

AMENDED IN SENATE AUGUST 31, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 759

Introduced by Assembly Member Linder

February 25, 2015

An act to amend Sections 3010, 3050.7, 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 3050.7 of the Vehicle Code is amended to read:*

13 3050.7. (a) The board may adopt stipulated decisions and
14 orders, without a hearing pursuant to ~~Section 3066~~, *Section 3066*
15 *or 3080*, to resolve one or more issues raised by a protest or petition
16 filed with the board. Whenever the parties to a protest or petition
17 submit a proposed stipulated decision and order of the board, a
18 copy of the proposed stipulated decision and order shall be
19 transmitted by the executive director of the board to each member
20 of the board. The proposed stipulated decision and order shall be
21 deemed to be adopted by the board unless a member of the board
22 notifies the executive director of the board of an objection thereto
23 within 10 days after that board member has received a copy of the
24 proposed stipulated decision and order.

25 (b) If the board adopts a stipulated decision and order to resolve
26 a protest filed pursuant to Section 3060 or 3070 in which the parties
27 stipulate that good cause exists for the termination of the franchise
28 of the protestant, and the order provides for a conditional or
29 unconditional termination of the franchise of the protestant,
30 paragraph (2) of subdivision (a) of Section 3060 and paragraph

1 (2) of subdivision (a) of Section 3070, which require a hearing to
2 determine whether good cause exists for termination of the
3 franchise, is inapplicable to the proceedings. If the stipulated
4 decision and order provides for an unconditional termination of
5 the franchise, the franchise may be terminated without further
6 proceedings by the board. If the stipulated decision and order
7 provides for the termination of the franchise, conditioned upon the
8 failure of a party to comply with specified conditions, the franchise
9 may be terminated upon a determination, according to the terms
10 of the stipulated decision and order, that the conditions have not
11 been met. If the stipulated decision and order provides for the
12 termination of the franchise conditioned upon the occurrence of
13 specified conditions, the franchise may be terminated upon a
14 determination, according to the terms of the stipulated decision
15 and order, that the stipulated conditions have occurred.

16 ~~SEC. 2.~~

17 *SEC. 3.* Section 3066 of the Vehicle Code is amended to read:

18 3066. (a) Upon receiving a protest pursuant to Section 3060,
19 3062, 3064, 3065, or 3065.1, the board shall fix a time within 60
20 days of the order, and place of hearing, and shall send by certified
21 mail a copy of the order to the franchisor, the protesting franchisee,
22 and all individuals and groups that have requested notification by
23 the board of protests and decisions of the board. Except in a case
24 involving a franchisee who deals exclusively in motorcycles, the
25 board or its executive director may, upon a showing of good cause,
26 accelerate or postpone the date initially established for a hearing,
27 but the hearing shall not be rescheduled more than 90 days after
28 the board's initial order. For the purpose of accelerating or
29 postponing a hearing date, "good cause" includes, but is not limited
30 to, the effects upon, and any irreparable harm to, the parties or
31 interested persons or groups if the request for a change in hearing
32 date is not granted. The board or an administrative law judge
33 designated by the board shall hear and consider the oral and
34 documented evidence introduced by the parties and other interested
35 individuals and groups, and the board shall make its decision solely
36 on the record so made. Chapter 4.5 (commencing with Section
37 11400) of Part 1 of Division 3 of Title 2 of the Government Code
38 and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513,
39 11514, 11515, and 11517 of the Government Code apply to these
40 proceedings.

1 (b) In a hearing on a protest filed pursuant to Section 3060 or
2 3062 the franchisor shall have the burden of proof to establish that
3 there is good cause to modify, replace, terminate, or refuse to
4 continue a franchise. The franchisee shall have the burden of proof
5 to establish that there is good cause not to enter into a franchise
6 establishing an additional motor vehicle dealership or relocating
7 an existing motor vehicle dealership.

