

AMENDED IN SENATE SEPTEMBER 4, 2015

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN ASSEMBLY JUNE 2, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1178

Introduced by Assembly Member Achadjian

February 27, 2015

An act to amend *Section 11713.3 of, to amend, repeal, and add Sections 3050, 3050.1, ~~3050.7, and 11713.3 and 3050.7~~* of, and to add *and repeal* 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~~ *would, until January 1, 2019,* 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, 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.

This bill would incorporate additional changes to Sections 3050.7 and 11713.3 of the Vehicle Code made by this bill and AB 759 to take effect if both bills are chaptered and this bill is chaptered last.

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

24 (d) Despite California's franchise law acknowledging that the
25 dealer did not have knowledge or reason to know that a vehicle

1 would be exported or resold, at least one manufacturer is
2 disregarding this franchise law by imposing a strict liability export
3 and sale-for-resale policy against dealers. These actions impose
4 severe sanctions on dealers regardless of the fact that dealers are
5 collecting sales tax and registering these vehicles in California and
6 have no reasonable knowledge of the future fate of those vehicles.

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

12 SEC. 2. Section 3050 of the Vehicle Code is amended to read:

13 3050. The board shall do all of the following:

14 (a) Adopt rules and regulations in accordance with Chapter 3.5
15 (commencing with Section 11340) of Part 1 of Division 3 of Title
16 2 of the Government Code governing those matters that are
17 specifically committed to its jurisdiction.

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

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

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

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

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

13 (d) Hear and decide, within the limitations and in accordance
14 with the procedure provided, a protest presented by a franchisee
15 pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072,
16 3074, 3075, or 3076. A member of the board who is a new motor
17 vehicle dealer may not participate in, hear, comment, advise other
18 members upon, or decide, any matter involving a protest filed
19 pursuant to Article 4 (commencing with Section 3060), unless all
20 parties to the protest stipulate otherwise.

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

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

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

37 *SEC. 3. Section 3050 is added to the Vehicle Code, to read:*

38 *3050. The board shall do all of the following:*

39 *(a) Adopt rules and regulations in accordance with Chapter*
40 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*

1 *Title 2 of the Government Code governing those matters that are*
2 *specifically committed to its jurisdiction.*

3 *(b) Hear and determine, within the limitations and in accordance*
4 *with the procedure provided, an appeal presented by an applicant*
5 *for, or holder of, a license as a new motor vehicle dealer,*
6 *manufacturer, manufacturer branch, distributor, distributor*
7 *branch, or representative when the applicant or licensee submits*
8 *an appeal provided for in this chapter from a decision arising out*
9 *of the department.*

10 *(c) Consider any matter concerning the activities or practices*
11 *of any person applying for or holding a license as a new motor*
12 *vehicle dealer, manufacturer, manufacturer branch, distributor,*
13 *distributor branch, or representative pursuant to Chapter 4*
14 *(commencing with Section 11700) of Division 5 submitted by any*
15 *person. A member of the board who is a new motor vehicle dealer*
16 *may not participate in, hear, comment, advise other members upon,*
17 *or decide any matter considered by the board pursuant to this*
18 *subdivision that involves a dispute between a franchisee and*
19 *franchisor. After that consideration, the board may do any one or*
20 *any combination of the following:*

21 *(1) Direct the department to conduct investigation of matters*
22 *that the board deems reasonable, and make a written report on*
23 *the results of the investigation to the board within the time specified*
24 *by the board.*

25 *(2) Undertake to mediate, arbitrate, or otherwise resolve any*
26 *honest difference of opinion or viewpoint existing between any*
27 *member of the public and any new motor vehicle dealer,*
28 *manufacturer, manufacturer branch, distributor, distributor*
29 *branch, or representative.*

