

AMENDED IN ASSEMBLY AUGUST 21, 2013

AMENDED IN ASSEMBLY JUNE 10, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 22, 2013

AMENDED IN SENATE APRIL 4, 2013

**SENATE BILL**

**No. 155**

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**Introduced by Senator Padilla**

January 31, 2013

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An act to amend Sections 3006, 3008, 3012, 3050, 3050.7, 3052, 3056, 3057, 3062, 3063, 3064, 3065, 3065.1, 3066, 3067, 3069.1, 11713.3, and 11713.13 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 155, as amended, Padilla. Vehicles: motor vehicle manufacturers and distributors.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee. Existing law prescribes procedures to be followed by franchisors, franchisees, and the board regarding claims for warranty reimbursement or incentive compensation. Existing law authorizes franchisors to conduct audits of franchisee warranty records and incentive records on a reasonable basis, and authorizes a franchisor to audit the franchisee's incentive records for 18 months, and warranty records for 12 months, after a claim is paid or credit issued. Existing law prohibits the disapproval of franchisee claims except for good cause, as specified, and requires that a notice of disapproval state the specific grounds upon which the disapproval

is based. Existing law gives a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the board.

This bill would revise these provisions to require, among other things, the franchisor to provide the franchisee with the specific grounds upon which any previously approved claims will be charged back, if the franchisor disapproves of a previously approved claim after an audit, and to prohibit a previously approved claim from being charged back to the franchisee except under certain circumstances, including when the claim is false or fraudulent. The bill would require the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, as provided. The bill would authorize the audit of a franchisee's *incentive and warranty* records for 9 months after a claim is paid or credit is issued, as specified. The bill would give a franchisee 6 months from the date of receipt of a specified written notice to file a protest with the board, and would specify that in the protest proceeding the franchisor has the burden of proof.

Existing law requires every vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing. Existing law also requires the franchisor to file a copy of its warranty reimbursement schedule or formula with the board, and requires the board to determine the reasonableness of the warranty reimbursement schedule or formula if the franchisee files a notice of protest with the board.

This bill would additionally require a franchisor to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostic services under a warranty. ~~The bill would permit the board, in determining the adequacy and fairness of the compensation, to consider published nationally recognized flat-rate time guides.~~ The bill would also require, if the board determines that the warranty reimbursement schedule or formula fails to provide adequate compensation, the franchisor to correct the failure by amending or replacing the warranty reimbursement schedule and implementing the correction as to all franchisees within 30 days after receipt of the board's order.

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 practices, including requiring a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.

This bill would prohibit a required facility alteration, expansion, or addition from being deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor if substantially similar goods or services are available from another vendor, except as specified. The bill would also prohibit the establishment or maintenance of a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer's right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless certain requirements are satisfied. The bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from taking or threatening to take any adverse action against a dealer pursuant to a published 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, unless the dealer was provided an export or sale-for-resale prohibition policy, in writing, prior to the sale or lease and the dealer knew or should have known of the customer's intent to export or resell the vehicle, as specified. Because a violation of these provisions would be a crime, this 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 the State of California vitally affect the general economy of this  
5 state and the public welfare.

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

15 (c) California franchise laws require manufacturers to provide  
16 reasonable reimbursement to dealers for warranty work, but fail  
17 to establish guidelines for determining whether a reimbursement  
18 is reasonable. Unlike many states, California does not require  
19 franchisors to provide an appeal process where dealers can dispute  
20 warranty and incentive claim denials or audit chargebacks.

21 (d) Franchisors sometimes establish strict liability export policies  
22 where a paid sales incentive is subject to being charged back in  
23 the event that a vehicle is exported, even when the dealership did  
24 not know, *or in the exercise of reasonable diligence should not*  
25 *have known*, of the intended exportation. Unlike many states,  
26 California does not prohibit those chargebacks in circumstances  
27 where the dealer did not have knowledge of or reason to know of  
28 the intended exportation, such as when the dealer has collected  
29 sales tax or the vehicle has been registered.

30 (e) Many franchisors measure dealership sales, service, and  
31 customer service performance against standards based upon  
32 ~~national or statewide~~ performance averages that ~~do~~ *may* not  
33 *adequately* take into account a dealer's local market. Unlike many  
34 states, California does not ~~impose any requirement that those~~  
35 ~~standards be reasonable~~ *provide criteria for the establishment of*  
36 *performance standards*.

37 (f) Franchisors sometimes establish facility models that require  
38 dealers to purchase goods or services from specific vendors even

1 if a dealer can obtain substantially similar goods or services from  
2 an alternative local vendor.

3 (g) It is the intent of this act to ensure that new motor vehicle  
4 dealers are treated fairly by their franchisors, that dealers are  
5 reasonably compensated for performing warranty repairs on behalf  
6 of their franchisor, that dealers are not subject to adverse action  
7 when vehicles are exported ~~without dealer knowledge and the~~  
8 ~~dealer did not know or have reason to know~~, that performance  
9 standards ~~take into account local market conditions~~ *are reasonable*,  
10 and that dealers be allowed to obtain required goods or services  
11 through vendors of their choosing.

12 SEC. 2. Section 3006 of the Vehicle Code is amended to read:

13 3006. The board shall organize and elect a president from  
14 among its members for a term of one year at the first meeting of  
15 each year. The newly elected president shall assume his or her  
16 duties at the conclusion of the meeting at which he or she was  
17 elected. Reelection to office during membership is unrestricted.

18 SEC. 3. Section 3008 of the Vehicle Code is amended to read:

19 3008. (a) All meetings of the board shall be open and public,  
20 and all persons shall be permitted to attend any meeting of the  
21 board, except that the board may hold executive sessions to  
22 deliberate on the decision to be reached upon the evidence  
23 introduced in a proceeding conducted in accordance with Chapter  
24 5 (commencing with Section 11500) of Part 1 of Division 3 of  
25 Title 2 of the Government Code.

26 (b) At all meetings of the board, open or executive, involving  
27 an appeal from a decision of the Director of Motor Vehicles, the  
28 director or his or her authorized representative may attend, present  
29 the position of the department, and then shall absent himself or  
30 herself from any executive session at the request of any member  
31 of the board.

32 (c) Within the limitations of its powers and authority, and in  
33 the event of disagreement between the board and the director  
34 regarding the decision to be reached, the decision of the board  
35 shall be final.

36 SEC. 4. Section 3012 of the Vehicle Code is amended to read:

37 3012. Each member of the board shall receive a per diem of  
38 one hundred dollars (\$100) for each day actually spent in the  
39 discharge of official duties, and he or she shall be reimbursed for  
40 traveling and other expenses necessarily incurred in the

1 performance of his or her duties. The per diem and reimbursement  
2 shall be wholly defrayed from funds that shall be provided in the  
3 annual budget of the department.

4 SEC. 5. Section 3050 of the Vehicle Code is amended to read:  
5 3050. The board shall do all of the following:

6 (a) Adopt rules and regulations in accordance with Chapter 3.5  
7 (commencing with Section 11340) of Part 1 of Division 3 of Title  
8 2 of the Government Code governing those matters that are  
9 specifically committed to its jurisdiction.

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

17 (c) Consider any matter concerning the activities or practices  
18 of any person applying for or holding a license as a new motor  
19 vehicle dealer, manufacturer, manufacturer branch, distributor,  
20 distributor branch, or representative pursuant to Chapter 4  
21 (commencing with Section 11700) of Division 5 submitted by any  
22 person. A member of the board who is a new motor vehicle dealer  
23 may not participate in, hear, comment, advise other members upon,  
24 or decide any matter considered by the board pursuant to this  
25 subdivision that involves a dispute between a franchisee and  
26 franchisor. After that consideration, the board may do any one or  
27 any combination of the following:

28 (1) Direct the department to conduct investigation of matters  
29 that the board deems reasonable, and make a written report on the  
30 results of the investigation to the board within the time specified  
31 by the board.

32 (2) Undertake to mediate, arbitrate, or otherwise resolve any  
33 honest difference of opinion or viewpoint existing between any  
34 member of the public and any new motor vehicle dealer,  
35 manufacturer, manufacturer branch, distributor branch, or  
36 representative.

37 (3) Order the department to exercise any and all authority or  
38 power that the department may have with respect to the issuance,  
39 renewal, refusal to renew, suspension, or revocation of the license  
40 of any new motor vehicle dealer, manufacturer, manufacturer

1 branch, distributor, distributor branch, or representative as that  
2 license is required under Chapter 4 (commencing with Section  
3 11700) of Division 5.

