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AMENDED IN ASSEMBLY JUNE 2, 2015  
AMENDED IN ASSEMBLY MARCH 26, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1178**

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**Introduced by Assembly Member Achadjian**

February 27, 2015

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An act to amend ~~Section 11713.3 of~~ Sections 3050, 3050.1, 3050.7, and 11713.3 of, and to add Article 6 (commencing with Section 3085) to Chapter 6 of Division 2 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1178, as amended, Achadjian. Vehicles: manufacturers and distributors.

*Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee in regard to a dispute with the vehicle manufacturer.*

*This bill would authorize the board to hear protests by an association challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch, and would establish procedures for hearing those protests, as specified.*

Existing law generally requires a manufacturer, distributor, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified practices, including taking or threatening to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. Existing law further provides that if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle. A violation of these provisions is a crime.

This bill would recast the provisions relating to export and sale-for-resale prohibitions described above to provide that it would be unlawful to take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition *unless the export or sale-for-resale prohibition policy was provided to the dealer in writing at least 48 hours before the sale or lease of the vehicle and the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition. The bill would provide that a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle* if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state. By expanding the scope of an existing crime, this bill would impose a state-mandated local program. ~~The bill would also provide that a manufacturer, manufacturer branch, distributor, or distributor branch may take an adverse action against a dealer only when a vehicle is either exported to a foreign country or resold in violation of an export or sale-for-resale prohibition policy if the manufacturer, manufacturer branch, distributor, or distributor branch provided the policy and a known exporter list in~~

~~writing to the dealer at least 48 hours before the sale or lease of the vehicle and the dealer sold or leased the vehicle to a person listed as a known exporter or the dealer had actual knowledge of the customer's intent to export the vehicle to a foreign country at the time of the sale or lease, and would, in any proceeding in which a challenge to an adverse action is at issue, require the burden of proof to be on the manufacturer, manufacturer branch, distributor, or distributor branch. This bill would make additional technical, nonsubstantive changes to those provisions and make related findings and declarations.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The distribution, sale, and service of new motor vehicles in
- 4 the State of California vitally affects the general economy of this
- 5 state and the public welfare.
- 6 (b) The new motor vehicle franchise system, which operates
- 7 within a strictly defined and highly regulated statutory scheme,
- 8 assures the consuming public of a well-organized distribution
- 9 system for the availability and sale of new motor vehicles
- 10 throughout the state, provides a network of quality warranty, recall,
- 11 and repair facilities to maintain those vehicles, and creates a
- 12 cost-effective method for the state to police those systems through
- 13 the licensing and regulation of private sector franchisors and
- 14 franchisees.
- 15 (c) Franchisors sometimes establish strict export policies when
- 16 a paid sales incentive is subject to being charged back or new
- 17 vehicle allocation is reduced when a vehicle is exported or resold,
- 18 even when the dealership did not know, or in the exercise of
- 19 reasonable diligence should not have known, of the intended
- 20 exportation or resale. In response, California franchise laws were
- 21 recently updated to prohibit chargebacks and other adverse actions

1 in circumstances in which the dealer did not have knowledge of,  
2 or reason to know of, the intended exportation or resale.

3 (d) Despite California's franchise law acknowledging that the  
4 dealer did not have knowledge or reason to know that a vehicle  
5 would be exported or resold, at least one manufacturer is  
6 disregarding this franchise law by imposing a strict liability export  
7 and sale-for-resale policy against dealers. These actions impose  
8 severe sanctions on dealers regardless of the fact that dealers are  
9 collecting sales tax and registering these vehicles in California and  
10 have no reasonable knowledge of the future fate of those vehicles.

11 (e) It is the intent of this act to ensure that new motor vehicle  
12 dealers are treated fairly by their franchisors, to prohibit franchisors  
13 from avoiding state franchise laws, and to ensure that dealers are  
14 not subject to adverse action when the dealer did not know or have  
15 reason to know vehicles are exported or resold.

16 *SEC. 2. Section 3050 of the Vehicle Code is amended to read:*  
17 3050. The board shall do all of the following:

18 (a) Adopt rules and regulations in accordance with Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code governing those matters that are  
21 specifically committed to its jurisdiction.