30 *(3) Order the department to exercise any and all authority or*
31 *power that the department may have with respect to the issuance,*
32 *renewal, refusal to renew, suspension, or revocation of the license*
33 *of any new motor vehicle dealer, manufacturer, manufacturer*
34 *branch, distributor, distributor branch, or representative as that*
35 *license is required under Chapter 4 (commencing with Section*
36 *11700) of Division 5.*

37 *(d) Hear and decide, within the limitations and in accordance*
38 *with the procedure provided, a protest presented by a franchisee*
39 *pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072,*
40 *3074, 3075, or 3076. A member of the board who is a new motor*

1 *vehicle dealer may not participate in, hear, comment, advise other*
2 *members upon, or decide, any matter involving a protest filed*
3 *pursuant to Article 4 (commencing with Section 3060), unless all*
4 *parties to the protest stipulate otherwise.*

5 *(e) Notwithstanding subdivisions (c) and (d), the courts have*
6 *jurisdiction over all common law and statutory claims originally*
7 *cognizable in the courts. For those claims, a party may initiate an*
8 *action directly in any court of competent jurisdiction.*

9 *(f) This section shall become operative on January 1, 2019.*

10 ~~SEC. 3.~~

11 *SEC. 4.* Section 3050.1 of the Vehicle Code is amended to
12 read:

13 3050.1. (a) In a proceeding, hearing, or in the discharge of
14 duties imposed under this chapter, the board, its executive director,
15 or an administrative law judge designated by the board may
16 administer oaths, take depositions, certify to official acts, and issue
17 subpoenas to compel attendance of witnesses and the production
18 of books, records, papers, and other documents in any part of the
19 state.

20 (b) For purposes of discovery, the board or its executive director
21 may, if deemed appropriate and proper under the circumstances,
22 authorize the parties to engage in the civil action discovery
23 procedures in Title 4 (commencing with Section 2016.010) of Part
24 4 of the Code of Civil Procedure, excepting the provisions of
25 Chapter 13 (commencing with Section 2030.010) of that title.
26 Discovery shall be completed no later than 15 days prior to the
27 commencement of the proceeding or hearing before the board.
28 This subdivision shall apply only to those proceedings or hearings
29 involving a petition filed pursuant to subdivision (c), or protest
30 filed pursuant to subdivision (d) or (e) of Section 3050. The board,
31 its executive director, or an administrative law judge designated
32 by the board may issue subpoenas to compel attendance at
33 depositions of persons having knowledge of the acts, omissions,
34 or events that are the basis for the proceedings, as well as the
35 production of books, records, papers, and other documents.

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

39 *SEC. 5.* Section 3050.1 is added to the Vehicle Code, 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 or protest filed pursuant to subdivision (c) or*
18 *(d) of Section 3050. The board, its executive director, or an*
19 *administrative law judge designated by the board may issue*
20 *subpoenas to compel attendance at depositions of persons having*
21 *knowledge of the acts, omissions, or events that are the basis for*
22 *the proceedings, as well as the production of books, records,*
23 *papers, and other documents.*

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

25 ~~SEC. 4.~~

26 SEC. 6. Section 3050.7 of the Vehicle Code is amended to
27 read:

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

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

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

25 *SEC. 6.1. Section 3050.7 of the Vehicle Code is amended to*
26 *read:*

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

39 (b) If the board adopts a stipulated decision and order to resolve
40 a protest filed pursuant to Section 3060 or 3070 in which the parties

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

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

23 *SEC. 7. Section 3050.7 is added to the Vehicle Code, to read:*

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

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

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

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

18 SEC. 7.1. Section 3050.7 is added to the Vehicle Code, to read:

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

31 (b) If the board adopts a stipulated decision and order to resolve
32 a protest filed pursuant to Section 3060 or 3070 in which the
33 parties stipulate that good cause exists for the termination of the
34 franchise of the protestant, and the order provides for a conditional
35 or unconditional termination of the franchise of the protestant,
36 paragraph (2) of subdivision (a) of Section 3060 and paragraph
37 (2) of subdivision (a) of Section 3070, which require a hearing to
38 determine whether good cause exists for termination of the
39 franchise, is inapplicable to the proceedings. If the stipulated
40 decision and order provides for an unconditional termination of