4 (d) Hear and decide, within the limitations and in accordance  
5 with the procedure provided, a protest presented by a franchisee  
6 pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072,  
7 3074, 3075, or 3076. A member of the board who is a new motor  
8 vehicle dealer may not participate in, hear, comment, advise other  
9 members upon, or decide, any matter involving a protest filed  
10 pursuant to Article 4 (commencing with Section 3060), unless all  
11 parties to the protest stipulate otherwise.

12 (e) Notwithstanding subdivisions (c) and (d), the courts have  
13 jurisdiction over all common law and statutory claims originally  
14 cognizable in the courts. For those claims, a party may initiate an  
15 action directly in any court of competent jurisdiction.

16 SEC. 6. Section 3050.7 of the Vehicle Code is amended to  
17 read:

18 3050.7. (a) The board may adopt stipulated decisions and  
19 orders, without a hearing pursuant to Section 3066, to resolve one  
20 or more issues raised by a protest or petition filed with the board.  
21 Whenever the parties to a protest or petition submit a proposed  
22 stipulated decision and order of the board, a copy of the proposed  
23 stipulated decision and order shall be transmitted by the executive  
24 director of the board to each member of the board. The proposed  
25 stipulated decision and order shall be deemed to be adopted by the  
26 board unless a member of the board notifies the executive director  
27 of the board of an objection thereto within 10 days after that board  
28 member has received a copy of the proposed stipulated decision  
29 and order.

30 (b) If the board adopts a stipulated decision and order to resolve  
31 a protest filed pursuant to Section 3060 or 3070 in which the parties  
32 stipulate that good cause exists for the termination of the franchise  
33 of the protestant, and the order provides for a conditional or  
34 unconditional termination of the franchise of the protestant,  
35 paragraph (2) of subdivision (a) of Section 3060 and paragraph  
36 (2) of subdivision (a) of Section 3070, which require a hearing to  
37 determine whether good cause exists for termination of the  
38 franchise, is inapplicable to the proceedings. If the stipulated  
39 decision and order provides for an unconditional termination of  
40 the franchise, the franchise may be terminated without further

1 proceedings by the board. If the stipulated decision and order  
2 provides for the termination of the franchise, conditioned upon the  
3 failure of a party to comply with specified conditions, the franchise  
4 may be terminated upon a determination, according to the terms  
5 of the stipulated decision and order, that the conditions have not  
6 been met. If the stipulated decision and order provides for the  
7 termination of the franchise conditioned upon the occurrence of  
8 specified conditions, the franchise may be terminated upon a  
9 determination, according to the terms of the stipulated decision  
10 and order, that the stipulated conditions have occurred.

11 SEC. 7. Section 3052 of the Vehicle Code is amended to read:

12 3052. (a) On or before the 10th day after the last day on which  
13 reconsideration of a final decision of the department can be ordered,  
14 the applicant or licensee may file an appeal with the executive  
15 director of the board. The appeal shall be in writing and shall state  
16 the grounds therefor. A copy of the appeal shall be mailed by the  
17 appellant to the department, and the department shall thereafter  
18 be considered as a party to the appeal. The right to appeal is not  
19 affected by failure to seek reconsideration before the department.

20 (b) An appeal is considered to be filed on the date it is received  
21 in the office of the executive director of the board, except that an  
22 appeal mailed to the executive director by means of registered mail  
23 is considered to be filed with the executive director on the postmark  
24 date.

25 (c) The appeal shall be accompanied by evidence that the  
26 appellant has requested the administrative record of the department  
27 and advanced the cost of preparation of that record. The complete  
28 administrative record includes the pleadings, all notices and orders  
29 issued by the department, any proposed decision by an  
30 administrative law judge, the exhibits admitted or rejected, the  
31 written evidence, and any other papers in the case. All parts of the  
32 administrative record requested by the appellant may be filed with  
33 the appeal together with the appellant's points and authorities. If  
34 the board orders the filing of additional parts of the administrative  
35 record, the board may order prior payment by the appellant of the  
36 cost of providing those additional parts.

37 (d) Except as provided in subdivisions (e) and (f), a decision of  
38 the department may not become effective during the period in  
39 which an appeal may be filed, and the filing of an appeal shall stay

1 the decision of the department until a final order is made by the  
2 board.

3 (e) When a decision has ordered revocation of a dealer’s license,  
4 the department may, on or before the last day upon which an appeal  
5 may be filed with the board, petition the board to order the decision  
6 of the department into effect.

7 (f) With respect to the department’s petition filed pursuant to  
8 subdivision (e), the department shall have the burden of proof. The  
9 board shall act upon the petition within 14 days or prior to the  
10 effective date of the department’s decision, whichever is later. The  
11 board may order oral argument on the petition before the board.

12 SEC. 8. Section 3056 of the Vehicle Code is amended to read:

13 3056. When the order reverses the decision of the department,  
14 the board may direct the department to reconsider the matter in  
15 the light of its order and may direct the department to take any  
16 further action as is specially enjoined upon it by law. In all cases  
17 the board shall enter its order within 60 days after the filing of the  
18 appeal, except in the case of unavoidable delay in supplying the  
19 administrative record, in which event the board shall make its final  
20 order within 60 days after receipt of the record.

21 SEC. 9. Section 3057 of the Vehicle Code is amended to read:

22 3057. The board shall fix an effective date for its orders not  
23 more than 30 days from the day the order is served upon the parties  
24 or remand the case to the department for fixing an effective date.  
25 A final order of the board shall be in writing and copies of the  
26 order shall be delivered to the parties personally or sent to them  
27 by registered mail. The order shall be final upon its delivery or  
28 mailing and no reconsideration or rehearing by the board shall be  
29 permitted.

30 SEC. 10. Section 3062 of the Vehicle Code is amended to read:

31 3062. (a) (1) Except as otherwise provided in subdivision (b),  
32 if a franchisor seeks to enter into a franchise establishing an  
33 additional motor vehicle dealership, or seeks to relocate an existing  
34 motor vehicle dealership, that has a relevant market area within  
35 which the same line-make is represented, the franchisor shall, in  
36 writing, first notify the board and each franchisee in that line-make  
37 in the relevant market area of the franchisor’s intention to establish  
38 an additional dealership or to relocate an existing dealership.  
39 Within 20 days of receiving the notice, satisfying the requirements  
40 of this section, or within 20 days after the end of an appeal

1 procedure provided by the franchisor, a franchisee required to be  
2 given the notice may file with the board a protest to the proposed  
3 dealership establishment or relocation described in the franchisor's  
4 notice. If, within this time, a franchisee files with the board a  
5 request for additional time to file a protest, the board or its  
6 executive director, upon a showing of good cause, may grant an  
7 additional 10 days to file the protest. When a protest is filed, the  
8 board shall inform the franchisor that a timely protest has been  
9 filed, that a hearing is required pursuant to Section 3066, and that  
10 the franchisor may not establish the proposed dealership or relocate  
11 the existing dealership until the board has held a hearing as  
12 provided in Section 3066, nor thereafter, if the board has  
13 determined that there is good cause for not permitting the  
14 establishment of the proposed dealership or relocation of the  
15 existing dealership. In the event of multiple protests, hearings may  
16 be consolidated to expedite the disposition of the issue.

17 (2) If a franchisor seeks to enter into a franchise that authorizes  
18 a satellite warranty facility to be established at, or relocated to, a  
19 proposed location that is within two miles of a dealership of the  
20 same line-make, the franchisor shall first give notice in writing of  
21 the franchisor's intention to establish or relocate a satellite warranty  
22 facility at the proposed location to the board and each franchisee  
23 operating a dealership of the same line-make within two miles of  
24 the proposed location. Within 20 days of receiving the notice  
25 satisfying the requirements of this section, or within 20 days after  
26 the end of an appeal procedure provided by the franchisor, a  
27 franchisee required to be given the notice may file with the board  
28 a protest to the establishing or relocating of the satellite warranty  
29 facility. If, within this time, a franchisee files with the board a  
30 request for additional time to file a protest, the board or its  
31 executive director, upon a showing of good cause, may grant an  
32 additional 10 days to file the protest. When a protest is filed, the  
33 board shall inform the franchisor that a timely protest has been  
34 filed, that a hearing is required pursuant to Section 3066, and that  
35 the franchisor may not establish or relocate the proposed satellite  
36 warranty facility until the board has held a hearing as provided in  
37 Section 3066, nor thereafter, if the board has determined that there  
38 is good cause for not permitting the satellite warranty facility. In  
39 the event of multiple protests, hearings may be consolidated to  
40 expedite the disposition of the issue.