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

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

19 ~~SEC. 3.~~

20 *SEC. 4.* Section 3067 of the Vehicle Code is amended to read:

21 3067. (a) The decision of the board shall be in writing and
22 shall contain findings of fact and a determination of the issues
23 presented. The decision shall sustain, conditionally sustain,
24 overrule, or conditionally overrule the protest. Conditions imposed
25 by the board shall be for the purpose of assuring performance of
26 binding contractual agreements between franchisees and franchisors
27 or otherwise serving the purposes of this article. If the board fails
28 to act within 30 days after the hearing, within 30 days after the
29 board receives a proposed decision when the case is heard before
30 an administrative law judge alone, or within a period necessitated
31 by Section 11517 of the Government Code, or as may be mutually
32 agreed upon by the parties, then the proposed action shall be
33 deemed to be approved. Copies of the board's decision shall be
34 delivered to the parties personally or sent to them by certified mail,
35 as well as to all individuals and groups that have requested
36 notification by the board of protests and decisions by the board.
37 The board's decision shall be final upon its delivery or mailing
38 and a reconsideration or rehearing is not permitted.

39 (b) Notwithstanding subdivision (c) of Section 11517 of the
40 Government Code, if a protest is heard by an administrative law

1 judge alone, 10 days after receipt by the board of the administrative
2 law judge’s proposed decision, a copy of the proposed decision
3 shall be filed by the board as a public record and a copy shall be
4 served by the board on each party and his or her attorney.

5 ~~SEC. 4.~~

6 *SEC. 5.* Section 3068 of the Vehicle Code is amended to read:

7 3068. Either party may seek judicial review of final decisions
8 of the board. Time for filing for the review shall not be more than
9 45 days from the date on which the final order of the board is made
10 public and is delivered to the parties personally or is sent to them
11 by certified mail.

12 ~~SEC. 5.~~

13 *SEC. 6.* Section 3072 of the Vehicle Code is amended to read:

14 3072. (a) (1) Except as otherwise provided in subdivision (b),
15 if a franchisor seeks to enter into a franchise establishing an
16 additional recreational vehicle dealership, or seeks to relocate an
17 existing recreational vehicle dealership, that has a relevant market
18 area in which the same recreational vehicle line-make is
19 represented, the franchisor shall, in writing, first notify the board
20 and each franchisee in that recreational vehicle line-make in the
21 relevant market area of the franchisor’s intention to establish an
22 additional dealership or to relocate an existing dealership. Within
23 20 days of receiving the notice, satisfying the requirements of this
24 section, or within 20 days after the end of any appeal procedure
25 provided by the franchisor, any franchisee required to be given
26 the notice may file with the board a protest to the proposed
27 dealership establishment or relocation described in the franchisor’s
28 notice. If, within this time, a franchisee files with the board a
29 request for additional time to file a protest, the board or its
30 executive director, upon a showing of good cause, may grant an
31 additional 10 days to file the protest. When a protest is filed, the
32 board shall inform the franchisor that a timely protest has been
33 filed, that a hearing is required pursuant to Section 3080, and that
34 the franchisor shall not establish the proposed dealership or relocate
35 the existing dealership until the board has held a hearing as
36 provided in Section 3080, nor thereafter, if the board has
37 determined that there is good cause for not permitting the
38 establishment of the proposed recreational vehicle dealership or
39 relocation of the existing recreational vehicle dealership. In the

1 event of multiple protests, hearings may be consolidated to expedite
2 the disposition of the issue.

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

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

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

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

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

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

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

37 (c) For the purposes of this section, the reopening of a dealership
38 that has not been in operation for one year or more shall be deemed
39 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:~~

9 *SEC. 7.* Section 3072.5 of the Vehicle Code is amended to
 10 read:

11 3072.5. For the purposes of this article, a “recreational vehicle
 12 line-make” is a group or groups of recreational vehicles defined
 13 by the terms of a written agreement that complies with Section
 14 331.3.

15 ~~SEC. 7:~~

16 *SEC. 8.* Section 3073 of the Vehicle Code is amended to read:

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

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

38 ~~SEC. 8:~~

39 *SEC. 9.* Section 3074 of the Vehicle Code is amended to read:

1 3074. (a) A franchisor shall specify to its franchisees the
2 delivery and preparation obligations of the franchisees prior to
3 delivery of new recreational vehicles to retail buyers. A copy of
4 the delivery and preparation obligations, which shall constitute
5 the franchisee's only responsibility for product liability between
6 the franchisee and the franchisor but which shall not in any way
7 affect the franchisee's responsibility for product liability between
8 the purchaser and either the franchisee or the franchisor, and a
9 schedule of compensation to be paid franchisees for the work and
10 services they shall be required to perform in connection with the
11 delivery and preparation obligations shall be filed with the board
12 by franchisors, and shall constitute the compensation as set forth
13 on the schedule. The schedule of compensation shall be reasonable,
14 with the reasonableness thereof being subject to the approval of
15 the board, if a franchisee files a notice of protest with the board.
16 In determining the reasonableness of the schedules, the board shall
17 consider all relevant circumstances, including, but not limited to,
18 the time required to perform each function that the dealer is
19 obligated to perform and the appropriate labor rate.