1 *the franchise, the franchise may be terminated without further*
 2 *proceedings by the board. If the stipulated decision and order*
 3 *provides for the termination of the franchise, conditioned upon*
 4 *the failure of a party to comply with specified conditions, the*
 5 *franchise may be terminated upon a determination, according to*
 6 *the terms of the stipulated decision and order, that the conditions*
 7 *have not been met. If the stipulated decision and order provides*
 8 *for the termination of the franchise conditioned upon the*
 9 *occurrence of specified conditions, the franchise may be terminated*
 10 *upon a determination, according to the terms of the stipulated*
 11 *decision and order, that the stipulated conditions have occurred.*

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

13 ~~SEC. 5.~~

14 SEC. 8. Article 6 (commencing with Section 3085) is added
 15 to Chapter 6 of Division 2 of the Vehicle Code, to read:

16

17 Article 6. Export and Sale-for-Resale Prohibition Hearings

18

19 3085. (a) An association may bring a protest challenging the
 20 legality of an export or sale-for-resale prohibition policy of a
 21 manufacturer, manufacturer branch, distributor, or distributor
 22 branch at any time on behalf of two or more dealers subject to the
 23 challenged policy pursuant to subdivision (y) of Section 11713.3.

24 (b) For the purpose of this article, an association is an
 25 organization primarily owned by, or comprised of, new motor
 26 vehicle dealers and that primarily represents the interests of dealers.

27 (c) Relief for a protest pursuant to this section is limited to a
 28 declaration that an export or sale-for-resale prohibition policy of
 29 a manufacturer, manufacturer branch, distributor, or distributor
 30 branch violates the prohibitions of subdivision (y) of Section
 31 11713.3. No monetary relief may be sought on behalf of the
 32 association or any dealers represented by the association.

33 (d) In a protest pursuant to this section, the association shall
 34 have the burden of proof to show that the challenged export or
 35 sale-for-resale prohibition policy violates subdivision (y) of Section
 36 11713.3.

37 3085.2. (a) Upon receiving a protest pursuant to Section 3085,
 38 the board shall fix a time and place of hearing within 60 days, and
 39 shall send by certified mail a copy of the order to the manufacturer,
 40 manufacturer branch, distributor, distributor branch, the protesting

1 association, and all individuals and groups that have requested
2 notification by the board of protests and decisions of the board.
3 The board or an administrative law judge designated by the board
4 shall hear and consider the oral and documented evidence
5 introduced by the parties and other interested individuals and
6 groups, and the board shall make its decision solely on the record
7 so made. Chapter 4.5 (commencing with Section 11400) of Part
8 1 of Division 3 of Title 2 of the Government Code and Sections
9 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515,
10 and 11517 of the Government Code apply to these proceedings.

11 (b) In a hearing on a protest filed pursuant to Section 3085, the
12 association shall have the burden of proof to establish a violation
13 of the applicable section by the subject manufacturer, manufacturer
14 branch, distributor, or distributor branch.

15 (c) 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 3085.4. (a) The decision of the board shall be in writing and
20 shall contain findings of fact and a determination of the issues
21 presented. The decision shall sustain, conditionally sustain,
22 overrule, or conditionally overrule the protest. Conditions imposed
23 by the board shall be for the purpose of assuring performance of
24 binding contractual agreements between franchisees and franchisors
25 or otherwise serving the purposes of this article. The board shall
26 act within 30 days after the hearing, within 30 days after the board
27 receives a proposed decision when the case is heard before an
28 administrative law judge alone, or within a period necessitated by
29 Section 11517 of the Government Code, or as may be mutually
30 agreed upon by the parties. Copies of the board's decision shall
31 be delivered to the parties personally or sent to them by certified
32 mail, as well as to all individuals and groups that have requested
33 notification by the board of protests and decisions by the board.
34 The board's decision shall be final upon its delivery or mailing
35 and a reconsideration or rehearing is not permitted.

