

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 473 (Aguiar-Curry)  
Version: July 3, 2023  
Hearing Date: July 11, 2023  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

Motor vehicle manufacturers, distributors, and dealers

**DIGEST**

This bill modifies the relationship between dealers and manufacturers of new motor vehicles by, among other things, making changes regarding competition, franchise agreements, facility upgrades related to EV charging stations, subscription services, and the jurisdiction and procedures of the New Motor Vehicle Board (NMVB), venue, and recovery of reasonable a fees and costs if a dealer prevails in a protest at the NMVB, as provided.

**EXECUTIVE SUMMARY**

Legislation is brought every few years attempting to address issues and concerns in the relationship between manufacturers and dealers of vehicles in California. This bill is the latest iteration. This bill makes several changes in this Committee’s jurisdiction. First, the bill prohibits offering to a consumer a subscription service for any motor vehicle feature that utilizes components and hardware already installed on the motor vehicle at the time of purchase and that would function after activation without ongoing expense to the dealer, manufacturer, distributor, or a third-party service provider, except as specified. Second, it expands existing law regarding competition to make it unlawful for a manufacturer to compete with their franchisees in the sale, lease, or service of motor vehicles. The bill provides that a manufacturer is to indemnify a franchisee from any act or omission that is the result of the franchisee’s use of a service provided by a digital vendor preselected by a franchisor and the use of that service violates California law. Lastly, a manufacturer is not to file or request relocation of any lawsuit involving a franchisee to a jurisdiction outside of California without the consent of the franchisee.

The bill is sponsored by the California New Car Dealers and is supported by the California Motorcycle Dealers Association. The bill is opposed by the Alliance for Automotive Innovation and other associations representing the automobile industry,

Cruise LLC, Scout Motors Inc., the Silicon Valley Leadership Council, and TechNet. The bill passed the Senate Transportation Committee on a vote of 13 to 1.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the DMV under the leadership of the Director of Motor Vehicles, who is charged with administering and enforcing the provisions of the Vehicle Code relating to the DMV, and is authorized to adopt and enforce rules and regulations as may be necessary. Included within these powers is the licensing and regulating of dealers, manufacturers, and distributors of motor vehicles who conduct business in California. (Veh. Code § 1500 et seq.)
- 2) Establishes within the DMV the NMVB and authorizes it to carry out certain responsibilities. (Veh. Code § 3000 et. seq.) The NMVB is authorized to:
  - a) adopt rules and regulations governing those matters that are specifically committed to its jurisdiction;
  - b) hear and decide protests of franchisees, as provided, or protests of associations challenging a policy of a licensee; and
  - c) 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. (Veh. Code § 3050.)
- 3) Makes it unlawful for a vehicle manufacturer or distributor to take specified actions against a dealer, including:
  - a) Refusing or failing to deliver in reasonable quantities and within a reasonable time, 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;
  - b) Preventing or requiring a dealer to change the executive management of a dealership;
  - c) Preventing or requiring a dealer from selling or transferring a part of the interest of any of them to another person;
  - d) Preventing a dealer from receiving fair and reasonable compensation for the value of the franchised business;
  - e) Obtaining from a dealer an agreement that limits or constrains the right of a dealer to file a protest before the New Motor Vehicle Board;
  - f) Offering refunds for the purchase of new motor vehicles without making the same offer to all other dealers within the relevant market area;
  - g) Modifying or refusing to renew a franchise without adhering to specified procedures;

- h) Competing with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area;
  - i) Unfairly discriminating among its franchisees with respect to warranty reimbursement or authority granted to its franchisees to make warranty adjustments with retail customers;
  - j) Exercising a right of first refusal to sell all or a material part of the franchised business or of the assets of the franchised business;
  - k) Unfairly discriminating in favor of a dealership owned or controlled by a manufacturer or distributor. (Veh. Code § 11713.3)
- 4) Makes it unlawful for any motor vehicle manufacturer to do any certain things, subject to specified conditions, including:
- a) Prevent a dealer from acquiring 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;
  - c) Require 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;
  - d) Establish a performance standard or sales objective that may materially affect the dealer, unless such standards are reasonable in light of all existing circumstances and a dealer is provided the methodology and data used in establishing the performance standard, sales objective, or program for measuring dealership sales or service performance; and
  - e) 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. (Vehicle Code §11713.13)
- 5) Provides that an "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.
- a) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person.

