however,
34 have the right to sell, transfer, or assign the franchise, or a right
35 thereunder, without the consent of the manufacturer or distributor
36 except that the consent shall not be unreasonably withheld.

37 (2) (A) For the transferring franchisee to fail, prior to the sale,
38 transfer, or assignment of a franchisee or the sale, assignment, or
39 transfer of all, or substantially all, of the assets of the franchised
40 business or a controlling interest in the franchised business to

1 another person, to notify the manufacturer or distributor of the
2 franchisee's decision to sell, transfer, or assign the franchise. The
3 notice shall be in writing and shall include all of the following:

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

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

31 (3) In an action in which the manufacturer's or distributor's
32 withholding of consent under this subdivision or subdivision (e)
33 is an issue, whether the withholding of consent was unreasonable
34 is a question of fact requiring consideration of all the existing
35 circumstances.

36 (e) To prevent, or attempt to prevent, a dealer from receiving
37 fair and reasonable compensation for the value of the franchised
38 business. There shall not be a transfer or assignment of the dealer's
39 franchise without the consent of the manufacturer or distributor,
40 which consent shall not be unreasonably withheld or conditioned

1 upon the release, assignment, novation, waiver, estoppel, or
2 modification of a claim or defense by the dealer.

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

8 ~~(g) (1) To obtain or attempt to obtain from a dealer or enforce~~
9 ~~or attempt to enforce against a dealer an agreement, provision,~~

10 (g) (1) *To obtain from a dealer or enforce against a dealer an*
11 *agreement, provision, release, assignment, novation, waiver, or*
12 *estoppel that does any of the following:*

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

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

20 (C) Provides for the termination of a franchise by a dealer.

21 (D) Requires a controversy between a manufacturer,
22 manufacturer branch, distributor, distributor branch, or
23 representative and a dealer to be referred to a person for a binding
24 determination.

25 (2) An agreement, provision, release, assignment, novation,
26 waiver, or estoppel prohibited by this subdivision shall be
27 unenforceable and void whether entered into before or during the
28 term of a franchise. This subdivision shall not limit or restrict the
29 terms upon which parties to a protest before the board, civil action,
30 or other proceeding can settle or resolve the protest or other claim,
31 or stipulate to evidentiary or procedural matters during the course
32 of a protest, civil action, or other proceeding.

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

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

36 (B) *Prohibit a dealer from waiving its right to file a protest*
37 *pursuant to Section 3065.1 after a franchisor incentive program*
38 *claim has been disapproved and the waiver is voluntarily given*
39 *as part of an agreement to settle that claim.*

1 (C) Prohibit a voluntary agreement supported by substantial
2 consideration, other than granting or renewing a franchise, that
3 does both of the following:

4 (i) Provides that a dealer establish or maintain exclusive
5 facilities, personnel, or display space or provides that a dealer
6 make a material alteration, expansion, or addition to a dealership
7 facility.

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

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

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

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

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

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

37 (k) To offer refunds or other types of inducements to a person
38 for the purchase of new motor vehicles of a certain line-make to
39 be sold to the state or a political subdivision of the state without

1 making the same offer to all other dealers in the same line-make
2 within the relevant market area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (t) To exercise a right of first refusal or other right requiring a
38 franchisee or an owner of the franchise to sell, transfer, or assign
39 to the franchisor, or to a nominee of the franchisor, all or a material

1 part of the franchised business or of the assets of the franchised
2 business unless all of the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

1 (iv) Sales or service incentives, discounts, or promotional
2 programs that are not made available to all California franchises
3 *of the same line-make* on an equivalent basis.

4 (B) Referring a prospective purchaser or lessee to a dealer in
5 which a manufacturer, branch, or distributor has an ownership
6 interest, unless the prospective purchaser or lessee resides in the
7 area of responsibility assigned to that dealer or the prospective
8 purchaser or lessee requests to be referred to that dealer.

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

15 (v) (1) To access, modify, or extract information from a
16 confidential dealer computer record, as defined in Section
17 11713.25, without obtaining the prior written consent of the dealer
18 and without maintaining administrative, technical, and physical
19 safeguards to protect the security, confidentiality, and integrity of
20 the information.

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

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

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

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

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

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

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

36 (x) (1) To unfairly discriminate against a franchisee selling a
37 service contract, debt cancellation agreement, maintenance
38 agreement, or similar product not approved, endorsed, sponsored,
39 or offered by the manufacturer, manufacturer branch, distributor,
40 or distributor branch or affiliate. For purposes of this subdivision,

1 unfair discrimination includes, but is not limited to, any of the
2 following:

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

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

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

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

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

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

39 (3) *This subdivision does not prohibit a manufacturer,*
40 *manufacturer branch, distributor, or distributor branch from*

1 *requiring a franchisee that sells a used vehicle as “certified” under*
2 *a certified used vehicle program established by the manufacturer,*
3 *manufacturer branch, distributor, or distributor branch to provide*
4 *a service contract approved, endorsed, sponsored, or offered by*
5 *the manufacturer, manufacturer branch, distributor, or distributor*
6 *branch.*

7 (y) As used in this section, “area of responsibility” is a
8 geographic area specified in a franchise that is used by the
9 franchisor for the purpose of evaluating the franchisee’s
10 performance of its sales and service obligations.

11 ~~SEC. 3.~~

12 *SEC. 4.* No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.