1 (3) The written notice shall contain, on the first page thereof in  
2 at least 12-point bold type and circumscribed by a line to segregate  
3 it from the rest of the text, the following statement:

4  
5 “NOTICE TO DEALER: You have the right to file a protest  
6 with the NEW MOTOR VEHICLE BOARD in Sacramento and  
7 have a hearing on your protest under the terms of the California  
8 Vehicle Code if you oppose this action. You must file your protest  
9 with the board within 20 days of your receipt of this notice, or  
10 within 20 days after the end of any appeal procedure that is  
11 provided by us to you. If within this time you file with the board  
12 a request for additional time to file a protest, the board or its  
13 executive director, upon a showing of good cause, may grant you  
14 an additional 10 days to file the protest.”

15  
16 (b) Subdivision (a) does not apply to either of the following:

17 (1) The relocation of an existing dealership to a location that is  
18 both within the same city as, and within one mile from, the existing  
19 dealership location.

20 (2) The establishment at a location that is both within the same  
21 city as, and within one-quarter mile from, the location of a  
22 dealership of the same line-make that has been out of operation  
23 for less than 90 days.

24 (c) Subdivision (a) does not apply to a display of vehicles at a  
25 fair, exposition, or similar exhibit if actual sales are not made at  
26 the event and the display does not exceed 30 days. This subdivision  
27 may not be construed to prohibit a new vehicle dealer from  
28 establishing a branch office for the purpose of selling vehicles at  
29 the fair, exposition, or similar exhibit, even though the event is  
30 sponsored by a financial institution, as defined in Section 31041  
31 of the Financial Code or by a financial institution and a licensed  
32 dealer. The establishment of these branch offices, however, shall  
33 be in accordance with subdivision (a) where applicable.

34 (d) For the purposes of this section, the reopening of a dealership  
35 that has not been in operation for one year or more shall be deemed  
36 the establishment of an additional motor vehicle dealership.

37 (e) As used in this section, the following definitions apply:

38 (1) “Motor vehicle dealership” or “dealership” means an  
39 authorized facility at which a franchisee offers for sale or lease,  
40 displays for sale or lease, or sells or leases new motor vehicles.

1 (2) “Satellite warranty facility” means a facility operated by a  
2 franchisee where authorized warranty repairs and service are  
3 performed and the offer for sale or lease, the display for sale or  
4 lease, or the sale or lease of new motor vehicles is not authorized  
5 to take place.

6 SEC. 11. Section 3063 of the Vehicle Code is amended to read:

7 3063. In determining whether good cause has been established  
8 for not entering into a franchise or relocating an existing dealership  
9 of the same line-make, the board shall take into consideration the  
10 existing circumstances, including, but not limited to, all of the  
11 following:

12 (a) Permanency of the investment.

13 (b) Effect on the retail motor vehicle business and the consuming  
14 public in the relevant market area.

15 (c) Whether it is injurious to the public welfare for an additional  
16 franchise to be established or an existing dealership to be relocated.

17 (d) Whether the franchisees of the same line-make in the relevant  
18 market area are providing adequate competition and convenient  
19 consumer care for the motor vehicles of the line-make in the market  
20 area, which shall include the adequacy of motor vehicle sales and  
21 service facilities, equipment, supply of vehicle parts, and qualified  
22 service personnel.

23 (e) Whether the establishment of an additional franchise would  
24 increase competition and therefore be in the public interest.

25 (f) For purposes of this section, the terms “motor vehicle  
26 dealership” and “dealership” shall have the same meaning as  
27 defined in Section 3062.

28 SEC. 12. Section 3064 of the Vehicle Code is amended to read:

29 3064. (a) Every franchisor shall specify to its franchisees the  
30 delivery and preparation obligations of the franchisees prior to  
31 delivery of new motor vehicles to retail buyers. A copy of the  
32 delivery and preparation obligations, which shall constitute the  
33 franchisee’s only responsibility for product liability between the  
34 franchisee and the franchisor but shall not in any way affect the  
35 franchisee’s responsibility for product liability between the  
36 purchaser and either the franchisee or the franchisor, and a schedule  
37 of compensation to be paid to franchisees for the work and services  
38 they shall be required to perform in connection with those delivery  
39 and preparation obligations shall be filed with the board by  
40 franchisors, and shall constitute the compensation as set forth on

1 the schedule. The schedule of compensation shall be reasonable,  
2 with the reasonableness thereof being subject to the approval of  
3 the board, if a franchisee files a notice of protest with the board.  
4 In determining the reasonableness of the schedules, the board shall  
5 consider all relevant circumstances, including, but not limited to,  
6 the time required to perform each function that the dealer is  
7 obligated to perform and the appropriate labor rate.

8 (b) Upon delivery of the vehicle, the franchisee shall give a  
9 copy of the delivery and preparation obligations to the purchaser  
10 and a written certification that the franchisee has fulfilled these  
11 obligations.

12 SEC. 13. Section 3065 of the Vehicle Code is amended to read:

13 3065. (a) Every franchisor shall properly fulfill every warranty  
14 agreement made by it and adequately and fairly compensate each  
15 of its franchisees for labor and parts used to fulfill that warranty  
16 when the franchisee has fulfilled warranty obligations of  
17 diagnostics, repair, and servicing and shall file a copy of its  
18 warranty reimbursement schedule or formula with the board. The  
19 warranty reimbursement schedule or formula shall be reasonable  
20 with respect to the time and compensation allowed to the franchisee  
21 for the warranty diagnostics, repair, and servicing, and all other  
22 conditions of the obligation. The reasonableness of the warranty  
23 reimbursement schedule or formula shall be determined by the  
24 board if a franchisee files a protest with the board. A franchisor  
25 shall not replace, modify, or supplement the warranty  
26 reimbursement schedule to impose a fixed percentage or other  
27 reduction in the time and compensation allowed to the franchisee  
28 for warranty repairs not attributable to a specific repair. A  
29 franchisor may reduce the allowed time and compensation  
30 applicable to a specific warranty repair only upon 15 days' prior  
31 written notice to the franchisee. ~~In any~~ Any protest challenging a  
32 reduction in time and compensation applicable to specific parts or  
33 labor operations ~~that is~~ shall be filed within six months following  
34 the franchisee's receipt of notice of the reduction, and the  
35 franchisor shall have the burden of establishing the reasonableness  
36 of the reduction and adequacy and fairness of the resulting  
37 compensation.

38 (b) In determining the adequacy and fairness of the  
39 compensation, ~~published, nationally recognized flat-rate time~~  
40 ~~guides~~ and the franchisee's effective labor rate charged to its

1 various retail customers may be considered together with other  
2 relevant criteria. If in a protest permitted by this section filed by  
3 any franchisee the board determines that the warranty  
4 reimbursement schedule or formula fails to provide adequate and  
5 fair compensation or fails ~~in whole or in part~~ to conform with the  
6 other requirements of this section, within 30 days after receipt of  
7 the board's order, the franchisor shall correct the failure by  
8 amending or replacing the warranty reimbursement schedule or  
9 formula and implementing the correction as to all franchisees of  
10 the franchisor that are located in this state.

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

17 (d) (1) All claims made by franchisees pursuant to this section  
18 shall be either approved or disapproved within 30 days after their  
19 receipt by the franchisor. Any claim not specifically disapproved  
20 in writing within 30 days from receipt by the franchisor shall be  
21 deemed approved on the 30th day. All claims made by franchisees  
22 under this section and Section 3064 for labor and parts shall be  
23 paid within 30 days after approval.

