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AMENDED IN SENATE JUNE 24, 1998
AMENDED IN ASSEMBLY MAY 7, 1998
AMENDED IN ASSEMBLY APRIL 28, 1998
AMENDED IN ASSEMBLY MARCH 31, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2707

**Introduced by Assembly Member Perata
(Coauthor: Assembly Member Miller)
(Coauthors: Senators McPherson and Polanco)**

February 23, 1998

An act to amend Sections 331, 331.1, ~~507~~, 3060, 3062, 3066, 3067, and 11713.3 of, ~~and to add Sections 114 and 543.5 to~~, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2707, as amended, Perata. Vehicles: New Motor Vehicle Board: franchises.

(1) Existing law defines the terms ~~“franchise,” “franchisee,” and “relevant market area”~~ “franchise” and “franchisee” for purposes of the Vehicle Code.

This bill would revise those definitions ~~and would define the terms “area of responsibility” and “satellite service facility.”~~

(2) Under existing law, motor vehicle dealer franchisors are prohibited from terminating, or refusing to continue, any existing franchise unless specified requirements are met,

including the requirement that a written notice be sent to franchise motor vehicle dealers concerning their rights to file certain protests with the New Motor Vehicle Board, as specified.

This bill would require additional information to be included in that notification.

~~(3) Existing law prohibits a franchisor from modifying or replacing a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment.~~

~~This bill would additionally prohibit the above if the modification or replacement would change the franchisee's area of responsibility.~~

~~(4) Under existing law, if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make of vehicle is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor is required to notify, in writing, the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership within or into that market area.~~

~~This bill would include within the scope of the above provision instances where the franchisor seeks to enter a franchise establishing an additional satellite service facility, except as specified, and would require that written notification to each franchisee contain specified information concerning the franchisee's right to protest the action to the board.~~

~~(5)~~

~~(4) Existing law makes it a crime for licensed automotive manufacturers, manufacturer branches, distributors, or distributor branches to engage in certain conduct.~~

~~This bill would include in that listing of prohibited conduct the following: (a) the exercise of a right of first refusal or certain other similar rights unless specified conditions are met, (b) the unfair discrimination in favor of any dealership owned or controlled, by the above described entities, (c) the failure of a transferring franchisee to provide a specified notice to a manufacturer or distributor regarding the~~



franchisee’s desire to sell, transfer, or assign a franchise, and (d) the failure of the manufacturer or distributor to provide a specified notice to the franchisee.

The bill would specify that it is unreasonable for a manufacturer or distributor to disapprove of a sale, assignment, or transfer of a franchise if certain conditions exist.

~~The bill would; specify that in any action between a manufacturer or distributor and a transferring franchisee, impose on the manufacturer or distributor the burden of proof to establish that its withholding of consent was not unreasonable, as specified in which the manufacturer’s or distributor’s withholding of consent is an issue, whether that withholding of consent was not unreasonable is a question of fact, requiring consideration of all the existing circumstances.~~

~~(6)~~

(5) Because a violation of the above provisions would be a crime, the bill would impose a state-mandated local program.

~~(7)~~

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

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

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

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

1 ~~SECTION 1. Section 114 is added to the Vehicle Code,~~
2 ~~to read:~~

3 ~~114. “Area of responsibility” is the geographic area~~
4 ~~used by the franchisor to evaluate a franchisee’s~~
5 ~~performance under the franchise.~~

6 ~~SEC. 2.~~

7 ~~SECTION 1.~~ Section 331 of the Vehicle Code is
8 amended to read:



1 331. (a) A “franchise” is a written agreement
2 between two or more persons having all of the following
3 conditions:

4 (1) A commercial relationship of definite duration or
5 continuing indefinite duration.

6 (2) The franchisee is granted the right to offer for sale
7 or lease, or to sell or lease at retail new motor vehicles
8 manufactured or distributed by the franchisor or the
9 right to perform authorized warranty repairs and service,
10 or the right to perform any combination of these
11 activities.

12 (3) The franchisee constitutes a component of the
13 franchisor’s distribution system.

14 (4) The operation of the franchisee’s business is
15 substantially associated with the franchisor’s trademark,
16 trade name, advertising, or other commercial symbol
17 designating the franchisor.

18 (5) The operation of a portion of the franchisee’s
19 business is substantially reliant on the franchisor for a
20 continued supply of new vehicles, parts, or accessories.

