

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 759**

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**Introduced by Assembly Member Linder**

February 25, 2015

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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 amended, 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, or 3065.1, the board shall fix a time within 60  
15 days of the order, and place of hearing, and shall send by certified  
16 mail a copy of the order to the franchisor, the protesting franchisee,  
17 and all individuals and groups that have requested notification by  
18 the board of protests and decisions of the board. Except in a case  
19 involving a franchisee who deals exclusively in motorcycles, the  
20 board or its executive director may, upon a showing of good cause,  
21 accelerate or postpone the date initially established for a hearing,  
22 but the hearing shall not be rescheduled more than 90 days after  
23 the board's initial order. For the purpose of accelerating or  
24 postponing a hearing date, "good cause" includes, but is not limited  
25 to, the effects upon, and any irreparable harm to, the parties or  
26 interested persons or groups if the request for a change in hearing  
27 date is not granted. The board or an administrative law judge  
28 designated by the board shall hear and consider the oral and  
29 documented evidence introduced by the parties and other interested  
30 individuals and groups, and the board shall make its decision solely

1 on the record so made. Chapter 4.5 (commencing with Section  
2 11400) of Part 1 of Division 3 of Title 2 of the Government Code  
3 and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513,  
4 11514, 11515, and 11517 of the Government Code apply to these  
5 proceedings.

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

13 (c) Except as otherwise provided in this chapter, in a hearing  
14 on a protest alleging a violation of, or filed pursuant to, Section  
15 3064, 3065 or 3065.1, the franchisee shall have the burden of proof,  
16 but the franchisor has the burden of proof to establish that a  
17 franchisee acted with intent to defraud the franchisor when that  
18 issue is material to a protest filed pursuant to Section 3065 or  
19 3065.1.

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

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

25 3067. (a) The decision of the board shall be in writing and  
26 shall contain findings of fact and a determination of the issues  
27 presented. The decision shall sustain, conditionally sustain,  
28 overrule, or conditionally overrule the protest. Conditions imposed  
29 by the board shall be for the purpose of assuring performance of  
30 binding contractual agreements between franchisees and franchisors  
31 or otherwise serving the purposes of this article. If the board fails  
32 to act within 30 days after the hearing, within 30 days after the  
33 board receives a proposed decision 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 certified mail,  
39 as well as to all individuals and groups that have requested  
40 notification by the board of protests and decisions by the board.

1 The board's decision shall be final upon its delivery or mailing  
2 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 the review shall not be more than  
12 45 days from the date on which the final order of the board is made  
13 public and is delivered to the parties personally or is sent to them  
14 by 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 recreational vehicle dealership, or seeks to relocate an  
19 existing recreational vehicle dealership, that has a relevant market  
20 area in which the same recreational vehicle line-make is  
21 represented, the franchisor shall, in writing, first notify the board  
22 and each franchisee in that recreational vehicle line-make in the  
23 relevant market area of the franchisor's intention to establish an  
24 additional dealership or to relocate an existing dealership. Within  
25 20 days of receiving the notice, satisfying the requirements of this  
26 section, or within 20 days after the end of any appeal procedure  
27 provided by the franchisor, any franchisee required to be given  
28 the notice may file with the board a protest to the proposed  
29 dealership establishment or relocation described in the franchisor's  
30 notice. If, within this time, a franchisee files with the board a  
31 request for additional time to file a protest, the board or its  
32 executive director, upon a showing of good cause, may grant an  
33 additional 10 days to file the protest. When a protest is filed, the  
34 board shall inform the franchisor that a timely protest has been  
35 filed, that a hearing is required pursuant to Section 3080, and that  
36 the franchisor shall not establish the proposed dealership or relocate  
37 the existing dealership until the board has held a hearing as  
38 provided in Section 3080, nor thereafter, if the board has  
39 determined that there is good cause for not permitting the  
40 establishment of the proposed recreational vehicle dealership or

1 relocation of the existing recreational vehicle dealership. In the  
2 event of multiple protests, hearings may be consolidated to expedite  
3 the disposition of the issue.

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

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

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

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

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

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

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

38 (c) For the purposes of this section, the reopening of a dealership  
39 that has not been in operation for one year or more shall be deemed  
40 the establishment of an additional recreational vehicle dealership.

1 (d) For the purposes of this section and Section 3073, a  
2 “recreational vehicle dealership” or “dealership” is any authorized  
3 facility at which a franchisee offers for sale or lease, displays for  
4 sale or lease, or sells or leases new recreational vehicles, as defined  
5 in subdivision (a) of Section 18010 of the Health and Safety Code.  
6 A “recreational vehicle dealership” or “dealership” does not include  
7 a dealer who deals exclusively in truck campers.

8 SEC. 6. Section 3072.5 of the Vehicle Code is amended to  
9 read:

10 3072.5. For the purposes of this article, a “recreational vehicle  
11 line-make” is a group or groups of recreational vehicles defined  
12 by the terms of a written agreement that complies with Section  
13 331.3.

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

15 3073. In determining whether good cause has been established  
16 for not entering into a recreational vehicle franchise or relocating  
17 an existing dealership of the same recreational vehicle line-make,  
18 the board shall take into consideration the existing circumstances,  
19 including, but not limited to, all of the following:

- 20 (a) The permanency of the investment.
- 21 (b) The effect on the retail recreational vehicle business and the  
22 consuming public in the relevant market area.
- 23 (c) Whether it is injurious to the public welfare for an additional  
24 recreational vehicle franchise to be established or an existing  
25 dealership be relocated.
- 26 (d) Whether the franchisees of the same recreational vehicle  
27 line-make in the relevant market area are providing adequate  
28 competition and convenient consumer care for the motor vehicles  
29 of the recreational vehicle line-make in the market area. In making  
30 this determination, the board shall consider the adequacy of  
31 recreational vehicle sales and, if required by the franchise, service  
32 facilities, equipment, supply of vehicle parts, and qualified service  
33 personnel.