36 (b) Notwithstanding subdivision (c) of Section 11517 of the
37 Government Code, if a protest is heard by an administrative law
38 judge alone, 10 days after receipt by the board of the administrative
39 law judge's proposed decision, a copy of the proposed decision

1 shall be filed by the board as a public record and a copy shall be
2 served by the board on each party and his or her attorney.

3 3085.6. Either party may seek judicial review of final decisions
4 of the board. An appeal shall be filed within 45 days from the date
5 on which the final order of the board is made public and is
6 delivered to the parties personally or is sent *to* them by certified
7 mail.

8 3085.8. The provisions of this article shall be applicable to any
9 association which is primarily owned by or comprised of new
10 motor vehicle dealers and acts on behalf of its new motor vehicle
11 franchisees.

12 3085.10. *This article shall remain in effect only until January*
13 *1, 2019, and as of that date is repealed, unless a later enacted*
14 *statute, that is enacted before January 1, 2019, deletes or extends*
15 *that date.*

16 ~~SEC. 6.~~

17 *SEC. 9.* 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 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, unless the export or sale-for-resale
 15 prohibition policy was provided to the dealer in writing at least 48
 16 hours before the sale or lease of the vehicle, and the dealer knew
 17 or reasonably should have known of the customer’s intent to export
 18 or resell the vehicle in violation of the prohibition. If the dealer
 19 causes the vehicle to be registered in this or any other state, and
 20 collects or causes to be collected any applicable sales or use tax
 21 due to this state, a rebuttable presumption is established that the
 22 dealer did not have reason to know of the customer’s intent to
 23 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 of
 26 proof by ~~clear and convincing~~ *a preponderance of the evidence* to
 27 show that the vehicle was exported or resold in violation of an
 28 export or sale-for-resale prohibition policy, that the prohibition
 29 policy was provided to the dealer in writing at least 48 hours prior
 30 to the sale or lease, and that the dealer knew or reasonably should
 31 have known of the customer’s intent to export the vehicle to a
 32 foreign country at the 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 expressly
2 include a provision stating the dealer’s rebuttable presumption if
3 the dealer causes the vehicle to be registered in this or any other
4 state and collects or causes to be collected any applicable sales or
5 use tax. A policy that is in violation of this paragraph is void and
6 unenforceable.

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

11 *SEC. 9.1. Section 11713.3 of the Vehicle Code is amended to*
12 *read:*

13 11713.3. It is unlawful and a violation of this code for a
14 manufacturer, manufacturer branch, distributor, or distributor
15 branch licensed pursuant to this code to do, directly or indirectly
16 through an affiliate, any of the following:

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

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

36 (c) To prevent or require, or attempt to prevent or require, a
37 dealer to change the executive management of a dealership, other
38 than the principal dealership operator or operators, if the franchise
39 was granted to the dealer in reliance upon the personal
40 qualifications of that person.

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

9 (2) (A) For the transferring franchisee to fail, prior to the sale,
10 transfer, or assignment of a franchisee or the sale, assignment, or
11 transfer of all, or substantially all, of the assets of the franchised
12 business or a controlling interest in the franchised business to
13 another person, to notify the manufacturer or distributor of the
14 franchisee's decision to sell, transfer, or assign the franchise. The
15 notice shall be in writing and shall include all of the following:

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

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

1 in the notice of disapproval a statement setting forth the reasons
2 for the disapproval.

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

8 (e) To prevent, or attempt to prevent, a dealer from receiving
9 fair and reasonable compensation for the value of the franchised
10 business. There shall not be a transfer or assignment of the dealer's
11 franchise without the consent of the manufacturer or ~~distributor,~~
12 ~~which consent~~ distributor. *The manufacturer or distributor shall*
13 ~~not be unreasonably withheld or conditioned~~ *withhold consent or*
14 *condition consent* upon the release, assignment, novation, waiver,
15 estoppel, or modification of a claim or defense by the dealer.