This bill:

- 1) Prohibits offering to a consumer a subscription service for any motor vehicle feature that utilizes components and hardware already installed on the motor vehicle at the time of purchase and would function after activation without ongoing expense to

the dealer, manufacturer, distributor, or a third-party service provider. Subscription services for navigation system updates, satellite radio, roadside assistance, and vehicle-connected services that rely on cellular or other data networks for continued operation are exempted.

- 2) Makes it unlawful for a manufacturer to fail to disclose to any franchisee, upon written request, the basis upon which new motor vehicles are allocated to franchisees.
- 3) Makes it unlawful for a manufacturer to compete with their franchisees in the sale, lease, or service of motor vehicles.
- 4) Provides that a manufacturer, manufacturer branch, distributor, or distributor branch, or an affiliate thereof, is not be deemed to be competing with their franchisees in the following limited circumstances:
  - a) creating a new line of motor vehicles and using new or existing franchisees;
  - b) directly providing an update to or repair of motor vehicle software, if the update or repair is provided over-the-air at no cost; and
  - c) owning or operating a dealership that maintains a fleet of autonomous vehicles, so long as the dealership does not sell or service such vehicles to or for any third party.
- 5) Makes it unlawful for the franchisor to exercise the right of first refusal in the sale or transfer of a franchise in bad faith.
- 6) Requires a manufacturer to indemnify a franchisee from any act or omission that is the result of the franchisee's use of a service provided by a digital vendor preselected by a franchisor and the use of that service violates California law. For purposes of this subdivision, a "service provided by a digital vendor" includes any electronic system that manages consumer data or generates consumer notices or documentation.
- 7) Makes it unlawful for a manufacturer to implement or modify a vehicle reservation system that does not either: (a) use customer dealer selection of other objective criteria to allocate vehicles; or, (b) at least 30 days prior to implementing the system, the franchisor makes available to its franchisees a description of all criteria used to allocate vehicles to franchisees.
- 8) Prohibits a manufacturer from implementing a program that requires public access to fast electric vehicle (EV) charging stations unless all of the criteria in a)-d) below are satisfied.
  - a) If the program or policy requires public access to the direct current fast charging stations, the franchisor must reimburse the dealer for one-half of all costs to install and maintain the stations, if the dealer agrees to pay the

- franchisor one-half of the net income generated from the ongoing use of the stations.
- b) The program or policy may not encourage or require the franchisee to install direct current fast charging stations at its dealership location if the franchisee can obtain access to direct current fast charging stations within a reasonable distance from the franchisee's dealership location by participating in a bank of shared charging stations with other dealerships or by constructing new charging stations with other organizations.
  - c) The program or policy does not require installation of more than the number and type of electric vehicle charging stations reasonably necessary to conduct service and sales operations.
  - d) The program or policy must be reasonable in light of all existing circumstances, including, but not limited to, local conditions, supply constraints, time constraints, advancements in vehicular technology, and electric grid integration.
- 9) Makes it unlawful for a manufacturer to file or request relocation of any lawsuit involving a franchisee to a jurisdiction outside of California without the consent of the franchisee.
- 10) Makes it unlawful for a manufacturer to fail to reimburse a franchisee for all its reasonable fees and costs following a protest to the NMVB if the board determines in the franchisee's favor and the protest was filed against the manufacturer, manufacturer branch, distributor, or distributor branch.
- 11) Provides that the provisions of the act are severable.
- 12) Makes various findings and declarations.

### COMMENTS

#### 1. Stated need for the bill

The author states:

AB 473 seeks to create a stronger, more equitable vehicle franchise system by modernizing California's New Motor Vehicle Franchise Law. This bill will ensure that California's new car dealer franchisees can continue operating without the threat that their vehicle manufacturer franchisors may compete against them, thereby undermining the overall intent and purpose of the franchise law. Further, the bill protects new car dealer franchisees from increasingly unreasonable requirements that threaten to put dealerships out of business. Finally, this bill protects customers from hidden charges in the purchase and/or operation of their vehicles. AB 473 has been carefully crafted to provide franchisees with needed statutory protections, while still ensuring that compliance with its provisions is

reasonable for franchisors. In striking this balance, AB 473 will provide relief to dealers, their customers, their employees, and their communities, protecting this robust engine of economic activity that employs over 140,000 Californians.