21 (b) The term “franchise” does not include an
22 agreement entered into by a manufacturer or distributor
23 and a person where all the following apply:

24 (1) The person is authorized to perform warranty
25 repairs and service on vehicles manufactured or
26 distributed by the manufacturer or distributor.

27 (2) The person is not a new motor vehicle dealer
28 franchisee of the manufacturer or distributor.

29 (3) The person’s repair and service facility is not
30 located within the relevant market area of a new motor
31 vehicle dealer franchisee of the manufacturer or
32 distributor.

33 ~~SEC. 3.—~~

34 *SEC. 2.* Section 331.1 of the Vehicle Code is amended
35 to read:

36 331.1. A “franchisee” is any person who, pursuant to
37 a franchise, receives new motor vehicles subject to
38 registration under this code or new off-highway
39 motorcycles, as defined in Section 436, from the
40 franchisor and who offers for sale or lease, or sells or leases



1 the vehicles at retail or is granted the right to perform
2 authorized warranty repairs and service, or the right to
3 perform any combination of these activities.

4 ~~SEC. 4. Section 507 of the Vehicle Code is amended~~
5 ~~to read:~~

6 ~~507. “Relevant market area” is any area within a~~
7 ~~radius of 10 miles from the site of a potential new~~
8 ~~dealership or satellite service center.~~

9 ~~SEC. 5. Section 543.5 is added to the Vehicle Code, to~~
10 ~~read:~~

11 ~~543.5. “Satellite service facility” is any facility~~
12 ~~operated by a franchisee where authorized warranty~~
13 ~~repairs and service are performed and the offer for sale~~
14 ~~or lease, or the sale or lease of new motor vehicles is not~~
15 ~~authorized to take place.~~

16 ~~SEC. 6.—~~

17 ~~SEC. 3. Section 3060 of the Vehicle Code is amended~~
18 ~~to read:~~

19 3060. (a) Notwithstanding Section 20999.1 of the
20 Business and Professions Code or the terms of any
21 franchise, no franchisor shall terminate or refuse to
22 continue any existing franchise unless all of the following
23 conditions are met:

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

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

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

32 (i) Transfer of any ownership or interest in the
33 franchise without the consent of the franchisor, which
34 consent shall not be unreasonably withheld.

35 (ii) Misrepresentation by the franchisee in applying
36 for the franchise.

37 (iii) Insolvency of the franchisee, or filing of any
38 petition by or against the franchisee under any
39 bankruptcy or receivership law.



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

3 (v) Failure of the motor vehicle dealer to conduct its
4 customary sales and service operations during its
5 customary hours of business for seven consecutive
6 business days, giving rise to a good faith belief on the part
7 of the franchisor that the motor vehicle dealer is in fact
8 going out of business, except for circumstances beyond
9 the direct control of the motor vehicle dealer or by order
10 of the department.

11 (C) The written notice shall contain, on the first page
12 thereof in at least 12-point bold type and circumscribed
13 by a line to segregate it from the rest of the text, one of
14 the following statements, whichever is applicable:

15 [To be inserted when a 60-day notice of termination is
16 given.]

17 “NOTICE TO DEALER: You have the right to file a
18 protest with the NEW MOTOR VEHICLE BOARD in
19 Sacramento and have a hearing in which you may protest
20 the termination of your franchise under provisions of the
21 California Vehicle Code. You must file your protest with
22 the board within 30 calendar days after receiving this
23 notice or within 30 days after the end of any appeal
24 procedure provided by the franchisor or your protest
25 right will be waived.”

26 [To be inserted when a 15-day notice of termination is
27 given.]

28 “NOTICE TO DEALER: You have the right to file a
29 protest with the NEW MOTOR VEHICLE BOARD in
30 Sacramento and have a hearing in which you may protest
31 the termination of your franchise under provisions of the
32 California Vehicle Code. You must file your protest with
33 the board within 10 calendar days after receiving this
34 notice or within 10 days after the end of any appeal
35 procedure provided by the franchisor or your protest
36 right will be waived.”