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

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

37 3074. (a) A franchisor shall specify to its franchisees the  
38 delivery and preparation obligations of the franchisees prior to  
39 delivery of new recreational vehicles to retail buyers. A copy of  
40 the delivery and preparation obligations, which shall constitute

1 the franchisee’s only responsibility for product liability between  
2 the franchisee and the franchisor but which shall not in any way  
3 affect the franchisee’s responsibility for product liability between  
4 the purchaser and either the franchisee or the franchisor, and a  
5 schedule of compensation to be paid franchisees for the work and  
6 services they shall be required to perform in connection with the  
7 delivery and preparation obligations shall be filed with the board  
8 by franchisors, and shall constitute the compensation as set forth  
9 on the schedule. The schedule of compensation shall be reasonable,  
10 with the reasonableness thereof being subject to the approval of  
11 the board, if a franchisee files a notice of protest with the board.  
12 In determining the reasonableness of the schedules, the board shall  
13 consider all relevant circumstances, including, but not limited to,  
14 the time required to perform each function that the dealer is  
15 obligated to perform and the appropriate labor rate.

16 (b) Upon delivery of the vehicle, the franchisee shall give a  
17 copy of the delivery and preparation obligations to the purchaser  
18 and a written certification that the franchisee has fulfilled these  
19 obligations.

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

21 3078. (a) If the board receives a complaint from a member of  
22 the public seeking a refund involving the sale or lease of, or a  
23 replacement of, a recreational vehicle, as defined in subdivision  
24 (a) of Section 18010 of the Health and Safety Code, from a  
25 recreational vehicle dealership, as defined in subdivision (d) of  
26 Section 3072, the board shall recommend that the complainant  
27 consult with the Department of Consumer Affairs.

28 (b) This chapter does not affect a person’s rights regarding a  
29 transaction involving a recreational vehicle as defined in  
30 subdivision (a), to maintain an action under any other statute,  
31 including, but not limited to, applicable provisions of Title 1.7  
32 (commencing with Section 1790) of Part 4 of Division 3 of the  
33 Civil Code.

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

35 3079. This article applies only to a recreational vehicle  
36 franchise entered into or renewed on or after January 1, 2004.

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

38 3080. (a) Upon receiving a protest pursuant to Section 3070,  
39 3072, 3074, 3075, or 3076, the board shall fix a time and place of  
40 hearing within 60 days of the order, and shall send by certified

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

19 (b) In a hearing on a protest filed pursuant to Section 3070 or  
20 3072, the franchisor shall have the burden of proof to establish  
21 that there is good cause to modify, replace, terminate, or refuse to  
22 continue a franchise. The franchisee shall have the burden of proof  
23 to establish that there is good cause not to enter into a franchise  
24 establishing an additional recreational vehicle dealership or  
25 relocating an existing recreational vehicle dealership.

26 (c) Except as otherwise provided in this chapter, in a hearing  
27 on a protest alleging a violation of, or filed pursuant to, Section  
28 3074, 3075, or 3076, the franchisee shall have the burden of proof,  
29 but the franchisor has the burden of proof to establish that a  
30 franchisee acted with intent to defraud the franchisor when that  
31 issue is material to a protest filed pursuant to Section 3075 or 3076.

32 ~~(d) A member of the board who is a new motor vehicle dealer  
33 or recreational vehicle dealer may not participate in, hear,  
34 comment, or advise other members upon, or decide, a matter  
35 involving a protest filed pursuant to this article unless all parties  
36 to the protest stipulate otherwise.~~

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

38 3081. (a) The decision of the board shall be in writing and  
39 shall contain findings of fact and a determination of the issues  
40 presented. The decision shall sustain, conditionally sustain,

1 overrule, or conditionally overrule the protest. Conditions imposed  
 2 by the board shall be for the purpose of assuring performance of  
 3 binding contractual agreements between franchisees and franchisors  
 4 or otherwise serving the purposes of this article. If the board fails  
 5 to act within 30 days after the hearing, within 30 days after the  
 6 board receives a proposed decision when the case is heard before  
 7 an administrative law judge alone, or within a period necessitated  
 8 by Section 11517 of the Government Code, or as may be mutually  
 9 agreed upon by the parties, then the proposed action shall be  
 10 deemed to be approved. Copies of the board’s decision shall be  
 11 delivered to the parties personally or sent to them by certified mail,  
 12 as well as to all individuals and groups that have requested  
 13 notification by the board of protests and decisions by the board.  
 14 The board’s decision shall be final upon its delivery or mailing  
 15 and a reconsideration or rehearing is not permitted.

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

22 SEC. 13. Section 3082 is added to the Vehicle Code, to read:  
 23 3082. Either party may seek judicial review of final decisions  
 24 of the board. Time for filing for the review shall not be more than  
 25 45 days from the date on which the final order of the board is made  
 26 public and is delivered to the parties personally or is sent to them  
 27 by certified mail.

28 SEC. 14. Section 11705 of the Vehicle Code is amended to  
 29 read:

30 11705. (a) The department, after notice and hearing, may  
 31 suspend or revoke the license issued to a dealer, transporter,  
 32 manufacturer, manufacturer branch, remanufacturer,  
 33 remanufacturer branch, distributor, or distributor branch upon  
 34 determining that the person to whom the license was issued is not  
 35 lawfully entitled thereto, or has done any of the following:

- 36 (1) Filed an application for the license using a false or fictitious
- 37 name not registered with the proper authorities, or knowingly made
- 38 a false statement or knowingly concealed a material fact, in the
- 39 application for the license.

