

AMENDED IN SENATE SEPTEMBER 4, 2015

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, 3070, 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) *This bill would incorporate additional changes to Sections 3050.7 and 11713.3 of the Vehicle Code made by this bill and AB 1178 to take effect if both bills are chaptered and this bill is chaptered last.*

~~(6)~~

(7) 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
13 read:

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

1 days after that board member has received a copy of the proposed
2 stipulated decision and order.

3 (b) If the board adopts a stipulated decision and order to resolve
4 a protest filed pursuant to Section 3060 or 3070 in which the parties
5 stipulate that good cause exists for the termination of the franchise
6 of the protestant, and the order provides for a conditional or
7 unconditional termination of the franchise of the protestant,
8 paragraph (2) of subdivision (a) of Section 3060 and paragraph
9 (2) of subdivision (a) of Section 3070, which require a hearing to
10 determine whether good cause exists for termination of the
11 franchise, is inapplicable to the proceedings. If the stipulated
12 decision and order provides for an unconditional termination of
13 the franchise, the franchise may be terminated without further
14 proceedings by the board. If the stipulated decision and order
15 provides for the termination of the franchise, conditioned upon the
16 failure of a party to comply with specified conditions, the franchise
17 may be terminated upon a determination, according to the terms
18 of the stipulated decision and order, that the conditions have not
19 been met. If the stipulated decision and order provides for the
20 termination of the franchise conditioned upon the occurrence of
21 specified conditions, the franchise may be terminated upon a
22 determination, according to the terms of the stipulated decision
23 and order, that the stipulated conditions have occurred.

24 *SEC. 2.1. Section 3050.7 of the Vehicle Code is amended to*
25 *read:*

26 3050.7. (a) The board may adopt stipulated decisions and
27 orders, without a hearing pursuant to Section 3066, 3080, or 3085.2
28 to resolve one or more issues raised by a protest or petition filed
29 with the board. Whenever the parties to a protest or petition submit
30 a proposed stipulated decision and order of the board, a copy of
31 the proposed stipulated decision and order shall be transmitted by
32 the executive director of the board to each member of the board.
33 The proposed stipulated decision and order shall be deemed to be
34 adopted by the board unless a member of the board notifies the
35 executive director of the board of an objection thereto within 10
36 days after that board member has received a copy of the proposed
37 stipulated decision and order.

38 (b) If the board adopts a stipulated decision and order to resolve
39 a protest filed pursuant to Section 3060 or 3070 in which the parties
40 stipulate that good cause exists for the termination of the franchise

1 of the protestant, and the order provides for a conditional or
2 unconditional termination of the franchise of the protestant,
3 paragraph (2) of subdivision (a) of Section 3060 and paragraph
4 (2) of subdivision (a) of Section 3070, which require a hearing to
5 determine whether good cause exists for termination of the
6 franchise, is inapplicable to the proceedings. If the stipulated
7 decision and order provides for an unconditional termination of
8 the franchise, the franchise may be terminated without further
9 proceedings by the board. If the stipulated decision and order
10 provides for the termination of the franchise, conditioned upon the
11 failure of a party to comply with specified conditions, the franchise
12 may be terminated upon a determination, according to the terms
13 of the stipulated decision and order, that the conditions have not
14 been met. If the stipulated decision and order provides for the
15 termination of the franchise conditioned upon the occurrence of
16 specified conditions, the franchise may be terminated upon a
17 determination, according to the terms of the stipulated decision
18 and order, that the stipulated conditions have occurred.

19 *(c) This section shall remain in effect only until January 1, 2019,*
20 *and as of that date is repealed, unless a later enacted statute, that*
21 *is enacted before January 1, 2019, deletes or extends that date.*

22 *SEC. 2.5. Section 3050.7 is added to the Vehicle Code, to read:*

23 *3050.7. (a) The board may adopt stipulated decisions and*
24 *orders, without a hearing pursuant to Section 3066 or 3080, to*
25 *resolve one or more issues raised by a protest or petition filed with*
26 *the board. Whenever the parties to a protest or petition submit a*
27 *proposed stipulated decision and order of the board, a copy of the*
28 *proposed stipulated decision and order shall be transmitted by the*
29 *executive director of the board to each member of the board. The*
30 *proposed stipulated decision and order shall be deemed to be*
31 *adopted by the board unless a member of the board notifies the*
32 *executive director of the board of an objection thereto within 10*
33 *days after that board member has received a copy of the proposed*
34 *stipulated decision and order.*

35 *(b) If the board adopts a stipulated decision and order to resolve*
36 *a protest filed pursuant to Section 3060 or 3070 in which the*
37 *parties stipulate that good cause exists for the termination of the*
38 *franchise of the protestant, and the order provides for a conditional*
39 *or unconditional termination of the franchise of the protestant,*
40 *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
 8 the failure of a party to comply with specified conditions, the
 9 franchise may be terminated upon a determination, according to
 10 the terms of the stipulated decision and order, that the conditions
 11 have not been met. If the stipulated decision and order provides
 12 for the termination of the franchise conditioned upon the
 13 occurrence of specified conditions, the franchise may be terminated
 14 upon a determination, according to the terms of the stipulated
 15 decision and order, that the stipulated conditions have occurred.

16 (c) This section shall become operative on January 1, 2019.

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, or 3065.1, the franchisee shall have the burden of
11 proof, but the franchisor has the burden of proof to establish that
12 a franchisee acted with intent to defraud the franchisor when that
13 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. 4. Section 3067 of the Vehicle Code is amended to read:

20 3067. (a) The decision of the board shall be in writing and
21 shall contain findings of fact and a determination of the issues
22 presented. The decision shall sustain, conditionally sustain,
23 overrule, or conditionally overrule the protest. Conditions imposed
24 by the board shall be for the purpose of assuring performance of
25 binding contractual agreements between franchisees and franchisors
26 or otherwise serving the purposes of this article. If the board fails
27 to act within 30 days after the hearing, within 30 days after the
28 board receives a proposed decision when the case is heard before
29 an administrative law judge alone, or within a period necessitated
30 by Section 11517 of the Government Code, or as may be mutually
31 agreed upon by the parties, then the proposed action shall be
32 deemed to be approved. Copies of the board's decision shall be
33 delivered to the parties personally or sent to them by certified mail,
34 as well as to all individuals and groups that have requested
35 notification by the board of protests and decisions by the board.
36 The board's decision shall be final upon its delivery or mailing
37 and a reconsideration or rehearing is not permitted.

