

**ASSEMBLY BILL**

**No. 759**

---

---

**Introduced by Assembly Member Linder**

February 25, 2015

---

---

An act to amend Sections 3010, 3066, 3067, 3068, 3072, 3072.5, 3073, 3074, 3078, 3079, 11705, 11713.1, 11713.3, and 11713.23 of, and to add Sections 3080, 3081, and 3082 to, the Vehicle Code, relating to recreational vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 759, as introduced, Linder. Recreational vehicles.

(1) Existing law establishes a New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as specified. Existing law regulates the terms and enforcement of recreational vehicle franchise agreements. Existing law requires a franchisor seeking to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same recreational vehicle line-make is represented, or seeking to relocate an existing motor vehicle dealership, to notify the board of that intention. Existing law allows franchisees in that recreational vehicle line-make in the relevant market area to file with the board a protest to establishing or relocating the dealership.

This bill would revise these provisions and would clarify that the above provisions apply to a franchisor seeking to enter into a franchise establishing an additional recreational vehicle dealership, or seeking to relocate an existing recreational vehicle dealership, that has a relevant market area within which the same recreation vehicle line-make is represented.

(2) Existing law generally requires a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Existing law allows the department to suspend or revoke a license issued to a dealer upon determining that the person to whom the license was issued has willfully violated specified requirements imposed on new motor vehicle franchisors relating to providing specified information and compensation to franchisees.

This bill would make the above provisions applicable to a recreational vehicle franchisor.

(3) Existing law makes it a violation, punishable as an infraction, for the holder of a dealer's license to, among other things, advertise or sell a new vehicle of a line-make for which the dealer does not hold a franchise. Under existing law, this prohibition does not apply to a recreational vehicle, as defined.

This bill would make the above prohibitions applicable to recreational vehicles. By increasing the scope of a crime, this bill would impose a state-mandated local program.

(4) Existing law makes it a violation, punishable as an infraction, for a licensed manufacturer or distributor to modify, replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of specified provisions of law.

This bill would make this prohibition subject to additional provisions of law relating to recreational vehicle manufacturers and distributors. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(5) Existing law prohibits a recreational vehicle manufacturer or distributor from selling a new recreational vehicle through a recreational vehicle dealer without having first entered into a written recreational vehicle franchise.

This bill would, following the termination, cancellation, or non-renewal of a recreational vehicle franchise, allow the sale of any new recreational vehicle inventory that was purchased by the recreational vehicle dealer, or shipped by a manufacturer or distributor, during the period that the written recreational vehicle franchise was in effect.

(6) 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. Section 3010 of the Vehicle Code is amended to  
2 read:

3 3010. Five members of the board shall constitute a quorum for  
4 the transaction of business, for the performance of any duty or the  
5 exercise of any power or authority of the board, except that three  
6 members of the board, who are not new motor vehicle dealers,  
7 shall constitute a quorum for the purposes of Article 4  
8 (commencing with Section 3060) *and Article 5 (commencing with*  
9 *Section 3070)* and the consideration of a petition pursuant to  
10 subdivision (c) of Section 3050 that involves a dispute between a  
11 franchisee and franchisor.

12 SEC. 2. Section 3066 of the Vehicle Code is amended to read:

13 3066. (a) Upon receiving a protest pursuant to Section 3060,  
14 3062, 3064, 3065, ~~3065.1, 3070, 3072, 3074, 3075, or 3076~~ *or*  
15 *3065.1*, the board shall fix a time within 60 days of the order, and  
16 place of hearing, and shall send by ~~registered~~ *certified* mail a copy  
17 of the order to the franchisor, the protesting franchisee, and all  
18 individuals and groups that have requested notification by the  
19 board of protests and decisions of the board. Except in a case  
20 involving a franchisee who deals exclusively in motorcycles, the  
21 board or its executive director may, upon a showing of good cause,  
22 accelerate or postpone the date initially established for a hearing,  
23 but the hearing ~~may~~ *shall* not be rescheduled more than 90 days  
24 after the board's initial order. For the purpose of accelerating or  
25 postponing a hearing date, "good cause" includes, but is not limited  
26 to, the effects upon, and any irreparable harm to, the parties or  
27 interested persons or groups if the request for a change in hearing  
28 date is not granted. The board or an administrative law judge  
29 designated by the board shall hear and consider the oral and  
30 documented evidence introduced by the parties and other interested  
31 individuals and groups, and the board shall make its decision solely  
32 on the record so made. Chapter 4.5 (commencing with Section  
33 11400) of Part 1 of Division 3 of Title 2 of the Government Code

1 and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513,  
 2 11514, 11515, and 11517 of the Government Code apply to these  
 3 proceedings.