37 (2) Except as provided in Section 3050.7, the board
38 finds that there is good cause for termination or refusal to
39 continue, following a hearing called pursuant to Section
40 3066. The franchisee may file a protest with the board



1 within 30 days after receiving a 60-day notice, satisfying
2 the requirements of this section, or within 30 days after
3 the end of any appeal procedure provided by the
4 franchisor, or within 10 days after receiving a 15-day
5 notice, satisfying the requirements of this section, or
6 within 10 days after the end of any appeal procedure
7 provided by the franchisor. When a protest is filed, the
8 board shall advise the franchisor that a timely protest has
9 been filed, that a hearing is required pursuant to Section
10 3066, and that the franchisor may not terminate or refuse
11 to continue until the board makes its findings.

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

15 (b) (1) Notwithstanding Section 20999.1 of the
16 Business and Professions Code or the terms of any
17 franchise, no franchisor shall modify or replace a
18 franchise with a succeeding franchise if the modification
19 or replacement would substantially affect the franchisee's
20 sales or service obligations or investment ~~or would~~
21 ~~change the franchisee's area of responsibility~~, unless the
22 franchisor has first given the board and each affected
23 franchisee written notice thereof at least 60 days in
24 advance of the modification or replacement. Within 30
25 days of receipt of the notice, satisfying the requirement
26 of this section, or within 30 days after the end of any
27 appeal procedure provided by the franchisor, a
28 franchisee may file a protest with the board and the
29 modification or replacement does not become effective
30 until there is a finding by the board that there is good
31 cause for the modification or replacement. If, however, a
32 replacement franchise is the successor franchise to an
33 expiring or expired term franchise, the prior franchise
34 shall continue in effect until resolution of the protest by
35 the board. In the event of multiple protests, hearings shall
36 be consolidated to expedite the disposition of the issue.

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



1 “NOTICE TO DEALER: Your franchise agreement is
2 being modified or replaced. If the modification or
3 replacement will substantially affect your sales or service
4 obligations or investment, you have the right to file a
5 protest with the NEW MOTOR VEHICLE BOARD in
6 Sacramento and have a hearing in which you may protest
7 the proposed modification or replacement of your
8 franchise under provisions of the California Vehicle
9 Code. You must file your protest with the board within 30
10 calendar days of your receipt of this notice or within 30
11 days after the end of any appeal procedure provided by
12 the franchisor or your protest rights will be waived.”

13 ~~SEC. 7.—~~

14 SEC. 4. Section 3062 of the Vehicle Code is amended
15 to read:

16 3062. (a) (1) Except as otherwise provided in
17 subdivision (b), if a franchisor seeks to enter into a
18 franchise establishing an additional motor vehicle
19 dealership ~~or satellite service facility~~ within a relevant
20 market area where the same line-make is then
21 represented, or seeks to relocate an existing motor
22 vehicle dealership ~~or satellite service facility~~, the
23 franchisor shall, in writing, first notify the board and each
24 franchisee in that line-make in the relevant market area
25 of the franchisor’s intention to establish an additional
26 dealership ~~or satellite service facility~~ or to relocate an
27 existing dealership ~~or satellite service facility~~ within or
28 into that market area. Within 20 days of receiving the
29 notice, satisfying the requirements of this section, or
30 within 20 days after the end of any appeal procedure
31 provided by the franchisor, ~~a franchisee~~ *any franchisee*
32 *required to be given the notice* may file with the board
33 a protest to the establishing or relocating of the dealership
34 ~~or satellite service facility~~. If, within this time, a franchisee
35 files with the board a request for additional time to file a
36 protest, the board or its secretary, upon a showing of good
37 cause, may grant an additional 10 days to file the protest.
38 When such a protest is filed, the board shall inform the
39 franchisor that a timely protest has been filed, that a
40 hearing is required pursuant to Section 3066, and that the



1 franchisor shall not establish or relocate the proposed
2 dealership ~~or satellite service facility~~ until the board has
3 held a hearing as provided in Section 3066, nor thereafter,
4 if the board has determined that there is good cause for
5 not permitting the dealership ~~or satellite service facility~~.
6 In the event of multiple protests, hearings may be
7 consolidated to expedite the disposition of the issue.