- 1 (2) Made, or knowingly or negligently permitted, an illegal use  
2 of the special plates issued to the licensee.
- 3 (3) Used a false or fictitious name, knowingly made a false  
4 statement, or knowingly concealed a material fact, in an application  
5 for the registration of a vehicle, or otherwise committed a fraud  
6 in the application.
- 7 (4) Failed to deliver to a transferee lawfully entitled thereto a  
8 properly endorsed certificate of ownership.
- 9 (5) Knowingly purchased, sold, or otherwise acquired or  
10 disposed of a stolen motor vehicle.
- 11 (6) Failed to provide and maintain a clear physical division  
12 between the type of business licensed pursuant to this chapter and  
13 any other type of business conducted at the established place of  
14 business.
- 15 (7) Willfully violated Section 3064, 3065, 3074, or 3075 or any  
16 rule or regulation adopted pursuant thereto.
- 17 (8) Violated any provision of Division 3 (commencing with  
18 Section 4000) or any rule or regulation adopted pursuant thereto,  
19 or subdivision (a) of Section 38200.
- 20 (9) Violated any provision of Division 4 (commencing with  
21 Section 10500) or any rule or regulation adopted pursuant thereto.
- 22 (10) Violated any provision of Article 1 (commencing with  
23 Section 11700) of Chapter 4 of Division 5 or any rule or regulation  
24 adopted pursuant thereto.
- 25 (11) Violated any provision of Part 5 (commencing with Section  
26 10701) of Division 2 of the Revenue and Taxation Code or any  
27 rule or regulation adopted pursuant thereto.
- 28 (12) Violated any provision of Chapter 2b (commencing with  
29 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code  
30 or any rule or regulation adopted pursuant thereto.
- 31 (13) Submitted a check, draft, or money order to the department  
32 for any obligation or fee due the state which was dishonored or  
33 refused payment upon presentation.
- 34 (14) Has caused any person to suffer any loss or damage by  
35 reason of any fraud or deceit practiced on that person or fraudulent  
36 representations made to that person in the course of the licensed  
37 activity.
- 38 For purposes of this paragraph, “fraud” includes any act or  
39 omission which is included within the definition of either “actual  
40 fraud” or “constructive fraud” as defined in Sections 1572 and

1 1573 of the Civil Code, and “deceit” has the same meaning as  
 2 defined in Section 1710 of the Civil Code. In addition, “fraud”  
 3 and “deceit” include, but are not limited to, a misrepresentation in  
 4 any manner, whether intentionally false or due to gross negligence,  
 5 of a material fact; a promise or representation not made honestly  
 6 and in good faith; an intentional failure to disclose a material fact;  
 7 and any act within Section 484 of the Penal Code.

8 For purposes of this paragraph, “person” also includes a  
 9 governmental entity.

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

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

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

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

21 (b) Any of the causes specified in this chapter as a cause for  
 22 refusal to issue a license to a transporter, manufacturer,  
 23 manufacturer branch, remanufacturer, remanufacturer branch,  
 24 distributor, distributor branch, or dealer applicant is cause to  
 25 suspend or revoke a license issued to a transporter, manufacturer,  
 26 manufacturer branch, remanufacturer, remanufacturer branch,  
 27 distributor, distributor branch, or dealer.

28 (c) Except as provided in Section 11707, every hearing provided  
 29 for in this section shall be conducted pursuant to Chapter 5  
 30 (commencing with Section 11500) of Part 1 of Division 3 of Title  
 31 2 of the Government Code.

32 SEC. 15. Section 11713.1 of the Vehicle Code is amended to  
 33 read:

34 11713.1. It is a violation of this code for the holder of a dealer’s  
 35 license issued under this article to do any of the following:

36 (a) Advertise a specific vehicle for sale without identifying the  
 37 vehicle by its model, model-year, and either its license number or  
 38 that portion of the vehicle identification number that distinguishes  
 39 the vehicle from all other vehicles of the same make, model, and  
 40 model-year. Model-year is not required to be advertised for current

1 model-year vehicles. Year models are no longer current when  
2 ensuing year models are available for purchase at retail in  
3 California. An advertisement that offers for sale a class of new  
4 vehicles in a dealer's inventory, consisting of five or more vehicles,  
5 that are all of the same make, model, and model-year is not required  
6 to include in the advertisement the vehicle identification numbers  
7 or license numbers of those vehicles.

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

16 (c) (1) Exclude from an advertisement of a vehicle for sale that  
17 there will be added to the advertised total price at the time of sale,  
18 charges for sales tax, vehicle registration fees, the California tire  
19 fee, the fee charged by the state for the issuance of a certificate of  
20 compliance or noncompliance pursuant to a statute, finance  
21 charges, a charge to electronically register or transfer the vehicle,  
22 and a dealer document processing charge.

23 (2) The obligations imposed by paragraph (1) are satisfied by  
24 adding to the advertisement a statement containing no abbreviations  
25 and that is worded in substantially the following form: "Plus  
26 government fees and taxes, any finance charges, any dealer  
27 document processing charge, any electronic filing charge, and any  
28 emission testing charge."

29 (3) For purposes of paragraph (1), "advertisement" means an  
30 advertisement in a newspaper, magazine, or direct mail publication  
31 that is two or more columns in width or one column in width and  
32 more than seven inches in length, or on a Web page of a dealer's  
33 Internet Web site that displays the price of a vehicle offered for  
34 sale on the Internet, as that term is defined in paragraph (6) of  
35 subdivision (f) of Section 17538 of the Business and Professions  
36 Code.