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

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

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

23 SEC. 3. Section 3067 of the Vehicle Code is amended to read:

24 3067. (a) The decision of the board shall be in writing and  
 25 shall contain findings of fact and a determination of the issues  
 26 presented. The decision shall sustain, conditionally sustain,  
 27 overrule, or conditionally overrule the protest. Conditions imposed  
 28 by the board shall be for the purpose of assuring performance of  
 29 binding contractual agreements between franchisees and franchisors  
 30 or otherwise serving the purposes of this ~~article or Article 5~~  
 31 ~~(commencing with Section 3070).~~ *article*. If the board fails to act  
 32 within 30 days after the hearing, within 30 days after the board  
 33 receives a proposed decision ~~where~~ *when* the case is heard before  
 34 an administrative law judge alone, or within a period necessitated  
 35 by Section 11517 of the Government Code, or as may be mutually  
 36 agreed upon by the parties, then the proposed action shall be  
 37 deemed to be approved. Copies of the board's decision shall be  
 38 delivered to the parties personally or sent to them by ~~registered~~  
 39 *certified* mail, as well as to all individuals and groups that have  
 40 requested notification by the board of protests and decisions by

1 the board. The board's decision shall be final upon its delivery or  
2 mailing and a reconsideration or rehearing is not permitted.

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

9 SEC. 4. Section 3068 of the Vehicle Code is amended to read:

10 3068. Either party may seek judicial review of final decisions  
11 of the board. Time for filing for ~~such~~ *the* review shall not be more  
12 than 45 days from the date on which the final order of the board  
13 is made public and is delivered to the parties personally or is sent  
14 ~~to them by registered~~ *certified* mail.

15 SEC. 5. Section 3072 of the Vehicle Code is amended to read:

16 3072. (a) (1) Except as otherwise provided in subdivision (b),  
17 if a franchisor seeks to enter into a franchise establishing an  
18 additional ~~motor recreational~~ vehicle dealership ~~within~~, *or seeks*  
19 *to relocate an existing recreational vehicle dealership, that has a*  
20 *relevant market area where in which the same recreational vehicle*  
21 *line-make is then represented, or seeks to relocate an existing motor*  
22 *vehicle dealership, represented*, the franchisor shall, in writing,  
23 first notify the board and each franchisee in that recreational vehicle  
24 line-make in the relevant market area of the franchisor's intention  
25 to establish an additional dealership or to relocate an existing  
26 ~~dealership within or into that market area.~~ *dealership.* Within 20  
27 days of receiving the notice, satisfying the requirements of this  
28 section, or within 20 days after the end of any appeal procedure  
29 provided by the franchisor, any franchisee required to be given  
30 the notice may file with the board a protest to ~~establishing or~~  
31 ~~relocating the dealership~~ *the proposed dealership establishment*  
32 *or relocation described in the franchisor's notice.* If, within this  
33 time, a franchisee files with the board a request for additional time  
34 to file a protest, the board or its ~~secretary~~ *executive director*, upon  
35 a showing of good cause, may grant an additional 10 days to file  
36 the protest. When a protest is filed, the board shall inform the  
37 franchisor that a timely protest has been filed, that a hearing is  
38 required pursuant to Section ~~3066~~ *3080*, and that the franchisor  
39 shall not ~~establish or relocate~~ the proposed dealership *or relocate*  
40 *the existing dealership* until the board has held a hearing as

1 provided in Section ~~3066~~ 3080, nor thereafter, if the board has  
2 determined that there is good cause for not permitting the  
3 *establishment of the proposed recreational vehicle dealership or*  
4 *relocation of the existing recreational vehicle dealership.* In the  
5 event of multiple protests, hearings may be consolidated to expedite  
6 the disposition of the issue.

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

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

20 (b) Subdivision (a) does not apply to any of the following:

21 (1) The relocation of an existing dealership to any location that  
22 is both within the same city as, and within one mile of, the existing  
23 dealership location.

24 (2) The establishment at any location that is both within the  
25 same city as, and within one-quarter mile of, the location of a  
26 dealership of the same recreational vehicle line-make that has been  
27 out of operation for less than 90 days.

28 (3) A display of vehicles at a fair, exposition, or similar exhibit  
29 if no actual sales are made at the event and the display does not  
30 exceed 30 days. This paragraph may not be construed to prohibit  
31 a new vehicle dealer from establishing a branch office for the  
32 purpose of selling vehicles at the fair, exposition, or similar exhibit,  
33 even though that event is sponsored by a financial institution, as  
34 defined in Section 31041 of the Financial Code, or by a financial  
35 institution and a licensed dealer. The establishment of these branch  
36 offices, however, shall be in accordance with subdivision (a) where  
37 applicable.

38 (4) An annual show sponsored by a national trade association  
39 of recreational vehicle manufacturers that complies with all of the  
40 requirements of subdivision (d) of Section 11713.15.

1 ~~(5) A motor vehicle dealership protesting the location of another~~  
2 ~~dealership with the same recreational vehicle line-make within its~~  
3 ~~relevant market area, if the dealership location subject to the protest~~  
4 ~~was established on or before January 1, 2004.~~

5 (c) For the purposes of this section, the reopening of a dealership  
6 that has not been in operation for one year or more shall be deemed  
7 the establishment of an additional ~~motor~~ *recreational* vehicle  
8 dealership.

