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AB-179 New Motor Vehicle Board. (2019-2020)

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Assembly Bill No. 179

CHAPTER 796

An act to amend Sections 3010, 3050.5, 3065, 3066, 11713.3, 11713.13, and 11726 of, to amend, repeal, and add Sections 3050, 3050.1, and 3050.7 of, to add Sections 3065.2, 3065.25, 3065.3, and 3065.4 to, to add and repeal Article 6 (commencing with Section 3085) of Chapter 6 of Division 2 of, and to repeal Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 of, the Vehicle Code, relating to new motor vehicles.

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 179, Reyes. New Motor Vehicle Board.

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. Prior law, until January 1, 2019, authorized 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 established procedures for hearing those protests, as specified.

This bill would again authorize the board to hear these protests and establish the hearing procedures until January 1, 2030.

Existing law requires the board to hear an appeal filed by a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, or distributor branch licensee or applicant of a decision by the department.

This bill would remove this requirement for the board to hear those appeals and would repeal applicable provisions.

Existing law authorizes the board, under specified circumstances, to mediate, arbitrate, or otherwise resolve certain disputes between a member of the public and a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

This bill would authorize the board to hear a dispute brought by a member of the public only if the person has filed the dispute with the board or consents to the jurisdiction of the board. The bill would, until January 1, 2030, also authorize the board to hear certain disputes brought by an association challenging a policy of a manufacturer, manufacturer branch, distributor, or distributor branch.

Existing law requires a franchisor to fairly compensate for labor and parts used to fulfill warranty obligations.

This bill would instead require a franchisor to reimburse a franchisee according to a retail labor rate and retail parts rate established by each franchisee. The bill would prescribe the method by which a franchisee may establish or alter those reimbursement rates and would require the board to resolve any disputes regarding the calculation of those rates. The bill would prohibit specified actions by a franchisor related to the establishment of those reimbursement rates.

Existing law prohibits a licensed manufacturer, manufacturer branch, distributor, distributor branch, or affiliate from engaging in specified proscribed business practices. A violation of these provisions is a misdemeanor.

This bill would prohibit additional acts, including making it unlawful for these entities to restrict dealers from selecting certain vendors of their choice, as specified. Because a violation of these new provisions would be punishable as a crime, the bill would impose a state-mandated local program.

The bill includes legislative findings and declarations and would make other conforming changes.

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 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 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) California franchise laws require manufacturers to provide reasonable reimbursement to dealers for warranty work, but fail to establish a clear procedure to determine whether a reimbursement is reasonable. Unlike many states that have addressed this issue, California does not require franchisees to be reimbursed for warranty work at a retail rate.

(d) California prohibits manufacturers from imposing chargebacks and other adverse actions on dealers when the dealer did not have knowledge of, or reason to know of, an intended exportation or resale of a vehicle. To combat these violations, California authorized associations to file protests with the New Motor Vehicle Board to enforce California law on export policies. This authority expired on January 1, 2019.

(e) Franchisors sometimes establish facility models that require dealers to update their facilities every few years. The Legislature intends to establish necessary parameters on facility upgrades.

(f) Additional authority is needed at the New Motor Vehicle Board to ensure a fair and equitable motor vehicle franchise system.

(g) Some manufacturers require dealers to indemnify manufacturers when implementing manufacturer policies.

(h) The New Motor Vehicle Board provides an effective means to resolve disputes between manufacturers and dealers because it provides staff and judges with subject matter expertise and a successful alternative dispute resolution program, which reduces a significant burden on the superior courts. Additional authority is needed at the New Motor Vehicle Board to address issues of performance standards.

(i) It is the intent of this act to ensure that new motor vehicle dealers are treated fairly by their franchisors, that dealers are reasonably compensated for performing warranty repairs on behalf of their franchisors, that manufacturers are discouraged from adopting and enforcing policies contrary to California law and regulation, that dealers are adequately protected from excessive facility upgrade requirements, and that dealers can seek to address illegal manufacturer acts by filing protests at the New Motor Vehicle Board.