## 2. Acting as referee between automobile dealers and manufacturers

The NMVB exists within the Department of Motor Vehicles (DMV) and operates in a quasi-judicial capacity to resolve disputes between franchise dealers and manufacturers and distributors of new motor vehicles and specified motorsports vehicles, and, to a certain extent, consumers. Under existing law, the NMVB may hear and determine specified protests and appeals from decisions made by the DMV, as well as consider matters concerning dealers, manufacturers, and distributors.

The Senate Transportation Committee analysis provides insight into the current status of the automobile industry:<sup>1</sup>

Auto manufacturers' relationship with their dealers is governed by their franchise agreements, which vary by manufacturer. Some manufacturers get along well with their dealers, others less so. Periodically business issues arise that strain the relationships. If those issues cannot be resolved through the franchise [agreement] then the dealers seek legislation to resolve their problems with their manufacturers. This puts the Legislature in the position of having to resolve business disputes between Fortune 500 companies and wealthy independent businesses. Unfortunately, this bill is not an isolated case. Over the past 10 years the Legislature has considered five bills dealing with the auto manufacturer/dealer relationship.

As much of the transportation industry has been changing, so too has the automobile industry. Driven by the goals of reducing pollution and greenhouse gas emissions, vehicle electrification is stressing the automobile manufacturers and their dealers. Dealers have to be trained to sell and repair the new technology, which is less lucrative to dealers because EVs require less maintenance than traditional cars. Compounding the discomfort is the emergence of electric vehicle-only manufacturers who don't use dealers. Yet despite this the past several years have resulted in record profits for manufacturers and dealers. Domestic manufacturers of cars and car parts made a profit of \$32 billion through the third quarter of 2022, their largest profit since 2016. Car dealerships also reported record-breaking profits through the third quarter of 2022, according to auto-retail advisers Haig Partners. However, the record profits for the industry are the result of consumers paying on average 20% more for cars than in 2019.<sup>2</sup>

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<sup>1</sup> Sen. Transportation Comm. analysis of AB 473 (2023-24 Reg. Sess.) as amended June 15, 2023 at p. 5.

<sup>2</sup> Nicole Goodkind, *Auto Sales are Falling but Profits are Surging. Welcome to the New Normal*. CNN (Jan. 12, 2023), available at <https://www.cnn.com/2023/01/12/investing/premarket-stocks-trading/index.html>.

3. Bill proposes several changes to the statutes governing the relationship between automobile dealers and manufacturers

The majority of this analysis will focus on the issues that fall within the jurisdiction of this Committee.

*a. Expanding competition prohibitions under existing law*

Existing law makes it unlawful for a manufacturer 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, with certain limited exceptions. The bill would significantly expand existing law to instead provide that it is unlawful for a manufacturer to compete with their franchisees in the sale, lease, or service of motor vehicles. In addition to existing exceptions, the bill would additionally specify that a manufacturer, manufacturer branch, distributor, or distributor branch, or an affiliate thereof, is not be deemed to be competing with their franchisees in any of the following limited circumstances: (1) when directly providing an update to, or repair of motor, vehicle software, if the update or repair is provided over-the-air at no cost; (2) when creating a new line of motor vehicles and using new or existing franchisees to sell and service those vehicles; and (3) when authorizing a third party, such as a government entity or a commercial or rental fleet operator, to perform service work on vehicles owned and operated by the same third party.

The author and sponsor have been in negotiations with various stakeholders on numerous issues in the bill. To address some concerns raised with the expansion of the competition language into the service of vehicles, the author has agreed to amend the bill to limit the expansion of competition regarding service to just warranty service of new motor vehicles. The specific amendment can be found attached to this analysis.

According to the sponsor of the bill, this provision is intended to close a “loophole” in existing law because the term “line make” is not defined. They state that there is a potential for a manufacturer to “simply launch a new brand and sell that brand directly to consumers, in direct competition with their franchised dealers.” They state there are several examples of manufacturers that have announced forthcoming new brands that may be sold directly to consumers instead of the traditional model of through the manufacturers dealers. They are concerned that manufacturers will argue that this would not run afoul of existing law, which fundamentally undermines the underlying purpose of the motor vehicle franchise law in their eyes.