9 (d) For the purposes of this section and Section 3073, a ~~“motor~~  
10 ~~“recreational vehicle dealership”~~ or “dealership” is any authorized  
11 facility at which a franchisee offers for sale or lease, displays for  
12 sale or lease, or sells or leases new recreational vehicles, as defined  
13 in subdivision (a) of Section 18010 of the Health and Safety Code.  
14 A ~~“motor “recreational vehicle dealership”~~ or “dealership” does  
15 not include a dealer who deals exclusively in truck campers.

16 SEC. 6. Section 3072.5 of the Vehicle Code is amended to  
17 read:

18 3072.5. For the purposes of this article, a “recreational vehicle  
19 line-make” is a group or groups of recreational vehicles defined  
20 by the terms of a written agreement that complies with Section  
21 ~~331~~ 331.3.

22 SEC. 7. Section 3073 of the Vehicle Code is amended to read:

23 3073. In determining whether good cause has been established  
24 for not entering into *a recreational vehicle franchise* or relocating  
25 an ~~additional franchise for existing dealership~~ of the same  
26 recreational vehicle line-make, the board shall take into  
27 consideration the existing circumstances, including, but not limited  
28 to, all of the following:

- 29 (a) The permanency of the investment.
- 30 (b) The effect on the retail recreational vehicle business and the  
31 consuming public in the relevant market area.
- 32 (c) Whether it is injurious to the public welfare for an additional  
33 *recreational vehicle franchise* to be established *or an existing*  
34 *dealership be relocated*.
- 35 (d) Whether the franchisees of the same recreational vehicle  
36 line-make in ~~that~~ *the* relevant market area are providing adequate  
37 competition and convenient consumer care for the motor vehicles  
38 of the recreational vehicle line-make in the market area. In making  
39 this determination, the board shall consider the adequacy of  
40 recreational vehicle sales and, if required by the franchise, service

1 facilities, equipment, supply of vehicle parts, and qualified service  
 2 personnel.

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

5 SEC. 8. Section 3074 of the Vehicle Code is amended to read:

6 3074. (a) A franchisor shall specify to its franchisees the  
 7 delivery and preparation obligations of the franchisees prior to  
 8 delivery of new recreational vehicles to retail buyers. A copy of  
 9 the delivery and preparation obligations, which shall constitute  
 10 the franchisee’s only responsibility for product liability between  
 11 the franchisee and the franchisor but which shall not in any way  
 12 affect the franchisee’s responsibility for product liability between  
 13 the purchaser and either the franchisee or the franchisor, and a  
 14 schedule of compensation to be paid franchisees for the work and  
 15 services they shall be required to perform in connection with the  
 16 delivery and preparation obligations shall be filed with the board  
 17 by franchisors, and shall constitute the compensation as set forth  
 18 on the schedule. The schedule of compensation shall be reasonable,  
 19 with the reasonableness thereof being subject to the approval of  
 20 the board, ~~providing if~~ a franchisee files a notice of protest with  
 21 the board. In determining the reasonableness of the schedules, the  
 22 board shall consider all relevant circumstances, including, but not  
 23 limited to, the time required to perform each function that the  
 24 dealer is obligated to perform and the appropriate labor rate.

25 (b) Upon delivery of the vehicle, the franchisee shall give a  
 26 copy of the delivery and preparation obligations to the purchaser  
 27 and a written certification that ~~he or she~~ *the franchisee* has fulfilled  
 28 these obligations.

29 SEC. 9. Section 3078 of the Vehicle Code is amended to read:

30 3078. (a) If the board receives a complaint from a member of  
 31 the public seeking a refund involving the sale or lease of, or a  
 32 replacement of, a recreational vehicle, as defined in subdivision  
 33 (a) of Section 18010 of the Health and Safety Code, from a ~~motor~~  
 34 *recreational* vehicle dealership, as defined in ~~paragraph (1) of~~  
 35 ~~subdivision (e)~~ *subdivision (d)* of Section 3072, the board shall  
 36 recommend that the complainant consult with the Department of  
 37 Consumer Affairs.

38 (b) ~~Nothing in this~~ *This chapter affects does not affect* a person’s  
 39 rights regarding a transaction involving a recreational vehicle as  
 40 defined in subdivision (a), to maintain an action under any other



1 statute, including, but not limited to, applicable provisions of Title  
2 1.7 (commencing with Section 1790) of Part 4 of Division 3 of  
3 the Civil Code.

4 SEC. 10. Section 3079 of the Vehicle Code is amended to read:

5 3079. This article applies only to a *recreational vehicle*  
6 franchise entered into or renewed on or after January 1, 2004.