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

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

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

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

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

33 (D) Requires a controversy between a manufacturer,
34 manufacturer branch, distributor, distributor branch, or
35 representative and a dealer to be referred to a person for a binding
36 determination. However, this subparagraph does not prohibit
37 arbitration before an independent arbitrator, provided that whenever
38 a motor vehicle franchise contract provides for the use of arbitration
39 to resolve a controversy arising out of, or relating to, that contract,
40 arbitration may be used to settle the controversy only if, after the

1 controversy arises, all parties to the controversy consent in writing
2 to use arbitration to settle the controversy. For the purpose of this
3 subparagraph, the terms “motor vehicle” and “motor vehicle
4 franchise contract” shall have the same meaning as defined in
5 Section 1226 of Title 15 of the United States Code. If arbitration
6 is elected to settle a dispute under a motor vehicle franchise
7 contract, the arbitrator shall provide the parties to the arbitration
8 with a written explanation of the factual and legal basis for the
9 award.

10 (2) An agreement, provision, release, assignment, novation,
11 waiver, or estoppel prohibited by this subdivision shall be
12 unenforceable and void.

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

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

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

20 (C) Affect the enforceability of any provision in a contract if
21 the provision is not prohibited under this subdivision or any other
22 law.

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

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

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

33 (i) Provides that a dealer establish or maintain exclusive
34 facilities, personnel, or display space or provides that a dealer
35 make a material alteration, expansion, or addition to a dealership
36 facility.

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

39 (G) Prohibit an agreement separate from the franchise agreement
40 that implements a dealer’s election to terminate the franchise if

1 the agreement is conditioned only on a specified time for
2 termination or payment of consideration to the dealer.

3 (H) (i) Prohibit a voluntary waiver agreement, supported by
4 valuable consideration, other than the consideration of renewing
5 a franchise, to waive the right of a dealer to file a protest under
6 Section 3062 for the proposed establishment or relocation of a
7 specific proposed dealership, if the waiver agreement provides all
8 of the following:

9 (I) The approximate address at which the proposed dealership
10 will be located.

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

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

15 (IV) Whether the franchisor or affiliate will hold an ownership
16 interest in the proposed dealership or real property of the proposed
17 dealership, and the approximate percentage of any franchisor or
18 affiliate ownership interest in the proposed dealership.

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

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

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

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

33 (h) To increase prices of motor vehicles that the dealer had
34 ordered for private retail consumers prior to the dealer's receipt
35 of the written official price increase notification. A sales contract
36 signed by a private retail consumer is evidence of the order. In the
37 event of manufacturer price reductions, the amount of the reduction
38 received by a dealer shall be passed on to the private retail
39 consumer by the dealer if the retail price was negotiated on the
40 basis of the previous higher price to the dealer. Price reductions

1 apply to all vehicles in the dealer’s inventory that were subject to
 2 the price reduction. Price differences applicable to new model or
 3 series motor vehicles at the time of the introduction of new models
 4 or series shall not be considered a price increase or price decrease.
 5 This subdivision does not apply to price changes caused by either
 6 of the following:

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

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

11 (i) To fail to pay to a dealer, within a reasonable time following
 12 receipt of a valid claim by a dealer thereof, a payment agreed to
 13 be made by the manufacturer or distributor to the dealer by reason
 14 of the fact that a new vehicle of a prior year model is in the dealer’s
 15 inventory at the time of introduction of new model vehicles.