38 (b) Notwithstanding subdivision (c) of Section 11517 of the
39 Government Code, if a protest is heard by an administrative law
40 judge alone, 10 days after receipt by the board of the administrative

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

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

5 3068. Either party may seek judicial review of final decisions
 6 of the board. Time for filing for the review shall not be more than
 7 45 days from the date on which the final order of the board is made
 8 public and is delivered to the parties personally or is sent to them
 9 by certified mail.

10 SEC. 6. Section 3070 of the Vehicle Code is amended to read:

11 3070. (a) Notwithstanding Section 20999.1 of the Business
 12 and Professions Code or the terms of any franchise, a franchisor
 13 of a dealer of new recreational vehicles, as defined in subdivision
 14 (a) of Section 18010 of the Health and Safety Code, except a dealer
 15 who deals exclusively in truck campers, may not terminate or
 16 refuse to continue a franchise unless all of the following conditions
 17 are met:

18 (1) The franchisee and the board have received written notice
 19 from the franchisor as follows:

20 (A) Sixty days before the effective date thereof setting forth the
 21 specific grounds for termination or refusal to continue.

22 (B) Fifteen days before the effective date thereof setting forth
 23 the specific grounds with respect to any of the following:

24 (i) Transfer of any ownership or interest in the franchise without
 25 the consent of the franchisor, which consent may not be
 26 unreasonably withheld.

27 (ii) Misrepresentation by the franchisee in applying for the
 28 franchise.

29 (iii) Insolvency of the franchisee, or filing of any petition by or
 30 against the franchisee under any bankruptcy or receivership law.

31 (iv) Any unfair business practice after written warning thereof.

32 (v) Failure of the dealer to conduct its customary sales and
 33 service operations during its customary hours of business for seven
 34 consecutive business days, giving rise to a good faith belief on the
 35 part of the franchisor that the recreational vehicle dealer is in fact
 36 going out of business, except for circumstances beyond the direct
 37 control of the recreational vehicle dealer or by order of the
 38 department.

39 (C) The written notice shall contain, on the first page thereof
 40 in at least 12-point bold type and circumscribed by a line to

1 segregate it from the rest of the text, one of the following
2 statements, whichever is applicable:

3 (i) To be inserted when a 60-day notice of termination is given:

4 “NOTICE TO DEALER: You have the right to file a protest
5 with the NEW MOTOR VEHICLE BOARD in Sacramento and
6 have a hearing in which you may protest the termination of your
7 franchise under provisions of the California Vehicle Code. You
8 must file your protest with the board within 30 calendar days after
9 receiving this notice or within 30 days after the end of any appeal
10 procedure provided by the franchisor or your protest right will be
11 waived.”

12 (ii) To be inserted when a 15-day notice of termination is given:

13 “NOTICE TO DEALER: You have the right to file a protest
14 with the NEW MOTOR VEHICLE BOARD in Sacramento and
15 have a hearing in which you may protest the termination of your
16 franchise under provisions of the California Vehicle Code. You
17 must file your protest with the board within 10 calendar days after
18 receiving this notice or within 10 days after the end of any appeal
19 procedure provided by the franchisor or your protest right will be
20 waived.”

21 (2) Except as provided in Section 3050.7, the board finds that
22 there is good cause for termination or refusal to continue, following
23 a hearing called pursuant to Section ~~3066~~. 3080. The franchisee
24 may file a protest with the board within 30 days after receiving a
25 60-day notice, satisfying the requirements of this section, or within
26 30 days after the end of any appeal procedure provided by the
27 franchisor, or within 10 days after receiving a 15-day notice,
28 satisfying the requirements of this section, or within 10 days after
29 the end of any appeal procedure provided by the franchisor. When
30 a protest is filed, the board shall advise the franchisor that a timely
31 protest has been filed, that a hearing is required pursuant to Section
32 ~~3066~~, 3080, and that the franchisor may not terminate or refuse to
33 continue until the board makes its findings.

34 (3) The franchisor has received the written consent of the
35 franchisee, or the appropriate period for filing a protest has elapsed.

36 (b) (1) Notwithstanding Section 20999.1 of the Business and
37 Professions Code or the terms of any franchise, a franchisor of a
38 dealer of recreational vehicles may not modify or replace a
39 franchise with a succeeding franchise if the modification or
40 replacement would substantially affect the franchisee’s sales or

1 service obligations or investment, unless the franchisor has first
 2 given the board and each affected franchisee written notice thereof
 3 at least 60 days in advance of the modification or replacement.
 4 Within 30 days of receipt of a notice satisfying the requirements
 5 of this section, or within 30 days after the end of any appeal
 6 procedure provided by the franchisor, a franchisee may file a
 7 protest with the board and the modification or replacement does
 8 not become effective until there is a finding by the board that there
 9 is good cause for the modification or replacement. If, however, a
 10 replacement franchise is the successor franchise to an expiring or
 11 expired term franchise, the prior franchise shall continue in effect
 12 until resolution of the protest by the board. In the event of multiple
 13 protests, hearings shall be consolidated to expedite the disposition
 14 of the issue.

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

18 “NOTICE TO DEALER: Your franchise agreement is being
 19 modified or replaced. If the modification or replacement will
 20 substantially affect your sales or service obligations or investment,
 21 you have the right to file a protest with the NEW MOTOR
 22 VEHICLE BOARD in Sacramento and have a hearing in which
 23 you may protest the proposed modification or replacement of your
 24 franchise under provisions of the California Vehicle Code. You
 25 must file your protest with the board within 30 calendar days of
 26 your receipt of this notice or within 30 days after the end of any
 27 appeal procedure provided by the ~~franchiser~~ franchisor or your
 28 protest rights will be waived.”