24 (2) A franchisor shall not disapprove a claim unless the claim  
25 is false or fraudulent, repairs were not properly made, repairs were  
26 inappropriate to correct a nonconformity with the written warranty  
27 due to an improper act or omission of the franchisee, or for material  
28 noncompliance with reasonable and nondiscriminatory  
29 documentation and administrative claims submission requirements.  
30 ~~A franchisor shall not disapprove a claim based upon an~~  
31 ~~extrapolation from a sample of claims.~~

32 (3) When any claim is disapproved, the franchisee who submits  
33 it shall be notified in writing of its disapproval within the required  
34 period, and each notice shall state the specific grounds upon which  
35 the disapproval is based. The franchisor shall provide for a  
36 reasonable appeal process allowing the franchisee at least 30 days  
37 after receipt of the written disapproval notice to provide additional  
38 supporting documentation or information rebutting the disapproval.  
39 If disapproval is based upon noncompliance with documentation  
40 or administrative claims submission requirements, the ~~franchisee~~

1 ~~shall have franchisor shall allow the franchisee~~ at least 30 days  
2 from the date of receipt of the notice to cure ~~the any material~~  
3 noncompliance. If the disapproval is rebutted, and *material*  
4 noncompliance is ~~reasonably~~ cured before the applicable deadline,  
5 the franchisor shall approve the claim.

6 (4) If the franchisee provides additional supporting  
7 documentation or information purporting to rebut the disapproval,  
8 attempts to cure noncompliance relating to the claim, or otherwise  
9 appeals denial of the claim and the franchisor continues to deny  
10 the claim, the franchisor shall provide the franchisee with a written  
11 notification of the final denial within 30 days of completion of the  
12 appeal process, which shall conspicuously state “Final Denial” on  
13 the first page.

14 (5) Failure to approve or pay within the above specified time  
15 limits, in individual instances for reasons beyond the reasonable  
16 control of the franchisor, shall not constitute a violation of this  
17 article.

18 (6) Within six months after either receipt of the written notice  
19 described in paragraph (3) or (4), whichever is later, a franchisee  
20 may file a protest with the board for determination of whether the  
21 franchisor complied with the requirements of this subdivision. In  
22 any protest pursuant to this subdivision, the franchisor shall have  
23 the burden of proof.

24 (e) (1) Audits of franchisee warranty records may be conducted  
25 by the franchisor on a reasonable basis for a period of nine months  
26 after a claim is paid or credit issued, ~~and only if the franchisor has~~  
27 ~~substantial evidence of a pattern of improper warranty claims,~~  
28 ~~including, but not limited to, a recent significant deviation between~~  
29 ~~the value or number of warranty claims made by the franchisee~~  
30 ~~and the average value or number of warranty claims made by~~  
31 ~~similarly sized dealers of the same line make issued. A franchisor~~  
32 ~~shall not select a franchisee for an audit, or perform an audit, in~~  
33 ~~a punitive, retaliatory, or unfairly discriminatory manner. A~~  
34 ~~franchisor may conduct no more than one random audit of a~~  
35 ~~franchisee in a nine-month period. The franchisor’s notification~~  
36 ~~to the franchisee of any additional audit within a nine-month period~~  
37 ~~shall be accompanied by written disclosure of the basis for that~~  
38 ~~additional audit.~~

39 (2) Previously approved claims shall not be disapproved or  
40 charged back to the franchisee unless the claim is false or

1 fraudulent, repairs were not properly made, repairs were  
2 inappropriate to correct a nonconformity with the written warranty  
3 due to an improper act or omission of the franchisee, or for material  
4 noncompliance with reasonable and nondiscriminatory  
5 documentation and administrative claims submission requirements.  
6 A franchisor shall not disapprove or chargeback a claim based  
7 upon an extrapolation from a sample of claims, *unless the sample*  
8 *of claims is selected randomly and the extrapolation is performed*  
9 *in a reasonable and statistically valid manner.*

10 (3) If the franchisor disapproves of a previously approved claim  
11 following an audit, the franchisor shall provide to the franchisee,  
12 within 30 days after the audit, a written disapproval notice stating  
13 the specific grounds upon which the claim is disapproved. The  
14 franchisor shall provide a reasonable appeal process allowing the  
15 franchisee a reasonable period of not less than 30 days after receipt  
16 of the written disapproval notice to respond to any disapproval  
17 with additional supporting documentation or information rebutting  
18 the disapproval and to cure noncompliance, with the period to be  
19 commensurate with the volume of claims under consideration. If  
20 the franchisee rebuts any disapproval and ~~reasonably~~ cures any  
21 *material* noncompliance relating to a claim before the applicable  
22 deadline, the franchisor shall not chargeback the franchisee for  
23 that claim.

24 (4) If the franchisee provides additional supporting  
25 documentation or information purporting to rebut the disapproval,  
26 attempts to cure noncompliance relating to the claim, or otherwise  
27 appeals denial of the claim and the franchisor continues to deny  
28 the claim, the franchisor shall provide the franchisee with a written  
29 notification of the final denial within 30 days of completion of the  
30 appeal process, which shall conspicuously state “Final Denial” on  
31 the first page.

32 (5) The franchisor shall not chargeback the franchisee until 45  
33 days after receipt of the written notice described in paragraph (3)  
34 or paragraph (4), whichever is later. Any chargeback to a franchisee  
35 for warranty parts or service compensation shall be made within  
36 90 days of receipt of that written notice. If the franchisee files a  
37 protest pursuant to this subdivision prior to the franchisor’s  
38 chargeback for denied claims, the franchisor shall not offset or  
39 otherwise undertake to collect the chargeback until the board issues  
40 a final order on the protest. If the board sustains the chargeback

1 or the protest is dismissed ~~with prejudice~~, the franchisor shall have  
2 90 days following issuance of the final order or the dismissal ~~with~~  
3 ~~prejudice~~ to make the chargeback, unless otherwise provided in a  
4 settlement agreement.

5 (6) Within six months after either receipt of the written  
6 disapproval notice or completion of the franchisor's appeal process,  
7 whichever is later, a franchisee may file a protest with the board  
8 for determination of whether the franchisor complied with this  
9 subdivision. ~~If a false claim was submitted by a franchisee with~~  
10 ~~intent to defraud the franchisor, a longer period for audit and any~~  
11 ~~resulting chargeback may be permitted if the franchisor obtains~~  
12 ~~an order from the board.~~ In any protest pursuant to this subdivision,  
13 the franchisor shall have the burden of proof.

14 *(f) If a false claim was submitted by a franchisee with the intent*  
15 *to defraud the franchisor, a longer period for audit and any*  
16 *resulting chargeback may be permitted if the franchisor obtains*  
17 *an order from the board.*

18 SEC. 14. Section 3065.1 of the Vehicle Code is amended to  
19 read:

20 3065.1. (a) All claims made by a franchisee for payment under  
21 the terms of a franchisor incentive program shall be either approved  
22 or disapproved within 30 days after receipt by the franchisor. When  
23 any claim is disapproved, the franchisee who submits it shall be  
24 notified in writing of its disapproval within the required period,  
25 and each notice shall state the specific grounds upon which the  
26 disapproval is based. Any claim not specifically disapproved in  
27 writing within 30 days from receipt shall be deemed approved on  
28 the 30th day.

29 (b) Franchisee claims for incentive program compensation shall  
30 not be disapproved unless the claim is false or fraudulent, the claim  
31 is ineligible under the terms of the incentive program as previously  
32 communicated to the franchisee, or for material noncompliance  
33 with reasonable and nondiscriminatory documentation and  
34 administrative claims submission requirements. ~~A franchisor shall~~  
35 ~~not disapprove a claim based upon an extrapolation from a sample~~  
36 ~~of claims.~~

37 (c) The franchisor shall provide for a reasonable appeal process  
38 allowing the franchisee at least 30 days after receipt of the written  
39 disapproval notice to respond to any disapproval with additional  
40 supporting documentation or information rebutting the disapproval.

1 If disapproval is based upon noncompliance with documentation  
2 or administrative claims submission requirements, the franchisee  
3 ~~shall have~~ *franchisor shall allow the franchisee* at least 30 days  
4 from the date of receipt of the written disapproval notice to cure  
5 ~~the any material~~ noncompliance. If the disapproval is rebutted,  
6 and *material* noncompliance is ~~reasonably~~ cured before the  
7 applicable deadline, the franchisor shall approve the claim.

8 (d) If the franchisee provides additional supporting  
9 documentation or information purporting to rebut the disapproval,  
10 attempts to cure noncompliance relating to the claim, or otherwise  
11 appeals denial of the claim, and the franchisor continues to deny  
12 the claim, the franchisor shall provide the franchisee with a written  
13 notification of the final denial within 30 days of completion of the  
14 appeal process, which shall conspicuously state “Final Denial” on  
15 the first page.

