AMENDED IN SENATE APRIL 2, 2009

SENATE BILL No. 424

Introduced by Senators Padilla, Florez, and Harman
(Coauthor: Assembly Member Fuentes)

February 26, 2009

An act to add Section 11713.13 to the Vehicle Code, relating to vehicles, *and declaring the urgency thereof, to take effect immediately*.

LEGISLATIVE COUNSEL'S DIGEST

SB 424, as amended, Padilla. Vehicles: manufacturers and distributors.

(1) Existing law generally requires a *manufacturer,* manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to, among other things, dishonor a warranty, rebate, or other incentive offered to the public or a dealer, as specified, or to unfairly discriminate in favor of a dealership owned or controlled, in whole or part, by a manufacturer or an entity that controls or is controlled by a manufacturer or distributor.

This bill ~~would enact the Dealer Franchise Fairness Act of 2009 and~~ would prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from preventing, or attempting to prevent, by contract or otherwise, a dealer from acquiring, adding, or maintaining a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the dealer currently operates a dealership~~,~~ ~~provided that~~ *if* the dealer complies with any reasonable facilities *and capital* requirements of the manufacturer or distributor~~,~~ or *from* requiring a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including economic conditions. In any proceeding under these provisions in which the reasonableness of a facility requirement is an issue, the manufacturer or distributor would have the burden of proof.

The bill would also prohibit additional specified unlawful acts by a manufacturer, manufacturer branch, distributor, or distributor branch against a dealer.

(2) Under existing law, a violation of the above provisions relating to occupational licensing and business regulations in the Vehicle Code is a misdemeanor.

Because this bill would create a new crime, it would impose a state-mandated local program.

(3) 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.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ $^2/_3$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The distribution, sale, and service of new motor vehicles in the State of California vitally affects the general economy of this state and the public welfare.

(b) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, assures the consuming public of a well-organized distribution system for the availability and sale of new motor vehicles throughout the state; provides a network of quality warranty, recall, and repair facilities to maintain those vehicles; and creates a cost-effective method for the state to police those systems through the licensing and regulation of private sector franchisors and franchisees.

~~(c) In 2008, over 125 new motor vehicle dealerships closed their doors in California. Those closures triggered job losses in the communities those dealerships served; diminished sales tax and other tax revenues for those communities; reduced the number of service bays necessary to perform warranty, recall, and other service repairs; and weakened interbrand and intrabrand price competition for consumers.~~

~~(d) Many of those closures stemmed from the expense of unreasonable franchisor facilities requirements that denied dealers enough flexibility to configure their dealerships in a manner that would have permitted them to remain in business and continue to service the needs of their communities and customers.~~

(c) Since January of 2008, over 170 new motor vehicle dealerships have closed their doors in California. These closures have resulted in job losses, diminished sales tax and other tax revenues, and a reduction in the number of new motor vehicle dealerships that service the consuming public.

~~(e)~~

(d) It is the intent of this act to ensure that ~~new motor vehicle dealers are treated fairly by their franchisors, that~~ facility requirements imposed by franchisors are reasonable, that assistance for dealers upon termination, nonrenewal, or cancellation of a franchise is adequate, and that dealers are properly indemnified for actions of auto manufacturers or distributors that are beyond ~~their control~~ *the control of dealers*.

~~SEC. 2. This act shall be known and may be cited as the "Dealer Franchise Fairness Act of 2009."~~

~~SEC. 3.~~

SEC. 2. Section 11713.13 is added to the Vehicle Code, to read:

11713.13. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

(a) Prevent, or attempt to prevent, by contract or otherwise, a dealer from acquiring, adding, or maintaining a sales or service operation for another line make of motor vehicles at the same or expanded facility at which the dealer currently operates a dealership~~, provided that~~ *if* the dealer complies with any reasonable facilities *and capital* requirements of the manufacturer or distributor.

(b) Require a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including economic conditions. In any proceeding under this subdivision or subdivision (a) in which the reasonableness of a facility *or capital* requirement is an issue, the manufacturer or distributor shall have the burden of proof.

(c) Require, by contract or otherwise, a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions. In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer or distributor shall have the burden of proof.

(d) *(1)* Fail to pay to a dealer, within 90 days of termination, cancellation, or nonrenewal of a franchise, all of the following:

~~(1)~~

(A) The dealer cost, plus any charges made by the manufacturer or distributor for vehicle distribution or delivery and the cost of any dealer-installed original equipment accessories, less any amount invoiced to the vehicle and paid by the manufacturer or distributor to the dealer, for all new and undamaged vehicles *with less than 500 miles* in the dealer's inventory that were acquired by the dealer from the manufacturer, distributor, or another new motor vehicle dealer franchised to sell vehicles of the same line-make~~, within 24~~ *in the ordinary course of business, within 18* months of termination, cancellation, or nonrenewal of the franchise.

~~(2)~~

(B) The dealer cost for all unused and undamaged supplies, parts, and accessories listed in the manufacturer's current parts catalog and in their original packaging, except that sheet metal may be packaged in a comparable substitute for the original package.

~~(3)~~

(C) The fair market value of each undamaged sign owned by the motor vehicle dealer and bearing a common name, trade name, or trademark of the manufacturer or distributor if acquisition of ~~such sign was recommended or required by the manufacturer or~~

the sign was required or made a condition of participation in an incentive program by the manufacturer or distributor.

~~(4)~~

(D) The fair market value of all special tools, computer systems, ~~and equipment that were recommended, required, or purchased from~~ *and equipment that were required or made a condition of participation in an incentive program by* the manufacturer or distributor that are in usable condition, excluding normal wear and tear.

~~(5)~~

(E) The dealer costs of handling, packing, loading, and transporting any items or inventory for repurchase by the manufacturer or distributor.

(2) This subdivision does not apply to a termination that is implemented as a result of the sale of substantially all of the inventory and fixed assets or stock of a franchised dealership if the dealership continues to operate as a franchisee of the same line-make.

(e) Fail, upon demand, to indemnify any existing or former franchisee and the franchisee's successors and assigns from any and all damages sustained and ~~attorneys~~ *attorney's* fees and other expenses reasonably incurred by the franchisee that result from or relate to any claim made or asserted by a third party against the franchisee to the extent the claim results from any of the following:

(1) The condition, characteristics, manufacture, assembly, or design of any vehicle, parts, accessories, tools, or equipment, or the selection or combination of parts or components manufactured or distributed by the manufacturer or distributor.

(2) Service systems, procedures, or methods the franchisor required or recommended the franchisee to use *if the franchisee properly uses the system, procedure, or method*.

(3) Improper use *or disclosure by a manufacturer or distributor* of nonpublic personal information obtained from a franchisee concerning any consumer, customer, or employee of the franchisee.

(4) Any act or omission of the manufacturer or distributor for which the franchisee would have a claim for contribution or indemnity under applicable law or under the franchise, irrespective of and without regard to any prior termination or expiration of the franchise.

~~SEC. 4.~~

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

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit, as soon as possible, franchised new motor vehicle dealers flexibility to configure their dealership facilities in a manner that will permit them to remain in business and continue to service the needs of their communities, it is necessary that this act take effect immediately.

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