This provision of the bill would not affect the ability of companies like Rivian or Tesla, who do not have any franchisees in the state, from continuing to sell their vehicles directly to consumers. It does; however, prohibit an auto manufacturer, manufacturer branch, distributor, or distributor branch, or an affiliate thereof, with existing

franchisees in this state from selling vehicles direct to the consumer and not using their existing dealer network.

Some concerns have been raised that this language could hinder the widespread adoption of electric vehicles (EVs) in the state. It is unclear how this provision affects the sale of EVs in this state. EVs are being sold in this state currently under both the direct to consumer model by companies like Rivian and Tesla (who do not have existing dealers in the state), and by manufacturers with existing dealerships, such as Ford, GM, Nissan, Chevy, Volvo, BMW, Hyundai, and Toyota. Nothing in this bill prevents a company from manufacturing EVs or selling EVs in the state. It does, however, limit how EVs can be sold to consumers for existing manufacturers – they would be required to use their existing dealer network to sell any vehicle they make or that any affiliate of the manufacturer makes, whether it is an EV or not. Affiliate under existing law 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, for these purposes, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any person. Additionally, nothing in the bill prevents a new company that does not have dealers in the state or is not an affiliate of a manufacturer with dealers in the state from selling cars directly to the consumer.

*b. Limitation on sale of subscriptions*

This bill would prohibit the offering to a consumer of a subscription service for any motor vehicle feature that utilizes components and hardware already installed on the motor vehicle at the time of purchase or lease and would function after activation without ongoing cost to or support by the dealer, manufacturer, distributor, or a third-party service provider. The bill specifies that this prohibition does not apply to navigation system updates, satellite radio, roadside assistance, software-dependent driver assistance or driver automation features, and vehicle-connected services that rely on cellular or other data networks for continued operation. A subscription service is defined, for these purposes, as a service provided in exchange for a recurring payment, including, but not limited to, a weekly, monthly, or annual payment charged to and made by a consumer, but does not include a consumer's recurring payment made pursuant to a conditional sales contract or lease contract, as defined.

According to the sponsor of the bill:

Current law does not regulate or restrict the ability of manufacturers to offer vehicle equipment subscription services, which involves charging the consumer a monthly or annual fee for unlocking features already built into the vehicle and that were capable of functioning at the time of the purchase. This lack of regulation could lead some manufacturers to artificially limit the functionality of vehicles at the time of sale, so that the manufacturer can offer a post-sale "subscription" to enable these

features. [...] These vehicle feature subscriptions harms (sic) both dealers and consumers, as these features are no longer included in the price of the vehicle, even though they are physically present in the vehicle at the time of sale, whether initially as a new vehicle or subsequently as used.

The Alliance for Automotive Innovation, the leading advocacy group for the auto industry (auto manufacturers), writes in opposition and states:

By prohibiting manufacturers from offering consumers subscription services for vehicle features this bill limits consumer choice, increases costs for consumers, negatively impacts used car buyers, and stifles innovation. [...] Automobiles now come with powerful computers and a variety of sensors. That creates the potential for innovations and features to be created and made available after the vehicle is purchased. Automobiles are at a transformative point. A vehicle's features will no longer be static after it rolls off the assembly line. The vehicle will resemble a smartphone or personal computer where innovative software is created and written for products that consumers already own. Consumers who like that could subscribe to a package that adds that feature to their vehicle. This innovative marketplace is in its infancy, and California should not outlaw it.

They argue that subscriptions allow consumers "to change their minds about features—both to get something they did not want before and now do want, or to stop paying for something that they no longer want." Additionally, they state that subscriptions "can result in cost savings for consumers and manufacturers by making vehicles cheaper to produce" and that "without subscriptions, used car buyers are limited to purchasing vehicles as they were configured when first sold as new." Lastly, they believe this will stifle innovation as automobiles are now equipped with powerful computers and a variety of sensors and will resemble a smartphone or personal computer.

The author may wish to consider if an outright ban on subscriptions is the best policy as opposed to enacting heightened consumer protections around this practice.

- c. *Indemnification for act or omission of the franchisee that is the result of the franchisee's use of a service provided by a digital vendor preselected by a franchisor and the use of that service violates California law*

The bill requires that, upon demand, a manufacturer is 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 results from or relates to any act or omission of the franchisee that is the result of the franchisee's use of a service provided by a digital vendor preselected by a franchisor and the use of that service violates California law. For purposes of this subdivision, a "service provided by a digital vendor" includes any electronic system that manages consumer data or generates consumer notices or documentation.