29 ~~SEC. 6.~~

30 *SEC. 7.* Section 3072 of the Vehicle Code is amended to read:

31 3072. (a) (1) Except as otherwise provided in subdivision (b),
 32 if a franchisor seeks to enter into a franchise establishing an
 33 additional recreational vehicle dealership, or seeks to relocate an
 34 existing recreational vehicle dealership, that has a relevant market
 35 area in which the same recreational vehicle line-make is
 36 represented, the franchisor shall, in writing, first notify the board
 37 and each franchisee in that recreational vehicle line-make in the
 38 relevant market area of the franchisor’s intention to establish an
 39 additional dealership or to relocate an existing dealership. Within
 40 20 days of receiving the notice, satisfying the requirements of this

1 section, or within 20 days after the end of any appeal procedure
2 provided by the franchisor, any franchisee required to be given
3 the notice may file with the board a protest to the proposed
4 dealership establishment or relocation described in the franchisor's
5 notice. If, within this time, a franchisee files with the board a
6 request for additional time to file a protest, the board or its
7 executive director, upon a showing of good cause, may grant an
8 additional 10 days to file the protest. When a protest is filed, the
9 board shall inform the franchisor that a timely protest has been
10 filed, that a hearing is required pursuant to Section 3080, and that
11 the franchisor shall not establish the proposed dealership or relocate
12 the existing dealership until the board has held a hearing as
13 provided in Section 3080, nor thereafter, if the board has
14 determined that there is good cause for not permitting the
15 establishment of the proposed recreational vehicle dealership or
16 relocation of the existing recreational vehicle dealership. In the
17 event of multiple protests, hearings may be consolidated to expedite
18 the disposition of the issue.

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

22 "NOTICE TO DEALER: You have the right to file a protest
23 with the **NEW MOTOR VEHICLE BOARD** in Sacramento and
24 have a hearing on your protest under the terms of the California
25 Vehicle Code if you oppose this action. You must file your protest
26 with the board within 20 days of your receipt of this notice, or
27 within 20 days after the end of any appeal procedure that is
28 provided by us to you. If, within this time, you file with the board
29 a request for additional time to file a protest, the board or its
30 executive director, upon a showing of good cause, may grant you
31 an additional 10 days to file the protest."

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

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

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

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

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

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

17 (d) For the purposes of this section and Section 3073, a
 18 “recreational vehicle dealership” or “dealership” is any authorized
 19 facility at which a franchisee offers for sale or lease, displays for
 20 sale or lease, or sells or leases new recreational vehicles, as defined
 21 in subdivision (a) of Section 18010 of the Health and Safety Code.
 22 A “recreational vehicle dealership” or “dealership” does not include
 23 a dealer who deals exclusively in truck campers.

24 ~~SEC. 7.~~

25 SEC. 8. Section 3072.5 of the Vehicle Code is amended to
 26 read:

27 3072.5. For the purposes of this article, a “recreational vehicle
 28 line-make” is a group or groups of recreational vehicles defined
 29 by the terms of a written agreement that complies with Section
 30 331.3.

31 ~~SEC. 8.~~

32 SEC. 9. Section 3073 of the Vehicle Code is amended to read:

33 3073. In determining whether good cause has been established
 34 for not entering into a recreational vehicle franchise or relocating
 35 an existing dealership of the same recreational vehicle line-make,
 36 the board shall take into consideration the existing circumstances,
 37 including, but not limited to, all of the following:

- 38 (a) The permanency of the investment.
- 39 (b) The effect on the retail recreational vehicle business and the
 40 consuming public in the relevant market area.

1 (c) Whether it is injurious to the public welfare for an additional
2 recreational vehicle franchise to be established or an existing
3 dealership be relocated.

4 (d) Whether the franchisees of the same recreational vehicle
5 line-make in the relevant market area are providing adequate
6 competition and convenient consumer care for the motor vehicles
7 of the recreational vehicle line-make in the market area. In making
8 this determination, the board shall consider the adequacy of
9 recreational vehicle sales and, if required by the franchise, service
10 facilities, equipment, supply of vehicle parts, and qualified service
11 personnel.

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

14 ~~SEC. 9.~~

15 *SEC. 10.* Section 3074 of the Vehicle Code is amended to read:

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

35 (b) Upon delivery of the vehicle, the franchisee shall give a
36 copy of the delivery and preparation obligations to the purchaser
37 and a written certification that the franchisee has fulfilled these
38 obligations.

39 ~~SEC. 10.~~

40 *SEC. 11.* Section 3078 of the Vehicle Code is amended to read:

1 3078. (a) If the board receives a complaint from a member of
2 the public seeking a refund involving the sale or lease of, or a
3 replacement of, a recreational vehicle, as defined in subdivision
4 (a) of Section 18010 of the Health and Safety Code, from a
5 recreational vehicle dealership, as defined in subdivision (d) of
6 Section 3072, the board shall recommend that the complainant
7 consult with the Department of Consumer Affairs.

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

14 ~~SEC. 11.~~

15 *SEC. 12.* Section 3079 of the Vehicle Code is amended to read:

16 3079. This article applies only to a recreational vehicle
17 franchise entered into or renewed on or after January 1, 2004.

18 ~~SEC. 12.~~

19 *SEC. 13.* Section 3080 is added to the Vehicle Code, to read:

20 3080. (a) Upon receiving a protest pursuant to Section 3070,
21 3072, 3074, 3075, or 3076, the board shall fix a time and place of
22 hearing within 60 days of the order, and shall send by certified
23 mail a copy of the order to the franchisor, the protesting franchisee,
24 and all individuals and groups that have requested notification by
25 the board of protests and decisions of the board. The board or its
26 executive director may, upon a showing of good cause, accelerate
27 or postpone the date initially established for a hearing, but the
28 hearing shall not be rescheduled more than 90 days after the board's
29 initial order. For the purpose of accelerating or postponing a
30 hearing date, "good cause" includes, but is not limited to, the
31 effects upon, and any irreparable harm to, the parties or interested
32 persons or groups if the request for a change in hearing date is not
33 granted. The board or an administrative law judge designated by
34 the board shall hear and consider the oral and documented evidence
35 introduced by the parties and other interested individuals and
36 groups, and the board shall make its decision solely on the record
37 so made. Chapter 4.5 (commencing with Section 11400) of Part
38 1 of Division 3 of Title 2 of the Government Code and Sections
39 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515,
40 and 11517 of the Government Code apply to these proceedings.

1 (b) In a hearing on a protest filed pursuant to Section 3070 or
2 3072, the franchisor shall have the burden of proof to establish
3 that 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 recreational vehicle dealership or
7 relocating an existing recreational 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 3074, 3075, or 3076, the franchisee shall have the burden of proof,
11 but the franchisor has the burden of proof to establish that a
12 franchisee acted with intent to defraud the franchisor when that
13 issue is material to a protest filed pursuant to Section 3075 or 3076.

14 ~~SEC. 13.~~

15 *SEC. 14.* Section 3081 is added to the Vehicle Code, to read:

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

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

1 ~~SEC. 14.~~

2 *SEC. 15.* Section 3082 is added to the Vehicle Code, to read:

3 3082. Either party may seek judicial review of final decisions
4 of the board. Time for filing for the review shall not be more than
5 45 days from the date on which the final order of the board is made
6 public and is delivered to the parties personally or is sent to them
7 by certified mail.