22 (b) Hear and determine, within the limitations and in accordance  
23 with the procedure provided, an appeal presented by an applicant  
24 for, or holder of, a license as a new motor vehicle dealer,  
25 manufacturer, manufacturer branch, distributor, distributor branch,  
26 or representative when the applicant or licensee submits an appeal  
27 provided for in this chapter from a decision arising out of the  
28 department.

29 (c) Consider any matter concerning the activities or practices  
30 of any person applying for or holding a license as a new motor  
31 vehicle dealer, manufacturer, manufacturer branch, distributor,  
32 distributor branch, or representative pursuant to Chapter 4  
33 (commencing with Section 11700) of Division 5 submitted by any  
34 person. A member of the board who is a new motor vehicle dealer  
35 may not participate in, hear, comment, advise other members upon,  
36 or decide any matter considered by the board pursuant to this  
37 subdivision that involves a dispute between a franchisee and  
38 franchisor. After that consideration, the board may do any one or  
39 any combination of the following:

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

5 (2) Undertake to mediate, arbitrate, or otherwise resolve any  
6 honest difference of opinion or viewpoint existing between any  
7 member of the public and any new motor vehicle dealer,  
8 manufacturer, manufacturer branch, distributor, distributor branch,  
9 or representative.

10 (3) Order the department to exercise any and all authority or  
11 power that the department may have with respect to the issuance,  
12 renewal, refusal to renew, suspension, or revocation of the license  
13 of any new motor vehicle dealer, manufacturer, manufacturer  
14 branch, distributor, distributor branch, or representative as that  
15 license is required under Chapter 4 (commencing with Section  
16 11700) of Division 5.

17 (d) Hear and decide, within the limitations and in accordance  
18 with the procedure provided, a protest presented by a franchisee  
19 pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072,  
20 3074, 3075, or 3076. A member of the board who is a new motor  
21 vehicle dealer may not participate in, hear, comment, advise other  
22 members upon, or decide, any matter involving a protest filed  
23 pursuant to Article 4 (commencing with Section 3060), unless all  
24 parties to the protest stipulate otherwise.

25 (e) *Hear and decide, within the limitations and in accordance*  
26 *with the procedure provided, a protest presented by an association*  
27 *challenging a policy of a manufacturer, manufacturer branch,*  
28 *distributor or distributor branch pursuant to Section 3085. A*  
29 *member of the board who is a new motor vehicle dealer may not*  
30 *participate in, hear, comment, advise other members upon, or*  
31 *decide, any matter involving a protest filed pursuant to Article 6*  
32 *(commencing with Section 3085), unless all participants to the*  
33 *protest stipulate otherwise.*

34 (e)

35 (f) Notwithstanding subdivisions ~~(e)~~ and (c), (d), and (e), the  
36 courts have jurisdiction over all common law and statutory claims  
37 originally cognizable in the courts. For those claims, a party may  
38 initiate an action directly in any court of competent jurisdiction.

39 SEC. 3. Section 3050.1 of the Vehicle Code is amended to read:

1 3050.1. (a) In a proceeding, hearing, or in the discharge of  
 2 duties imposed under this chapter, the board, its executive director,  
 3 or an administrative law judge designated by the board may  
 4 administer oaths, take depositions, certify to official acts, and issue  
 5 subpoenas to compel attendance of witnesses and the production  
 6 of books, records, papers, and other documents in any part of the  
 7 state.

8 (b) For purposes of discovery, the board or its executive director  
 9 may, if deemed appropriate and proper under the circumstances,  
 10 authorize the parties to engage in the civil action discovery  
 11 procedures in Title 4 (commencing with Section 2016.010) of Part  
 12 4 of the Code of Civil Procedure, excepting the provisions of  
 13 Chapter 13 (commencing with Section 2030.010) of that title.  
 14 Discovery shall be completed no later than 15 days prior to the  
 15 commencement of the proceeding or hearing before the board.  
 16 This subdivision shall apply only to those proceedings or hearings  
 17 involving a petition *filed pursuant to subdivision (c)*, or protest  
 18 filed pursuant to subdivision ~~(e)~~ ~~or (d)~~ *(d) or (e)* of Section 3050.  
 19 The board, its executive director, or an administrative law judge  
 20 designated by the board may issue subpoenas to compel attendance  
 21 at depositions of persons having knowledge of the acts, omissions,  
 22 or events that are the basis for the proceedings, as well as the  
 23 production of books, records, papers, and other documents.