SEC. 2. Section 3010 of the Vehicle Code is amended to read:

3010. Five members of the board shall constitute a quorum for the transaction of business, for the performance of any duty or the exercise of any power or authority of the board, except that three members of the board, who are not new motor vehicle dealers, shall constitute a quorum for the purposes of Article 4 (commencing with Section 3060) and the consideration of a petition pursuant to subdivision (b) of Section 3050 that involves a dispute between a franchisee and franchisor.

SEC. 3. Section 3050 of the Vehicle Code is amended to read:

3050. The board shall do all of the following:

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

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

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

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

(B) The board does not have jurisdiction over a dispute pursuant to this paragraph involving any member of the public, including a consumer or other person who is not applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5, unless that person has filed the dispute with the board or consents to jurisdiction by the board.

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

(c) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

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

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

(f) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 4. Section 3050 is added to the Vehicle Code, to read:

3050. The board shall do all of the following:

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

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

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

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

or representative.

(B) The board does not have jurisdiction over a dispute pursuant to this paragraph involving any member of the public, including a consumer, or other person that is not applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5, unless that person has filed the dispute with the board or consents to jurisdiction by the board.

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

(c) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

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

(e) This section shall become operative on January 1, 2030.

SEC. 5. Section 3050.1 of the Vehicle Code is amended to read:

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

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

(c) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 6. Section 3050.1 is added to the Vehicle Code, to read:

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

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

(c) This section shall become operative on January 1, 2030.

SEC. 7. Section 3050.5 of the Vehicle Code is amended to read:

3050.5. Pursuant to Section 3016, the board shall establish a fee for the initial filing by any party in regard to any protest or petition filed pursuant to this chapter.

SEC. 8. Section 3050.7 of the Vehicle Code is amended to read:

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

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section 3070, which require a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

(c) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 9. Section 3050.7 is added to the Vehicle Code, to read:

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

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a conditional or unconditional termination of the franchise of the protestant, paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section 3070, which require a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

(c) This section shall become operative on January 1, 2030.

SEC. 10. Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 of the Vehicle Code is repealed.

SEC. 11. Section 3065 of the Vehicle Code is amended to read:

3065. (a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to satisfy the warranty obligations of the franchisor, including, but not limited to, diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule with the board. The warranty reimbursement schedule shall be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a warranty repair.

(1) The franchisor shall use time allowances for the diagnosis and performance of work and service that are reasonable and adequate for a qualified technician to perform the work or services. A franchisor shall not unreasonably deny a written request

submitted by a franchisee for modification of a franchisor's uniform time allowance for a specific warranty repair, or a request submitted by a franchisee for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the franchisor to assess the merits of the franchisee's request.

(2) A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time or compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time or compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the franchisee.

(3) Any protest challenging a reduction in time or compensation applicable to specific parts or labor operations shall be filed within six months following the franchisee's receipt of notice of the reduction, and the franchisor shall have the burden of establishing the reasonableness of the reduction and adequacy and fairness of the resulting reduction in time or compensation.

(b) In determining what constitutes a reasonable warranty reimbursement schedule under this section, a franchisor shall compensate each of its franchisees for parts and labor at rates equal to the franchisee's retail labor rate and retail parts rate, as established pursuant to Section 3065.2. Nothing in this subdivision prohibits a franchisee and a franchisor from entering into a voluntary written agreement signed by both parties that compensates for labor and parts used to satisfy the warranty obligations of the franchisor at rates other than the franchisee's retail rates, provided that the warranty reimbursement schedule adequately and fairly compensates the franchisee.

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) (1) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. All claims made by franchisees under this section and Section 3064 for labor and parts shall be paid within 30 days after approval.

(2) A franchisor shall not disapprove a claim unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(3) When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the notice to cure any material noncompliance. If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(6) Within six months after either receipt of the written notice described in paragraph (3) or (4), whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with the requirements of this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(e) (1) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis for a period of nine months after a claim is paid or credit issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no more than one random audit of a franchisee in a nine-month period. The franchisor's notification to the franchisee of any additional audit within a nine-month period shall be accompanied by written disclosure of the basis for that additional audit.