8 *(2) If a franchisor seeks to enter into a franchise that*
9 *authorizes a satellite warranty facility to be established at,*
10 *or relocated to, a proposed location which is within two*
11 *miles of any dealership of the same line-make, the*
12 *franchisor shall first give notice in writing of the*
13 *franchisor's intention to establish or relocate a satellite*
14 *warranty facility at the proposed location to the board*
15 *and each franchisee operating a dealership of the same*
16 *line-make within two miles of the proposed location.*
17 *Within 20 days of receiving the notice satisfying the*
18 *requirements of this section, or within 20 days after the*
19 *end of any appeal procedure provided by the franchisor,*
20 *any franchisee required to be given the notice may file*
21 *with the board a protest to the establishing or relocating*
22 *of the satellite warranty facility. If, within this time, a*
23 *franchisee files with the board a request for additional*
24 *time to file a protest, the board or its secretary, upon a*
25 *showing of good cause, may grant an additional 10 days to*
26 *file the protest. When such a protest is filed, the board*
27 *shall inform the franchisor that a timely protest has been*
28 *filed, that a hearing is required pursuant to Section 3066,*
29 *and that the franchisor shall not establish or relocate the*
30 *proposed satellite warranty facility until the board has*
31 *held a hearing as provided in Section 3066, nor thereafter,*
32 *if the board has determined that there is good cause for*
33 *not permitting the satellite warranty facility. In the event*
34 *of multiple protests, hearings may be consolidated to*
35 *expedite the disposition of the issue.*

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



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

12 (b) Subdivision (a) does not apply to ~~any~~ *either* of the
13 following:

14 (1) The relocation of an existing dealership to any
15 location that is both within the same city as, and is within
16 one mile from, the existing dealership location.

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

21 ~~(3) The establishment or relocation of a dealership or~~
22 ~~satellite service facility that is to be located within a~~
23 ~~10-mile radius of a satellite service facility authorized by~~
24 ~~the franchisor to perform warranty repairs and service on~~
25 ~~vehicles of the same line-make, unless the location of the~~
26 ~~proposed establishment or relocation is in the relevant~~
27 ~~market area of another motor vehicle dealership of the~~
28 ~~same line-make.~~

29 ~~(4) The establishment or relocation of a satellite~~
30 ~~service facility to be operated by a franchisee as an~~
31 ~~adjunct to that franchisee’s dealership and proposed to be~~
32 ~~located within that franchisee’s area of responsibility,~~
33 ~~unless the satellite service facility is to be located within~~
34 ~~a two-mile radius of a dealership of the same line-make~~
35 ~~operated by another franchisee. The establishment or~~
36 ~~relocation of a satellite service facility to be operated by~~
37 ~~a franchisee as an adjunct to that franchisee’s dealership~~
38 ~~at any location that is both within that franchisee’s area~~
39 ~~of responsibility and within a two-mile radius of a~~
40 ~~dealership of the same line-make operated by another~~



1 ~~franchisee may only be protested pursuant to subdivision~~
2 ~~(a) by a franchisee that operates a dealership of the same~~
3 ~~line-make within that two-mile radius of the location of~~
4 ~~the proposed satellite service facility.~~

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

17 (d) For the purposes of this section, the reopening of
18 a dealership that has not been in operation for one year
19 or more shall be deemed the establishment of an
20 additional motor vehicle dealership.

21 ~~(e) As used in this section, “motor vehicle dealership”~~
22 ~~or “dealership” is any authorized facility at which a~~
23 ~~franchisee offers for sale or lease, or sells or leases new~~
24 ~~motor vehicles.~~

25 ~~SEC. 8.—~~

26 *(e) As used in this section, the following definitions*
27 *apply:*

28 *(1) “Motor vehicle dealership” or “dealership” means*
29 *any authorized facility at which a franchisee offers for sale*
30 *or lease, displays for sale or lease, or sells or leases new*
31 *motor vehicles.*

32 *(2) “Satellite warranty facility” means any facility*
33 *operated by a franchisee where authorized warranty*
34 *repairs and service are performed and the offer for sale*
35 *or lease, the display for sale or lease, or the sale or lease*
36 *of new motor vehicles is not authorized to take place.*

37 *SEC. 5.* Section 3066 of the Vehicle Code is amended
38 to read:

39 3066. (a) Upon receiving a notice of protest pursuant
40 to Section 3060, 3062, 3064, 3065, or 3065.1, the board shall



