

Cal Veh Code § 11700

Deering's California Codes are current through Chapter 27 with the exception of Chapter 21 of the 2022 Regular Session.

Deering's California Codes Annotated > VEHICLE CODE (§§ 1 — 42277) > Division 5 Occupational Licensing and Business Regulations (Chs. 1 — 11) > Chapter 4 Manufacturers, Transporters, Dealers, and Salesmen (Arts. 1 — 3) > Article 1 Issuance of License and Certificates to Manufacturers, Transporters, and Dealers (§§ 11700 — 11740)

§ 11700. License or temporary permit required

No person shall act as a dealer, remanufacturer, manufacturer, or transporter, or as a manufacturer branch, remanufacturer branch, distributor, or distributor branch, without having first been issued a license as required in Section 11701 or temporary permit issued by the department, except that, when the license or temporary permit has been canceled, suspended, or revoked or has expired, any vehicle in the dealer's inventory and owned by the dealer when the dealer ceased to be licensed may be sold at wholesale to a licensed dealer. The former licensee shall give the purchasing dealer a statement of facts stating that the seller is not a licensed dealer. Any vehicle on consignment with the dealer when the dealer ceased to be licensed shall be returned to the consignor. Any vehicle in the dealer's possession, but not owned by the dealer and not on consignment when the dealer ceased to be licensed, shall be returned to the owner of the vehicle.

History

Enacted Stats 1959 ch 3. Amended Stats 1967 ch 557 § 2; Stats 1971 ch 1214 § 21; Stats 1973 ch 996 § 20, operative July 1, 1974; Stats 1975 ch 182 § 15, effective July 5, 1975; Stats 1976 ch 619 § 4; Stats 1977 ch 105 § 2; Stats 1983 ch 1286 § 24; Stats 1990 ch 1563 § 38 (AB 3243).

Annotations

Notes

Derivation:

Amendments:

Derivation:

Former Veh C § 200, as added Stats 1957 ch 1319 § 7.

Amendments:

1967 Amendment:

(1) Substituted "It shall be unlawful for any person to" for "No person shall" at the beginning; (2) added "manufacturer, or transporter" after "act as a dealer, "; (3) deleted "from the department" after "having first procured"; and (4) added "or temporary permit issued by the department, or when such license and certificate or temporary permit issued by the department has been canceled, suspended, revoked, or invalidated or has expired" at the end.

1971 Amendment:

(1) Substituted "special plates" for "certificate"; and (2) deleted "and certificate" after "such license".

1973 Amendment:

Added ", and, on and after July 1, 1974, it shall be unlawful for any person to act as a manufacturer branch, distributor, or distributor branch,".

1975 Amendment:

(1) Deleted "dealer," after "act as a"; (2) deleted "or transporter, and, on and after July 1, 1974, it shall be unlawful for any person to act as a" before "manufacturer branch"; (3) deleted "or" before "distributor branch"; (4) added "transporter, or dealer"; and (5) deleted "and special plates" after "a license".

1976 Amendment:

Substituted (1) "dealer, manufacturer, or transporter, and, on and after July 1, 1974, it shall be unlawful for any person to act as a manufacturer branch, distributor, or distributor branch," for "manufacturer, manufacturer branch, distributor, distributor branch, transporter, or dealer" before "without having"; (2) added "and special plates" after "procured a license" and (3) substituted "invalidated, expired, or the terms and conditions of an agreement effected pursuant to Section 11707 have not been fulfilled" for "or invalidated or has expired" at the end of the section.

1977 Amendment:

(1) Deleted "and special plates" after "a license"; and (2) substituted "in" for "by" after "as required".

1983 Amendment:

(1) Added "remanufacturer, "; (2) substituted "it is" for ", on and after July 1, 1974, it shall be" after "transporter, and"; (3) added "remanufacturer branch, "; and (4) substituted "the" for "such" after "department, or when".

1990 Amendment:

Substituted the section for the former section which read: "It is unlawful for any person to act as a dealer, remanufacturer, manufacturer, or transporter, and it is unlawful for any person to act as a manufacturer branch, remanufacturer branch, distributor, or distributor branch, without having first procured a license as required in Section 11701 or temporary permit issued by the department, or when the license or temporary permit issued by the department has been canceled, suspended, revoked, invalidated, expired, or the terms and conditions of an agreement effected pursuant to Section 11707 have not been fulfilled."

Notes to Decisions

1. Generally

The primary concern manifested in the statutory scheme governing the licensing of automobile dealers (Veh C, Div 5, Ch 4, Art 1) is the protection of the public from unscrupulous and irresponsible persons in the sale of vehicles subject to registration under the code. *Merrill v. Department of Motor Vehicles* (Cal. 1969), 71 Cal. 2d 907, 80 Cal. Rptr. 89, 458 P.2d 33, 1969 Cal. LEXIS 296.