20 (b) Upon delivery of the vehicle, the franchisee shall give a
21 copy of the delivery and preparation obligations to the purchaser
22 and a written certification that the franchisee has fulfilled these
23 obligations.

24 ~~SEC. 9.~~

25 *SEC. 10.* Section 3078 of the Vehicle Code is amended to read:

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

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

39 ~~SEC. 10.~~

40 *SEC. 11.* Section 3079 of the Vehicle Code is amended to read:

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

3 ~~SEC. 11.~~

4 *SEC. 12.* Section 3080 is added to the Vehicle Code, to read:

5 3080. (a) Upon receiving a protest pursuant to Section 3070,
6 3072, 3074, 3075, or 3076, the board shall fix a time and place of
7 hearing within 60 days of the order, and shall send by certified
8 mail a copy of the order to the franchisor, the protesting franchisee,
9 and all individuals and groups that have requested notification by
10 the board of protests and decisions of the board. The board or its
11 executive director may, upon a showing of good cause, accelerate
12 or postpone the date initially established for a hearing, but the
13 hearing shall not be rescheduled more than 90 days after the board's
14 initial order. For the purpose of accelerating or postponing a
15 hearing date, "good cause" includes, but is not limited to, the
16 effects upon, and any irreparable harm to, the parties or interested
17 persons or groups if the request for a change in hearing date is not
18 granted. The board or an administrative law judge designated by
19 the board shall hear and consider the oral and documented evidence
20 introduced by the parties and other interested individuals and
21 groups, and the board shall make its decision solely on the record
22 so made. Chapter 4.5 (commencing with Section 11400) of Part
23 1 of Division 3 of Title 2 of the Government Code and Sections
24 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515,
25 and 11517 of the Government Code apply to these proceedings.

26 (b) In a hearing on a protest filed pursuant to Section 3070 or
27 3072, the franchisor shall have the burden of proof to establish
28 that there is good cause to modify, replace, terminate, or refuse to
29 continue a franchise. The franchisee shall have the burden of proof
30 to establish that there is good cause not to enter into a franchise
31 establishing an additional recreational vehicle dealership or
32 relocating an existing recreational vehicle dealership.

33 (c) Except as otherwise provided in this chapter, in a hearing
34 on a protest alleging a violation of, or filed pursuant to, Section
35 3074, 3075, or 3076, the franchisee shall have the burden of proof,
36 but the franchisor has the burden of proof to establish that a
37 franchisee acted with intent to defraud the franchisor when that
38 issue is material to a protest filed pursuant to Section 3075 or 3076.

39 ~~SEC. 12.~~

40 *SEC. 13.* Section 3081 is added to the Vehicle Code, to read:

1 3081. (a) The decision of the board shall be in writing and
2 shall contain findings of fact and a determination of the issues
3 presented. The decision shall sustain, conditionally sustain,
4 overrule, or conditionally overrule the protest. Conditions imposed
5 by the board shall be for the purpose of assuring performance of
6 binding contractual agreements between franchisees and franchisors
7 or otherwise serving the purposes of this article. If the board fails
8 to act within 30 days after the hearing, within 30 days after the
9 board receives a proposed decision when the case is heard before
10 an administrative law judge alone, or within a period necessitated
11 by Section 11517 of the Government Code, or as may be mutually
12 agreed upon by the parties, then the proposed action shall be
13 deemed to be approved. Copies of the board's decision shall be
14 delivered to the parties personally or sent to them by certified mail,
15 as well as to all individuals and groups that have requested
16 notification by the board of protests and decisions by the board.
17 The board's decision shall be final upon its delivery or mailing
18 and a reconsideration or rehearing is not permitted.

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

25 ~~SEC. 13.~~

26 *SEC. 14.* Section 3082 is added to the Vehicle Code, to read:

27 3082. Either party may seek judicial review of final decisions
28 of the board. Time for filing for the review shall not be more than
29 45 days from the date on which the final order of the board is made
30 public and is delivered to the parties personally or is sent to them
31 by certified mail.