1 fix a time, which shall be within 60 days of the order, and
2 place of hearing, and shall send by registered mail a copy
3 of the order to the franchisor, the protesting franchisee,
4 and all individuals and groups which have requested
5 notification by the board of protests and decisions of the
6 board. Except in any case involving a franchisee who
7 deals exclusively in motorcycles, the board or its secretary
8 may, upon a showing of good cause, accelerate or
9 postpone the date initially established for a hearing, but
10 in no event shall the hearing be rescheduled more than
11 90 days after the board's initial order. For the purpose of
12 accelerating or postponing a hearing date, "good cause"
13 includes, but is not limited to, the effects upon, and any
14 irreparable harm to, the parties or interested persons or
15 groups if the request for a change in hearing date is not
16 granted. The board, or a hearing officer designated by the
17 board, shall hear and consider the oral and documented
18 evidence introduced by the parties and other interested
19 individuals and groups, and the board shall make its
20 decision solely on the record so made. Chapter 4.5
21 (commencing with Section 11400) of Part 1 of Division 3
22 of Title 2 of the Government Code and Sections 11507.3,
23 11507.6, 11507.7, 11511, 11513, 11514, 11515, and 11517 of
24 the Government Code apply to these proceedings.

25 (b) In any hearing on a protest filed pursuant to
26 Section 3060 or 3062, the franchisor shall have the burden
27 of proof to establish that there is good cause to modify,
28 replace, terminate, or refuse to continue a franchise. The
29 franchisee shall have the burden of proof to establish that
30 there is good cause not to enter into a franchise
31 establishing or relocating an additional motor vehicle
32 dealership.

33 (c) In any hearing on a protest alleging a violation of,
34 or filed pursuant to, Section 3064, 3065, or 3065.1, the
35 franchisee shall have the burden of proof, but the
36 franchisor has the burden of proof to establish that a
37 franchisee acted with intent to defraud the franchisor
38 where that issue is material to a protest filed pursuant to
39 Section 3065 or 3065.1.



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

6 ~~SEC. 9.—~~

7 *SEC. 6.* Section 3067 of the Vehicle Code is amended
8 to read:

9 3067. (a) The decision of the board shall be in writing
10 and shall contain findings of fact and a determination of
11 the issues presented. The decision shall sustain,
12 conditionally sustain, overrule, or conditionally overrule
13 the protest. Any conditions imposed by the board shall be
14 for the purpose of assuring performance of binding
15 contractual agreements between franchisees and
16 franchisors or otherwise serving the purposes of this
17 article. If the board fails to act within 30 days after such
18 hearing, within 30 days after the board receives a
19 proposed decision where the case is heard before a
20 hearing officer alone, or within such period as may be
21 necessitated by Section 11517 of the Government Code or
22 as may be mutually agreed upon by the parties, then the
23 proposed action shall be deemed to be approved. Copies
24 of the board's decision shall be delivered to the parties
25 personally or sent to them by registered mail, as well as
26 to all individuals and groups, which have requested
27 notification by the board of protests and decisions by the
28 board. The board's decision shall be final upon its delivery
29 or mailing and no reconsideration or rehearing shall be
30 permitted.

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

38 ~~SEC. 10.—~~

39 *SEC. 7.* Section 11713.3 of the Vehicle Code is
40 amended to read:



1 11713.3. It is unlawful and a violation of this code for
2 any manufacturer, manufacturer branch, distributor, or
3 distributor branch licensed under this code to do any of
4 the following:

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

17 (b) To prevent or require, or attempt to prevent or
18 require, by contract or otherwise, any change in the
19 capital structure of a dealership or the means by or
20 through which the dealer finances the operation of the
21 dealership, provided that the dealer at all times meets any
22 reasonable capital standards agreed to by the dealer and
23 the manufacturer or distributor, and also provided that
24 no change in capital structure shall cause a change in the
25 principal management or have the effect of a sale of the
26 franchise without the consent of the manufacturer or
27 distributor.

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

34 (d) (1) Except as provided in subdivision (t), to
35 prevent or require, or attempt to prevent or require, by
36 contract or otherwise, any dealer, or any officer, partner,
37 or stockholder of any dealership, the sale or transfer of
38 any part of the interest of any of them to any other person
39 or persons. No dealer, officer, partner, or stockholder
40 shall, however, have the right to sell, transfer, or assign



1 the franchise, or any right thereunder, without the
2 consent of the manufacturer or distributor except that
3 the consent shall not be unreasonably withheld.