37 (d) Represent the dealer document processing charge, electronic  
38 registration or transfer charge, or emission testing charge, as a  
39 governmental fee.

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

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

19 (2) This subdivision does not apply to a transaction involving  
20 the following:

21 (A) A mobilehome.

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

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

26 (D) A manufactured home.

27 (E) A new vehicle that will be substantially altered or modified  
28 by a converter prior to resale.

29 (F) A commercial vehicle with a gross vehicle weight rating of  
30 more than 10,000 pounds.

31 (G) A vehicle purchased for export and exported outside the  
32 territorial limits of the United States without being registered with  
33 the department.

34 (H) A vehicle acquired in the ordinary course of business as a  
35 new vehicle by a dealer franchised to sell that vehicle, if all of the  
36 following apply:

37 (i) The manufacturer or distributor of the vehicle files a  
38 bankruptcy petition.

39 (ii) The franchise agreement of the dealer is terminated,  
40 canceled, or rejected by the manufacturer or distributor as part of

1 the bankruptcy proceedings and the termination, cancellation, or  
2 rejection is not a result of the revocation by the department of the  
3 dealer's license or the dealer's conviction of a crime.

4 (iii) The vehicle is held in the inventory of the dealer on the  
5 date the bankruptcy petition is filed.

6 (iv) The vehicle is sold by the dealer within six months of the  
7 date the bankruptcy petition is filed.

8 (3) Subparagraph (H) of paragraph (2) does not entitle a dealer  
9 whose franchise agreement has been terminated, canceled, or  
10 rejected to continue to perform warranty service repairs or continue  
11 to be eligible to offer or receive consumer or dealer incentives  
12 offered by the manufacturer or distributor.

13 (g) Sell a park trailer, as specified in Section 18009.3 of the  
14 Health and Safety Code, without disclosing in writing to the  
15 purchaser that a park trailer is required to be moved by a transporter  
16 or a licensed manufacturer or dealer under a permit issued by the  
17 Department of Transportation or a local authority with respect to  
18 highways under their respective jurisdictions.

19 (h) Advertise free merchandise, gifts, or services provided by  
20 a dealer contingent on the purchase of a vehicle. "Free" includes  
21 merchandise or services offered for sale at a price less than the  
22 seller's cost of the merchandise or services.

23 (i) (1) Advertise vehicles, and related goods or services, at a  
24 specified dealer price, with the intent not to supply reasonably  
25 expectable demand, unless the advertisement discloses the number  
26 of vehicles in stock at the advertised price. In addition, whether  
27 or not there are sufficient vehicles in stock to supply a reasonably  
28 expectable demand, when phrases such as "starting at," "from,"  
29 "beginning as low as," or words of similar import are used in  
30 reference to an advertised price, the advertisement shall disclose  
31 the number of vehicles available at that advertised price.

32 (2) For purposes of this subdivision, in a newspaper  
33 advertisement for a vehicle that is two model-years old or newer,  
34 the actual phrase that states the number of vehicles in stock at the  
35 advertised price shall be printed in a type size that is at least equal  
36 to one-quarter of the type size, and in the same style and color of  
37 type, used for the advertised price. However, in no case shall the  
38 phrase be printed in less than 8-point type size, and the phrase  
39 shall be disclosed immediately above, below, or beside the

1 advertised price without intervening words, pictures, marks, or  
2 symbols.

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

6 (j) Use “rebate” or similar words, including, but not limited to,  
7 “cash back,” in advertising the sale of a vehicle unless the rebate  
8 is expressed in a specific dollar amount and is in fact a rebate  
9 offered by the vehicle manufacturer or distributor, a finance  
10 company affiliated with a vehicle manufacturer or distributor, a  
11 regulated utility, or a governmental entity directly to the retail  
12 purchaser of the vehicle or to the assignee of the retail purchaser.

13 (k) Require a person to pay a higher price for a vehicle and  
14 related goods or services for receiving advertised credit terms than  
15 the cash price the same person would have to pay to purchase the  
16 same vehicle and related goods or services. For the purpose of this  
17 subdivision, “cash price” has the same meaning as defined in  
18 subdivision (e) of Section 2981 of the Civil Code.

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

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

22 (n) (1) Use “invoice,” “dealer’s invoice,” “wholesale price,”  
23 or similar terms that refer to a dealer’s cost for a vehicle in an  
24 advertisement for the sale of a vehicle or advertise that the selling  
25 price of a vehicle is above, below, or at either of the following:

26 (A) The manufacturer’s or distributor’s invoice price to a dealer.

27 (B) A dealer’s cost.

28 (2) This subdivision does not apply to either of the following:

29 (A) A communication occurring during face-to-face negotiations  
30 for the purchase of a specific vehicle if the prospective purchaser  
31 initiates a discussion of the vehicle’s invoice price or the dealer’s  
32 cost for that vehicle.

33 (B) A communication between a dealer and a prospective  
34 commercial purchaser that is not disseminated to the general public.  
35 For purposes of this subparagraph, a “commercial purchaser”  
36 means a dealer, lessor, lessor-retailer, manufacturer,  
37 remanufacturer, distributor, financial institution, governmental  
38 entity, or person who purchases 10 or more vehicles during a year.

39 (o) Violate a law prohibiting bait and switch advertising,  
40 including, but not limited to, the guides against bait advertising

1 set forth in Part 238 (commencing with Section 238) of Title 16  
2 of the Code of Federal Regulations, as those regulations read on  
3 January 1, 1988.