16 (e) Following the disapproval of a claim, a franchisee shall have  
17 six months from ~~either~~ receipt of the written notice described in  
18 *either* subdivision (a) or (d), whichever is later, to file a protest  
19 with the board for determination of whether the franchisor  
20 complied with ~~this subdivision~~ *subdivisions (a), (b), (c), and (d)*.  
21 In any hearing pursuant to this subdivision *or subdivision (a), (b),*  
22 *(c), or (d)*, the franchisor shall have the burden of proof.

23 (f) All claims made by franchisees under this section shall be  
24 paid within 30 days following approval. Failure to approve or pay  
25 within the above specified time limits, in individual instances for  
26 reasons beyond the reasonable control of the franchisor, do not  
27 constitute a violation of this article.

28 (g) (1) Audits of franchisee incentive records may be conducted  
29 by the franchisor on a reasonable basis, and for a period of nine  
30 months after a claim is paid or credit issued. *A franchisor shall*  
31 *not select a franchisee for an audit, or perform an audit, in a*  
32 *punitive, retaliatory, or unfairly discriminatory manner. A*  
33 *franchisor may conduct no more than one random audit of a*  
34 *franchisee in a nine-month period. The franchisor’s notification*  
35 *to the franchisee of any additional audit within a nine-month period*  
36 *shall be accompanied by written disclosure of the basis for that*  
37 *additional audit.*

38 (2) Previously approved claims shall not be disapproved and  
39 charged back unless the claim is false or fraudulent, the claim is  
40 ineligible under the terms of the incentive program as previously

1 communicated to the franchisee, or for material noncompliance  
2 with reasonable and nondiscriminatory documentation and  
3 administrative claims submission requirements. A franchisor shall  
4 not disapprove a claim or chargeback a claim based upon an  
5 extrapolation from a sample of claims, *unless the sample of claims*  
6 *is selected randomly and the extrapolation is performed in a*  
7 *reasonable and statistically valid manner.*

8 (3) If the franchisor disapproves of a previously approved claim  
9 following an audit, the franchisor shall provide to the franchisee,  
10 within 30 days after the audit, a written disapproval notice stating  
11 the specific grounds upon which the claim is disapproved. The  
12 franchisor shall provide a reasonable appeal process allowing the  
13 franchisee a reasonable period of not less than 30 days after receipt  
14 of the written disapproval notice to respond to any disapproval  
15 with additional supporting documentation or information rebutting  
16 the disapproval and to cure *any material* noncompliance, with the  
17 period to be commensurate with the volume of claims under  
18 consideration. If the franchisee rebuts any disapproval and  
19 ~~reasonably~~ cures any *material* noncompliance relating to a claim  
20 before the applicable deadline, the franchisor shall not chargeback  
21 the franchisee for that claim.

22 (4) If the franchisee provides additional supporting  
23 documentation or information purporting to rebut the disapproval,  
24 attempts to cure noncompliance relating to the claim, or otherwise  
25 appeals denial of the claim, and the franchisor continues to deny  
26 the claim, the franchisor shall provide the franchisee with a written  
27 notification of the final denial within 30 days of completion of the  
28 appeal process, which shall conspicuously state “Final Denial” on  
29 the first page.

30 (5) The franchisor shall not chargeback the franchisee until 45  
31 days after the franchisee receives the written notice described in  
32 paragraph (3) or (4), whichever is later. If the franchisee ~~reasonably~~  
33 cures any *material* noncompliance relating to a claim, the  
34 franchisor shall not chargeback the dealer for that claim. Any  
35 chargeback to a franchisee for incentive program compensation  
36 shall be made within 90 days after the franchisee receives that  
37 written notice. If the board sustains the chargeback or the protest  
38 is dismissed ~~with prejudice~~, the franchisor shall have 90 days  
39 following issuance of the final order or the dismissal ~~with prejudice~~

1 to make the chargeback, unless otherwise provided in a settlement  
2 agreement.

3 (6) Within six months after either receipt of the written notice  
4 described in paragraph (3) or (4), a franchisee may file a protest  
5 with the board for determination of whether the franchisor  
6 complied with this subdivision. ~~If a false claim was submitted by  
7 a franchisee with the intent to defraud the franchisor, a longer  
8 period for audit and any resulting chargeback may be permitted if  
9 the franchisor obtains an order from the board.~~ If the franchisee  
10 files a protest pursuant to this subdivision prior to the franchisor's  
11 chargeback for denied claims, the franchisor shall not offset or  
12 otherwise undertake to collect the chargeback until the board issues  
13 a final order on the protest. In any protest pursuant to this  
14 subdivision, the franchisor shall have the burden of proof.

15 *(h) If a false claim was submitted by a franchisee with the intent  
16 to defraud the franchisor, a longer period for audit and any  
17 resulting chargeback may be permitted if the franchisor obtains  
18 an order from the board.*

19 SEC. 15. Section 3066 of the Vehicle Code is amended to read:

20 3066. (a) Upon receiving a protest pursuant to Section 3060,  
21 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076, the  
22 board shall fix a time within 60 days of the order, and place of  
23 hearing, and shall send by registered mail a copy of the order to  
24 the franchisor, the protesting franchisee, and all individuals and  
25 groups that have requested notification by the board of protests  
26 and decisions of the board. Except in a case involving a franchisee  
27 who deals exclusively in motorcycles, the board or its executive  
28 director may, upon a showing of good cause, accelerate or postpone  
29 the date initially established for a hearing, but the hearing may not  
30 be rescheduled more than 90 days after the board's initial order.  
31 For the purpose of accelerating or postponing a hearing date, "good  
32 cause" includes, but is not limited to, the effects upon, and any  
33 irreparable harm to, the parties or interested persons or groups if  
34 the request for a change in hearing date is not granted. The board  
35 or an administrative law judge designated by the board shall hear  
36 and consider the oral and documented evidence introduced by the  
37 parties and other interested individuals and groups, and the board  
38 shall make its decision solely on the record so made. Chapter 4.5  
39 (commencing with Section 11400) of Part 1 of Division 3 of Title  
40 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7,

1 11511, 11511.5, 11513, 11514, 11515, and 11517 of the  
2 Government Code apply to these proceedings.

3 (b) In a hearing on a protest filed pursuant to Section 3060,  
4 3062, 3070, or 3072, the franchisor shall have the burden of proof  
5 to establish that there is good cause to modify, replace, terminate,  
6 or refuse to continue a franchise. The franchisee shall have the  
7 burden of proof to establish that there is good cause not to enter  
8 into a franchise establishing or relocating an additional motor  
9 vehicle dealership.

10 (c) Except as otherwise provided in this chapter, in a hearing  
11 on a protest alleging a violation of, or filed pursuant to, Section  
12 3064, 3065, 3065.1, 3074, 3075, or 3076, the franchisee shall have  
13 the burden of proof, but the franchisor has the burden of proof to  
14 establish that a franchisee acted with intent to defraud the  
15 franchisor where that issue is material to a protest filed pursuant  
16 to Section 3065, 3065.1, 3075, or 3076.

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

21 SEC. 16. Section 3067 of the Vehicle Code is amended to read:

22 3067. (a) The decision of the board shall be in writing and  
23 shall contain findings of fact and a determination of the issues  
24 presented. The decision shall sustain, conditionally sustain,  
25 overrule, or conditionally overrule the protest. Conditions imposed  
26 by the board shall be for the purpose of assuring performance of  
27 binding contractual agreements between franchisees and franchisors  
28 or otherwise serving the purposes of this article or Article 5  
29 (commencing with Section 3070). If the board fails to act within  
30 30 days after the hearing, within 30 days after the board receives  
31 a proposed decision where the case is heard before an  
32 administrative law judge alone, or within a period necessitated by  
33 Section 11517 of the Government Code, or as may be mutually  
34 agreed upon by the parties, then the proposed action shall be  
35 deemed to be approved. Copies of the board's decision shall be  
36 delivered to the parties personally or sent to them by registered  
37 mail, as well as to all individuals and groups that have requested  
38 notification by the board of protests and decisions by the board.  
39 The board's decision shall be final upon its delivery or mailing  
40 and a reconsideration or rehearing is not permitted.

1 (b) Notwithstanding subdivision (c) of Section 11517 of the  
2 Government Code, if a protest is heard by an administrative law  
3 judge alone, 10 days after receipt by the board of the administrative  
4 law judge’s proposed decision, a copy of the proposed decision  
5 shall be filed by the board as a public record and a copy shall be  
6 served by the board on each party and his or her attorney.

