

AMENDED IN ASSEMBLY MAY 12, 2009

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 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 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: $\frac{2}{3}$. 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.

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

6 (d) It is the intent of this act to ensure that facility requirements
7 imposed by franchisors are reasonable, that assistance for dealers
8 upon termination, nonrenewal, or cancellation of a franchise is
9 adequate, and that dealers are properly indemnified for actions of
10 auto manufacturers or distributors that are beyond the control of
11 dealers.

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

14 11713.13. It is unlawful and a violation of this code for any
15 manufacturer, manufacturer branch, distributor, or distributor
16 branch licensed under this code to do, directly or indirectly through
17 an affiliate, any of the following:

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

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

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

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

(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, in the ordinary course of business, within 18 months of termination, cancellation, or nonrenewal of the franchise.

(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.

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

(D) The fair market value of all special tools, computer systems, 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.

(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 franchisor of a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code.

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(3) 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) (1) (A) Fail to pay to a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, within 90 days of termination, cancellation, or

1 nonrenewal of a franchise for a recreational vehicle line-make,
2 as defined in Section 3072.5, the dealer cost, plus any charges
3 made by the manufacturer or distributor for vehicle distribution
4 or delivery and the cost of any dealer-installed original equipment
5 accessories, less any amount invoiced to the vehicle and paid by
6 the manufacturer or distributor to the dealer, when the termination,
7 cancellation or nonrenewal is initiated by a recreational vehicle
8 manufacturer. This paragraph only applies to new and unused
9 recreational vehicles that do not currently have or have had in the
10 past, material damage, as defined in Section 9990, and that the
11 dealer acquired from the manufacturer, distributor, or another
12 new motor vehicle dealer franchised to sell recreational vehicles
13 of the same line-make in the ordinary course of business within
14 12 months of the termination, cancellation, or nonrenewal of the
15 franchise.

16 (B) For those recreational vehicles with odometers, paragraph
17 (1) shall apply to only those vehicles that have no more than 1,500
18 miles on the odometer, in addition to the number of miles incurred
19 while delivering the vehicle from the manufacturer's facility that
20 produced the vehicle for delivery to the dealer's retail location.

21 (C) Damaged recreational vehicles shall be repurchased by the
22 manufacturer provided there is an offset in value for damages,
23 except recreational vehicles that have or had material damage,
24 as defined in Section 9990, may be repurchased at the
25 manufacturer's option provided there is an offset in value for
26 damages.

27 (2) Fail to pay to a dealer of new recreational vehicles, as
28 defined in subdivision (a) of Section 18010 of the Health and Safety
29 Code, within 90 days of termination, cancellation, or nonrenewal
30 of a franchise, all of the following:

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

36 (B) The fair market value of each undamaged sign owned by
37 the motor vehicle dealer and bearing a common name, trade name,
38 or trademark of the manufacturer or distributor if acquisition of
39 the sign was required or made a condition of participation in an
40 incentive program by the manufacturer or distributor.

1 (C) *The fair market value of all special tools, computer systems,*
2 *and equipment that were required or made a condition of*
3 *participation in an incentive program by the manufacturer or*
4 *distributor that are in usable condition, excluding normal wear*
5 *and tear.*

6 (D) *The dealer costs of handling, packing, loading, and*
7 *transporting any items or inventory for repurchase by the*
8 *manufacturer or distributor.*

9 (e)

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

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

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

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

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

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

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

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