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

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

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

16 ~~(iii) The proposed transferee's written agreement to~~
17 ~~comply with the lawful terms of the franchise.~~

18 ~~(iv)~~

19 (iii) The proposed transferee's application for
20 approval to become the successor franchisee. The
21 application shall include forms and related information
22 generally utilized by the manufacturer or distributor in
23 reviewing prospective franchisees, if those forms are
24 readily made available to existing franchisees. As soon as
25 practicable after receipt of the proposed transferee's
26 application, the manufacturer or distributor shall notify
27 the franchisee and the proposed transferee of any
28 information needed to make the application complete.

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



1 disapproved by the franchisor in the manner provided by
 2 this subdivision. If the proposed sale, assignment, or
 3 transfer is disapproved, the franchisor shall include in the
 4 notice of disapproval a statement setting forth the reasons
 5 for the disapproval.

6 ~~(3) For the purposes of this subdivision and~~
 7 ~~subdivision (e), it is unreasonable for a manufacturer or~~
 8 ~~distributor to disapprove the sale, assignment, or transfer~~
 9 ~~of a franchise if all of the following apply:~~

10 ~~(A) The proposed transferee is capable of being issued~~
 11 ~~a dealer license pursuant to Chapter 4 (commencing with~~
 12 ~~Section 11700) of Division 5.~~

13 ~~(B) The proposed transferee meets the~~
 14 ~~manufacturer's or distributor's written and reasonable~~
 15 ~~standards or qualifications relating to character, prior~~
 16 ~~business experience and consumer service, and financial~~
 17 ~~requirements, provided those standards or qualifications,~~
 18 ~~if any, are in effect at the time of the proposed sale,~~
 19 ~~assignment, or transfer, and are readily made available to~~
 20 ~~existing franchisees.~~

21 ~~(C) The transfer to the proposed transferee will not~~
 22 ~~exceed the manufacturer's or distributor's written, and~~
 23 ~~reasonable restrictions, if any, related to multiple~~
 24 ~~ownership or control of franchises of the same line make~~
 25 ~~by a single person, entity, or group, provided those~~
 26 ~~restrictions are in effect at the time of the proposed sale,~~
 27 ~~assignment, or transfer and are readily made available to~~
 28 ~~existing franchisees.~~

29 ~~(4) In any action between a manufacturer or~~
 30 ~~distributor and a transferring franchisee in which the~~

31 ~~(3) In any action in which the manufacturer's or~~
 32 ~~distributor's withholding of consent under this~~
 33 ~~subdivision or subdivision (e) is an issue, whether the~~
 34 ~~withholding of consent was not unreasonable is a question~~
 35 ~~of fact requiring consideration of all the existing~~
 36 ~~circumstances and on which the manufacturer or~~
 37 ~~distributor shall have the burden of proof. of all the~~
 38 ~~existing circumstances.~~

39 ~~(e) To prevent, or attempt to prevent, a dealer from~~
 40 ~~receiving fair and reasonable compensation for the value~~



1 of the franchised business. There shall be no transfer or
2 assignment of the dealer's franchise without the consent
3 of the manufacturer or distributor, which consent shall
4 not be unreasonably withheld or conditioned upon the
5 release, assignment, novation, waiver, estoppel, or
6 modification of any claim or defense by the dealer.

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

13 (g) To require a dealer to prospectively assent to a
14 release, assignment, novation, waiver, or estoppel which
15 would relieve any person from liability to be imposed by
16 this article or to require any controversy between a
17 dealer and a manufacturer, distributor, or representative,
18 to be referred to any person other than the board, if the
19 referral would be binding on the dealer. This subdivision
20 does not, however, prohibit arbitration before an
21 independent arbitrator.

22 (h) To increase prices of motor vehicles which the
23 dealer had ordered for private retail consumers prior to
24 the dealer's receipt of the written official price increase
25 notification. A sales contract signed by a private retail
26 consumer is evidence of each such order. In the event of
27 manufacturer price reductions, the amount of the
28 reduction received by a dealer shall be passed on to the
29 private retail consumer by the dealer if the retail price
30 was negotiated on the basis of the previous higher price
31 to the dealer. Price reductions apply to all vehicles in the
32 dealer's inventory which were subject to the price
33 reduction. Price differences applicable to new model or
34 series motor vehicles at the time of the introduction of
35 new models or series shall not be considered a price
36 increase or price decrease. Price changes caused by
37 either (1) the addition to a motor vehicle of required or
38 optional equipment pursuant to state or federal law, or
39 (2) revaluation of the United States dollar in the case of
40 foreign-made vehicles, are not subject to this subdivision.