4 (p) Make an untrue or misleading statement indicating that a  
5 vehicle is equipped with all the factory-installed optional equipment  
6 the manufacturer offers, including, but not limited to, a false  
7 statement that a vehicle is “fully factory equipped.”

8 (q) Affix on a new vehicle a supplemental price sticker  
9 containing a price that represents the dealer’s asking price that  
10 exceeds the manufacturer’s suggested retail price unless all of the  
11 following occur:

12 (1) The supplemental sticker clearly and conspicuously discloses  
13 in the largest print appearing on the sticker, other than the print  
14 size used for the dealer’s name, that the supplemental sticker price  
15 is the dealer’s asking price, or words of similar import, and that it  
16 is not the manufacturer’s suggested retail price.

17 (2) The supplemental sticker clearly and conspicuously discloses  
18 the manufacturer’s suggested retail price.

19 (3) The supplemental sticker lists each item that is not included  
20 in the manufacturer’s suggested retail price, and discloses the  
21 additional price of each item. If the supplemental sticker price is  
22 greater than the sum of the manufacturer’s suggested retail price  
23 and the price of the items added by the dealer, the supplemental  
24 sticker price shall set forth that difference and describe it as “added  
25 mark-up.”

26 (r) Advertise an underselling claim, including, but not limited  
27 to, “we have the lowest prices” or “we will beat any dealer’s price,”  
28 unless the dealer has conducted a recent survey showing that the  
29 dealer sells its vehicles at lower prices than another licensee in its  
30 trade area and maintains records to adequately substantiate the  
31 claims. The substantiating records shall be made available to the  
32 department upon request.

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

38 (2) For purposes of this subdivision, “incentive” means anything  
39 of value offered to induce people to purchase a vehicle, including,

1 but not limited to, discounts, savings claims, rebates, below-market  
2 finance rates, and free merchandise or services.

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

6 (u) Fail to disclose in writing to the franchisor of a new motor  
7 vehicle dealer the name of the purchaser, date of sale, and the  
8 vehicle identification number of each new motor vehicle sold of  
9 the line-make of that franchisor, or intentionally submit to that  
10 franchisor a false name for the purchaser or false date for the date  
11 of sale.

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

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

19 (x) Fail to disclose, in a clear and conspicuous manner in at  
20 least 10-point boldface type on the face of a contract for the retail  
21 sale of a new motor vehicle that this transaction is, or is not, subject  
22 to a fee received by an autobroker from the selling new motor  
23 vehicle dealer, and the name of the autobroker, if applicable.

24 (y) Sell or lease a new motor vehicle after October 1, 2012,  
25 unless the dealer has a contractual agreement with the department  
26 to be a private industry partner pursuant to Section 1685. This  
27 subdivision does not apply to the sale or lease of a motorcycle or  
28 off-highway motor vehicle subject to identification under Section  
29 38010 or a recreational vehicle as defined in Section 18010 of the  
30 Health and Safety Code.

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

34 SEC. 16. Section 11713.3 of the Vehicle Code is amended to  
35 read:

36 11713.3. It is unlawful and a violation of this code for a  
37 manufacturer, manufacturer branch, distributor, or distributor  
38 branch licensed pursuant to this code to do, directly or indirectly  
39 through an affiliate, any of the following:

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

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

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

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

33 (2) (A) For the transferring franchisee to fail, prior to the sale,  
34 transfer, or assignment of a franchisee or the sale, assignment, or  
35 transfer of all, or substantially all, of the assets of the franchised  
36 business or a controlling interest in the franchised business to  
37 another person, to notify the manufacturer or distributor of the  
38 franchisee's decision to sell, transfer, or assign the franchise. The  
39 notice shall be in writing and shall include all of the following:

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

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

3 (iii) The proposed transferee's application for approval to  
4 become the successor franchisee. The application shall include  
5 forms and related information generally utilized by the  
6 manufacturer or distributor in reviewing prospective franchisees,  
7 if those forms are readily made available to existing franchisees.  
8 As soon as practicable after receipt of the proposed transferee's  
9 application, the manufacturer or distributor shall notify the  
10 franchisee and the proposed transferee of information needed to  
11 make the application complete.

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

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

32 (e) To prevent, or attempt to prevent, a dealer from receiving  
33 fair and reasonable compensation for the value of the franchised  
34 business. There shall not be a transfer or assignment of the dealer's  
35 franchise without the consent of the manufacturer or distributor,  
36 which consent shall not be unreasonably withheld or conditioned  
37 upon the release, assignment, novation, waiver, estoppel, or  
38 modification of a claim or defense by the dealer.

39 (f) To obtain money, goods, services, or another benefit from  
40 a person with whom the dealer does business, on account of, or in

1 relation to, the transaction between the dealer and that other person,  
2 other than for compensation for services rendered, unless the  
3 benefit is promptly accounted for, and transmitted to, the dealer.

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

8 (A) Modifies or disclaims a duty or obligation of a manufacturer,  
9 manufacturer branch, distributor, distributor branch, or  
10 representative, or a right or privilege of a dealer, pursuant to  
11 Chapter 4 (commencing with Section 11700) of Division 5 or  
12 Chapter 6 (commencing with Section 3000) of Division 2.