(2) Previously approved claims shall not be disapproved or charged back to the franchisee unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due

to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

(3) If the franchisor disapproves of a previously approved claim following an audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a written disapproval notice stating the specific grounds upon which the claim is disapproved. The franchisor shall provide a reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period to be commensurate with the volume of claims under consideration. If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) The franchisor shall not chargeback the franchisee until 45 days after receipt of the written notice described in paragraph (3) or paragraph (4), whichever is later. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of receipt of that written notice. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. If the board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written disapproval notice or completion of the franchisor's appeal process, whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(f) If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

SEC. 12. Section 3065.2 is added to the Vehicle Code, to read:

3065.2. (a) A franchisee seeking to establish or modify its retail labor rate, retail parts rate, or both, to determine a reasonable warranty reimbursement schedule shall, no more frequently than once per calendar year, complete the following requirements:

(1) The franchisee shall submit in writing to the franchisor whichever of the following is fewer in number:

(A) Any 100 consecutive qualified repair orders completed, including any nonqualified repair orders completed in the same period.

(B) All repair orders completed in any 90-consecutive-day period.

(2) The franchisee shall calculate its retail labor rate by determining the total charges for labor from the qualified repair orders submitted and dividing that amount by the total number of hours that generated those charges.

(3) The franchisee shall calculate its retail parts rate by determining the total charges for parts from the qualified repair orders submitted, dividing that amount by the franchisee's total cost of the purchase of those parts, subtracting one, and multiplying by 100 to produce a percentage.

(4) The franchisee shall provide notice to the franchisor of its retail labor rate and retail parts rate calculated in accordance with this subdivision.

(b) For purposes of subdivision (a), qualified repair orders submitted under this subdivision shall be from a period occurring not more than 180 days before the submission. Repair orders submitted pursuant to this section may be transmitted electronically. A franchisee may submit either of the following:

(1) A single set of qualified repair orders for purposes of calculating both its retail labor rate and its retail parts rate.

(2) A set of qualified repair orders for purposes of calculating only its retail labor rate or only its retail parts rate.

(c) Charges included in a repair order arising from any of the following shall be omitted in calculating the retail labor rate and retail parts rate under this section:

(1) Manufacturer, manufacturer branch, distributor, or distributor branch special events, specials, or promotional discounts for retail customer repairs.

(2) Parts sold, or repairs performed, at wholesale.

(3) Routine maintenance, including, but not limited to, the replacement of bulbs, fluids, filters, batteries, and belts that are not provided in the course of, and related to, a repair.

(4) Items that do not have individual part numbers including, but not limited to, nuts, bolts, and fasteners.

(5) Vehicle reconditioning.

(6) Accessories.

(7) Repairs of conditions caused by a collision, a road hazard, the force of the elements, vandalism, theft, or owner, operational, or third-party negligence or deliberate act.

(8) Parts sold or repairs performed for insurance carriers.

(9) Vehicle emission inspections required by law.

(10) Manufacturer-approved goodwill or policy repairs or replacements.

(11) Repairs for government agencies or service contract providers.

(12) Repairs with aftermarket parts, when calculating the retail parts rate, but not the retail labor rate.

(13) Repairs on aftermarket parts.

(14) Replacement of or work on tires, including front-end alignments and wheel or tire rotations.

(15) Repairs of motor vehicles owned by the franchisee or an employee thereof at the time of the repair.

(d) (1) A franchisor may contest to the franchisee the material accuracy of the retail labor rate or retail parts rate that was calculated by the franchisee under this section within 30 days after receiving notice from the franchisee or, if the franchisor requests supplemental repair orders pursuant to paragraph (4), within 30 days after receiving the supplemental repair orders. If the franchisor seeks to contest the retail labor rate, retail parts rate, or both, the franchisor shall submit no more than one notification to the franchisee. The notification shall be limited to an assertion that the rate is materially inaccurate or fraudulent, and shall provide a full explanation of any and all reasons for the allegation, evidence substantiating the franchisor's position, a copy of all calculations used by the franchisor in determining the franchisor's position, and a proposed adjusted retail labor rate or retail parts rate, as applicable, on the basis of the repair orders submitted by the franchisee or, if applicable, on the basis provided in paragraph (5). After submitting the notification, the franchisor shall not add to, expand, supplement, or otherwise modify any element of that notification, including, but not limited to, its grounds for contesting the retail labor rate, retail parts rate, or both, without justification. A franchisor shall not deny the franchisee's submission for the retail labor rate, retail parts rate, or both, under subdivision (a).