California Department of Motor Vehicles did not exceed its administrative authority by obtaining a search warrant to conduct an administrative search of the offices of a boat dealership; pursuant to the statutory authority under Veh C §§ 11700, 11705 and Pen C § 830.3(c) and pursuant to California case law, the DMV maintained authority to act as peace officers to conduct searches for criminal activity. *Pac. Marine Ctr., Inc. v. Silva* (E.D. Cal. 2011), 809 F. Supp. 2d 1266, 2011 U.S. Dist. LEXIS 93447, *aff'd*, (9th Cir. Cal. 2014), 553 Fed. Appx. 671, 2014 U.S. App. LEXIS 1114.

Opinion Notes

Attorney General's Opinions

Dates for motor vehicle dealer's compliance with requirements as to bond. 30 Ops. Cal. Atty. Gen. 115.

Research References & Practice Aids

Cross References:

Violation as misdemeanor: Veh C § 40000.11.

"Misdemeanor": Pen C § 17.

Punishment for misdemeanor: Pen C §§ 19, 19.2.

Treatises:

Cal. Forms Pleading & Practice (Matthew Bender) ch 89 "Automobiles: Sales And Financing Under The Rees-Levering Act".

Cal. Legal Forms, (Matthew Bender) § 46.251.

Witkin & Epstein, Criminal Law (4th ed), Crimes Against Public Peace and Welfare §§ 422, 423, 424.

Witkin & Epstein, Criminal Law (4th ed), Crimes Against Governmental Authority § 167.

Annotations:

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

ALR Fed

Who is “automobile manufacturer” for purposes of the Automobile Dealers Day in Court Act (15 USCS §§ 1221 et seq.). 51 ALR Fed 812.

Hierarchy Notes:

Cal Veh Code Div. 5

Cal Veh Code Div. 5, Ch. 4, Art. 1

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§ 11700.1. Licensing requirements for out of state dealers without established places of business in state

A dealer who does not have an established place of business in this state but who is currently authorized to do business as, and who has an established place of business as, a vehicle dealer in another state is not subject to licensure under this article if the business transacted in California is limited to the importation of vehicles for sale to, or the export of vehicles purchased from, persons licensed in California under this chapter.

History

Added Stats 1979 ch 1088 § 3, effective September 28, 1979.

Annotations

Research References & Practice Aids

Hierarchy Notes:

Cal Veh Code Div. 5

Cal Veh Code Div. 5, Ch. 4, Art. 1

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Cal Veh Code § 11701

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§ 11701. Application for license; Proof of status

Every manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles of a type subject to registration, or snowmobiles, motorcycles, all-terrain vehicles, or trailers of a type subject to identification, shall make application to the department for a license containing a general distinguishing number. The applicant shall submit proof of his or her status as a bona fide manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer as may reasonably be required by the department.

History

Enacted Stats 1959 ch 3. Amended Stats 1970 ch 1290 § 2; Stats 1971 ch 1214 § 22; Stats 1973 ch 996 § 21, operative July 1, 1974; Stats 1975 ch 182 § 16, effective July 5, 1975; Stats 1979 ch 622 § 5; Stats 1983 ch 1286 § 25; Stats 2002 ch 758 § 9 (AB 3024); Stats 2003 ch 62 § 303 (SB 600); Stats 2004 ch 836 § 8 (AB 2848).

Annotations

Notes

Derivation:

Amendments:

Derivation:

(a) Former Veh C § 201, as added Stats 1957 ch 1319 § 7.

(b) Former Veh C § 206, as enacted Stats 1937 ch 27, Amended Stats 1935 ch 671, Stats 1945 ch 469 § 2, Stats 1949 ch 1497 § 1.

(c) Stats 1923 ch 266 § 46, as Amended Stats 1927 ch 752 § 11, Stats 1929 ch 253 § 15.

(d) Stats 1915 ch 188 § 9, as Amended Stats 1917 ch 218 § 8, Stats 1921 ch 147 § 8.

(e) Stats 1913 ch 326 § 9.

Amendments:**1970 Amendment:**

Added “or of snowmobiles” after “subject to registration”.

1971 Amendment:

Substituted “special plates” for “certificate”.

1973 Amendment:

Added (1) “and manufacturer branch, distributor of, and distributor branch,”; and (2) “manufacturer branch, distributor, distributor branch,”.

1975 Amendment:

Deleted “and special plates” after “a license”.

1979 Amendment:

Substituted “snowmobiles or motorcycles of a type subject to identification” for “of snowmobiles”.

1983 Amendment:

Added (1) “remanufacturer of, and remanufacturer branch,”; (2) the commas after “registration” and after “identification”; (3) “or her” after “proof of his”; and (4) “remanufacturer, remanufacturer branch”.

2002 Amendment:

Substituted “snowmobiles, motorcycles, or trailers” for “motorcycles or trailers” in the first sentence.

2003 Amendment:

Amended the first sentence by substituting (1) a comma for “of, and” after “manufacturer”, “remanufacturer”, “distributor” and “transporter”; and (2) “dealer of” for “dealer in”.

2004 Amendment:

Added “all-terrain vehicles” in the first sentence.