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

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

16 (D) Requires a controversy between a manufacturer,  
17 manufacturer branch, distributor, distributor branch, or  
18 representative and a dealer to be referred to a person for a binding  
19 determination. However, this subparagraph does not prohibit  
20 arbitration before an independent arbitrator, provided that whenever  
21 a motor vehicle franchise contract provides for the use of arbitration  
22 to resolve a controversy arising out of, or relating to, that contract,  
23 arbitration may be used to settle the controversy only if, after the  
24 controversy arises, all parties to the controversy consent in writing  
25 to use arbitration to settle the controversy. For the purpose of this  
26 subparagraph, the terms “motor vehicle” and “motor vehicle  
27 franchise contract” shall have the same meaning as defined in  
28 Section 1226 of Title 15 of the United States Code. If arbitration  
29 is elected to settle a dispute under a motor vehicle franchise  
30 contract, the arbitrator shall provide the parties to the arbitration  
31 with a written explanation of the factual and legal basis for the  
32 award.

33 (2) An agreement, provision, release, assignment, novation,  
34 waiver, or estoppel prohibited by this subdivision shall be  
35 unenforceable and void.

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

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

- 1 (B) Affect the enforceability of any stipulated order or other  
2 order entered by the board.
- 3 (C) Affect the enforceability of any provision in a contract if  
4 the provision is not prohibited under this subdivision or any other  
5 law.
- 6 (D) Affect the enforceability of a provision in any contract  
7 entered into on or before December 31, 2011.
- 8 (E) Prohibit a dealer from waiving its right to file a protest  
9 pursuant to Section 3065.1 if the waiver agreement is entered into  
10 after a franchisor incentive program claim has been disapproved  
11 by the franchisor and the waiver is voluntarily given as part of an  
12 agreement to settle that claim.
- 13 (F) Prohibit a voluntary agreement supported by valuable  
14 consideration, other than granting or renewing a franchise, that  
15 does both of the following:
  - 16 (i) Provides that a dealer establish or maintain exclusive  
17 facilities, personnel, or display space or provides that a dealer  
18 make a material alteration, expansion, or addition to a dealership  
19 facility.
  - 20 (ii) Contains no waiver or other provision prohibited by  
21 subparagraph (A), (B), (C), or (D) of paragraph (1).
- 22 (G) Prohibit an agreement separate from the franchise agreement  
23 that implements a dealer's election to terminate the franchise if  
24 the agreement is conditioned only on a specified time for  
25 termination or payment of consideration to the dealer.
- 26 (H) (i) Prohibit a voluntary waiver agreement, supported by  
27 valuable consideration, other than the consideration of renewing  
28 a franchise, to waive the right of a dealer to file a protest under  
29 Section 3062 for the proposed establishment or relocation of a  
30 specific proposed dealership, if the waiver agreement provides all  
31 of the following:
  - 32 (I) The approximate address at which the proposed dealership  
33 will be located.
  - 34 (II) The planning potential used to establish the proposed  
35 dealership's facility, personnel, and capital requirements.
  - 36 (III) An approximation of projected vehicle and parts sales, and  
37 number of vehicles to be serviced at the proposed dealership.
  - 38 (IV) Whether the franchisor or affiliate will hold an ownership  
39 interest in the proposed dealership or real property of the proposed

1 dealership, and the approximate percentage of any franchisor or  
2 affiliate ownership interest in the proposed dealership.

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

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

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

9 (ii) Notwithstanding the provisions of a waiver agreement  
10 entered into pursuant to the provisions of this subparagraph, a  
11 dealer may file a protest under Section 3062 if any of the  
12 information provided pursuant to clause (i) has become materially  
13 inaccurate since the waiver agreement was executed. Any  
14 determination of the enforceability of a waiver agreement shall be  
15 determined by the board and the franchisor shall have the burden  
16 of proof.

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

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

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

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

- 1 (j) To deny the widow, widower, or heirs designated by a  
 2 deceased owner of a dealership the opportunity to participate in  
 3 the ownership of the dealership or successor dealership under a  
 4 valid franchise for a reasonable time after the death of the owner.
- 5 (k) To offer refunds or other types of inducements to a person  
 6 for the purchase of new motor vehicles of a certain line-make to  
 7 be sold to the state or a political subdivision of the state without  
 8 making the same offer to all other dealers in the same line-make  
 9 within the relevant market area.
- 10 (l) To modify, replace, enter into, relocate, terminate, or refuse  
 11 to renew a franchise in violation of Article 4 (commencing with  
 12 Section 3060) or Article 5 (commencing with Section 3070) of  
 13 Chapter 6 of Division 2.
- 14 (m) To employ a person as a representative who has not been  
 15 licensed pursuant to Article 3 (commencing with Section 11900)  
 16 of Chapter 4 of Division 5.
- 17 (n) To deny a dealer the right of free association with another  
 18 dealer for a lawful purpose.
- 19 (o) (1) To compete with a dealer in the same line-make  
 20 operating under an agreement or franchise from a manufacturer  
 21 or distributor in the relevant market area.
- 22 (2) A manufacturer, branch, or distributor or an entity that  
 23 controls or is controlled by, a manufacturer, branch, or distributor,  
 24 shall not, however, be deemed to be competing in the following  
 25 limited circumstances:
- 26 (A) Owning or operating a dealership for a temporary period,  
 27 not to exceed one year at the location of a former dealership of the  
 28 same line-make that has been out of operation for less than six  
 29 months. However, after a showing of good cause by a  
 30 manufacturer, branch, or distributor that it needs additional time  
 31 to operate a dealership in preparation for sale to a successor  
 32 independent franchisee, the board may extend the time period.
- 33 (B) Owning an interest in a dealer as part of a bona fide dealer  
 34 development program that satisfies all of the following  
 35 requirements:
- 36 (i) The sole purpose of the program is to make franchises  
 37 available to persons lacking capital, training, business experience,  
 38 or other qualities ordinarily required of prospective franchisees  
 39 and the dealer development candidate is an individual who is  
 40 unable to acquire the franchise without assistance of the program.