8 ~~SEC. 15.~~

9 *SEC. 16.* Section 11705 of the Vehicle Code is amended to
10 read:

11 11705. (a) The department, after notice and hearing, may
12 suspend or revoke the license issued to a dealer, transporter,
13 manufacturer, manufacturer branch, remanufacturer,
14 remanufacturer branch, distributor, or distributor branch upon
15 determining that the person to whom the license was issued is not
16 lawfully entitled thereto, or has done any of the following:

17 (1) Filed an application for the license using a false or fictitious
18 name not registered with the proper authorities, or knowingly made
19 a false statement or knowingly concealed a material fact, in the
20 application for the license.

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

23 (3) Used a false or fictitious name, knowingly made a false
24 statement, or knowingly concealed a material fact, in an application
25 for the registration of a vehicle, or otherwise committed a fraud
26 in the application.

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

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

31 (6) Failed to provide and maintain a clear physical division
32 between the type of business licensed pursuant to this chapter and
33 any other type of business conducted at the established place of
34 business.

35 (7) Willfully violated Section 3064, 3065, 3074, or 3075 or any
36 rule or regulation adopted pursuant thereto.

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

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

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

6 (11) Violated any provision of Part 5 (commencing with Section
7 10701) of Division 2 of the Revenue and Taxation Code or any
8 rule or regulation adopted pursuant thereto.

9 (12) Violated any provision of Chapter 2b (commencing with
10 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code
11 or any rule or regulation adopted pursuant thereto.

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

15 (14) Has caused any person to suffer any loss or damage by
16 reason of any fraud or deceit practiced on that person or fraudulent
17 representations made to that person in the course of the licensed
18 activity.

19 For purposes of this paragraph, “fraud” includes any act or
20 omission which is included within the definition of either “actual
21 fraud” or “constructive fraud” as defined in Sections 1572 and
22 1573 of the Civil Code, and “deceit” has the same meaning as
23 defined in Section 1710 of the Civil Code. In addition, “fraud”
24 and “deceit” include, but are not limited to, a misrepresentation in
25 any manner, whether intentionally false or due to gross negligence,
26 of a material fact; a promise or representation not made honestly
27 and in good faith; an intentional failure to disclose a material fact;
28 and any act within Section 484 of the Penal Code.

29 For purposes of this paragraph, “person” also includes a
30 governmental entity.

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

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

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

38 (18) As a buy-here-pay-here dealer, violated any provision of
39 Chapter 11 (commencing with Section 7500) of Division 3 of the

1 Business and Professions Code or any rule or regulation adopted
2 pursuant to those provisions.

3 (b) Any of the causes specified in this chapter as a cause for
4 refusal to issue a license to a transporter, manufacturer,
5 manufacturer branch, remanufacturer, remanufacturer branch,
6 distributor, distributor branch, or dealer applicant is cause to
7 suspend or revoke a license issued to a transporter, manufacturer,
8 manufacturer branch, remanufacturer, remanufacturer branch,
9 distributor, distributor branch, or dealer.

10 (c) Except as provided in Section 11707, every hearing provided
11 for in this section shall be conducted pursuant to Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3 of Title
13 2 of the Government Code.

14 ~~SEC. 16.~~

15 *SEC. 17.* Section 11713.1 of the Vehicle Code is amended to
16 read:

17 11713.1. It is a violation of this code for the holder of a dealer's
18 license issued under this article to do any of the following:

19 (a) Advertise a specific vehicle for sale without identifying the
20 vehicle by its model, model-year, and either its license number or
21 that portion of the vehicle identification number that distinguishes
22 the vehicle from all other vehicles of the same make, model, and
23 model-year. Model-year is not required to be advertised for current
24 model-year vehicles. Year models are no longer current when
25 ensuing year models are available for purchase at retail in
26 California. An advertisement that offers for sale a class of new
27 vehicles in a dealer's inventory, consisting of five or more vehicles,
28 that are all of the same make, model, and model-year is not required
29 to include in the advertisement the vehicle identification numbers
30 or license numbers of those vehicles.

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

39 (c) (1) Exclude from an advertisement of a vehicle for sale that
40 there will be added to the advertised total price at the time of sale,

1 charges for sales tax, vehicle registration fees, the California tire
2 fee, the fee charged by the state for the issuance of a certificate of
3 compliance or noncompliance pursuant to a statute, finance
4 charges, a charge to electronically register or transfer the vehicle,
5 and a dealer document processing charge.

6 (2) The obligations imposed by paragraph (1) are satisfied by
7 adding to the advertisement a statement containing no abbreviations
8 and that is worded in substantially the following form: “Plus
9 government fees and taxes, any finance charges, any dealer
10 document processing charge, any electronic filing charge, and any
11 emission testing charge.”

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

20 (d) Represent the dealer document processing charge, electronic
21 registration or transfer charge, or emission testing charge, as a
22 governmental fee.

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

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

- 1 (2) This subdivision does not apply to a transaction involving
2 the following:
- 3 (A) A mobilehome.
 - 4 (B) A commercial coach, as defined in Section 18001.8 of the
5 Health and Safety Code.
 - 6 (C) An off-highway motor vehicle subject to identification as
7 defined in Section 38012.
 - 8 (D) A manufactured home.
 - 9 (E) A new vehicle that will be substantially altered or modified
10 by a converter prior to resale.
 - 11 (F) A commercial vehicle with a gross vehicle weight rating of
12 more than 10,000 pounds.
 - 13 (G) A vehicle purchased for export and exported outside the
14 territorial limits of the United States without being registered with
15 the department.
 - 16 (H) A vehicle acquired in the ordinary course of business as a
17 new vehicle by a dealer franchised to sell that vehicle, if all of the
18 following apply:
 - 19 (i) The manufacturer or distributor of the vehicle files a
20 bankruptcy petition.
 - 21 (ii) The franchise agreement of the dealer is terminated,
22 canceled, or rejected by the manufacturer or distributor as part of
23 the bankruptcy proceedings and the termination, cancellation, or
24 rejection is not a result of the revocation by the department of the
25 dealer's license or the dealer's conviction of a crime.
 - 26 (iii) The vehicle is held in the inventory of the dealer on the
27 date the bankruptcy petition is filed.
 - 28 (iv) The vehicle is sold by the dealer within six months of the
29 date the bankruptcy petition is filed.
- 30 (3) Subparagraph (H) of paragraph (2) does not entitle a dealer
31 whose franchise agreement has been terminated, canceled, or
32 rejected to continue to perform warranty service repairs or continue
33 to be eligible to offer or receive consumer or dealer incentives
34 offered by the manufacturer or distributor.
- 35 (g) Sell a park trailer, as specified in Section 18009.3 of the
36 Health and Safety Code, without disclosing in writing to the
37 purchaser that a park trailer is required to be moved by a transporter
38 or a licensed manufacturer or dealer under a permit issued by the
39 Department of Transportation or a local authority with respect to
40 highways under their respective jurisdictions.