32 ~~SEC. 14.~~

33 *SEC. 15.* Section 11705 of the Vehicle Code is amended to
34 read:

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

- 1 (1) Filed an application for the license using a false or fictitious
2 name not registered with the proper authorities, or knowingly made
3 a false statement or knowingly concealed a material fact, in the
4 application for the license.
- 5 (2) Made, or knowingly or negligently permitted, an illegal use
6 of the special plates issued to the licensee.
- 7 (3) Used a false or fictitious name, knowingly made a false
8 statement, or knowingly concealed a material fact, in an application
9 for the registration of a vehicle, or otherwise committed a fraud
10 in the application.
- 11 (4) Failed to deliver to a transferee lawfully entitled thereto a
12 properly endorsed certificate of ownership.
- 13 (5) Knowingly purchased, sold, or otherwise acquired or
14 disposed of a stolen motor vehicle.
- 15 (6) Failed to provide and maintain a clear physical division
16 between the type of business licensed pursuant to this chapter and
17 any other type of business conducted at the established place of
18 business.
- 19 (7) Willfully violated Section 3064, 3065, 3074, or 3075 or any
20 rule or regulation adopted pursuant thereto.
- 21 (8) Violated any provision of Division 3 (commencing with
22 Section 4000) or any rule or regulation adopted pursuant thereto,
23 or subdivision (a) of Section 38200.
- 24 (9) Violated any provision of Division 4 (commencing with
25 Section 10500) or any rule or regulation adopted pursuant thereto.
- 26 (10) Violated any provision of Article 1 (commencing with
27 Section 11700) of Chapter 4 of Division 5 or any rule or regulation
28 adopted pursuant thereto.
- 29 (11) Violated any provision of Part 5 (commencing with Section
30 10701) of Division 2 of the Revenue and Taxation Code or any
31 rule or regulation adopted pursuant thereto.
- 32 (12) Violated any provision of Chapter 2b (commencing with
33 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code
34 or any rule or regulation adopted pursuant thereto.
- 35 (13) Submitted a check, draft, or money order to the department
36 for any obligation or fee due the state which was dishonored or
37 refused payment upon presentation.
- 38 (14) Has caused any person to suffer any loss or damage by
39 reason of any fraud or deceit practiced on that person or fraudulent

1 representations made to that person in the course of the licensed
2 activity.

3 For purposes of this paragraph, “fraud” includes any act or
4 omission which is included within the definition of either “actual
5 fraud” or “constructive fraud” as defined in Sections 1572 and
6 1573 of the Civil Code, and “deceit” has the same meaning as
7 defined in Section 1710 of the Civil Code. In addition, “fraud”
8 and “deceit” include, but are not limited to, a misrepresentation in
9 any manner, whether intentionally false or due to gross negligence,
10 of a material fact; a promise or representation not made honestly
11 and in good faith; an intentional failure to disclose a material fact;
12 and any act within Section 484 of the Penal Code.

13 For purposes of this paragraph, “person” also includes a
14 governmental entity.

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

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

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

22 (18) As a buy-here-pay-here dealer, violated any provision of
23 Chapter 11 (commencing with Section 7500) of ~~Divisions~~ *Division*
24 3 of the Business and Professions Code or any rule or regulation
25 adopted pursuant to those provisions.

26 (b) Any of the causes specified in this chapter as a cause for
27 refusal to issue a license to a transporter, manufacturer,
28 manufacturer branch, remanufacturer, remanufacturer branch,
29 distributor, distributor branch, or dealer applicant is cause to
30 suspend or revoke a license issued to a transporter, manufacturer,
31 manufacturer branch, remanufacturer, remanufacturer branch,
32 distributor, distributor branch, or dealer.

33 (c) Except as provided in Section 11707, every hearing provided
34 for in this section shall be conducted pursuant to Chapter 5
35 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code.

37 ~~SEC. 15.~~

38 *SEC. 16.* Section 11713.1 of the Vehicle Code is amended to
39 read:

1 11713.1. It is a violation of this code for the holder of a dealer's
2 license issued under this article to do any of the following:

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

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

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

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

36 (3) For purposes of paragraph (1), "advertisement" means an
37 advertisement in a newspaper, magazine, or direct mail publication
38 that is two or more columns in width or one column in width and
39 more than seven inches in length, or on a Web page of a dealer's
40 Internet Web site that displays the price of a vehicle offered for

1 sale on the Internet, as that term is defined in paragraph (6) of
2 subdivision (f) of Section 17538 of the Business and Professions
3 Code.