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

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

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

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

20 (B) A manufacturer, branch, and distributor that owns an interest  
21 in a dealer in the manner described in subparagraph (B) of  
22 paragraph (2) shall give written notice to the board, annually, of  
23 the name and location of each dealer in which it has an ownership  
24 interest, the name of the bona fide dealer development owner or  
25 owners, and the ownership interests of each owner expressed as a  
26 percentage.

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

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

32 (r) To fail to affix an identification number to a park trailer, as  
33 described in Section 18009.3 of the Health and Safety Code, that  
34 is manufactured on or after January 1, 1987, and that does not  
35 clearly identify the unit as a park trailer to the department. The  
36 configuration of the identification number shall be approved by  
37 the department.

38 (s) To dishonor a warranty, rebate, or other incentive offered  
39 to the public or a dealer in connection with the retail sale of a new  
40 motor vehicle, based solely upon the fact that an autobroker

1 arranged or negotiated the sale. This subdivision shall not prohibit  
2 the disallowance of that rebate or incentive if the purchaser or  
3 dealer is ineligible to receive the rebate or incentive pursuant to  
4 any other term or condition of a rebate or incentive program.

5 (t) To exercise a right of first refusal or other right requiring a  
6 franchisee or an owner of the franchise to sell, transfer, or assign  
7 to the franchisor, or to a nominee of the franchisor, all or a material  
8 part of the franchised business or of the assets of the franchised  
9 business unless all of the following requirements are met:

10 (1) The franchise authorizes the franchisor to exercise a right  
11 of first refusal to acquire the franchised business or assets of the  
12 franchised business in the event of a proposed sale, transfer, or  
13 assignment.

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

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

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

31 (5) Upon the franchisor’s exercise of the right of first refusal,  
32 the consideration paid by the franchisor to the franchisee and  
33 owners of the franchised business shall equal or exceed all  
34 consideration that each of them were to have received under the  
35 terms of, or in connection with, the proposed sale, assignment, or  
36 transfer, and the franchisor shall comply with all the terms and  
37 conditions of the agreement or agreements to sell, transfer, or  
38 assign the franchised business.

39 (6) The franchisor shall reimburse the proposed transferee for  
40 expenses paid or incurred by the proposed transferee in evaluating,

1 investigating, and negotiating the proposed transfer to the extent  
2 those expenses do not exceed the usual, customary, and reasonable  
3 fees charged for similar work done in the area in which the  
4 franchised business is located. These expenses include, but are not  
5 limited to, legal and accounting expenses, and expenses incurred  
6 for title reports and environmental or other investigations of real  
7 property on which the franchisee's operations are conducted. The  
8 proposed transferee shall provide the franchisor a written  
9 itemization of those expenses, and a copy of all nonprivileged  
10 reports and studies for which expenses were incurred, if any, within  
11 30 days of the proposed transferee's receipt of a written request  
12 from the franchisor for that accounting. The franchisor shall make  
13 payment within 30 days of exercising the right of first refusal.

14 (u) (1) To unfairly discriminate in favor of a dealership owned  
15 or controlled, in whole or in part, by a manufacturer or distributor  
16 or an entity that controls or is controlled by the manufacturer or  
17 distributor. Unfair discrimination includes, but is not limited to,  
18 the following:

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

22 (i) A vehicle that is not made available to each franchisee  
23 pursuant to a reasonable allocation formula that is applied  
24 uniformly, and a part or accessory that is not made available to all  
25 franchisees on an equal basis when there is no reasonable allocation  
26 formula that is applied uniformly.

27 (ii) A vehicle, part, or accessory that is not made available to  
28 each franchisee on comparable delivery terms, including the time  
29 of delivery after the placement of an order. Differences in delivery  
30 terms due to geographic distances or other factors beyond the  
31 control of the manufacturer, branch, or distributor shall not  
32 constitute unfair competition.

33 (iii) Information obtained from a franchisee by the manufacturer,  
34 branch, or distributor concerning the business affairs or operations  
35 of a franchisee in which the manufacturer, branch, or distributor  
36 does not have an ownership interest. The information includes,  
37 but is not limited to, information contained in financial statements  
38 and operating reports, the name, address, or other personal  
39 information or buying, leasing, or service behavior of a dealer  
40 customer, and other information that, if provided to a franchisee

1 or dealer owned or controlled by a manufacturer or distributor,  
2 would give that franchisee or dealer a competitive advantage. This  
3 clause does not apply if the information is provided pursuant to a  
4 subpoena or court order, or to aggregated information made  
5 available to all franchisees.

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

9 (B) Referring a prospective purchaser or lessee to a dealer in  
10 which a manufacturer, branch, or distributor has an ownership  
11 interest, unless the prospective purchaser or lessee resides in the  
12 area of responsibility assigned to that dealer or the prospective  
13 purchaser or lessee requests to be referred to that dealer.

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

20 (v) (1) To access, modify, or extract information from a  
21 confidential dealer computer record, as defined in Section  
22 11713.25, without obtaining the prior written consent of the dealer  
23 and without maintaining administrative, technical, and physical  
24 safeguards to protect the security, confidentiality, and integrity of  
25 the information.