- d. Requires actions to be filed in a California court unless the franchisee agrees otherwise and includes one way fee shifting provisions*

The bill prohibits a manufacturer from filing or requesting relocation of any lawsuit involving a franchisee located in California to a jurisdiction outside of California without the consent of the franchisee. In 1997, a California appellate court ruled that courts retain jurisdiction over all common law and statutory claims arising between manufacturers and dealers originally cognizable in the courts, which essentially removed any jurisdiction for these disputes from the NMVB. (*Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 Cal.App.4th 1527.) Accordingly, disputes at common law are litigated in court. Existing state and federal law generally governs proper venue. As both parties to litigation in the context of the bill are business entities with the knowledge, resources, and ability to obtain legal representation, there does not seem to be a compelling policy reason to enact a special venue statute for dealerships. As such, the author may wish to amend the bill to remove this language.

Additionally, the bill requires manufacturers to reimburse a franchisee for all its reasonable fees and costs following a protest at the board, if the board issues a determination on the merits in the franchisee's favor and the protest was filed against the manufacturer, manufacturer branch, distributor, or distributor branch. Generally, parties are required to pay their own legal fees, regardless of who won, with the rationale of ensuring no one would hesitate to file a legitimate court case due to the fear of having to pay for legal fees on both sides. In certain instances the Legislature has granted a prevailing party the right to have their fees and costs paid for by the losing party when there is a persuasive policy reason for deviating from the general rule. As noted above, these disputes are between two business entities that have the knowledge, resources, and ability to obtain legal representation, and as such there does not seem to be a compelling policy reason for deviating from the general rule in this instance. Therefore, the author may wish to remove this language.

The specific amendments to address the issues raised above can be found attached to the end of this analysis.

- e. Other proposed author amendments to address various concerns of the opposition*

The author has proposed to amend the bill to address other various concerns of the opposition as they relate to the provisions of the bill regarding EV charging stations and fleet vehicles. The amendments amend the EV charging language to apply when a manufacturer implements a program or policy that coerces or requires a franchisee to install direct current fast charging stations, not when a manufacturer encourages them. Additionally, the bill makes clarifications to the language that provides the competition language in the bill does not apply to a third party operating a commercial or rental fleet. The amendments clarify that the competition language does not apply to the instance where a manufacturer authorizes a fleet operator or other third party to perform warranty service work on fleet vehicles owned by that entity, or in the instance

where a dealership is owned for the fleet sale or service of autonomous vehicles, provided that the dealership is of a line-make that does not have franchisees and the dealership does not engage in the sale of consumer goods. The specific amendments to can be found attached to the end of this analysis.

#### 4. Proposed amendments

A mock-up of the amendments in context to address the issues set forth in the Comments, above, is attached to this analysis.<sup>3</sup>

#### 5. Statements in support

The California New Car Dealers Association, sponsor of the bill, writes in support stating:

Without a new motor vehicle franchise law, there would be a significant imbalance in bargaining power between large multinational vehicle manufacturers and local independently-owned franchised dealerships. Importantly, dealerships cannot strengthen their bargaining power by banding together, as doing so would run afoul of federal antitrust law. This is why the Legislature regularly updates franchise laws to address the latest manufacturer abuses against dealers and the public. Today's dealers are facing an unprecedented level of cost-shifting by manufacturers related to warranty reimbursement, punitive policies associated with brand spin-offs and other coercive policies in direct contrast with the intent of established franchise laws.

AB 473 levels the playing field by restoring the proper competitive balance between dealers and their manufacturers so that independent franchised dealers can continue to service the needs of their communities and customers. [...]

Since the advent of the Internet and new direct to consumer marketing practices by nonfranchisor manufacturers (e.g. Tesla and Rivian), the current standard has become outdated and susceptible to workarounds by automakers looking to skirt the law and compete directly with their franchisee.

AB 473 would restrict the ability of manufacturers to offer post-sale subscriptions that enable features that are physically built into the vehicle, thereby protecting consumers from fees to access features in the vehicle they believed came equipped upon purchase.