7 SEC. 17. Section 3069.1 of the Vehicle Code is amended to  
8 read:

9 3069.1. Sections 3060 to 3065.1, inclusive, do not apply to a  
10 franchise authorizing a dealership, as defined in subdivision (d)  
11 of Section 3072.

12 SEC. 18. Section 11713.3 of the Vehicle Code is amended to  
13 read:

14 11713.3. It is unlawful and a violation of this code for a  
15 manufacturer, manufacturer branch, distributor, or distributor  
16 branch licensed pursuant to this code to do, directly or indirectly  
17 through an affiliate, any of the following:

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

28 (b) To prevent or require, or attempt to prevent or require, by  
29 contract or otherwise, a change in the capital structure of a  
30 dealership or the means by or through which the dealer finances  
31 the operation of the dealership, if the dealer at all times meets  
32 reasonable capital standards agreed to by the dealer and the  
33 manufacturer or distributor, and if a change in capital structure  
34 does not cause a change in the principal management or have the  
35 effect of a sale of the franchise without the consent of the  
36 manufacturer or distributor.

37 (c) To prevent or require, or attempt to prevent or require, a  
38 dealer to change the executive management of a dealership, other  
39 than the principal dealership operator or operators, if the franchise

1 was granted to the dealer in reliance upon the personal  
2 qualifications of that person.

3 (d) (1) Except as provided in subdivision (t), to prevent or  
4 require, or attempt to prevent or require, by contract or otherwise,  
5 a dealer, or an officer, partner, or stockholder of a dealership, the  
6 sale or transfer of a part of the interest of any of them to another  
7 person. A dealer, officer, partner, or stockholder shall not, however,  
8 have the right to sell, transfer, or assign the franchise, or a right  
9 thereunder, without the consent of the manufacturer or distributor  
10 except that the consent shall not be unreasonably withheld.

11 (2) (A) For the transferring franchisee to fail, prior to the sale,  
12 transfer, or assignment of a franchisee or the sale, assignment, or  
13 transfer of all, or substantially all, of the assets of the franchised  
14 business or a controlling interest in the franchised business to  
15 another person, to notify the manufacturer or distributor of the  
16 franchisee's decision to sell, transfer, or assign the franchise. The  
17 notice shall be in writing and shall include all of the following:

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

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

21 (iii) The proposed transferee's application for approval to  
22 become the successor franchisee. The application shall include  
23 forms and related information generally utilized by the  
24 manufacturer or distributor in reviewing prospective franchisees,  
25 if those forms are readily made available to existing franchisees.  
26 As soon as practicable after receipt of the proposed transferee's  
27 application, the manufacturer or distributor shall notify the  
28 franchisee and the proposed transferee of information needed to  
29 make the application complete.

30 (B) For the manufacturer or distributor, to fail, on or before 60  
31 days after the receipt of all of the information required pursuant  
32 to subparagraph (A), or as extended by a written agreement  
33 between the manufacturer or distributor and the franchisee, to  
34 notify the franchisee of the approval or the disapproval of the sale,  
35 transfer, or assignment of the franchise. The notice shall be in  
36 writing and shall be personally served or sent by certified mail,  
37 return receipt requested, or by guaranteed overnight delivery  
38 service that provides verification of delivery and shall be directed  
39 to the franchisee. A proposed sale, assignment, or transfer shall  
40 be deemed approved, unless disapproved by the franchisor in the

1 manner provided by this subdivision. If the proposed sale,  
2 assignment, or transfer is disapproved, the franchisor shall include  
3 in the notice of disapproval a statement setting forth the reasons  
4 for the disapproval.

5 (3) In an action in which the manufacturer's or distributor's  
6 withholding of consent under this subdivision or subdivision (e)  
7 is an issue, whether the withholding of consent was unreasonable  
8 is a question of fact requiring consideration of all the existing  
9 circumstances.

10 (e) To prevent, or attempt to prevent, a dealer from receiving  
11 fair and reasonable compensation for the value of the franchised  
12 business. There shall not be a transfer or assignment of the dealer's  
13 franchise without the consent of the manufacturer or distributor,  
14 which consent shall not be unreasonably withheld or conditioned  
15 upon the release, assignment, novation, waiver, estoppel, or  
16 modification of a claim or defense by the dealer.

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

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

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

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

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

34 (D) Requires a controversy between a manufacturer,  
35 manufacturer branch, distributor, distributor branch, or  
36 representative and a dealer to be referred to a person for a binding  
37 determination. However, this subparagraph does not prohibit  
38 arbitration before an independent arbitrator, provided that whenever  
39 a motor vehicle franchise contract provides for the use of arbitration  
40 to resolve a controversy arising out of, or relating to, that contract,

1 arbitration may be used to settle the controversy only if, after the  
2 controversy arises, all parties to the controversy consent in writing  
3 to use arbitration to settle the controversy. For the purpose of this  
4 subparagraph, the terms “motor vehicle” and “motor vehicle  
5 franchise contract” shall have the same meaning as defined in  
6 Section 1226 of Title 15 of the United States Code. If arbitration  
7 is elected to settle a dispute under a motor vehicle franchise  
8 contract, the arbitrator shall provide the parties to the arbitration  
9 with a written explanation of the factual and legal basis for the  
10 award.

11 (2) An agreement, provision, release, assignment, novation,  
12 waiver, or estoppel prohibited by this subdivision shall be  
13 unenforceable and void.

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

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

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

21 (C) Affect the enforceability of any provision in a contract if  
22 the provision is not prohibited under this subdivision or any other  
23 law.

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

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

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

34 (i) Provides that a dealer establish or maintain exclusive  
35 facilities, personnel, or display space or provides that a dealer  
36 make a material alteration, expansion, or addition to a dealership  
37 facility.

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

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

5 (H) (i) Prohibit a voluntary waiver agreement, supported by  
6 valuable consideration, other than the consideration of renewing  
7 a franchise, to waive the right of a dealer to file a protest under  
8 Section 3062 for the proposed establishment or relocation of a  
9 specific proposed dealership, if the waiver agreement provides all  
10 of the following:

11 (I) The approximate address at which the proposed dealership  
12 will be located.

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

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

17 (IV) Whether the franchisor or affiliate will hold an ownership  
18 interest in the proposed dealership or real property of the proposed  
19 dealership, and the approximate percentage of any franchisor or  
20 affiliate ownership interest in the proposed dealership.

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

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

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

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

35 (h) To increase prices of motor vehicles that the dealer had  
36 ordered for private retail consumers prior to the dealer's receipt  
37 of the written official price increase notification. A sales contract  
38 signed by a private retail consumer is evidence of the order. In the  
39 event of manufacturer price reductions, the amount of the reduction  
40 received by a dealer shall be passed on to the private retail

1 consumer by the dealer if the retail price was negotiated on the  
2 basis of the previous higher price to the dealer. Price reductions  
3 apply to all vehicles in the dealer's inventory that were subject to  
4 the price reduction. Price differences applicable to new model or  
5 series motor vehicles at the time of the introduction of new models  
6 or series shall not be considered a price increase or price decrease.  
7 This subdivision does not apply to price changes caused by either  
8 of the following:

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

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

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

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

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

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

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

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

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

38 (2) A manufacturer, branch, or distributor or an entity that  
39 controls or is controlled by, a manufacturer, branch, or distributor,

1 shall not, however, be deemed to be competing in the following  
2 limited circumstances:

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

10 (B) Owning an interest in a dealer as part of a bona fide dealer  
11 development program that satisfies all of the following  
12 requirements:

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

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

20 (iii) The program requires the dealer development candidate to  
21 manage the day-to-day operations and business affairs of the dealer  
22 and to acquire, within a reasonable time and on reasonable terms  
23 and conditions, beneficial ownership and control of a majority  
24 interest in the dealer and disassociation of any direct or indirect  
25 ownership or control by the manufacturer, branch, or distributor.

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

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

37 (B) A manufacturer, branch, and distributor that owns an interest  
38 in a dealer in the manner described in subparagraph (B) of  
39 paragraph (2) shall give written notice to the board, annually, of  
40 the name and location of each dealer in which it has an ownership

1 interest, the name of the bona fide dealer development owner or  
2 owners, and the ownership interests of each owner expressed as a  
3 percentage.

4 (p) To unfairly discriminate among its franchisees with respect  
5 to warranty reimbursement or authority granted to its franchisees  
6 to make warranty adjustments with retail customers.