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

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

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

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

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

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

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

1 (x) (1) To unfairly discriminate against a franchisee selling a  
2 service contract, debt cancellation agreement, maintenance  
3 agreement, or similar product not approved, endorsed, sponsored,  
4 or offered by the manufacturer, manufacturer branch, distributor,  
5 or distributor branch or affiliate. For purposes of this subdivision,  
6 unfair discrimination includes, but is not limited to, any of the  
7 following:

8 (A) Express or implied statements that the dealer is under an  
9 obligation to exclusively sell or offer to sell service contracts, debt  
10 cancellation agreements, or similar products approved, endorsed,  
11 sponsored, or offered by the manufacturer, manufacturer branch,  
12 distributor, or distributor branch or affiliate.

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

23 (C) Measuring a dealer's performance under a franchise  
24 agreement based upon the sale of service contracts, debt  
25 cancellation agreements, or similar products approved, endorsed,  
26 sponsored, or offered by the manufacturer, manufacturer branch,  
27 distributor, or distributor branch or affiliate.

28 (D) Requiring a dealer to actively promote the sale of service  
29 contracts, debt cancellation agreements, or similar products  
30 approved, endorsed, sponsored, or offered by the manufacturer,  
31 manufacturer branch, distributor, or distributor branch or affiliate.

32 (E) Conditioning access to vehicles or parts, or vehicle sales or  
33 service incentives upon the sale of service contracts, debt  
34 cancellation agreements, or similar products approved, endorsed,  
35 sponsored, or offered by the manufacturer, manufacturer branch,  
36 distributor, or distributor branch or affiliate.

37 (2) Unfair discrimination does not include, and nothing shall  
38 prohibit a manufacturer from, offering an incentive program to  
39 vehicle dealers who voluntarily sell or offer to sell service  
40 contracts, debt cancellation agreements, or similar products

1 approved, endorsed, sponsored, or offered by the manufacturer,  
2 manufacturer branch, distributor, or distributor branch or affiliate,  
3 if the program does not provide vehicle sales or service incentives.

4 (3) This subdivision does not prohibit a manufacturer,  
5 manufacturer branch, distributor, or distributor branch from  
6 requiring a franchisee that sells a used vehicle as “certified” under  
7 a certified used vehicle program established by the manufacturer,  
8 manufacturer branch, distributor, or distributor branch to provide  
9 a service contract approved, endorsed, sponsored, or offered by  
10 the manufacturer, manufacturer branch, distributor, or distributor  
11 branch.

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

17  
18 “Service Contract Disclosure  
19 The service contract you are purchasing is not provided or backed  
20 by the manufacturer of the vehicle you are purchasing. The  
21 manufacturer of the vehicle is not responsible for claims or repairs  
22 under this service contract.

23 \_\_\_\_\_  
24 Signature of Purchaser”  
25

26 (y) To take or threaten to take any adverse action against a dealer  
27 pursuant to an export or sale-for-resale prohibition because the  
28 dealer sold or leased a vehicle to a customer who either exported  
29 the vehicle to a foreign country or resold the vehicle in violation  
30 of the prohibition, unless the export or sale-for-resale prohibition  
31 policy was provided to the dealer in writing prior to the sale or  
32 lease, and the dealer knew or reasonably should have known of  
33 the customer’s intent to export or resell the vehicle in violation of  
34 the prohibition at the time of sale or lease. If the dealer causes the  
35 vehicle to be registered in this or any other state, and collects or  
36 causes to be collected any applicable sales or use tax due to this  
37 state, a rebuttable presumption is established that the dealer did  
38 not have reason to know of the customer’s intent to export or resell  
39 the vehicle.

1 (z) As used in this section, “area of responsibility” is a  
2 geographic area specified in a franchise that is used by the  
3 franchisor for the purpose of evaluating the franchisee’s  
4 performance of its sales and service obligations.

5 SEC. 17. Section 11713.23 of the Vehicle Code is amended to  
6 read:

7 11713.23. (a) A recreational vehicle manufacturer,  
8 manufacturer branch, distributor, or distributor branch licensed  
9 under this code shall not sell a new recreational vehicle in this  
10 state to or through a recreational vehicle dealer without having  
11 first entered into a written recreational vehicle franchise with that  
12 recreational vehicle dealer, that complies with the requirements  
13 of Section 331.3 and that has been signed by both parties.

14 (b) A recreational vehicle dealer shall not sell a new recreational  
15 vehicle in this state without having first entered into a written  
16 recreational vehicle franchise, that complies with the requirements  
17 of Section 331.3, with a recreational vehicle manufacturer,  
18 manufacturer branch, distributor, or distributor branch licensed  
19 under this code, that has been signed by both parties.

20 (c) (1) A recreational vehicle manufacturer, manufacturer  
21 branch, distributor, or distributor branch shall not ship a new  
22 recreational vehicle to a recreational dealer on or after January 1,  
23 2009, without a recreational vehicle franchise that has been signed  
24 by both parties.

25 (2) A recreational vehicle dealer shall not receive a new  
26 recreational vehicle from a recreational vehicle manufacturer,  
27 manufacturer branch, distributor, or distributor branch on or after  
28 January 1, 2009, without a recreational vehicle franchise that has  
29 been signed by both parties.

30 (d) Any new recreational vehicle inventory that has been  
31 purchased by a recreational vehicle dealer, or shipped by a  
32 manufacturer, manufacturer branch, distributor, or distributor  
33 branch, before January 1, 2009, may be sold at any time without  
34 a recreational vehicle franchise.

35 (e) Following the termination, cancellation, or nonrenewal of  
36 a recreational vehicle franchise, any new recreational vehicle  
37 inventory that was purchased by the recreational vehicle dealer,  
38 or shipped by a manufacturer, manufacturer branch, distributor,  
39 or distributor branch, during the period that the written recreational

1 vehicle franchise was in effect, may be sold by that recreational  
2 vehicle dealer at any time.

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

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