24 *SEC. 4. Section 3050.7 of the Vehicle Code is amended to read:*

25 3050.7. (a) The board may adopt stipulated decisions and  
 26 orders, without a hearing pursuant to Section ~~3066~~, *3066 or 3085.2*,  
 27 to resolve one or more issues raised by a protest or petition filed  
 28 with the board. Whenever the parties to a protest or petition submit  
 29 a proposed stipulated decision and order of the board, a copy of  
 30 the proposed stipulated decision and order shall be transmitted by  
 31 the executive director of the board to each member of the board.  
 32 The proposed stipulated decision and order shall be deemed to be  
 33 adopted by the board unless a member of the board notifies the  
 34 executive director of the board of an objection thereto within 10  
 35 days after that board member has received a copy of the proposed  
 36 stipulated decision and order.

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

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

18 *SEC. 5. Article 6 (commencing with Section 3085) is added to*  
 19 *Chapter 6 of Division 2 of the Vehicle Code, to read:*

20

21 *Article 6. Export and Sale-for-Resale Prohibition Hearings*

22

23 *3085. (a) An association may bring a protest challenging the*  
 24 *legality of an export or sale-for-resale prohibition policy of a*  
 25 *manufacturer, manufacturer branch, distributor, or distributor*  
 26 *branch at any time on behalf of two or more dealers subject to the*  
 27 *challenged policy pursuant to subdivision (y) of Section 11713.3.*

28 *(b) For the purpose of this article, an association is an*  
 29 *organization primarily owned by, or comprised of, new motor*  
 30 *vehicle dealers and that primarily represents the interests of*  
 31 *dealers.*

32 *(c) Relief for a protest pursuant to this section is limited to a*  
 33 *declaration that an export or sale-for-resale prohibition policy of*  
 34 *a manufacturer, manufacturer branch, distributor, or distributor*  
 35 *branch violates the prohibitions of subdivision (y) of Section*  
 36 *11713.3. No monetary relief may be sought on behalf of the*  
 37 *association or any dealers represented by the association.*

38 *(d) In a protest pursuant to this section, the association shall*  
 39 *have the burden of proof to show that the challenged export or*

1 *sale-for-resale prohibition policy violates subdivision (y) of Section*  
 2 *11713.3.*

3 *3085.2. (a) Upon receiving a protest pursuant to Section 3085,*  
 4 *the board shall fix a time and place of hearing within 60 days, and*  
 5 *shall send by certified mail a copy of the order to the manufacturer,*  
 6 *manufacturer branch, distributor, distributor branch, the protesting*  
 7 *association, and all individuals and groups that have requested*  
 8 *notification by the board of protests and decisions of the board.*  
 9 *The board or an administrative law judge designated by the board*  
 10 *shall hear and consider the oral and documented evidence*  
 11 *introduced by the parties and other interested individuals and*  
 12 *groups, and the board shall make its decision solely on the record*  
 13 *so made. Chapter 4.5 (commencing with Section 11400) of Part*  
 14 *1 of Division 3 of Title 2 of the Government Code and Sections*  
 15 *11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515,*  
 16 *and 11517 of the Government Code apply to these proceedings.*

17 *(b) In a hearing on a protest filed pursuant to Section 3085, the*  
 18 *association shall have the burden of proof to establish a violation*  
 19 *of the applicable section by the subject manufacturer, manufacturer*  
 20 *branch, distributor, or distributor branch.*

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

25 *3085.4. (a) The decision of the board shall be in writing and*  
 26 *shall contain findings of fact and a determination of the issues*  
 27 *presented. The decision shall sustain, conditionally sustain,*  
 28 *overrule, or conditionally overrule the protest. Conditions imposed*  
 29 *by the board shall be for the purpose of assuring performance of*  
 30 *binding contractual agreements between franchisees and*  
 31 *franchisors or otherwise serving the purposes of this article. The*  
 32 *board shall act within 30 days after the hearing, within 30 days*  
 33 *after the board receives a proposed decision when the case is*  
 34 *heard before an administrative law judge alone, or within a period*  
 35 *necessitated by Section 11517 of the Government Code, or as may*  
 36 *be mutually agreed upon by the parties. Copies of the board's*  
 37 *decision shall be delivered to the parties personally or sent to them*  
 38 *by certified mail, as well as to all individuals and groups that have*  
 39 *requested notification by the board of protests and decisions by*