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

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

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

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

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

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

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

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

8 (B) Owning an interest in a dealer as part of a bona fide dealer
9 development program that satisfies all of the following
10 requirements:

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

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

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

24 (C) Owning a wholly owned subsidiary corporation of a
25 distributor that sells motor vehicles at retail, if, for at least three
26 years prior to January 1, 1973, the subsidiary corporation has been
27 a wholly owned subsidiary of the distributor and engaged in the
28 sale of vehicles at retail.

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

35 (B) A manufacturer, branch, and distributor that owns an interest
36 in a dealer in the manner described in subparagraph (B) of
37 paragraph (2) shall give written notice to the board, annually, of
38 the name and location of each dealer in which it has an ownership
39 interest, the name of the bona fide dealer development owner or

1 owners, and the ownership interests of each owner expressed as a
2 percentage.

3 (p) To unfairly discriminate among its franchisees with respect
4 to warranty reimbursement or authority granted to its franchisees
5 to make warranty adjustments with retail customers.

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

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

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

21 (t) To exercise a right of first refusal or other right requiring a
22 franchisee or an owner of the franchise to sell, transfer, or assign
23 to the franchisor, or to a nominee of the franchisor, all or a material
24 part of the franchised business or of the assets of the franchised
25 business unless all of the following requirements are met:

26 (1) The franchise authorizes the franchisor to exercise a right
27 of first refusal to acquire the franchised business or assets of the
28 franchised business in the event of a proposed sale, transfer, or
29 assignment.

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

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

37 (4) The proposed transferee is neither a family member of an
38 owner of the franchised business, nor a managerial employee of
39 the franchisee owning 15 percent or more of the franchised
40 business, nor a corporation, partnership, or other legal entity owned

1 by the existing owners of the franchised business. For purposes of
2 this paragraph, a “family member” means the spouse of an owner
3 of the franchised business, the child, grandchild, brother, sister,
4 or parent of an owner, or a spouse of one of those family members.
5 This paragraph does not limit the rights of the franchisor to
6 disapprove a proposed transferee as provided in subdivision (d).

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

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

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

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

38 (i) A vehicle that is not made available to each franchisee
39 pursuant to a reasonable allocation formula that is applied
40 uniformly, and a part or accessory that is not made available to all

1 franchisees on an equal basis when there is no reasonable allocation
2 formula that is applied uniformly.

3 (ii) A vehicle, part, or accessory that is not made available to
4 each franchisee on comparable delivery terms, including the time
5 of delivery after the placement of an order. Differences in delivery
6 terms due to geographic distances or other factors beyond the
7 control of the manufacturer, branch, or distributor shall not
8 constitute unfair competition.

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

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

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

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

36 (v) (1) To access, modify, or extract information from a
37 confidential dealer computer record, as defined in Section
38 11713.25, without obtaining the prior written consent of the dealer
39 and without maintaining administrative, technical, and physical

1 safeguards to protect the security, confidentiality, and integrity of
2 the information.

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

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

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

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

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

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

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

18 (x) (1) To unfairly discriminate against a franchisee selling a
19 service contract, debt cancellation agreement, maintenance
20 agreement, or similar product not approved, endorsed, sponsored,
21 or offered by the manufacturer, manufacturer branch, distributor,
22 or distributor branch or affiliate. For purposes of this subdivision,
23 unfair discrimination includes, but is not limited to, any of the
24 following:

25 (A) Express or implied statements that the dealer is under an
26 obligation to exclusively sell or offer to sell service contracts, debt
27 cancellation agreements, or similar products approved, endorsed,
28 sponsored, or offered by the manufacturer, manufacturer branch,
29 distributor, or distributor branch or affiliate.

30 (B) Express or implied statements that selling or offering to sell
31 service contracts, debt cancellation agreements, maintenance
32 agreements, or similar products not approved, endorsed, sponsored,
33 or offered by the manufacturer, manufacturer branch, distributor,
34 or distributor branch or affiliate, or the failure to sell or offer to
35 sell service contracts, debt cancellation agreements, maintenance
36 agreements, or similar products approved, endorsed, sponsored,
37 or offered by the manufacturer, manufacturer branch, distributor,
38 or distributor branch or affiliate will have any negative
39 consequences for the dealer.