(2) If the franchisee agrees with the conclusions of the franchisor and any corresponding adjustment to the retail labor rate or retail parts rate, no further action shall be required. The new adjusted rate shall be deemed effective as of the 30th calendar day after the franchisor's receipt of the notice submitted pursuant to subdivision (a).

(3) In the event the franchisor provides all of the information required by paragraph (1) to the franchisee, and the franchisee does not agree with the adjusted rate proposed by the franchisor, the franchisor shall pay the franchisee at the franchisor's proposed adjusted retail labor rate or retail parts rate until a decision is rendered upon any board protest filed pursuant to Section 3065.4 or until any mutual resolution between the franchisor and the franchisee. The franchisor's proposed adjusted rate shall be deemed to be effective as of the 30th day after the franchisor's receipt of the notice submitted pursuant to subdivision (a).

(4) If the franchisor determines from the franchisee's set of repair orders submitted pursuant to subdivisions (a) and (b) that the franchisee's submission for a retail labor rate or retail parts rate is substantially higher than the franchisee's current warranty rate, the franchisor may request, in writing, within 30 days after the franchisor's receipt of the notice submitted pursuant to subdivision (a), all repair orders closed within the period of 30 days immediately preceding, or 30 days immediately following, the set of repair orders submitted by the franchisee. If the franchisee fails to provide the supplemental repair orders, all time period under this section shall be suspended until the supplemental repair orders are provided.

(5) If the franchisor requests supplemental repair orders pursuant to paragraphs (1) and (4), the franchisor may calculate a proposed adjusted retail labor rate or retail parts rate, as applicable, based upon any set of the qualified repair orders submitted by the franchisee, if the franchisor complies with all of the following requirements:

(A) The franchisor uses the same requirements applicable to the franchisee's submission pursuant to paragraph (1) of subdivision (a).

(B) The franchisor uses the formula to calculate retail labor rate or retail parts as provided in subdivision (a).

(C) The franchisor omits all charges in the repair orders as provided in subdivision (c).

(e) If the franchisor does not contest the retail labor rate or retail parts rate that was calculated by the franchisee, or if the franchisor fails to contest the rate pursuant to subdivision (d), within 30 days after receiving the notice submitted by the franchisee pursuant to subdivision (a), the uncontested retail labor rate or retail parts rate shall take effect on the 30th day after the franchisor's receipt of the notice and the franchisor shall use the new retail labor rate or retail parts rate, or both, if applicable, to determine compensation to fulfill warranty obligations to the franchisee pursuant to this section.

(f) When calculating the retail parts rate and retail labor rate, all of the following shall apply:

(1) Promotional reward program cash-equivalent pay methods shall not be considered discounts.

(2) (A) The franchisor is prohibited from establishing or implementing a special part or component number for parts used in warranty work, if the result of the special part or component lowers compensation to the franchisee below that amount calculated pursuant to this section.

(B) This paragraph does not apply to parts or components that are subject to a recall and are issued a new special part or component number. This paragraph does not prohibit a franchisor from changing prices of parts in the ordinary course of business.

(g) When the franchisor is compensating the franchisee for the retail parts rate, all of the following shall apply:

(1) If the franchisor furnishes a part to a franchisee at no cost for use in performing warranty obligations, the franchisor shall compensate the franchisee the amount resulting from multiplying the wholesale value of the part by the franchisee's retail parts rate determined pursuant to this section.

(2) If the franchisor furnishes a part to a franchisee at a reduced cost for use in performing warranty obligations, the franchisor shall compensate the franchisee the amount resulting from multiplying the wholesale value of the part by the franchisee's retail parts rate determined pursuant to this section, plus the franchisee's cost of the part.

(3) The wholesale value of the part, for purposes of this subdivision, shall be the greater of:

(A) The amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee.

(B) The cost of the part shown in a current franchisor's established price schedule.

(C) The cost of a substantially identical part shown in a current franchisor's established price schedule.