4 (d) Represent the dealer document processing charge, electronic
5 registration or transfer charge, or emission testing charge, as a
6 governmental fee.

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

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

25 (2) This subdivision does not apply to a transaction involving
26 the following:

27 (A) A mobilehome.

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

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

32 (D) A manufactured home.

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

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

37 (G) A vehicle purchased for export and exported outside the
38 territorial limits of the United States without being registered with
39 the department.

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

4 (i) The manufacturer or distributor of the vehicle files a
5 bankruptcy petition.

6 (ii) The franchise agreement of the dealer is terminated,
7 canceled, or rejected by the manufacturer or distributor as part of
8 the bankruptcy proceedings and the termination, cancellation, or
9 rejection is not a result of the revocation by the department of the
10 dealer's license or the dealer's conviction of a crime.

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

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

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

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

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

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

39 (2) For purposes of this subdivision, in a newspaper
40 advertisement for a vehicle that is two model-years old or newer,

1 the actual phrase that states the number of vehicles in stock at the
2 advertised price shall be printed in a type size that is at least equal
3 to one-quarter of the type size, and in the same style and color of
4 type, used for the advertised price. However, in no case shall the
5 phrase be printed in less than 8-point type size, and the phrase
6 shall be disclosed immediately above, below, or beside the
7 advertised price without intervening words, pictures, marks, or
8 symbols.

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

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

19 (k) Require a person to pay a higher price for a vehicle and
20 related goods or services for receiving advertised credit terms than
21 the cash price the same person would have to pay to purchase the
22 same vehicle and related goods or services. For the purpose of this
23 subdivision, “cash price” has the same meaning as defined in
24 subdivision (e) of Section 2981 of the Civil Code.

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

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

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

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

33 (B) A dealer’s cost.

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

35 (A) A communication occurring during face-to-face negotiations
36 for the purchase of a specific vehicle if the prospective purchaser
37 initiates a discussion of the vehicle’s invoice price or the dealer’s
38 cost for that vehicle.

39 (B) A communication between a dealer and a prospective
40 commercial purchaser that is not disseminated to the general public.

1 For purposes of this subparagraph, a “commercial purchaser”
2 means a dealer, lessor, lessor-retailer, manufacturer,
3 remanufacturer, distributor, financial institution, governmental
4 entity, or person who purchases 10 or more vehicles during a year.

5 (o) Violate a law prohibiting bait and switch advertising,
6 including, but not limited to, the guides against bait advertising
7 set forth in Part 238 (commencing with Section 238) of Title 16
8 of the Code of Federal Regulations, as those regulations read on
9 January 1, 1988.

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

14 (q) Affix on a new vehicle a supplemental price sticker
15 containing a price that represents the dealer’s asking price that
16 exceeds the manufacturer’s suggested retail price unless all of the
17 following occur:

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

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

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

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

39 (s) (1) Advertise an incentive offered by the manufacturer or
40 distributor if the dealer is required to contribute to the cost of the

1 incentive as a condition of participating in the incentive program,
2 unless the dealer discloses in a clear and conspicuous manner that
3 dealer participation may affect consumer cost.

4 (2) For purposes of this subdivision, “incentive” means anything
5 of value offered to induce people to purchase a vehicle, including,
6 but not limited to, discounts, savings claims, rebates, below-market
7 finance rates, and free merchandise or services.

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

11 (u) Fail to disclose in writing to the franchisor of a new motor
12 vehicle dealer the name of the purchaser, date of sale, and the
13 vehicle identification number of each new motor vehicle sold of
14 the line-make of that franchisor, or intentionally submit to that
15 franchisor a false name for the purchaser or false date for the date
16 of sale.

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

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

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

29 (y) Sell or lease a new motor vehicle after October 1, 2012,
30 unless the dealer has a contractual agreement with the department
31 to be a private industry partner pursuant to Section 1685. This
32 subdivision does not apply to the sale or lease of a motorcycle or
33 off-highway motor vehicle subject to identification under Section
34 38010 or a recreational vehicle as defined in Section 18010 of the
35 Health and Safety Code.