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<sup>3</sup> The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel as well as the addition of co-authors.

6. Statements in opposition

The Alliance for Automotive Innovation, the leading advocacy group for the auto industry (auto manufacturers), writes in opposition stating:

AB 473 contains major provisions that are harmful to consumers, stifle innovation and undermine California's zero emission vehicle policies. [...]

Consumers will not buy ZEVs if there are not charged vehicles at dealerships that the consumer can test drive and buy. Manufacturers have spent over \$330 billion on zero emission technology, an investment that was made in response to California's mandate that all new vehicle sales be ZEVs by 2035. This mandate is on the manufacturer, not the dealer, which means dealers are not required to sell them. In order for the sales required under the mandate to occur, dealerships need enough DC fast chargers on their lots to keep their fleet of ZEVs charged for use and sale to the consumer. It should be the responsibility of the dealership to ensure that they can sell the cars on their lots.

**SUPPORT**

California New Car Dealers Association  
California Motorcycle Dealers Association

**OPPOSITION**

Alliance for Automotive Innovation  
Cruise LLC  
Motorcycle Industry Council  
Recreational Off-Highway Vehicle Association  
Scout Motors Inc.  
Silicon Valley Leadership Group  
Specialty Vehicle Institute of America  
TechNet

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 179 (Reyes, Ch. 796, Stats. 2019) revised the criteria for determining the labor rate and allowable hours for which dealers are compensated by manufacturers for warranty work from a reasonableness standard to a specific formula based on actual invoices. NMVB is authorized to adjudicate disputes amongst other provisions.

AB 2107 (Reyes, 2018), would have created a formula for calculating time allowances for warranty reimbursement work, amongst other provisions. This bill was vetoed by then Governor Brown stating that the current “framework appears to be working reasonably well and I see no reason to adopt the rather complicated formula authorized in this bill-with perhaps unintended consequences.”

AB 1178 (Achadjian, Ch. 526, Stats. 2015) authorized the NMVB to hear protests by an association challenging the legality of an export policy of a manufacturer. It also provided that an automobile manufacturer may take an adverse action against a dealer pursuant to export prohibitions only if the manufacturer has provided the dealer with the export policy in writing at least 48 hours before the vehicle is sold, and the dealer knew or should have known of the customer’s intent to export.

SB 155 (Padilla, Ch. 512, Stats. 2013) modified the relationship between motor vehicle dealers and manufacturers by, among other things, making changes regarding the use of flat-rate time schedules for warranty reimbursement, warranty and incentive claims, audits, protest rights, export policies, performance standards, and facility improvements.

SB 642 (Padilla, Ch. 342, Stats. 2011) modified and expanded the existing statutory framework regulating the relationship between vehicle manufacturers and their franchised dealers.

**PRIOR VOTES**

- Senate Transportation Committee (Ayes 13, Noes 1)
- Assembly Floor (Ayes 74, Noes 0)
- Assembly Appropriations Committee (Ayes 15, Noes 0)
- Assembly Transportation Committee (Ayes 14, Noes 0)
- Assembly Judiciary Committee (Ayes 10, Noes 0)

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**MOCK-UP OF PROPOSED AMENDMENTS TO SEC. 4 AND SEC. 5 OF THE BILL**

**SEC. 4.** 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) (1) 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.

(2) To fail to disclose to any franchisee, upon written request, the basis upon which new motor vehicles of the same line-make are allocated or distributed to franchisees in the state and the basis upon which the current allocation or distribution is being made or will be made to the franchisee.

(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 their franchisees in the sale, lease, or *warranty* service of *new* motor vehicles.

(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.

~~(D) Owning or operating a dealership that maintains a fleet of autonomous vehicles, so long as the dealership does not sell or service such vehicles to or for any third party.~~

(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.

(4) In addition to the exceptions identified in paragraphs (2) and (3), a manufacturer, manufacturer branch, distributor, or distributor branch, or an affiliate thereof, shall not be deemed to be competing with their franchisees in any of the following limited circumstances:

(A) When directly providing an update to or repair of motor vehicle software, if the update or repair is provided over-the-air at no cost.

(B) When creating a new line of motor vehicles and using new or existing franchisees to sell and service those vehicles.