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

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

9 *3085.6. Either party may seek judicial review of final decisions*  
10 *of the board. An appeal shall be filed within 45 days from the date*  
11 *on which the final order of the board is made public and is*  
12 *delivered to the parties personally or is sent them by certified mail.*

13 *3085.8. The provisions of this article shall be applicable to*  
14 *any association which is primarily owned by or comprised of new*  
15 *motor vehicle dealers and acts on behalf of its new motor vehicle*  
16 *franchisees.*

17 ~~SEC. 2.~~

18 *SEC. 6.* Section 11713.3 of the Vehicle Code is amended to  
19 read:

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

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

34 (b) To prevent or require, or attempt to prevent or require, by  
35 contract or otherwise, a change in the capital structure of a  
36 dealership or the means by or through which the dealer finances  
37 the operation of the dealership, if the dealer at all times meets  
38 reasonable capital standards agreed to by the dealer and the  
39 manufacturer or distributor, and if a change in capital structure  
40 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 The manufacturer or distributor shall not unreasonably withhold  
20 consent or condition consent upon the release, assignment,  
21 novation, waiver, estoppel, or modification of a claim or defense  
22 by the dealer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (i) Provides that a dealer establish or maintain exclusive  
2 facilities, personnel, or display space or provides that a dealer  
3 make a material alteration, expansion, or addition to a dealership  
4 facility.

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

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

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

17 (I) The approximate address at which the proposed dealership  
18 will be located.

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

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

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

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

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

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

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

- 1 (h) To increase prices of motor vehicles that the dealer had  
 2 ordered for private retail consumers prior to the dealer’s receipt  
 3 of the written official price increase notification. A sales contract  
 4 signed by a private retail consumer is evidence of the order. In the  
 5 event of manufacturer price reductions, the amount of the reduction  
 6 received by a dealer shall be passed on to the private retail  
 7 consumer by the dealer if the retail price was negotiated on the  
 8 basis of the previous higher price to the dealer. Price reductions  
 9 apply to all vehicles in the dealer’s inventory that were subject to  
 10 the price reduction. Price differences applicable to new model or  
 11 series motor vehicles at the time of the introduction of new models  
 12 or series shall not be considered a price increase or price decrease.  
 13 This subdivision does not apply to price changes caused by either  
 14 of the following:
- 15 (1) The addition to a motor vehicle of required or optional  
 16 equipment pursuant to state or federal law.
  - 17 (2) Revaluation of the United States dollar in the case of a  
 18 foreign-make vehicle.
- 19 (i) To fail to pay to a dealer, within a reasonable time following  
 20 receipt of a valid claim by a dealer thereof, a payment agreed to  
 21 be made by the manufacturer or distributor to the dealer by reason  
 22 of the fact that a new vehicle of a prior year model is in the dealer’s  
 23 inventory at the time of introduction of new model vehicles.
- 24 (j) To deny the widow, widower, or heirs designated by a  
 25 deceased owner of a dealership the opportunity to participate in  
 26 the ownership of the dealership or successor dealership under a  
 27 valid franchise for a reasonable time after the death of the owner.
- 28 (k) To offer refunds or other types of inducements to a person  
 29 for the purchase of new motor vehicles of a certain line-make to  
 30 be sold to the state or a political subdivision of the state without  
 31 making the same offer to all other dealers in the same line-make  
 32 within the relevant market area.
- 33 (l) To modify, replace, enter into, relocate, terminate, or refuse  
 34 to renew a franchise in violation of Article 4 (commencing with  
 35 Section 3060) of Chapter 6 of Division 2.
- 36 (m) To employ a person as a representative who has not been  
 37 licensed pursuant to Article 3 (commencing with Section 11900)  
 38 of Chapter 4 of Division 5.
- 39 (n) To deny a dealer the right of free association with another  
 40 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, or an entity that  
5 controls or is controlled by a manufacturer, branch, or distributor,  
6 shall not, however, be deemed to be competing in the following  
7 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) (1) To take or threaten to take any adverse action against a  
 11 dealer pursuant to an export or sale-for-resale prohibition because  
 12 the dealer sold or leased a vehicle to a customer who either  
 13 exported the vehicle to a foreign country or resold the vehicle in  
 14 violation of the prohibition, *if unless the export or sale-for-resale*  
 15 *prohibition policy was provided to the dealer in writing at least*  
 16 *48 hours before the sale or lease of the vehicle, and the dealer*  
 17 *knew or reasonably should have known of the customer’s intent*  
 18 *to export or resell the vehicle in violation of the prohibition. If the*  
 19 *dealer causes the vehicle to be registered in this or any other state,*  
 20 *and collects or causes to be collected any applicable sales or use*  
 21 *tax due to this*~~state~~ *state, a rebuttable presumption is established*  
 22 *that the dealer did not have reason to know of the customer’s intent*  
 23 *to export or resell the vehicle. In a proceeding in which a challenge*  
 24 *to an adverse action is at issue, the manufacturer, manufacturer*  
 25 *branch, distributor, or distributor branch shall have the burden*  
 26 *of proof by clear and convincing evidence to show that the vehicle*  
 27 *was exported or resold in violation of an export or sale-for-resale*  
 28 *prohibition policy, that the prohibition policy was provided to the*  
 29 *dealer in writing at least 48 hours prior to the sale or lease, and*  
 30 *that the dealer knew or reasonably should have known of the*  
 31 *customer’s intent to export the vehicle to a foreign country at the*  
 32 *time of the sale or lease.*