1 (C) Measuring a dealer’s performance under a franchise
2 agreement based upon the sale of service contracts, debt
3 cancellation agreements, or similar products approved, endorsed,
4 sponsored, or offered by the manufacturer, manufacturer branch,
5 distributor, or distributor branch or affiliate.

6 (D) Requiring a dealer to actively promote the sale of service
7 contracts, debt cancellation agreements, or similar products
8 approved, endorsed, sponsored, or offered by the manufacturer,
9 manufacturer branch, distributor, or distributor branch or affiliate.

10 (E) Conditioning access to vehicles or parts, or vehicle sales or
11 service incentives upon the sale of service contracts, debt
12 cancellation agreements, or similar products approved, endorsed,
13 sponsored, or offered by the manufacturer, manufacturer branch,
14 distributor, or distributor branch or affiliate.

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

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

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

35
36 “Service Contract Disclosure
37 The service contract you are purchasing is not provided or backed
38 by the manufacturer of the vehicle you are purchasing. The
39 manufacturer of the vehicle is not responsible for claims or repairs
40 under this service contract.

1 _____
2 Signature of Purchaser”
3

4 (y) (1) To take or threaten to take any adverse action against a
5 dealer pursuant to an export or sale-for-resale prohibition because
6 the dealer sold or leased a vehicle to a customer who either
7 exported the vehicle to a foreign country or resold the vehicle in
8 violation of the prohibition, unless the export or sale-for-resale
9 prohibition policy was provided to the dealer in writing ~~prior to~~
10 ~~at least 48 hours before the sale or lease, lease of the vehicle, and~~
11 the dealer knew or reasonably should have known of the customer’s
12 intent to export or resell the vehicle in violation of the ~~prohibition~~
13 ~~at the time of sale or lease.~~ *prohibition*. If the dealer causes the
14 vehicle to be registered in this or any other state, and collects or
15 causes to be collected any applicable sales or use tax due to this
16 state, a rebuttable presumption is established that the dealer did
17 not have reason to know of the customer’s intent to export or resell
18 the vehicle. *In a proceeding in which a challenge to an adverse*
19 *action is at issue, the manufacturer, manufacturer branch,*
20 *distributor, or distributor branch shall have the burden of proof*
21 *by a preponderance of the evidence to show that the vehicle was*
22 *exported or resold in violation of an export or sale-for-resale*
23 *prohibition policy, that the prohibition policy was provided to the*
24 *dealer in writing at least 48 hours prior to the sale or lease, and*
25 *that the dealer knew or reasonably should have known of the*
26 *customer’s intent to export the vehicle to a foreign country at the*
27 *time of the sale or lease.*

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

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

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

5 *SEC. 10. (a) Sections 6.1 and 7.1 of this bill incorporates*
6 *changes to Section 3050.7 of the Vehicle Code proposed by both*
7 *this bill and Assembly Bill 759. These sections shall only become*
8 *operative if (1) both bills are enacted and become effective on or*
9 *before January 1, 2016, (2) each bill amends or adds Section*
10 *3050.7 of the Vehicle Code, and (3) this bill is enacted after*
11 *Assembly Bill 759, in which case Sections 6 and 7 of this bill shall*
12 *not become operative.*

13 *(b) Section 9.1 of this bill incorporates amendments to Section*
14 *11713.3 of the Vehicle Code proposed by both this bill and*
15 *Assembly Bill 759. It shall only become operative if (1) both bills*
16 *are enacted and become effective on or before January 1, 2016,*
17 *(2) each bill amends Section 11713.3 of the Vehicle Code, and (3)*
18 *this bill is enacted after Assembly Bill 759, in which case Section*
19 *9 of this bill shall not become operative.*

20 ~~SEC. 7:~~

21 *SEC. 11.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.