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

9 (r) To fail to affix an identification number to a park trailer, as  
10 described in Section 18009.3 of the Health and Safety Code, that  
11 is manufactured on or after January 1, 1987, and that does not  
12 clearly identify the unit as a park trailer to the department. The  
13 configuration of the identification number shall be approved by  
14 the department.

15 (s) To dishonor a warranty, rebate, or other incentive offered  
16 to the public or a dealer in connection with the retail sale of a new  
17 motor vehicle, based solely upon the fact that an autobroker  
18 arranged or negotiated the sale. This subdivision shall not prohibit  
19 the disallowance of that rebate or incentive if the purchaser or  
20 dealer is ineligible to receive the rebate or incentive pursuant to  
21 any other term or condition of a rebate or incentive program.

22 (t) To exercise a right of first refusal or other right requiring a  
23 franchisee or an owner of the franchise to sell, transfer, or assign  
24 to the franchisor, or to a nominee of the franchisor, all or a material  
25 part of the franchised business or of the assets of the franchised  
26 business unless all of the following requirements are met:

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

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

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

38 (4) The proposed transferee is neither a family member of an  
39 owner of the franchised business, nor a managerial employee of  
40 the franchisee owning 15 percent or more of the franchised

1 business, nor a corporation, partnership, or other legal entity owned  
2 by the existing owners of the franchised business. For purposes of  
3 this paragraph, a “family member” means the spouse of an owner  
4 of the franchised business, the child, grandchild, brother, sister,  
5 or parent of an owner, or a spouse of one of those family members.  
6 This paragraph does not limit the rights of the franchisor to  
7 disapprove a proposed transferee as provided in subdivision (d).

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

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

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

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

39 (i) A vehicle that is not made available to each franchisee  
40 pursuant to a reasonable allocation formula that is applied

1 uniformly, and a part or accessory that is not made available to all  
2 franchisees on an equal basis when there is no reasonable allocation  
3 formula that is applied uniformly.

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

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

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

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

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

37 (v) (1) To access, modify, or extract information from a  
38 confidential dealer computer record, as defined in Section  
39 11713.25, without obtaining the prior written consent of the dealer  
40 and without maintaining administrative, technical, and physical

1 safeguards to protect the security, confidentiality, and integrity of  
2 the information.

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

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

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

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

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

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

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

18 (x) (1) To unfairly discriminate against a franchisee selling a  
19 service contract, debt cancellation agreement, maintenance  
20 agreement, or similar product not approved, endorsed, sponsored,  
21 or offered by the manufacturer, manufacturer branch, distributor,  
22 or distributor branch or affiliate. For purposes of this subdivision,  
23 unfair discrimination includes, but is not limited to, any of the  
24 following:

25 (A) Express or implied statements that the dealer is under an  
26 obligation to exclusively sell or offer to sell service contracts, debt  
27 cancellation agreements, or similar products approved, endorsed,  
28 sponsored, or offered by the manufacturer, manufacturer branch,  
29 distributor, or distributor branch or affiliate.

30 (B) Express or implied statements that selling or offering to sell  
31 service contracts, debt cancellation agreements, maintenance  
32 agreements, or similar products not approved, endorsed, sponsored,  
33 or offered by the manufacturer, manufacturer branch, distributor,  
34 or distributor branch or affiliate, or the failure to sell or offer to  
35 sell service contracts, debt cancellation agreements, maintenance  
36 agreements, or similar products approved, endorsed, sponsored,  
37 or offered by the manufacturer, manufacturer branch, distributor,  
38 or distributor branch or affiliate will have any negative  
39 consequences for the dealer.

1 (C) Measuring a dealer’s performance under a franchise  
2 agreement based upon the sale of service contracts, debt  
3 cancellation agreements, or similar products approved, endorsed,  
4 sponsored, or offered by the manufacturer, manufacturer branch,  
5 distributor, or distributor branch or affiliate.

6 (D) Requiring a dealer to actively promote the sale of service  
7 contracts, debt cancellation agreements, or similar products  
8 approved, endorsed, sponsored, or offered by the manufacturer,  
9 manufacturer branch, distributor, or distributor branch or affiliate.

10 (E) Conditioning access to vehicles or parts, or vehicle sales or  
11 service incentives upon the sale of service contracts, debt  
12 cancellation agreements, or similar products approved, endorsed,  
13 sponsored, or offered by the manufacturer, manufacturer branch,  
14 distributor, or distributor branch or affiliate.

15 (2) Unfair discrimination does not include, and nothing shall  
16 prohibit a manufacturer from, offering an incentive program to  
17 vehicle dealers who voluntarily sell or offer to sell service  
18 contracts, debt cancellation agreements, or similar products  
19 approved, endorsed, sponsored, or offered by the manufacturer,  
20 manufacturer branch, distributor, or distributor branch or affiliate,  
21 if the program does not provide vehicle sales or service incentives.

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

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

35

36 “Service Contract Disclosure

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

1 \_\_\_\_\_  
2 Signature of Purchaser”

3  
4 (y) To take or threaten to take any adverse action against a dealer  
5 pursuant to an export or sale-for-resale prohibition because the  
6 dealer sold or leased a vehicle to a customer who either exported  
7 the vehicle to a foreign country or resold the vehicle in violation  
8 of the prohibition, unless the export or sale-for-resale prohibition  
9 policy was provided to the dealer in writing prior to the sale or  
10 lease, and the dealer knew or reasonably should have known of  
11 the customer’s intent to export or resell the vehicle in violation of  
12 the prohibition at the time of sale or lease. If the dealer causes the  
13 vehicle to be registered in this or any other state, and collects or  
14 causes to be collected any applicable sales or use tax due to this  
15 state, a rebuttable presumption is established that the dealer did  
16 not have reason to know of the customer’s intent to export or resell  
17 the vehicle.

18 (z) 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 SEC. 19. Section 11713.13 of the Vehicle Code is amended to  
23 read:

24 11713.13. It is unlawful and a violation of this code for any  
25 manufacturer, manufacturer branch, distributor, or distributor  
26 branch licensed under this code to do, directly or indirectly through  
27 an affiliate, any of the following:

28 (a) Prevent, or attempt to prevent, by contract or otherwise, a  
29 dealer from acquiring, adding, or maintaining a sales or service  
30 operation for another line-make of motor vehicles at the same or  
31 expanded facility at which the dealer currently operates a dealership  
32 if the dealer complies with any reasonable facilities and capital  
33 requirements of the manufacturer or distributor.

34 (b) Require a dealer to establish or maintain exclusive facilities,  
35 personnel, or display space if the imposition of the requirement  
36 would be unreasonable in light of all existing circumstances,  
37 including economic conditions. In any proceeding ~~under this~~  
38 ~~subdivision or subdivision (a)~~ in which the reasonableness of a  
39 facility or capital requirement is an issue, the manufacturer or  
40 distributor shall have the burden of proof.

1 (c) Require, by contract or otherwise, a dealer to make a material  
2 alteration, expansion, or addition to any dealership facility, unless  
3 the required alteration, expansion, or addition is reasonable in light  
4 of all existing circumstances, including economic conditions *and*  
5 *advancements in vehicular technology. This subdivision does not*  
6 *limit the obligation of a dealer to comply with any applicable*  
7 *health or safety laws.*

8 (1) A required facility alteration, expansion, or addition shall  
9 not be deemed reasonable if it requires that the dealer purchase  
10 goods or services from a specific vendor when ~~substantially similar~~  
11 goods or services *of substantially similar kind and quality* are  
12 available from another vendor. *Notwithstanding the prohibitions*  
13 *in this paragraph, a manufacturer, manufacturer branch,*  
14 *distributor, or distributor branch may require the dealer to request*  
15 *approval for the use of alternative goods or services in writing.*  
16 *Approval for these requests shall not be unreasonably withheld,*  
17 *and the request shall be deemed approved if not specifically denied*  
18 *in writing within 20 business days of receipt of the dealer's written*  
19 *request. This paragraph does not authorize a dealer to impair or*  
20 *eliminate the intellectual property or trademark rights of the*  
21 *manufacturer, manufacturer branch, distributor, or distributor*  
22 *branch, or to permit a dealer to erect or maintain signs that do not*  
23 *conform to the intellectual property usage guidelines of the*  
24 *manufacturer, manufacturer branch, distributor, or distributor*  
25 *branch. This paragraph shall not apply to a specific good or service*  
26 *if the manufacturer, manufacturer branch, distributor, or distributor*  
27 *branch provides the dealer with a lump-sum payment or series of*  
28 *payments of a substantial portion of the cost of that good or service,*  
29 *if the payment is intended solely to reimburse the dealer for the*  
30 *purchase of the specified good or service.*

31 (2) In any proceeding in which a required facility alteration,  
32 expansion, or addition is an issue, the manufacturer, manufacturer  
33 branch, distributor, distributor branch, or affiliate shall have the  
34 burden of proof.