(h) When a franchisee submits for the establishment or modification of a retail labor rate, retail parts rate, or both, pursuant to this section, a franchisee's retail labor rate or retail parts rate shall be calculated only using the method prescribed in this section. When a franchisee submits for the establishment or modification of a retail labor rate, retail parts rate, or both, pursuant to this section, a franchisor shall not use, or require a franchisee to use, any other method, including, but not limited to, any of the following:

(1) Substituting any other purported repair sample for that submitted by a franchisee.

(2) Imposing any method related to the establishment of a retail labor rate or retail parts rate that is unreasonable or time consuming, or require the use of information that is unreasonable or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the franchisee's financial statement.

(3) Unilaterally calculating a retail labor rate or retail parts rate for a franchisee, except as provided in subdivision (d).

(4) Using a franchisee's sample, submitted for establishing or increasing its retail parts rate, to establish or reduce the franchisee's retail labor rate or using a franchisee's sample, submitted for establishing or increasing its retail labor rate, to establish or reduce the franchisee's retail parts rate.

(i) A franchisor shall not do any of the following:

(1) Attempt to influence a franchisee to implement or change the prices for which the franchisee sells parts or labor in retail repairs because the franchisee is seeking compensation or exercising any right pursuant to this section.

(2) Directly or indirectly, take or threaten to take any adverse action against a franchisee for seeking compensation or exercising any right pursuant to this section, by any action including, but not limited to, the following:

(A) Assessing penalties, surcharges, or similar costs to a franchisee.

(B) Transferring or shifting any costs to a franchisee.

(C) Limiting allocation of vehicles or parts to a franchisee.

(D) Failing to act other than in good faith.

(E) Hindering, delaying, or rejecting the proper and timely payment of compensation due under this section to a franchisee.

(F) Establishing, implementing, enforcing, or applying any discriminatory policy, standard, rule, program, or incentive regarding compensation due under this section.

(G) Conducting or threatening to conduct nonroutine or nonrandom warranty, nonwarranty repair, or other service-related audits in response to a franchisee seeking compensation or exercising any right pursuant to this section.

(3) This subdivision does not prohibit a franchisor from increasing prices of vehicles or parts in the ordinary course of business.

(j) As used in this section, a "qualified repair order" is a repair order, closed at the time of submission, for work that was performed outside of the period of the manufacturer's warranty and paid for by the customer, but that would have been covered by a manufacturer's warranty if the work had been required and performed during the period of warranty.

SEC. 13. Section 3065.25 is added to the Vehicle Code, immediately following Section 3065.2, to read:

3065.25. As used in Sections 3065, 3065.2, and 3065.4, the following terms shall have the following meanings:

(a) "Parts" includes, but is not limited to, engine, transmission, and other part assemblies.

(b) "Warranty" includes a new vehicle warranty, a certified preowned warranty, a repair pursuant to a technical service bulletin on a vehicle covered under the period of warranty, a repair pursuant to a customer service campaign on a vehicle covered under the period of warranty, and a recall conducted pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the United States Code.

SEC. 14. Section 3065.3 is added to the Vehicle Code, to read:

3065.3. (a) No franchisor shall establish or maintain a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that is inconsistent with the standards set forth in subdivision (g) of Section 11713.13.

(b) A franchisee may file a protest with the board for determination of whether a franchisor has complied with this section and in that proceeding the franchisor shall have the burden of proof.

SEC. 15. Section 3065.4 is added to the Vehicle Code, to read:

3065.4. (a) If a franchisor fails to comply with Section 3065.2, or if a franchisee disputes the franchisor's proposed adjusted retail labor rate or retail parts rate, the franchisee may file a protest with the board for a declaration of the franchisee's retail labor rate or retail parts rate. In any protest under this section, the franchisor shall have the burden of proof that it complied with Section 3065.2 and that the franchisee's determination of the retail labor rate or retail parts rate is materially inaccurate or fraudulent.

(b) Upon a decision by the board pursuant to subdivision (a), the board may determine the difference between the amount the franchisee has actually received from the franchisor for fulfilled warranty obligations and the amount that the franchisee would have received if the franchisor had compensated the franchisee at the retail labor rate and retail parts rate as determined in accordance with Section 3065.2 for a period beginning 30 days after receipt of the franchisee's initial submission under subdivision (a) of Section 3065.2. The franchisee may submit a request to the franchisor to calculate the unpaid warranty reimbursement compensation and the franchisor shall provide this calculation to the franchisee within 30 days after receipt of the request. The request for the calculation will also be deemed a request for payment of the unpaid warranty reimbursement compensation.