~~(C) When authorizing a third party, such as a government entity or a commercial or rental fleet operator, to perform service work on vehicles owned and operated by the same third party.~~

*(C) When authorizing a fleet operator or other third party, such as a government entity or a commercial or rental fleet operator, to perform warranty service work on fleet vehicles owned or operated by a fleet owner, operator or other third party, provided that the franchisor does not prohibit or prevent the fleet operator or other third party from obtaining warranty service work from a franchisee of the same line-make.*

*(D) When owning or operating a dealership for the fleet sale or service of autonomous vehicles, provided that the dealership is of a line-make that does not have franchisees and the dealership does not engage in the sale of consumer goods, as defined by Section 1761 of the Civil Code.*

*(E) For the purposes of this paragraph, the following definitions shall apply:*

(i) *“Autonomous vehicles” shall have the same meaning as “autonomous vehicle” in paragraph (2) of subdivision (a) of Section 38750.*

(ii) *“Fleet vehicles” shall mean five or more vehicles under common ownership or operation.*

(iii) *“Fleet sale” shall mean a sale to a person that owns, operates, or maintains fleet vehicles.*

(5) *For the purpose of this subdivision, “warranty” shall have the same meaning as set forth in Section 3065.25.*

(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 after the proposed transferee's receipt of a written

request from the franchisor for that accounting. The franchisor shall make payment within 30 days after exercising the right of first refusal.

(7) The franchisor does not use, or threaten to use, the exercise of the right of first refusal in bad faith.

(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.

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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. 5.** 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.

(E) Any act or omission of the franchisee that is the result of the franchisee's use of a service provided by a digital vendor preselected by a franchisor and the use of that service violates California law. For purposes of this subdivision, a "service provided by a digital vendor" includes any electronic system that manages consumer data or generates consumer notices or documentation.

(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" has 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) Implement or modify a vehicle reservation system for the sale or lease of motor vehicles that does not comply with either of the following requirements:

(1) Any vehicle reservation system designed, implemented, or controlled by a franchisor that allocates vehicles to franchisees shall use customer dealer selection or other objective criteria to allocate the vehicles.

(2) At least 30 days prior to implementing a vehicle reservation system, a franchisor shall make available to its franchisees a description of the reservation program rules and requirements to franchisees through the system, as applicable. Notice of any change to such criteria shall be provided at least 30 days prior to it becoming effective.

(k) (1) Implement a program or policy that ~~encourages~~ *coerces* or requires the franchisee to install direct current fast charging stations, unless all of the following are satisfied:

~~(1)~~ (A) If the program or policy requires public access to the direct current fast charging stations, the franchisor shall reimburse the dealer for one-half of all costs to install and maintain the stations, if the dealer ~~agrees to pay~~ *pays* the franchisor one-half of the net

income generated from the ongoing use of the stations. *This subparagraph shall not apply to a manufacturer program or policy that encourages the franchisee to install publicly accessible direct current fast charging stations, if the program or policy reimburses the dealer for no less than one-half of the cost of all direct current fast charging stations subject to the program or policy.*

~~(2)~~ (B) The program or policy does not limit the ability of a franchisee to use all available incentives or utility rate plans to minimize total installation cost.

~~(3)~~ (C) The program or policy does not require installation of more than the number and type of electric vehicle charging stations reasonably necessary to conduct service and sales operations.

~~(4)~~ (D) The program or policy must be reasonable in light of supply constraints, time constraints, advancements in vehicular technology, and electric grid integration.

*(2) For purposes of this subdivision, the term "coerce" shall mean the use of force or threats to persuade, constrain, or compel a franchisee to take a specific action. "Coerce" includes, but is not limited to, threatening to withhold vehicles or parts from a franchisee or charging a franchisee a higher price for vehicles or parts on the basis of the franchisee refusing, declining, or failing to perform a specific behavior.*

~~(l) File or request relocation of any lawsuit involving a franchisee located in California to a jurisdiction outside of California without the consent of the franchisee.~~

~~(m) Fail to reimburse a franchisee for all its reasonable fees and costs following a protest at the board, if the board issues a determination on the merits in the franchisee's favor and the protest was filed against the manufacturer, manufacturer branch, distributor, or distributor branch.~~

~~(n)~~ (l) 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.

(3) "Vehicle reservation system" means a process that is used to hold open the opportunity for a specified consumer to place an order for the purchase or lease of a new motor vehicle.