7 SEC. 11. Section 3080 is added to the Vehicle Code, to read:

8 3080. (a) Upon receiving a protest pursuant to Section 3070,  
9 3072, 3074, 3075, or 3076, the board shall fix a time and place of  
10 hearing within 60 days of the order, and shall send by certified  
11 mail a copy of the order to the franchisor, the protesting franchisee,  
12 and all individuals and groups that have requested notification by  
13 the board of protests and decisions of the board. The board or its  
14 executive director may, upon a showing of good cause, accelerate  
15 or postpone the date initially established for a hearing, but the  
16 hearing shall not be rescheduled more than 90 days after the board's  
17 initial order. For the purpose of accelerating or postponing a  
18 hearing date, "good cause" includes, but is not limited to, the  
19 effects upon, and any irreparable harm to, the parties or interested  
20 persons or groups if the request for a change in hearing date is not  
21 granted. The board or an administrative law judge designated by  
22 the board shall hear and consider the oral and documented evidence  
23 introduced by the parties and other interested individuals and  
24 groups, and the board shall make its decision solely on the record  
25 so made. Chapter 4.5 (commencing with Section 11400) of Part  
26 1 of Division 3 of Title 2 of the Government Code and Sections  
27 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515,  
28 and 11517 of the Government Code apply to these proceedings.

29 (b) In a hearing on a protest filed pursuant to Section 3070 or  
30 3072, the franchisor shall have the burden of proof to establish  
31 that there is good cause to modify, replace, terminate, or refuse to  
32 continue a franchise. The franchisee shall have the burden of proof  
33 to establish that there is good cause not to enter into a franchise  
34 establishing an additional recreational vehicle dealership or  
35 relocating an existing recreational vehicle dealership.

36 (c) Except as otherwise provided in this chapter, in a hearing  
37 on a protest alleging a violation of, or filed pursuant to, Section  
38 3074, 3075, or 3076, the franchisee shall have the burden of proof,  
39 but the franchisor has the burden of proof to establish that a

1 franchisee acted with intent to defraud the franchisor when that  
2 issue is material to a protest filed pursuant to Section 3075 or 3076.

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

8 SEC. 12. Section 3081 is added to the Vehicle Code, to read:

9 3081. (a) The decision of the board shall be in writing and  
10 shall contain findings of fact and a determination of the issues  
11 presented. The decision shall sustain, conditionally sustain,  
12 overrule, or conditionally overrule the protest. Conditions imposed  
13 by the board shall be for the purpose of assuring performance of  
14 binding contractual agreements between franchisees and franchisors  
15 or otherwise serving the purposes of this article. If the board fails  
16 to act within 30 days after the hearing, within 30 days after the  
17 board receives a proposed decision when the case is heard before  
18 an administrative law judge alone, or within a period necessitated  
19 by Section 11517 of the Government Code, or as may be mutually  
20 agreed upon by the parties, then the proposed action shall be  
21 deemed to be approved. Copies of the board’s decision shall be  
22 delivered to the parties personally or sent to them by certified mail,  
23 as well as to all individuals and groups that have requested  
24 notification by the board of protests and decisions by the board.  
25 The board’s decision shall be final upon its delivery or mailing  
26 and a reconsideration or rehearing is not permitted.

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

33 SEC. 13. Section 3082 is added to the Vehicle Code, to read:

34 3082. Either party may seek judicial review of final decisions  
35 of the board. Time for filing for the review shall not be more than  
36 45 days from the date on which the final order of the board is made  
37 public and is delivered to the parties personally or is sent to them  
38 by certified mail.

39 SEC. 14. Section 11705 of the Vehicle Code is amended to  
40 read:

1 11705. (a) The department, after notice and hearing, may  
2 suspend or revoke the license issued to a dealer, transporter,  
3 manufacturer, manufacturer branch, remanufacturer,  
4 remanufacturer branch, distributor, or distributor branch upon  
5 determining that the person to whom the license was issued is not  
6 lawfully entitled thereto, or has done any of the following:

7 (1) Filed an application for the license using a false or fictitious  
8 name not registered with the proper authorities, or knowingly made  
9 a false statement or knowingly concealed a material fact, in the  
10 application for the license.

11 (2) Made, or knowingly or negligently permitted, an illegal use  
12 of the special plates issued to the licensee.

13 (3) Used a false or fictitious name, knowingly made a false  
14 statement, or knowingly concealed a material fact, in an application  
15 for the registration of a vehicle, or otherwise committed a fraud  
16 in the application.

17 (4) Failed to deliver to a transferee lawfully entitled thereto a  
18 properly endorsed certificate of ownership.

19 (5) Knowingly purchased, sold, or otherwise acquired or  
20 disposed of a stolen motor vehicle.

21 (6) Failed to provide and maintain a clear physical division  
22 between the type of business licensed pursuant to this chapter and  
23 any other type of business conducted at the established place of  
24 business.

25 (7) Willfully violated Section ~~3064 or 3065~~ 3064, 3065, 3074,  
26 or 3075 or any rule or regulation adopted pursuant thereto.

27 (8) Violated any provision of Division 3 (commencing with  
28 Section 4000) or any rule or regulation adopted pursuant thereto,  
29 or subdivision (a) of Section 38200.

30 (9) Violated any provision of Division 4 (commencing with  
31 Section 10500) or any rule or regulation adopted pursuant thereto.