1 (h) Advertise free merchandise, gifts, or services provided by
2 a dealer contingent on the purchase of a vehicle. “Free” includes
3 merchandise or services offered for sale at a price less than the
4 seller’s cost of the merchandise or services.

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

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

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

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

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

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

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

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

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

8 (B) A dealer’s cost.

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

10 (A) A communication occurring during face-to-face negotiations
11 for the purchase of a specific vehicle if the prospective purchaser
12 initiates a discussion of the vehicle’s invoice price or the dealer’s
13 cost for that vehicle.

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

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

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

29 (q) Affix on a new vehicle a supplemental price sticker
30 containing a price that represents the dealer’s asking price that
31 exceeds the manufacturer’s suggested retail price unless all of the
32 following occur:

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

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

1 (3) The supplemental sticker lists each item that is not included
2 in the manufacturer’s suggested retail price, and discloses the
3 additional price of each item. If the supplemental sticker price is
4 greater than the sum of the manufacturer’s suggested retail price
5 and the price of the items added by the dealer, the supplemental
6 sticker price shall set forth that difference and describe it as “added
7 mark-up.”

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

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

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

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

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

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

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

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

6 (y) Sell or lease a new motor vehicle after October 1, 2012,
7 unless the dealer has a contractual agreement with the department
8 to be a private industry partner pursuant to Section 1685. This
9 subdivision does not apply to the sale or lease of a motorcycle or
10 off-highway motor vehicle subject to identification under Section
11 38010 or a recreational vehicle as defined in Section 18010 of the
12 Health and Safety Code.

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

16 ~~SEC. 17.~~

17 *SEC. 18.* Section 11713.3 of the Vehicle Code is amended to
18 read:

19 11713.3. It is unlawful and a violation of this code for a
20 manufacturer, manufacturer branch, distributor, or distributor
21 branch licensed pursuant to this code to do, directly or indirectly
22 through an affiliate, any of the following:

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

33 (b) To prevent or require, or attempt to prevent or require, by
34 contract or otherwise, a change in the capital structure of a
35 dealership or the means by or through which the dealer finances
36 the operation of the dealership, if the dealer at all times meets
37 reasonable capital standards agreed to by the dealer and the
38 manufacturer or distributor, and if a change in capital structure
39 does not cause a change in the principal management or have the

1 effect of a sale of the franchise without the consent of the
2 manufacturer or distributor.

3 (c) To prevent or require, or attempt to prevent or require, a
4 dealer to change the executive management of a dealership, other
5 than the principal dealership operator or operators, if the franchise
6 was granted to the dealer in reliance upon the personal
7 qualifications of that person.

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

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

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

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

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

35 (B) For the manufacturer or distributor, to fail, on or before 60
36 days after the receipt of all of the information required pursuant
37 to subparagraph (A), or as extended by a written agreement
38 between the manufacturer or distributor and the franchisee, to
39 notify the franchisee of the approval or the disapproval of the sale,
40 transfer, or assignment of the franchise. The notice shall be in

1 writing and shall be personally served or sent by certified mail,
 2 return receipt requested, or by guaranteed overnight delivery
 3 service that provides verification of delivery and shall be directed
 4 to the franchisee. A proposed sale, assignment, or transfer shall
 5 be deemed approved, unless disapproved by the franchisor in the
 6 manner provided by this subdivision. If the proposed sale,
 7 assignment, or transfer is disapproved, the franchisor shall include
 8 in the notice of disapproval a statement setting forth the reasons
 9 for the disapproval.

10 (3) In an action in which the manufacturer’s or distributor’s
 11 withholding of consent under this subdivision or subdivision (e)
 12 is an issue, whether the withholding of consent was unreasonable
 13 is a question of fact requiring consideration of all the existing
 14 circumstances.

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

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

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

31 (A) Modifies or disclaims a duty or obligation of a manufacturer,
 32 manufacturer branch, distributor, distributor branch, or
 33 representative, or a right or privilege of a dealer, pursuant to
 34 Chapter 4 (commencing with Section 11700) of Division 5 or
 35 Chapter 6 (commencing with Section 3000) of Division 2.

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

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

39 (D) Requires a controversy between a manufacturer,
 40 manufacturer branch, distributor, distributor branch, or

1 representative and a dealer to be referred to a person for a binding
2 determination. However, this subparagraph does not prohibit
3 arbitration before an independent arbitrator, provided that whenever
4 a motor vehicle franchise contract provides for the use of arbitration
5 to resolve a controversy arising out of, or relating to, that contract,
6 arbitration may be used to settle the controversy only if, after the
7 controversy arises, all parties to the controversy consent in writing
8 to use arbitration to settle the controversy. For the purpose of this
9 subparagraph, the terms “motor vehicle” and “motor vehicle
10 franchise contract” shall have the same meaning as defined in
11 Section 1226 of Title 15 of the United States Code. If arbitration
12 is elected to settle a dispute under a motor vehicle franchise
13 contract, the arbitrator shall provide the parties to the arbitration
14 with a written explanation of the factual and legal basis for the
15 award.

16 (2) An agreement, provision, release, assignment, novation,
17 waiver, or estoppel prohibited by this subdivision shall be
18 unenforceable and void.

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

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

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

26 (C) Affect the enforceability of any provision in a contract if
27 the provision is not prohibited under this subdivision or any other
28 law.

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

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

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

39 (i) Provides that a dealer establish or maintain exclusive
40 facilities, personnel, or display space or provides that a dealer

1 make a material alteration, expansion, or addition to a dealership
2 facility.

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

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

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

15 (I) The approximate address at which the proposed dealership
16 will be located.

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

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

21 (IV) Whether the franchisor or affiliate will hold an ownership
22 interest in the proposed dealership or real property of the proposed
23 dealership, and the approximate percentage of any franchisor or
24 affiliate ownership interest in the proposed dealership.