(c) If the franchisor fails to make full payment within 30 days after the franchisee submits a request for payment, the franchisee may file an action in superior court for injunctive and other appropriate relief to enforce the determination or order of the board.

The franchisee may also recover in superior court its actual reasonable expenses in bringing and maintaining an enforcement action in superior court.

(d) Either the franchisor or the franchisee may seek judicial review of the board's determination pursuant to Section 3068.

SEC. 16. Section 3066 of the Vehicle Code is amended to read:

3066. (a) Upon receiving a protest pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3065.3, or 3065.4, the board shall fix a time within 60 days of the order, and place of hearing, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. Except in a case involving a franchisee who deals exclusively in motorcycles, the board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

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

(c) Except as otherwise provided in this chapter, in a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, or 3065.1, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when that issue is material to a protest filed pursuant to Section 3065 or 3065.1.

(d) In a hearing on a protest filed pursuant to Section 3065.3, the franchisor shall have the burden of proof to establish that the franchisor complied with subdivision (g) of Section 11713.13.

(e) In a hearing on a protest filed pursuant to Section 3065.4, the franchisor shall have the burden of proof to establish that the franchisor complied with Section 3065.2 and that the franchisee's determination of the retail labor rate or retail parts rate is materially inaccurate or fraudulent.

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

SEC. 17. Article 6 (commencing with Section 3085) is added to Chapter 6 of Division 2 of the Vehicle Code, to read:

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

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

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

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

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

3085.2. (a) Upon receiving a protest pursuant to Section 3085, the board shall fix a time and place of hearing within 60 days, and shall send by certified mail a copy of the order to the manufacturer, manufacturer branch, distributor, distributor branch, the protesting association, and all individuals and groups that have requested notification by the board of protests and decisions of the board. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and

Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

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

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

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

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

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

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

3085.10. This article shall remain in effect only until January 1, 2030, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2030, deletes or extends that date.

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

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

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of a new vehicle sold or distributed by the manufacturer or distributor, a new vehicle or parts or accessories to new vehicles that are of a model offered by the manufacturer or distributor to other franchisees in this state of the same line-make, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered in this state. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

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

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

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

(2) (A) For the transferring franchisee to fail, prior to the sale, transfer, or assignment of a franchisee or the sale, assignment, or transfer of all, or substantially all, of the assets of the franchised business or a controlling interest in the franchised business to

another person, to notify the manufacturer or distributor of the franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

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

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

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

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

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

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall not be a transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor. The manufacturer or distributor shall not unreasonably withhold consent or condition consent upon the release, assignment, novation, waiver, estoppel, or modification of a claim or defense by the dealer.

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

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

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

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

(C) Requires a dealer to terminate a franchise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) To increase prices of motor vehicles that the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of the order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory that were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. This subdivision does not apply to price changes caused by either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) A manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

(p) (1) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted to its franchisees to make warranty adjustments with retail customers.

(2) (A) To require a franchisee to perform service repair or warranty work on any vehicle model that is not currently available to the franchisee for sale or lease as a new vehicle.

(B) This subdivision shall not apply to any vehicle model that is not currently commercially available as a new vehicle. Nothing in this subdivision prohibits a franchisee and a manufacturer, manufacturer branch, distributor, distributor branch, or affiliate from entering into a voluntary written agreement, signed by both parties, to perform service repair or warranty work on any vehicle model provided that the warranty work is reimbursed at the retail labor rate and retail parts rate as established pursuant to Section 3065.2.

(3) As used in this subdivision, "warranty" shall have the same meaning as defined in Section 3065.25.

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

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

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

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

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

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

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

(4) The proposed transferee is neither a family member of an owner of the franchised business, nor a managerial employee of the franchisee owning 15 percent or more of the franchised business, nor a corporation, partnership, or other legal entity owned by the existing owners of the franchised business. For purposes of this paragraph, a "family member" means the spouse of an owner of the franchised business, the child, grandchild, brother, sister, or parent of an owner, or a spouse of one of those family members. This paragraph does not limit the rights of the franchisor to disapprove a proposed transferee as provided in subdivision (d).