32 (10) Violated any provision of Article 1 (commencing with  
33 Section 11700) of Chapter 4 of Division 5 or any rule or regulation  
34 adopted pursuant thereto.

35 (11) Violated any provision of Part 5 (commencing with Section  
36 10701) of Division 2 of the Revenue and Taxation Code or any  
37 rule or regulation adopted pursuant thereto.

38 (12) Violated any provision of Chapter ~~3332b~~ 2b (commencing  
39 with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil  
40 Code or any rule or regulation adopted pursuant thereto.

1 (13) Submitted a check, draft, or money order to the department  
2 for any obligation or fee due the state which was dishonored or  
3 refused payment upon presentation.

4 (14) Has caused any person to suffer any loss or damage by  
5 reason of any fraud or deceit practiced on that person or fraudulent  
6 representations made to that person in the course of the licensed  
7 activity.

8 For purposes of this paragraph, “fraud” includes any act or  
9 omission which is included within the definition of either “actual  
10 fraud” or “constructive fraud” as defined in Sections 1572 and  
11 1573 of the Civil Code, and “deceit” has the same meaning as  
12 defined in Section 1710 of the Civil Code. In addition, “fraud”  
13 and “deceit” include, but are not limited to, a misrepresentation in  
14 any manner, whether intentionally false or due to gross negligence,  
15 of a material fact; a promise or representation not made honestly  
16 and in good faith; an intentional failure to disclose a material fact;  
17 and any act within Section 484 of the Penal Code.

18 For purposes of this paragraph, “person” also includes a  
19 governmental entity.

20 (15) Failed to meet the terms and conditions of an agreement  
21 entered into pursuant to Section 11707.

22 (16) Violated Section 43151, 43152, or 43153 of, or subdivision  
23 (b) of Section 44072.10 of, the Health and Safety Code.

24 (17) Failed to repay a claim paid by the Consumer Motor  
25 Vehicle Recovery Corporation as provided in subdivision (i) of  
26 Section 11703.

27 (18) As a buy-here-pay-here dealer, violated any provision of  
28 Chapter 11 (commencing with Section 7500) of Divisions 3 of the  
29 Business and Professions Code or any rule or regulation adopted  
30 pursuant to those provisions.

31 (b) Any of the causes specified in this chapter as a cause for  
32 refusal to issue a license to a transporter, manufacturer,  
33 manufacturer branch, remanufacturer, remanufacturer branch,  
34 distributor, distributor branch, or dealer applicant is cause to  
35 suspend or revoke a license issued to a transporter, manufacturer,  
36 manufacturer branch, remanufacturer, remanufacturer branch,  
37 distributor, distributor branch, or dealer.

38 (c) Except as provided in Section 11707, every hearing provided  
39 for in this section shall be conducted pursuant to Chapter 5

1 (commencing with Section 11500) of Part 1 of Division 3 of Title  
2 of the Government Code.

3 SEC. 15. Section 11713.1 of the Vehicle Code is amended to  
4 read:

5 11713.1. It is a violation of this code for the holder of a dealer's  
6 license issued under this article to do any of the following:

7 (a) Advertise a specific vehicle for sale without identifying the  
8 vehicle by its model, model-year, and either its license number or  
9 that portion of the vehicle identification number that distinguishes  
10 the vehicle from all other vehicles of the same make, model, and  
11 model-year. Model-year is not required to be advertised for current  
12 model-year vehicles. Year models are no longer current when  
13 ensuing year models are available for purchase at retail in  
14 California. An advertisement that offers for sale a class of new  
15 vehicles in a dealer's inventory, consisting of five or more vehicles,  
16 that are all of the same make, model, and model-year is not required  
17 to include in the advertisement the vehicle identification numbers  
18 or license numbers of those vehicles.

19 (b) Advertise the total price of a vehicle without including all  
20 costs to the purchaser at time of sale, except taxes, vehicle  
21 registration fees, the California tire fee, as defined in Section 42885  
22 of the Public Resources Code, emission testing charges not  
23 exceeding fifty dollars (\$50), actual fees charged for certificates  
24 pursuant to Section 44060 of the Health and Safety Code, finance  
25 charges, and any dealer document processing charge or charge to  
26 electronically register or transfer the vehicle.

27 (c) (1) Exclude from an advertisement of a vehicle for sale that  
28 there will be added to the advertised total price at the time of sale,  
29 charges for sales tax, vehicle registration fees, the California tire  
30 fee, the fee charged by the state for the issuance of a certificate of  
31 compliance or noncompliance pursuant to a statute, finance  
32 charges, a charge to electronically register or transfer the vehicle,  
33 and a dealer document processing charge.

34 (2) The obligations imposed by paragraph (1) are satisfied by  
35 adding to the advertisement a statement containing no abbreviations  
36 and that is worded in substantially the following form: "Plus  
37 government fees and taxes, any finance charges, any dealer  
38 document processing charge, any electronic filing charge, and any  
39 emission testing charge."