33 (2) *An export or sale-for-resale prohibition policy shall not*  
 34 *include a provision that expressly or implicitly requires a dealer*  
 35 *to make further inquiries into a customer’s intent, identity, or*  
 36 *financial ability to purchase or lease a vehicle based on any of the*  
 37 *customer’s characteristics listed or defined in Section 51 of the*  
 38 *Civil Code. A policy that is in violation of this paragraph is void*  
 39 *and unenforceable.*

1 (3) An export or sale-for-resale prohibition policy shall  
 2 expressly include a provision stating the dealer’s rebuttable  
 3 presumption if the dealer causes the vehicle to be registered in  
 4 this or any other state and collects or causes to be collected any  
 5 applicable sales or use tax. A policy that is in violation of this  
 6 paragraph is void and unenforceable.

7 ~~(2) Notwithstanding paragraph (1), the manufacturer,~~  
 8 ~~manufacturer branch, distributor, or distributor branch may take~~  
 9 ~~an adverse action against a dealer only when a vehicle is either~~  
 10 ~~exported to a foreign county or resold in violation of an export or~~  
 11 ~~sale-for-resale prohibition policy if the manufacturer, manufacturer~~  
 12 ~~branch, distributor, or distributor branch provided the policy and~~  
 13 ~~a known exporter list in writing to the dealer at least 48 hours~~  
 14 ~~before the sale or lease of the vehicle and the dealer sold or leased~~  
 15 ~~the vehicle to a person listed as a known exporter or the dealer had~~  
 16 ~~actual knowledge of the customer’s intent to export the vehicle to~~  
 17 ~~a foreign country at the time of the sale or lease. In any proceeding~~  
 18 ~~in which a challenge to an adverse action is at issue, the~~  
 19 ~~manufacturer, manufacturer branch, distributor, or distributor~~  
 20 ~~branch shall have the burden of proof to show that the vehicle was~~  
 21 ~~either exported or resold in violation of an export or sale-for-resale~~  
 22 ~~prohibition policy and that the customer’s name appeared on the~~  
 23 ~~list of known exporters provided to the dealer at least 48 hours~~  
 24 ~~prior to the sale or lease, or the dealer had actual knowledge of the~~  
 25 ~~customer’s intent to export the vehicle to a foreign country at the~~  
 26 ~~time of the sale or lease.~~

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

31 ~~SEC. 3.~~

32 *SEC. 7.* No reimbursement is required by this act pursuant to  
 33 Section 6 of Article XIII B of the California Constitution because  
 34 the only costs that may be incurred by a local agency or school  
 35 district will be incurred because this act creates a new crime or  
 36 infraction, eliminates a crime or infraction, or changes the penalty  
 37 for a crime or infraction, within the meaning of Section 17556 of  
 38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

O