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

1 ~~SEC. 16.~~

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

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

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

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

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

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

1 (2) (A) For the transferring franchisee to fail, prior to the sale,
2 transfer, or assignment of a franchisee or the sale, assignment, or
3 transfer of all, or substantially all, of the assets of the franchised
4 business or a controlling interest in the franchised business to
5 another person, to notify the manufacturer or distributor of the
6 franchisee's decision to sell, transfer, or assign the franchise. The
7 notice shall be in writing and shall include all of the following:

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

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

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

1 (e) To prevent, or attempt to prevent, a dealer from receiving
2 fair and reasonable compensation for the value of the franchised
3 business. There shall not be a transfer or assignment of the dealer’s
4 franchise without the consent of the manufacturer or distributor,
5 which consent shall not be unreasonably withheld or conditioned
6 upon the release, assignment, novation, waiver, estoppel, or
7 modification of a claim or defense by the dealer.

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

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

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

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

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

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

1 with a written explanation of the factual and legal basis for the
2 award.

3 (2) An agreement, provision, release, assignment, novation,
4 waiver, or estoppel prohibited by this subdivision shall be
5 unenforceable and void.

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

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

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

13 (C) Affect the enforceability of any provision in a contract if
14 the provision is not prohibited under this subdivision or any other
15 law.

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

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

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

26 (i) Provides that a dealer establish or maintain exclusive
27 facilities, personnel, or display space or provides that a dealer
28 make a material alteration, expansion, or addition to a dealership
29 facility.

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

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

36 (H) (i) Prohibit a voluntary waiver agreement, supported by
37 valuable consideration, other than the consideration of renewing
38 a franchise, to waive the right of a dealer to file a protest under
39 Section 3062 for the proposed establishment or relocation of a

1 specific proposed dealership, if the waiver agreement provides all
2 of the following:

3 (I) The approximate address at which the proposed dealership
4 will be located.

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

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

9 (IV) Whether the franchisor or affiliate will hold an ownership
10 interest in the proposed dealership or real property of the proposed
11 dealership, and the approximate percentage of any franchisor or
12 affiliate ownership interest in the proposed dealership.

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

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

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

19 (ii) Notwithstanding the provisions of a waiver agreement
20 entered into pursuant to the provisions of this subparagraph, a
21 dealer may file a protest under Section 3062 if any of the
22 information provided pursuant to clause (i) has become materially
23 inaccurate since the waiver agreement was executed. Any
24 determination of the enforceability of a waiver agreement shall be
25 determined by the board and the franchisor shall have the burden
26 of proof.

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

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

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

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

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

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

19 (l) To modify, replace, enter into, relocate, terminate, or refuse
20 to renew a franchise in violation of Article 4 (commencing with
21 Section 3060) or Article 5 (commencing with Section 3070) of
22 Chapter 6 of Division 2.

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

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

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

31 (2) A manufacturer, branch, or ~~distributor~~ *distributor*, or an
32 entity that ~~controls~~ *controls*, or is controlled by, a manufacturer,
33 branch, or distributor, shall not, however, be deemed to be
34 competing in the following limited circumstances:

35 (A) Owning or operating a dealership for a temporary period,
36 not to exceed one year at the location of a former dealership of the
37 same line-make that has been out of operation for less than six
38 months. However, after a showing of good cause by a
39 manufacturer, branch, or distributor that it needs additional time

1 to operate a dealership in preparation for sale to a successor
2 independent franchisee, the board may extend the time period.

3 (B) Owning an interest in a dealer as part of a bona fide dealer
4 development program that satisfies all of the following
5 requirements:

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

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

13 (iii) The program requires the dealer development candidate to
14 manage the day-to-day operations and business affairs of the dealer
15 and to acquire, within a reasonable time and on reasonable terms
16 and conditions, beneficial ownership and control of a majority
17 interest in the dealer and disassociation of any direct or indirect
18 ownership or control by the manufacturer, branch, or distributor.

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

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

30 (B) A manufacturer, branch, and distributor that owns an interest
31 in a dealer in the manner described in subparagraph (B) of
32 paragraph (2) shall give written notice to the board, annually, of
33 the name and location of each dealer in which it has an ownership
34 interest, the name of the bona fide dealer development owner or
35 owners, and the ownership interests of each owner expressed as a
36 percentage.