1 (3) For purposes of paragraph (1), “advertisement” means an  
 2 advertisement in a newspaper, magazine, or direct mail publication  
 3 that is two or more columns in width or one column in width and  
 4 more than seven inches in length, or on a Web page of a dealer’s  
 5 Internet Web site that displays the price of a vehicle offered for  
 6 sale on the Internet, as that term is defined in paragraph (6) of  
 7 subdivision (f) of Section 17538 of the Business and Professions  
 8 Code.

9 (d) Represent the dealer document processing charge, electronic  
 10 registration or transfer charge, or emission testing charge, as a  
 11 governmental fee.

12 (e) Fail to sell a vehicle to a person at the advertised total price,  
 13 exclusive of taxes, vehicle registration fees, the California tire fee,  
 14 the fee charged by the state for the issuance of a certificate of  
 15 compliance or noncompliance pursuant to a statute, finance  
 16 charges, mobilehome escrow fees, the amount of a city, county,  
 17 or city and county imposed fee or tax for a mobilehome, a dealer  
 18 document processing charge, an electronic registration or transfer  
 19 charge, and a charge for emission testing not to exceed fifty dollars  
 20 (\$50) plus the actual fees charged for certificates pursuant to  
 21 Section 44060 of the Health and Safety Code, while the vehicle  
 22 remains unsold, unless the advertisement states the advertised total  
 23 price is good only for a specified time and the time has elapsed.  
 24 Advertised vehicles shall be sold at or below the advertised total  
 25 price, with statutorily permitted exclusions, regardless of whether  
 26 the purchaser has knowledge of the advertised total price.

27 (f) (1) Advertise for sale, sell, or purchase for resale a new  
 28 vehicle of a line-make for which the dealer does not hold a  
 29 franchise.

30 (2) This subdivision does not apply to a transaction involving  
 31 the following:

32 (A) A mobilehome.

33 ~~(B) A recreational vehicle as defined in Section 18010 of the~~  
 34 ~~Health and Safety Code.~~

35 ~~(C)~~

36 (B) A commercial coach, as defined in Section 18001.8 of the  
 37 Health and Safety Code.

38 ~~(D)~~

39 (C) An off-highway motor vehicle subject to identification as  
 40 defined in Section 38012.

- 1     ~~(E)~~
- 2     (D) A manufactured home.
- 3     ~~(F)~~
- 4     (E) A new vehicle that will be substantially altered or modified
- 5     by a converter prior to resale.
- 6     ~~(G)~~
- 7     (F) A commercial vehicle with a gross vehicle weight rating of
- 8     more than 10,000 pounds.
- 9     ~~(H)~~
- 10    (G) A vehicle purchased for export and exported outside the
- 11    territorial limits of the United States without being registered with
- 12    the department.
- 13    ~~(I)~~
- 14    (H) A vehicle acquired in the ordinary course of business as a
- 15    new vehicle by a dealer franchised to sell that vehicle, if all of the
- 16    following apply:
- 17    (i) The manufacturer or distributor of the vehicle files a
- 18    bankruptcy petition.
- 19    (ii) The franchise agreement of the dealer is terminated,
- 20    canceled, or rejected by the manufacturer or distributor as part of
- 21    the bankruptcy proceedings and the termination, cancellation, or
- 22    rejection is not a result of the revocation by the department of the
- 23    dealer's license or the dealer's conviction of a crime.
- 24    (iii) The vehicle is held in the inventory of the dealer on the
- 25    date the bankruptcy petition is filed.
- 26    (iv) The vehicle is sold by the dealer within six months of the
- 27    date the bankruptcy petition is filed.
- 28    (3) Subparagraph-~~(I)~~ (H) of paragraph (2) does not entitle a
- 29    dealer whose franchise agreement has been terminated, canceled,
- 30    or rejected to continue to perform warranty service repairs or
- 31    continue to be eligible to offer or receive consumer or dealer
- 32    incentives offered by the manufacturer or distributor.
- 33    (g) Sell a park trailer, as specified in Section 18009.3 of the
- 34    Health and Safety Code, without disclosing in writing to the
- 35    purchaser that a park trailer is required to be moved by a transporter
- 36    or a licensed manufacturer or dealer under a permit issued by the
- 37    Department of Transportation or a local authority with respect to
- 38    highways under their respective jurisdictions.
- 39    (h) Advertise free merchandise, gifts, or services provided by
- 40    a dealer contingent on the purchase of a vehicle. "Free" includes

1 merchandise or services offered for sale at a price less than the  
2 seller's cost of the merchandise or services.

3 (i) (1) Advertise vehicles, and related goods or services, at a  
4 specified dealer price, with the intent not to supply reasonably  
5 expectable demand, unless the advertisement discloses the number  
6 of vehicles in stock at the advertised price. In addition, whether  
7 or not there are sufficient vehicles in stock to supply a reasonably  
8 expectable demand, when phrases such as "starting at," "from,"  
9 "beginning as low as," or words of similar import are used in  
10 reference to an advertised price, the advertisement shall disclose  
11 the number of vehicles available at that advertised price.