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

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

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

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

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

25 (n) To deny any dealer the right of free association
26 with any other dealer for any lawful purpose.

27 (o) To compete with a dealer in the same line-make
28 operating under an agreement or franchise from a
29 manufacturer or distributor in the relevant market area.
30 A manufacturer or distributor shall not, however, be
31 deemed to be competing when operating a dealership
32 either temporarily for a reasonable period, or in a bona
33 fide retail operation which is for sale to any qualified
34 independent person at a fair and reasonable price, or in
35 a bona fide relationship in which an independent person
36 has made a significant investment subject to loss in the
37 dealership and can reasonably expect to acquire full
38 ownership of the dealership on reasonable terms and
39 conditions. A distributor shall not be deemed to be
40 competing when a wholly owned subsidiary corporation



1 of the distributor sells motor vehicles at retail, if, for at
2 least three years prior to January 1, 1973, the subsidiary
3 corporation has been a wholly owned subsidiary of the
4 distributor and engaged in the sale of vehicles at retail.

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

9 (q) To sell vehicles to persons not licensed under this
10 chapter for resale.

11 (r) To fail to affix an identification number to any park
12 trailer, as described in subdivision (b) of Section 18010 of
13 the Health and Safety Code, which is manufactured on or
14 after January 1, 1987, and which does not clearly identify
15 the unit as a park trailer to the department. The
16 configuration of the identification number shall be
17 approved by the department.

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

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

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

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



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

5 (4) The proposed transferee is neither a family
6 member of an owner of the franchised business, nor a
7 managerial employee of the franchisee owning 15
8 percent or more of the franchised business, nor a
9 corporation, partnership, or other legal entity owned by
10 the existing owners of the franchised business. For
11 purposes of this paragraph, a “family member” means the
12 spouse of an owner of the franchised business, the child,
13 grandchild, brother, sister, or parent of an owner, or a
14 spouse of one of those family members. Nothing
15 contained in this paragraph limits the rights of the
16 franchisor to disapprove a proposed transferee as
17 provided in subdivision (d).

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

27 (6) The franchisor shall reimburse the proposed
28 transferee for any expenses paid or incurred by the
29 proposed transferee in evaluating, investigating, and
30 negotiating the proposed transfer to the extent those
31 expenses do not exceed the usual, customary, and
32 reasonable fees charged for similar work done in the area
33 in which the franchised business is located. These
34 expenses include, but are not limited to, legal and
35 accounting expenses, and expenses incurred for title
36 reports and environmental or other investigations of any
37 real property on which the franchisee’s operations are
38 conducted. The proposed transferee shall provide the
39 franchisor a written itemization of those expenses, and a
40 copy of all nonprivileged reports and studies for which



1 expenses were incurred, if any, within 30 days of the
2 proposed transferee's receipt of a written request from
3 the franchisor for that accounting. The franchisor shall
4 make payment within 30 days of exercising the right of
5 first refusal.

6 (u) To unfairly discriminate in favor of any dealership
7 owned or controlled, in whole or part, by a manufacturer
8 or distributor or an entity that controls or is controlled by
9 the manufacturer or distributor. Nothing in this
10 subdivision shall be interpreted to prohibit a franchisor
11 from granting a franchise to prospective franchisees or
12 assisting those franchisees during the course of the
13 franchise relationship as part of a program or programs
14 to make franchises available to persons lacking capital,
15 training, business experience, or other qualifications
16 ordinarily required of prospective franchisees.

17 ~~SEC. 11.~~

18 *SEC. 8.* No reimbursement is required by this act
19 pursuant to Section 6 of Article XIII B of the California
20 Constitution because the only costs that may be incurred
21 by a local agency or school district will be incurred
22 because this act creates a new crime or infraction,
23 eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition
26 of a crime within the meaning of Section 6 of Article
27 XIII B of the California Constitution.

28 Notwithstanding Section 17580 of the Government
29 Code, unless otherwise specified, the provisions of this act
30 shall become operative on the same date that the act
31 takes effect pursuant to the California Constitution.