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

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

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

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

(i) A vehicle that is not made available to each franchisee pursuant to a reasonable allocation formula that is applied uniformly, and a part or accessory that is not made available to all franchisees on an equal basis when there is no reasonable allocation formula that is applied uniformly.

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

(iii) Information obtained from a franchisee by the manufacturer, branch, or distributor concerning the business affairs or operations of a franchisee in which the manufacturer, branch, or distributor does not have an ownership interest. The

information includes, but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior of a dealer customer, and other information that, if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor, would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

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

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

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

(v) (1) To access, modify, or extract information from a confidential dealer computer record, as defined in Section 11713.25, without obtaining the prior written consent of the dealer and without maintaining administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information.

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Requiring a dealer to provide a disclosure or notice different from the notice set forth in paragraph (4) of this subdivision for the sale of the service contracts.

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

(3) This subdivision does not prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from requiring a franchisee that sells a used vehicle as "certified" under a certified used vehicle program established by the manufacturer, manufacturer branch, distributor, or distributor branch to provide a service contract approved, endorsed, sponsored, or offered by the manufacturer, manufacturer branch, distributor, or distributor branch.

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

"Service Contract Disclosure

The service contract you are purchasing is not provided or backed by the manufacturer of the vehicle you are purchasing. The manufacturer of the vehicle is not responsible for claims or repairs under this service contract.

Signature of Purchaser"

(y) (1) 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. 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. In a proceeding in which a challenge to an adverse action is at issue, the manufacturer, manufacturer branch, distributor, or distributor branch shall have the burden of proof by a preponderance of the evidence to show that the vehicle was exported or resold in violation of an export or sale-for-resale prohibition policy, that the prohibition policy was provided to the dealer in writing at least 48 hours prior to the sale or lease, and that the dealer knew or reasonably should have known of the customer's intent to export the vehicle to a foreign country at the time of the sale or lease.

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

(3) An export or sale-for-resale prohibition policy shall expressly include a provision stating the dealer's rebuttable presumption 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. A policy that is in violation of this paragraph is void and unenforceable.

(4) For purposes of this subdivision, "adverse action" means any activity that imposes, either expressly or implicitly, a burden, responsibility, or penalty on a dealer, including, but not limited to, nonroutine or nonrandom audits, withholding of incentives, or monetary chargebacks, imposed by the manufacturer, manufacturer branch, distributor, or distributor branch, or through an affiliate.

(z) As used in this section, the following terms have the following meanings:

(1) "Affiliate" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under the common direction and control with, another person. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(2) "Area of responsibility" means a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee's performance of its sales and service obligations.

SEC. 19. Section 11713.13 of the Vehicle Code is amended 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 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 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 and advancements in vehicular technology. This subdivision does not limit the obligation of a dealer to comply with any applicable health or safety laws.

(1) A required facility alteration, expansion, or addition shall not be deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor when goods or services of substantially similar kind, quality, and general design concept are available from another vendor. Notwithstanding the prohibitions in this paragraph, a manufacturer, manufacturer branch, distributor, distributor branch, or affiliate may require the dealer to request approval for the use of alternative goods or services in writing. Approval for these requests shall not be unreasonably withheld, and the request shall be deemed approved if not specifically denied in writing within 20 business days of receipt of the dealer's written request. This paragraph does not authorize a dealer to impair or eliminate the intellectual property or trademark rights of the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate, or to permit a dealer to erect or maintain signs that do not conform to the intellectual property usage guidelines of the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate. This paragraph shall not apply to a specific good or service if the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate provides the dealer with a lump-sum payment or series of payments toward a substantial portion of the cost of that good or service, if the payment is intended solely to reimburse the dealer for the purchase of the specified good or service.

(2) In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof.

(3) (A) A required facility alteration, expansion, or addition shall not be deemed reasonable if the facility has been modified within the last 10 years at a cost of more than two hundred fifty thousand dollars (\$250,000), and the modification was required, or was made for the purposes of complying with a franchisor's brand image program, and was approved by the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate.

(B) This paragraph does not apply to a specific facility alteration, expansion, or addition that is necessary to enable the sale or service of zero-emission or near-zero-emission vehicles, as defined in Section 44258 of the Health and Safety Code.