12 (2) For purposes of this subdivision, in a newspaper  
13 advertisement for a vehicle that is two model-years old or newer,  
14 the actual phrase that states the number of vehicles in stock at the  
15 advertised price shall be printed in a type size that is at least equal  
16 to one-quarter of the type size, and in the same style and color of  
17 type, used for the advertised price. However, in no case shall the  
18 phrase be printed in less than 8-point type size, and the phrase  
19 shall be disclosed immediately above, below, or beside the  
20 advertised price without intervening words, pictures, marks, or  
21 symbols.

22 (3) The disclosure required by this subdivision is in addition to  
23 any other disclosure required by this code or any regulation  
24 regarding identifying vehicles advertised for sale.

25 (j) Use "rebate" or similar words, including, but not limited to,  
26 "cash back," in advertising the sale of a vehicle unless the rebate  
27 is expressed in a specific dollar amount and is in fact a rebate  
28 offered by the vehicle manufacturer or distributor, a finance  
29 company affiliated with a vehicle manufacturer or distributor, a  
30 regulated utility, or a governmental entity directly to the retail  
31 purchaser of the vehicle or to the assignee of the retail purchaser.

32 (k) Require a person to pay a higher price for a vehicle and  
33 related goods or services for receiving advertised credit terms than  
34 the cash price the same person would have to pay to purchase the  
35 same vehicle and related goods or services. For the purpose of this  
36 subdivision, "cash price" has the same meaning as defined in  
37 subdivision (e) of Section 2981 of the Civil Code.

38 (l) Advertise a guaranteed trade-in allowance.

39 (m) Misrepresent the authority of a salesperson, representative,  
40 or agent to negotiate the final terms of a transaction.



- 1 (n) (1) Use “invoice,” “dealer’s invoice,” “wholesale price,”  
2 or similar terms that refer to a dealer’s cost for a vehicle in an  
3 advertisement for the sale of a vehicle or advertise that the selling  
4 price of a vehicle is above, below, or at either of the following:  
5 (A) The manufacturer’s or distributor’s invoice price to a dealer.  
6 (B) A dealer’s cost.
- 7 (2) This subdivision does not apply to either of the following:  
8 (A) A communication occurring during face-to-face negotiations  
9 for the purchase of a specific vehicle if the prospective purchaser  
10 initiates a discussion of the vehicle’s invoice price or the dealer’s  
11 cost for that vehicle.  
12 (B) A communication between a dealer and a prospective  
13 commercial purchaser that is not disseminated to the general public.  
14 For purposes of this subparagraph, a “commercial purchaser”  
15 means a dealer, lessor, lessor-retailer, manufacturer,  
16 remanufacturer, distributor, financial institution, governmental  
17 entity, or person who purchases 10 or more vehicles during a year.
- 18 (o) Violate a law prohibiting bait and switch advertising,  
19 including, but not limited to, the guides against bait advertising  
20 set forth in Part 238 (commencing with Section 238) of Title 16  
21 of the Code of Federal Regulations, as those regulations read on  
22 January 1, 1988.
- 23 (p) Make an untrue or misleading statement indicating that a  
24 vehicle is equipped with all the factory-installed optional equipment  
25 the manufacturer offers, including, but not limited to, a false  
26 statement that a vehicle is “fully factory equipped.”
- 27 (q) Affix on a new vehicle a supplemental price sticker  
28 containing a price that represents the dealer’s asking price that  
29 exceeds the manufacturer’s suggested retail price unless all of the  
30 following occur:  
31 (1) The supplemental sticker clearly and conspicuously discloses  
32 in the largest print appearing on the sticker, other than the print  
33 size used for the dealer’s name, that the supplemental sticker price  
34 is the dealer’s asking price, or words of similar import, and that it  
35 is not the manufacturer’s suggested retail price.  
36 (2) The supplemental sticker clearly and conspicuously discloses  
37 the manufacturer’s suggested retail price.  
38 (3) The supplemental sticker lists each item that is not included  
39 in the manufacturer’s suggested retail price, and discloses the  
40 additional price of each item. If the supplemental sticker price is

1 greater than the sum of the manufacturer's suggested retail price  
2 and the price of the items added by the dealer, the supplemental  
3 sticker price shall set forth that difference and describe it as "added  
4 mark-up."

5 (r) Advertise an underselling claim, including, but not limited  
6 to, "we have the lowest prices" or "we will beat any dealer's price,"  
7 unless the dealer has conducted a recent survey showing that the  
8 dealer sells its vehicles at lower prices than another licensee in its  
9 trade area and maintains records to adequately substantiate the  
10 claims. The substantiating records shall be made available to the  
11 department upon request.

12 (s) (1) Advertise an incentive offered by the manufacturer or  
13 distributor if the dealer is required to contribute to the cost of the  
14 incentive as a condition of participating in the incentive program,  
15 unless the dealer discloses in a clear and conspicuous manner that  
16 dealer participation may affect consumer cost.