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

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

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

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

39 (h) To increase prices of motor vehicles that the dealer had
40 ordered for private retail consumers prior to the dealer's receipt

1 of the written official price increase notification. A sales contract
2 signed by a private retail consumer is evidence of the order. In the
3 event of manufacturer price reductions, the amount of the reduction
4 received by a dealer shall be passed on to the private retail
5 consumer by the dealer if the retail price was negotiated on the
6 basis of the previous higher price to the dealer. Price reductions
7 apply to all vehicles in the dealer's inventory that were subject to
8 the price reduction. Price differences applicable to new model or
9 series motor vehicles at the time of the introduction of new models
10 or series shall not be considered a price increase or price decrease.
11 This subdivision does not apply to price changes caused by either
12 of the following:

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

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

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

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

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

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

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

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

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

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

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

15 (B) Owning an interest in a dealer as part of a bona fide dealer
16 development program that satisfies all of the following
17 requirements:

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

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

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

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

36 (3) (A) A manufacturer, branch, and distributor that owns or
37 operates a dealership in the manner described in subparagraph (A)
38 of paragraph (2) shall give written notice to the board, within 10
39 days, each time it commences or terminates operation of a

1 dealership and each time it acquires, changes, or divests itself of
2 an ownership interest.

3 (B) A manufacturer, branch, and distributor that owns an interest
4 in a dealer in the manner described in subparagraph (B) of
5 paragraph (2) shall give written notice to the board, annually, of
6 the name and location of each dealer in which it has an ownership
7 interest, the name of the bona fide dealer development owner or
8 owners, and the ownership interests of each owner expressed as a
9 percentage.

10 (p) To unfairly discriminate among its franchisees with respect
11 to warranty reimbursement or authority granted to its franchisees
12 to make warranty adjustments with retail customers.

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

15 (r) To fail to affix an identification number to a park trailer, as
16 described in Section 18009.3 of the Health and Safety Code, that
17 is manufactured on or after January 1, 1987, and that does not
18 clearly identify the unit as a park trailer to the department. The
19 configuration of the identification number shall be approved by
20 the department.

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

28 (t) To exercise a right of first refusal or other right requiring a
29 franchisee or an owner of the franchise to sell, transfer, or assign
30 to the franchisor, or to a nominee of the franchisor, all or a material
31 part of the franchised business or of the assets of the franchised
32 business unless all of the following requirements are met:

33 (1) The franchise authorizes the franchisor to exercise a right
34 of first refusal to acquire the franchised business or assets of the
35 franchised business in the event of a proposed sale, transfer, or
36 assignment.

37 (2) The franchisor gives written notice of its exercise of the
38 right of first refusal no later than 45 days after the franchisor
39 receives all of the information required pursuant to subparagraph

40 (A) of paragraph (2) of subdivision (d).

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

4 (4) The proposed transferee is neither a family member of an
5 owner of the franchised business, nor a managerial employee of
6 the franchisee owning 15 percent or more of the franchised
7 business, nor a corporation, partnership, or other legal entity owned
8 by the existing owners of the franchised business. For purposes of
9 this paragraph, a “family member” means the spouse of an owner
10 of the franchised business, the child, grandchild, brother, sister,
11 or parent of an owner, or a spouse of one of those family members.
12 This paragraph does not limit the rights of the franchisor to
13 disapprove a proposed transferee as provided in subdivision (d).

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

22 (6) The franchisor shall reimburse the proposed transferee for
23 expenses paid or incurred by the proposed transferee in evaluating,
24 investigating, and negotiating the proposed transfer to the extent
25 those expenses do not exceed the usual, customary, and reasonable
26 fees charged for similar work done in the area in which the
27 franchised business is located. These expenses include, but are not
28 limited to, legal and accounting expenses, and expenses incurred
29 for title reports and environmental or other investigations of real
30 property on which the franchisee’s operations are conducted. The
31 proposed transferee shall provide the franchisor a written
32 itemization of those expenses, and a copy of all nonprivileged
33 reports and studies for which expenses were incurred, if any, within
34 30 days of the proposed transferee’s receipt of a written request
35 from the franchisor for that accounting. The franchisor shall make
36 payment within 30 days of exercising the right of first refusal.

37 (u) (1) To unfairly discriminate in favor of a dealership owned
38 or controlled, in whole or in part, by a manufacturer or distributor
39 or an entity that controls or is controlled by the manufacturer or

1 distributor. Unfair discrimination includes, but is not limited to,
2 the following:

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

6 (i) A vehicle that is not made available to each franchisee
7 pursuant to a reasonable allocation formula that is applied
8 uniformly, and a part or accessory that is not made available to all
9 franchisees on an equal basis when there is no reasonable allocation
10 formula that is applied uniformly.

11 (ii) A vehicle, part, or accessory that is not made available to
12 each franchisee on comparable delivery terms, including the time
13 of delivery after the placement of an order. Differences in delivery
14 terms due to geographic distances or other factors beyond the
15 control of the manufacturer, branch, or distributor shall not
16 constitute unfair competition.

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

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

33 (B) Referring a prospective purchaser or lessee to a dealer in
34 which a manufacturer, branch, or distributor has an ownership
35 interest, unless the prospective purchaser or lessee resides in the
36 area of responsibility assigned to that dealer or the prospective
37 purchaser or lessee requests to be referred to that dealer.

38 (2) This subdivision does not prohibit a franchisor from granting
39 a franchise to prospective franchisees or assisting those franchisees
40 during the course of the franchise relationship as part of a program

1 or programs to make franchises available to persons lacking capital,
2 training, business experience, or other qualifications ordinarily
3 required of prospective franchisees.

4 (v) (1) To access, modify, or extract information from a
5 confidential dealer computer record, as defined in Section
6 11713.25, without obtaining the prior written consent of the dealer
7 and without maintaining administrative, technical, and physical
8 safeguards to protect the security, confidentiality, and integrity of
9 the information.