(C) This paragraph does not apply to a specific facility alteration, expansion, or addition involving the exercise of the franchisor's trademark rights that is necessary to erect or maintain signs or to the use of any trademark.

(D) This paragraph does not apply to a specific facility alteration, expansion, or addition that is necessary to comply with any applicable health or safety laws.

(E) This paragraph does not apply to the installation of specialized equipment that is necessary to service a vehicle offered by a franchisor and available for sale by the franchisee.

(F) This paragraph does not apply to voluntary written agreements signed by both parties between a franchisee and a manufacturer, manufacturer branch, distributor, distributor branch, or affiliate.

(d) (1) Fail to pay to a dealer, within 90 days of termination, 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.

(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 nonrenewal of a franchise for a recreational vehicle line-make, as defined in Section 3072.5, 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 a new recreational vehicle when the termination, cancellation, or nonrenewal is initiated by a recreational vehicle manufacturer. This paragraph only applies to new and unused recreational vehicles that do not currently have or have had in the past, material damage, as defined in Section 9990, and that the dealer acquired from the manufacturer, distributor, or another new motor vehicle dealer franchised to sell recreational vehicles of the same line-make in the ordinary course of business within 12 months of the termination, cancellation, or nonrenewal of the franchise.

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

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

(2) 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 nonrenewal of a franchise, all of the following:

(A) 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.

(B) 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.

(C) 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.

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

(f) (1) Fail, upon demand, to indemnify any existing or former franchisee and the franchisee's successors and assigns from any and all damages sustained and 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:

(A) 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.

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

(C) 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.

(D) 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.

(2) Require a franchisee to indemnify its franchisor, or any third party, for the actions of the franchisee that were properly made in compliance with a franchisor's policy, program, or requirement.

(3) This subdivision does not limit, in any way, the existing rights, remedies, or recourses available to any person who purchases or leases vehicles at retail.

(g) (1) Establish or maintain a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer's right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless both of the following requirements are satisfied:

(A) The performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is reasonable in light of all existing circumstances, including, but not limited to, the following:

(i) Demographics in the dealer's area of responsibility.

(ii) Geographical and market characteristics in the dealer's area of responsibility.

(iii) The availability and allocation of vehicles and parts inventory.

(iv) Local and statewide economic circumstances.

(v) Historical sales, service, and customer service performance of the line-make within the dealer's area of responsibility, including vehicle brand preferences of consumers in the dealer's area of responsibility.

(B) Within 30 days after a request by the dealer, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate provides a written summary of the methodology and data used in establishing the performance standard, sales objective, or program for measuring dealership sales or service performance. The summary shall be in detail sufficient to permit the dealer to determine how the standard was established and applied to the dealer.

(2) In any proceeding in which the reasonableness of a performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof.

(3) As used in this subdivision, "area of responsibility" shall have the same meaning as defined in subdivision (z) of Section 11713.3.

(h) Restrict the ability of a dealer to select a digital service of a dealer's choice that is offered by a vendor of the dealer's choice, provided that the service offered by the vendor is approved by the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate. Approval for services selected by dealers shall not be unreasonably withheld. For purposes of this subdivision, digital service includes, but is not limited to, internet website and data management services, but does not include warranty repair processes for a vehicle.

(i) Restrict, limit, or discourage a franchisee from checking or verifying the applicability of a technical service bulletin or customer service campaign to any vehicle.

(j) As used in this section, the following terms have the following meanings:

(1) "Affiliate" means a person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under the common direction and control with, another person. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

(2) "Facility" or "facilities" includes, but is not limited to, premises, places, buildings, or structures.

SEC. 20. Section 11726 of the Vehicle Code is amended to read:

11726. Any licensee suffering pecuniary loss because of any willful failure by any other licensee to comply with any provision of Article 1 (commencing with Section 11700) or 3 (commencing with Section 11900) of Chapter 4 of Division 5 or with any regulation adopted by the department or any rule adopted or decision rendered by the board under authority vested in them may

recover damages and reasonable attorney fees therefor in any court of competent jurisdiction. Any such licensee may also have appropriate injunctive relief in any such court.

SEC. 21. 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.