17 (2) For purposes of this subdivision, "incentive" means anything  
18 of value offered to induce people to purchase a vehicle, including,  
19 but not limited to, discounts, savings claims, rebates, below-market  
20 finance rates, and free merchandise or services.

21 (t) Display or offer for sale a used vehicle unless there is affixed  
22 to the vehicle the Federal Trade Commission's Buyer's Guide as  
23 required by Part 455 of Title 16 of the Code of Federal Regulations.

24 (u) Fail to disclose in writing to the franchisor of a new motor  
25 vehicle dealer the name of the purchaser, date of sale, and the  
26 vehicle identification number of each new motor vehicle sold of  
27 the line-make of that franchisor, or intentionally submit to that  
28 franchisor a false name for the purchaser or false date for the date  
29 of sale.

30 (v) Enter into a contract for the retail sale of a motor vehicle  
31 unless the contract clearly and conspicuously discloses whether  
32 the vehicle is being sold as a new vehicle or a used vehicle, as  
33 defined in this code.

34 (w) Use a simulated check, as defined in subdivision (a) of  
35 Section 22433 of the Business and Professions Code, in an  
36 advertisement for the sale or lease of a vehicle.

37 (x) Fail to disclose, in a clear and conspicuous manner in at  
38 least 10-point boldface type on the face of a contract for the retail  
39 sale of a new motor vehicle that this transaction is, or is not, subject

1 to a fee received by an autobroker from the selling new motor  
2 vehicle dealer, and the name of the autobroker, if applicable.

3 (y) Sell or lease a new motor vehicle after October 1, 2012,  
4 unless the dealer has a contractual agreement with the department  
5 to be a private industry partner pursuant to Section 1685. This  
6 subdivision does not apply to the sale or lease of a motorcycle or  
7 off-highway motor vehicle subject to identification under Section  
8 38010 or a recreational vehicle as defined in Section 18010 of the  
9 Health and Safety Code.

10 (z) As used in this section, “make” and “model” have the same  
11 meaning as is provided in Section 565.12 of Title 49 of the Code  
12 of Federal Regulations.

13 SEC. 16. Section 11713.3 of the Vehicle Code is amended to  
14 read:

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

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

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

38 (c) To prevent or require, or attempt to prevent or require, a  
39 dealer to change the executive management of a dealership, other  
40 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) or Article 5 (commencing with Section 3070) of  
30 Chapter 6 of Division 2.

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

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

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

39 (2) A manufacturer, branch, or distributor or an entity that  
40 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. 17. Section 11713.23 of the Vehicle Code is amended to  
23 read:

24 11713.23. (a) A recreational vehicle manufacturer,  
25 manufacturer branch, distributor, or distributor branch licensed  
26 under this code shall not sell a new recreational vehicle in this  
27 state to or through a recreational vehicle dealer without having  
28 first entered into a written recreational vehicle franchise with that  
29 recreational vehicle dealer, that complies with the requirements  
30 of Section 331.3 and that has been signed by both parties.

31 (b) A recreational vehicle dealer shall not sell a new recreational  
32 vehicle in this state without having first entered into a written  
33 recreational vehicle franchise, that complies with the requirements  
34 of Section 331.3, with a recreational vehicle manufacturer,  
35 manufacturer branch, distributor, or distributor branch licensed  
36 under this code, that has been signed by both parties.

37 (c) (1) A recreational vehicle manufacturer, manufacturer  
38 branch, distributor, or distributor branch shall not ship a new  
39 recreational vehicle to a recreational dealer on or after January 1,

1 2009, without a recreational vehicle franchise that has been signed  
2 by both parties.

3 (2) A recreational vehicle dealer shall not receive a new  
4 recreational vehicle from a recreational vehicle manufacturer,  
5 manufacturer branch, distributor, or distributor branch on or after  
6 January 1, 2009, without a recreational vehicle franchise that has  
7 been signed by both parties.

8 (d) Any new recreational vehicle inventory that has been  
9 purchased by a recreational vehicle dealer, or shipped by a  
10 manufacturer, manufacturer branch, distributor, or distributor  
11 branch, before January 1, 2009, may be sold at any time without  
12 a recreational vehicle franchise.

13 (e) *Following the termination, cancellation, or nonrenewal of*  
14 *a recreational vehicle franchise, any new recreational vehicle*  
15 *inventory that was purchased by the recreational vehicle dealer,*  
16 *or shipped by a manufacturer, manufacturer branch, distributor,*  
17 *or distributor branch, during the period that the written*  
18 *recreational vehicle franchise was in effect, may be sold by that*  
19 *recreational vehicle dealer at any time.*

20 (e)

21 (f) This section applies only to a dealer and manufacturer  
22 agreement involving recreational vehicles, as defined in subdivision  
23 (a) of Section 18010 of the Health and Safety Code, but does not  
24 include an agreement with a dealer who deals exclusively in truck  
25 campers.

26 SEC. 18. 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.

O