37 (p) To unfairly discriminate among its franchisees with respect
38 to warranty reimbursement or authority granted to its franchisees
39 to make warranty adjustments with retail customers.

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

3 (r) To fail to affix an identification number to a park trailer, as
4 described in Section 18009.3 of the Health and Safety Code, that
5 is manufactured on or after January 1, 1987, and that does not
6 clearly identify the unit as a park trailer to the department. The
7 configuration of the identification number shall be approved by
8 the department.

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

16 (t) To exercise a right of first refusal or other right requiring a
17 franchisee or an owner of the franchise to sell, transfer, or assign
18 to the franchisor, or to a nominee of the franchisor, all or a material
19 part of the franchised business or of the assets of the franchised
20 business unless all of the following requirements are met:

21 (1) The franchise authorizes the franchisor to exercise a right
22 of first refusal to acquire the franchised business or assets of the
23 franchised business in the event of a proposed sale, transfer, or
24 assignment.

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

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

32 (4) The proposed transferee is neither a family member of an
33 owner of the franchised business, nor a managerial employee of
34 the franchisee owning 15 percent or more of the franchised
35 business, nor a corporation, partnership, or other legal entity owned
36 by the existing owners of the franchised business. For purposes of
37 this paragraph, a “family member” means the spouse of an owner
38 of the franchised business, the child, grandchild, brother, sister,
39 or parent of an owner, or a spouse of one of those family members.

1 This paragraph does not limit the rights of the franchisor to
2 disapprove a proposed transferee as provided in subdivision (d).

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

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

26 (u) (1) To unfairly discriminate in favor of a dealership owned
27 or controlled, in whole or in part, by a manufacturer or distributor
28 or an entity that controls or is controlled by the manufacturer or
29 distributor. Unfair discrimination includes, but is not limited to,
30 the following:

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

34 (i) A vehicle that is not made available to each franchisee
35 pursuant to a reasonable allocation formula that is applied
36 uniformly, and a part or accessory that is not made available to all
37 franchisees on an equal basis when there is no reasonable allocation
38 formula that is applied uniformly.

39 (ii) A vehicle, part, or accessory that is not made available to
40 each franchisee on comparable delivery terms, including the time

1 of delivery after the placement of an order. Differences in delivery
2 terms due to geographic distances or other factors beyond the
3 control of the manufacturer, branch, or distributor shall not
4 constitute unfair competition.

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

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

21 (B) Referring a prospective purchaser or lessee to a dealer in
22 which a manufacturer, branch, or distributor has an ownership
23 interest, unless the prospective purchaser or lessee resides in the
24 area of responsibility assigned to that dealer or the prospective
25 purchaser or lessee requests to be referred to that dealer.

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

32 (v) (1) To access, modify, or extract information from a
33 confidential dealer computer record, as defined in Section
34 11713.25, without obtaining the prior written consent of the dealer
35 and without maintaining administrative, technical, and physical
36 safeguards to protect the security, confidentiality, and integrity of
37 the information.

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 (w) (1) To use electronic, contractual, or other means to prevent
2 or interfere with any of the following:
 - 3 (A) The lawful efforts of a dealer to comply with federal and
4 state data security and privacy laws.
 - 5 (B) The ability of a dealer to do either of the following:
 - 6 (i) Ensure that specific data accessed from the dealer’s computer
7 system is within the scope of consent specified in subdivision (v).
 - 8 (ii) Monitor specific data accessed from or written to the dealer’s
9 computer system.
- 10 (2) Paragraph (1) does not limit a duty that a dealer may have
11 to safeguard the security and privacy of records maintained by the
12 dealer.
- 13 (x) (1) To unfairly discriminate against a franchisee selling a
14 service contract, debt cancellation agreement, maintenance
15 agreement, or similar product not approved, endorsed, sponsored,
16 or offered by the manufacturer, manufacturer branch, distributor,
17 or distributor branch or affiliate. For purposes of this subdivision,
18 unfair discrimination includes, but is not limited to, any of the
19 following:
 - 20 (A) Express or implied statements that the dealer is under an
21 obligation to exclusively sell or offer to sell service contracts, debt
22 cancellation agreements, or similar products approved, endorsed,
23 sponsored, or offered by the manufacturer, manufacturer branch,
24 distributor, or distributor branch or affiliate.
 - 25 (B) Express or implied statements that selling or offering to sell
26 service contracts, debt cancellation agreements, maintenance
27 agreements, or similar products not approved, endorsed, sponsored,
28 or offered by the manufacturer, manufacturer branch, distributor,
29 or distributor branch or affiliate, or the failure to sell or offer to
30 sell service contracts, debt cancellation agreements, maintenance
31 agreements, or similar products approved, endorsed, sponsored,
32 or offered by the manufacturer, manufacturer branch, distributor,
33 or distributor branch or affiliate will have any negative
34 consequences for the dealer.
 - 35 (C) Measuring a dealer’s performance under a franchise
36 agreement based upon the sale of service contracts, debt
37 cancellation agreements, or similar products approved, endorsed,
38 sponsored, or offered by the manufacturer, manufacturer branch,
39 distributor, or distributor branch or affiliate.