35 (d) (1) Fail to pay to a dealer, within 90 days of termination,  
36 cancellation, or nonrenewal of a franchise, all of the following:

37 (A) The dealer cost, plus any charges made by the manufacturer  
38 or distributor for vehicle distribution or delivery and the cost of  
39 any dealer-installed original equipment accessories, less any  
40 amount invoiced to the vehicle and paid by the manufacturer or

1 distributor to the dealer, for all new and undamaged vehicles with  
2 less than 500 miles in the dealer's inventory that were acquired  
3 by the dealer from the manufacturer, distributor, or another new  
4 motor vehicle dealer franchised to sell vehicles of the same  
5 line-make, in the ordinary course of business, within 18 months  
6 of termination, cancellation, or nonrenewal of the franchise.

7 (B) The dealer cost for all unused and undamaged supplies,  
8 parts, and accessories listed in the manufacturer's current parts  
9 catalog and in their original packaging, except that sheet metal  
10 may be packaged in a comparable substitute for the original  
11 package.

12 (C) The fair market value of each undamaged sign owned by  
13 the motor vehicle dealer and bearing a common name, trade name,  
14 or trademark of the manufacturer or distributor if acquisition of  
15 the sign was required or made a condition of participation in an  
16 incentive program by the manufacturer or distributor.

17 (D) The fair market value of all special tools, computer systems,  
18 and equipment that were required or made a condition of  
19 participation in an incentive program by the manufacturer or  
20 distributor that are in usable condition, excluding normal wear and  
21 tear.

22 (E) The dealer costs of handling, packing, loading, and  
23 transporting any items or inventory for repurchase by the  
24 manufacturer or distributor.

25 (2) This subdivision does not apply to a franchisor of a dealer  
26 of new recreational vehicles, as defined in subdivision (a) of  
27 Section 18010 of the Health and Safety Code.

28 (3) This subdivision does not apply to a termination that is  
29 implemented as a result of the sale of substantially all of the  
30 inventory and fixed assets or stock of a franchised dealership if  
31 the dealership continues to operate as a franchisee of the same  
32 line-make.

33 (e) (1) (A) Fail to pay to a dealer of new recreational vehicles,  
34 as defined in subdivision (a) of Section 18010 of the Health and  
35 Safety Code, within 90 days of termination, cancellation, or  
36 nonrenewal of a franchise for a recreational vehicle line-make, as  
37 defined in Section 3072.5, the dealer cost, plus any charges made  
38 by the manufacturer or distributor for vehicle distribution or  
39 delivery and the cost of any dealer-installed original equipment  
40 accessories, less any amount invoiced to the vehicle and paid by

1 the manufacturer or distributor to the dealer, for a new recreational  
2 vehicle when the termination, cancellation, or nonrenewal is  
3 initiated by a recreational vehicle manufacturer. This paragraph  
4 only applies to new and unused recreational vehicles that do not  
5 currently have or have had in the past, material damage, as defined  
6 in Section 9990, and that the dealer acquired from the  
7 manufacturer, distributor, or another new motor vehicle dealer  
8 franchised to sell recreational vehicles of the same line-make in  
9 the ordinary course of business within 12 months of the  
10 termination, cancellation, or nonrenewal of the franchise.

11 (B) For those recreational vehicles with odometers, paragraph  
12 (1) shall apply to only those vehicles that have no more than 1,500  
13 miles on the odometer, in addition to the number of miles incurred  
14 while delivering the vehicle from the manufacturer's facility that  
15 produced the vehicle for delivery to the dealer's retail location.

16 (C) Damaged recreational vehicles shall be repurchased by the  
17 manufacturer provided there is an offset in value for damages,  
18 except recreational vehicles that have or had material damage, as  
19 defined in Section 9990, may be repurchased at the manufacturer's  
20 option provided there is an offset in value for damages.

21 (2) Fail to pay to a dealer of new recreational vehicles, as  
22 defined in subdivision (a) of Section 18010 of the Health and  
23 Safety Code, within 90 days of termination, cancellation, or  
24 nonrenewal of a franchise, all of the following:

25 (A) The dealer cost for all unused and undamaged supplies,  
26 parts, and accessories listed in the manufacturer's current parts  
27 catalog and in their original packaging, except that sheet metal  
28 may be packaged in a comparable substitute for the original  
29 package.

30 (B) The fair market value of each undamaged sign owned by  
31 the motor vehicle dealer and bearing a common name, trade name,  
32 or trademark of the manufacturer or distributor if acquisition of  
33 the sign was required or made a condition of participation in an  
34 incentive program by the manufacturer or distributor.

35 (C) The fair market value of all special tools, computer systems,  
36 and equipment that were required or made a condition of  
37 participation in an incentive program by the manufacturer or  
38 distributor that are in usable condition, excluding normal wear and  
39 tear.

1 (D) The dealer costs of handling, packing, loading, and  
2 transporting any items or inventory for repurchase by the  
3 manufacturer or distributor.

4 (f) (1) Fail, upon demand, to indemnify any existing or former  
5 franchisee and the franchisee's successors and assigns from any  
6 and all damages sustained and attorney's fees and other expenses  
7 reasonably incurred by the franchisee that result from or relate to  
8 any claim made or asserted by a third party against the franchisee  
9 to the extent the claim results from any of the following:

10 (A) The condition, characteristics, manufacture, assembly, or  
11 design of any vehicle, parts, accessories, tools, or equipment, or  
12 the selection or combination of parts or components manufactured  
13 or distributed by the manufacturer or distributor.

14 (B) Service systems, procedures, or methods the franchisor  
15 required or recommended the franchisee to use if the franchisee  
16 properly uses the system, procedure, or method.

17 (C) Improper use or disclosure by a manufacturer or distributor  
18 of nonpublic personal information obtained from a franchisee  
19 concerning any consumer, customer, or employee of the franchisee.

20 (D) Any act or omission of the manufacturer or distributor for  
21 which the franchisee would have a claim for contribution or  
22 indemnity under applicable law or under the franchise, irrespective  
23 of and without regard to any prior termination or expiration of the  
24 franchise.

25 (2) This subdivision does not limit, in any way, the existing  
26 rights, remedies, or recourses available to any person who  
27 purchases or leases vehicles at retail.

28 (g) (1) Establish or maintain a performance standard, sales  
29 objective, or program for measuring a dealer's sales, service, or  
30 customer service performance that may materially affect the dealer,  
31 including, but not limited to, the dealer's right to payment under  
32 any incentive or reimbursement program or establishment of  
33 working capital requirements, unless both of the following  
34 requirements are satisfied:

35 (A) The performance standard, sales objective, or program for  
36 measuring dealership sales, service, or customer service  
37 performance is reasonable in light of all existing circumstances,  
38 including, but not limited to, the following:

39 (i) Demographics in the dealer's area of responsibility.

1 (ii) Geographical and market characteristics in the dealer’s area  
2 of responsibility.

3 (iii) The availability and allocation of vehicles and parts  
4 inventory.

5 (iv) Local and ~~regional~~ *statewide* economic circumstances.

6 (v) Historical sales, service, and customer service performance  
7 of the line-make within the dealer’s area of responsibility, including  
8 vehicle brand preferences of consumers in the dealer’s area of  
9 responsibility.

10 (B) Within 30 days after a request by the dealer, the  
11 manufacturer, manufacturer branch, distributor, distributor branch,  
12 or affiliate provides a written summary of the methodology and  
13 data used in establishing the performance standard, sales objective,  
14 or program for measuring dealership sales or service performance.  
15 The summary shall be in detail sufficient to permit the dealer to  
16 determine how the standard was established and applied to the  
17 dealer.

18 (2) In any proceeding in which the reasonableness of a  
19 performance standard, sales objective, or program for measuring  
20 dealership sales, service, or customer service performance is an  
21 issue, the manufacturer, manufacturer branch, distributor,  
22 distributor branch, or affiliate shall have the burden of proof.

23 (3) As used in this subdivision, “area of responsibility” shall  
24 have the same meaning as defined in subdivision (z) of Section  
25 11713.3.

26 SEC. 20. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.