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

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

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

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

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

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

25 (x) (1) To unfairly discriminate against a franchisee selling a
26 service contract, debt cancellation agreement, maintenance
27 agreement, or similar product not approved, endorsed, sponsored,
28 or offered by the manufacturer, manufacturer branch, distributor,
29 or distributor branch or affiliate. For purposes of this subdivision,
30 unfair discrimination includes, but is not limited to, any of the
31 following:

32 (A) Express or implied statements that the dealer is under an
33 obligation to exclusively sell or offer to sell 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 (B) Express or implied statements that selling or offering to sell
38 service contracts, debt cancellation agreements, maintenance
39 agreements, or similar products not approved, endorsed, sponsored,
40 or offered by the manufacturer, manufacturer branch, distributor,

1 or distributor branch or affiliate, or the failure to sell or offer to
2 sell service contracts, debt cancellation agreements, maintenance
3 agreements, or similar products approved, endorsed, sponsored,
4 or offered by the manufacturer, manufacturer branch, distributor,
5 or distributor branch or affiliate will have any negative
6 consequences for the dealer.

7 (C) Measuring a dealer's performance under a franchise
8 agreement based upon the sale of service contracts, debt
9 cancellation agreements, or similar products approved, endorsed,
10 sponsored, or offered by the manufacturer, manufacturer branch,
11 distributor, or distributor branch or affiliate.

12 (D) Requiring a dealer to actively promote the sale of 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 (E) Conditioning access to vehicles or parts, or vehicle sales or
17 service incentives upon the sale of service contracts, debt
18 cancellation agreements, or similar products approved, endorsed,
19 sponsored, or offered by the manufacturer, manufacturer branch,
20 distributor, or distributor branch or affiliate.

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

28 (3) This subdivision does not prohibit a manufacturer,
29 manufacturer branch, distributor, or distributor branch from
30 requiring a franchisee that sells a used vehicle as "certified" under
31 a certified used vehicle program established by the manufacturer,
32 manufacturer branch, distributor, or distributor branch to provide
33 a service contract approved, endorsed, sponsored, or offered by
34 the manufacturer, manufacturer branch, distributor, or distributor
35 branch.

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

1
 2 “Service Contract Disclosure
 3 The service contract you are purchasing is not provided or backed
 4 by the manufacturer of the vehicle you are purchasing. The
 5 manufacturer of the vehicle is not responsible for claims or repairs
 6 under this service contract.

7 _____
 8 Signature of Purchaser”
 9

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

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

28 *SEC. 18.1. Section 11713.3 of the Vehicle Code is amended to*
 29 *read:*

30 11713.3. It is unlawful and a violation of this code for a
 31 manufacturer, manufacturer branch, distributor, or distributor
 32 branch licensed pursuant to this code to do, directly or indirectly
 33 through an affiliate, any of the following:

34 (a) To refuse or fail to deliver in reasonable quantities and within
 35 a reasonable time after receipt of an order from a dealer having a
 36 franchise for the retail sale of a new vehicle sold or distributed by
 37 the manufacturer or distributor, a new vehicle or parts or
 38 accessories to new vehicles as are covered by the franchise, if the
 39 vehicle, parts, or accessories are publicly advertised as being
 40 available for delivery or actually being delivered. This subdivision

1 is not violated, however, if the failure is caused by acts or causes
2 beyond the control of the manufacturer, manufacturer branch,
3 distributor, or distributor branch.

4 (b) To prevent or require, or attempt to prevent or require, by
5 contract or otherwise, a change in the capital structure of a
6 dealership or the means by or through which the dealer finances
7 the operation of the dealership, if the dealer at all times meets
8 reasonable capital standards agreed to by the dealer and the
9 manufacturer or distributor, and if a change in capital structure
10 does not cause a change in the principal management or have the
11 effect of a sale of the franchise without the consent of the
12 manufacturer or distributor.

13 (c) To prevent or require, or attempt to prevent or require, a
14 dealer to change the executive management of a dealership, other
15 than the principal dealership operator or operators, if the franchise
16 was granted to the dealer in reliance upon the personal
17 qualifications of that person.

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

26 (2) (A) For the transferring franchisee to fail, prior to the sale,
27 transfer, or assignment of a franchisee or the sale, assignment, or
28 transfer of all, or substantially all, of the assets of the franchised
29 business or a controlling interest in the franchised business to
30 another person, to notify the manufacturer or distributor of the
31 franchisee's decision to sell, transfer, or assign the franchise. The
32 notice shall be in writing and shall include all of the following:

- 33 (i) The proposed transferee's name and address.
34 (ii) A copy of all of the agreements relating to the sale,
35 assignment, or transfer of the franchised business or its assets.
36 (iii) The proposed transferee's application for approval to
37 become the successor franchisee. The application shall include
38 forms and related information generally utilized by the
39 manufacturer or distributor in reviewing prospective franchisees,
40 if those forms are readily made available to existing franchisees.

1 As soon as practicable after receipt of the proposed transferee's
2 application, the manufacturer or distributor shall notify the
3 franchisee and the proposed transferee of information needed to
4 make the application complete.

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

20 (3) In an action in which the manufacturer's or distributor's
21 withholding of consent under this subdivision or subdivision (e)
22 is an issue, whether the withholding of consent was unreasonable
23 is a question of fact requiring consideration of all the existing
24 circumstances.

25 (e) To prevent, or attempt to prevent, a dealer from receiving
26 fair and reasonable compensation for the value of the franchised
27 business. There shall not be a transfer or assignment of the dealer's
28 franchise without the consent of the manufacturer or ~~distributor,~~
29 ~~which consent distributor.~~ *The manufacturer or distributor shall*
30 ~~not be unreasonably withheld or conditioned~~ *withhold consent or*
31 *condition consent* upon the release, assignment, novation, waiver,
32 estoppel, or modification of a claim or defense by the dealer.

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

38 (g) (1) Except as provided in paragraph (3), to obtain from a
39 dealer or enforce against a dealer an agreement, provision, release,

1 assignment, novation, waiver, or estoppel that does any of the
2 following:

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

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

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

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

28 (2) An agreement, provision, release, assignment, novation,
29 waiver, or estoppel prohibited by this subdivision shall be
30 unenforceable and void.

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

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

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

38 (C) Affect the enforceability of any provision in a contract if
39 the provision is not prohibited under this subdivision or any other
40 law.