1 (D) Requiring a dealer to actively promote the sale of service
2 contracts, debt cancellation agreements, or similar products
3 approved, endorsed, sponsored, or offered by the manufacturer,
4 manufacturer branch, distributor, or distributor branch or affiliate.

5 (E) Conditioning access to vehicles or parts, or vehicle sales or
6 service incentives upon the sale of service contracts, debt
7 cancellation agreements, or similar products approved, endorsed,
8 sponsored, or offered by the manufacturer, manufacturer branch,
9 distributor, or distributor branch or affiliate.

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

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

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

30

31 “Service Contract Disclosure

32 The service contract you are purchasing is not provided or backed
33 by the manufacturer of the vehicle you are purchasing. The
34 manufacturer of the vehicle is not responsible for claims or repairs
35 under this service contract.

36

37 _____
38 Signature of Purchaser”

39

40 (y) To take or threaten to take any adverse action against a dealer
pursuant to an export or sale-for-resale prohibition because the

1 dealer sold or leased a vehicle to a customer who either exported
2 the vehicle to a foreign country or resold the vehicle in violation
3 of the prohibition, unless the export or sale-for-resale prohibition
4 policy was provided to the dealer in writing prior to the sale or
5 lease, and the dealer knew or reasonably should have known of
6 the customer's intent to export or resell the vehicle in violation of
7 the prohibition at the time of sale or lease. If the dealer causes the
8 vehicle to be registered in this or any other state, and collects or
9 causes to be collected any applicable sales or use tax due to this
10 state, a rebuttable presumption is established that the dealer did
11 not have reason to know of the customer's intent to export or resell
12 the vehicle.

13 (z) As used in this section, "area of responsibility" is a
14 geographic area specified in a franchise that is used by the
15 franchisor for the purpose of evaluating the franchisee's
16 performance of its sales and service obligations.

17 ~~SEC. 17.~~

18 *SEC. 18.* Section 11713.23 of the Vehicle Code is amended to
19 read:

20 11713.23. (a) A recreational vehicle manufacturer,
21 manufacturer branch, distributor, or distributor branch licensed
22 under this code shall not sell a new recreational vehicle in this
23 state to or through a recreational vehicle dealer without having
24 first entered into a written recreational vehicle franchise with that
25 recreational vehicle dealer, that complies with the requirements
26 of Section 331.3 and that has been signed by both parties.

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

33 (c) (1) A recreational vehicle manufacturer, manufacturer
34 branch, distributor, or distributor branch shall not ship a new
35 recreational vehicle to a recreational dealer on or after January 1,
36 2009, without a recreational vehicle franchise that has been signed
37 by both parties.

38 (2) A recreational vehicle dealer shall not receive a new
39 recreational vehicle from a recreational vehicle manufacturer,
40 manufacturer branch, distributor, or distributor branch on or after

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

3 (d) Any new recreational vehicle inventory that has been
4 purchased by a recreational vehicle dealer, or shipped by a
5 manufacturer, manufacturer branch, distributor, or distributor
6 branch, before January 1, 2009, may be sold at any time without
7 a recreational vehicle franchise.

8 (e) Following the termination, cancellation, or nonrenewal of
9 a recreational vehicle franchise, any new recreational vehicle
10 inventory that was purchased by the recreational vehicle dealer,
11 or shipped by a manufacturer, manufacturer branch, distributor,
12 or distributor branch, during the period that the written recreational
13 vehicle franchise was in effect, may be sold by that recreational
14 vehicle dealer at any time.

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

20 ~~SEC. 18:~~

21 *SEC. 19.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

O