- 1 (D) Affect the enforceability of a provision in any contract
2 entered into on or before December 31, 2011.
- 3 (E) Prohibit a dealer from waiving its right to file a protest
4 pursuant to Section 3065.1 if the waiver agreement is entered into
5 after a franchisor incentive program claim has been disapproved
6 by the franchisor and the waiver is voluntarily given as part of an
7 agreement to settle that claim.
- 8 (F) Prohibit a voluntary agreement supported by valuable
9 consideration, other than granting or renewing a franchise, that
10 does both of the following:
 - 11 (i) Provides that a dealer establish or maintain exclusive
12 facilities, personnel, or display space or provides that a dealer
13 make a material alteration, expansion, or addition to a dealership
14 facility.
 - 15 (ii) Contains no waiver or other provision prohibited by
16 subparagraph (A), (B), (C), or (D) of paragraph (1).
- 17 (G) Prohibit an agreement separate from the franchise agreement
18 that implements a dealer’s election to terminate the franchise if
19 the agreement is conditioned only on a specified time for
20 termination or payment of consideration to the dealer.
- 21 (H) (i) Prohibit a voluntary waiver agreement, supported by
22 valuable consideration, other than the consideration of renewing
23 a franchise, to waive the right of a dealer to file a protest under
24 Section 3062 for the proposed establishment or relocation of a
25 specific proposed dealership, if the waiver agreement provides all
26 of the following:
 - 27 (I) The approximate address at which the proposed dealership
28 will be located.
 - 29 (II) The planning potential used to establish the proposed
30 dealership’s facility, personnel, and capital requirements.
 - 31 (III) An approximation of projected vehicle and parts sales, and
32 number of vehicles to be serviced at the proposed dealership.
 - 33 (IV) Whether the franchisor or affiliate will hold an ownership
34 interest in the proposed dealership or real property of the proposed
35 dealership, and the approximate percentage of any franchisor or
36 affiliate ownership interest in the proposed dealership.
 - 37 (V) The line-makes to be operated at the proposed dealership.
 - 38 (VI) If known at the time the waiver agreement is executed, the
39 identity of the dealer who will operate the proposed dealership.

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

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

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

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

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

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

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

39 (k) To offer refunds or other types of inducements to a person
40 for the purchase of new motor vehicles of a certain line-make to

1 be sold to the state or a political subdivision of the state without
2 making the same offer to all other dealers in the same line-make
3 within the relevant market area.

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

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

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

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

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

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

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

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

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

37 (iii) The program requires the dealer development candidate to
38 manage the day-to-day operations and business affairs of the dealer
39 and to acquire, within a reasonable time and on reasonable terms
40 and conditions, beneficial ownership and control of a majority

1 interest in the dealer and disassociation of any direct or indirect
2 ownership or control by the manufacturer, branch, or distributor.

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

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

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

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

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

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

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

39 (t) To exercise a right of first refusal or other right requiring a
40 franchisee or an owner of the franchise to sell, transfer, or assign

1 to the franchisor, or to a nominee of the franchisor, all or a material
2 part of the franchised business or of the assets of the franchised
3 business unless all of the following requirements are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
 13 “Service Contract Disclosure

14 The service contract you are purchasing is not provided or backed
 15 by the manufacturer of the vehicle you are purchasing. The
 16 manufacturer of the vehicle is not responsible for claims or repairs
 17 under this service contract.

18
 19 _____
 19 Signature of Purchaser”

20

21 (y) (1) To take or threaten to take any adverse action against a
 22 dealer pursuant to an export or sale-for-resale prohibition because
 23 the dealer sold or leased a vehicle to a customer who either
 24 exported the vehicle to a foreign country or resold the vehicle in
 25 violation of the prohibition, unless the export or sale-for-resale
 26 prohibition policy was provided to the dealer in writing ~~prior to~~
 27 ~~at least 48 hours before the sale or lease, lease of the vehicle,~~ and
 28 the dealer knew or reasonably should have known of the customer’s
 29 intent to export or resell the vehicle in violation of the ~~prohibition~~
 30 ~~at the time of sale or lease.~~ *prohibition*. If the dealer causes the
 31 vehicle to be registered in this or any other state, and collects or
 32 causes to be collected any applicable sales or use tax due to this
 33 state, a rebuttable presumption is established that the dealer did
 34 not have reason to know of the customer’s intent to export or resell
 35 the vehicle. *In a proceeding in which a challenge to an adverse*
 36 *action is at issue, the manufacturer, manufacturer branch,*
 37 *distributor, or distributor branch shall have the burden of proof*
 38 *by a preponderance of the evidence to show that the vehicle was*
 39 *exported or resold in violation of an export or sale-for-resale*
 40 *prohibition policy, that the prohibition policy was provided to the*

1 dealer in writing at least 48 hours prior to the sale or lease, and
2 that the dealer knew or reasonably should have known of the
3 customer's intent to export the vehicle to a foreign country at the
4 time of the sale or lease.

5 (2) An export or sale-for-resale prohibition policy shall not
6 include a provision that expressly or implicitly requires a dealer
7 to make further inquiries into a customer's intent, identity, or
8 financial ability to purchase or lease a vehicle based on any of the
9 customer's characteristics listed or defined in Section 51 of the
10 Civil Code. A policy that is in violation of this paragraph is void
11 and unenforceable.

12 (3) An export or sale-for-resale prohibition policy shall
13 expressly include a provision stating the dealer's rebuttable
14 presumption if the dealer causes the vehicle to be registered in
15 this or any other state and collects or causes to be collected any
16 applicable sales or use tax. A policy that is in violation of this
17 paragraph is void and unenforceable.

18 (z) As used in this section, "area of responsibility" ~~is~~ means a
19 geographic area specified in a franchise that is used by the
20 franchisor for the purpose of evaluating the franchisee's
21 performance of its sales and service obligations.

22 ~~SEC. 18.~~

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

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

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

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

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

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

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

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

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

25 *SEC. 20. Sections 2.1 and 2.5 of this bill incorporate*
26 *amendments to Section 3050.7 of the Vehicle Code proposed by*
27 *both this bill and Assembly Bill 1178. They shall only become*
28 *operative if (1) both bills are enacted and become effective on or*
29 *before January 1, 2016, (2) each bill amends Section 3050.7 of*
30 *the Vehicle Code, and (3) this bill is enacted after Assembly Bill*
31 *1178, in which case Section 2 of this bill shall not become*
32 *operative.*

33 *SEC. 21. Section 18.1 of this bill incorporates amendments to*
34 *Section 11713.3 of the Vehicle Code proposed by both this bill*
35 *and Assembly Bill 1178. It shall only become operative if (1) both*
36 *bills are enacted and become effective on or before January 1,*
37 *2016, (2) each bill amends Section 11713.3 of the Vehicle Code,*
38 *and (3) this bill is enacted after Assembly Bill 1178, in which case*
39 *Section 18 of this bill shall not become operative.*

1 ~~SEC. 19.~~

2 *SEC. 22.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

O