Notes to Decisions

1. Generally

In claim and delivery to recover possession of automobile, contention that dealers for whom defendant was working were not regular dealers and that they could not secure dealer’s license plates and could not legally operate car without such plates was immaterial where car was taken by defendant on

particular trip in question without their consent. *National Funding Corp. v. Stump* (Cal. App. 1943), 57 Cal. App. 2d 29, 133 P.2d 855, 1943 Cal. App. LEXIS 142.

The question “what is a ‘bona fide’ dealer, within the meaning of Veh C § 11701?” is one of law. *Merrill v. Department of Motor Vehicles* (Cal. 1969), 71 Cal. 2d 907, 80 Cal. Rptr. 89, 458 P.2d 33, 1969 Cal. LEXIS 296.

The term “bona fide,” as used in Veh C § 11701, in referring to a “bona fide... dealer,” is used in the sense of honesty, fair dealing, and freedom from deceit. *Merrill v. Department of Motor Vehicles* (Cal. 1969), 71 Cal. 2d 907, 80 Cal. Rptr. 89, 458 P.2d 33, 1969 Cal. LEXIS 296.

A motor vehicle dealer may be found lacking in bona fides, within the meaning of Veh C § 11701, only if he is found lacking in the qualities of honesty and reliability for which the statutory scheme manifests concern. *Merrill v. Department of Motor Vehicles* (Cal. 1969), 71 Cal. 2d 907, 80 Cal. Rptr. 89, 458 P.2d 33, 1969 Cal. LEXIS 296.

Although the presence of an inventory might be considered one of the usual indicia of reliability in a dealer, a stock of automobiles is not a necessary concomitant of a “bona fide” dealership, within the contemplation of Veh C § 11701. *Merrill v. Department of Motor Vehicles* (Cal. 1969), 71 Cal. 2d 907, 80 Cal. Rptr. 89, 458 P.2d 33, 1969 Cal. LEXIS 296.

Opinion Notes

Attorney General’s Opinions

Dates for motor vehicle dealer’s compliance with requirements as to bond. 30 Ops. Cal. Atty. Gen. 115.

Research References & Practice Aids

Cross References:

“Motorcycle”: Veh C § 400.

“Snowmobile”: Veh C § 557.

Administrative Code and Agency References

Regulations concerning occupational license applications: 13 Cal Code Reg §§ 250.00, 250.02.

Regulations concerning business license applications: 13 Cal Code Reg §§ 252.10, 252.20.

Treatises:

Cal. Forms Pleading & Practice (Matthew Bender) ch 471B “Licensing By Public Agencies”.

Annotations:

Right of person wrongfully refused license upon proper application therefor to do act for which license is required. 30 A.L.R.2d 1006.

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Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

Hierarchy Notes:

Cal Veh Code Div. 5

Cal Veh Code Div. 5, Ch. 4, Art. 1

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Cal Veh Code § 11713.2

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§ 11713.2. Unlawful coercion or attempt to coerce dealer to do certain things

It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state:

- (a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.
- (b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.
- (c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.
- (d) To participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.
- (e) To enter into any agreement with the manufacturer, manufacturer branch, distributor, or distributor branch, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and manufacturer, manufacturer branch, distributor, or distributor branch. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article.

History

Added Stats 1973 ch 996 § 29, operative July 1, 1974, as Veh C § 11713.1. Renumbered by Stats 1979 ch 943 § 1.

Annotations

Notes

Prior Law:

There was another section of this number which was added Stats 1973 ch 996 § 30, operative July 1, 1974, Amended Stats 1974 ch 384 § 13, effective July 5, 1974, and renumbered Veh C § 11713.3 by Stats 1979 ch 943 § 3.

Research References & Practice Aids

Cross References:

Violation of division as misdemeanor: Veh C § 40000.11.

“Misdemeanor”: Pen C § 17.

Punishment for misdemeanor: Pen C §§ 19, 19.2.

Treatises:

Cal. Forms Pleading & Practice (Matthew Bender) ch 515 “Securities And Franchise Regulation”.

Cal. Antitrust and Unfair Comp. Law, ch 4, Joint Ventures and Franchises, § 4.07[C].

Witkin & Epstein, Criminal Law (4th ed), Crimes Against Public Peace and Welfare §§ 422, 423, 424.

Witkin & Epstein, Criminal Law (4th ed), Crimes Against Governmental Authority § 167.

Annotations:

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 A.L.R.4th 624.

Damages for wrongful termination of automobile dealership contracts. 54 ALR3d 324.

Validity, construction, and effect of clause in franchise contract prohibiting transfer of franchise or contract. 59 ALR3d 244.

Fraud in connection with franchise or distributorship relationship. 64 ALR3d 6.

Liability for interference with franchise. 97 ALR3d 890.

Hierarchy Notes:

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Cal Veh Code § 11713.3

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§ 11713.3. Unlawful acts by manufacturer, manufacturer branch, distributor, distributor branch, or affiliate

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

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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,

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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.

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(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)

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(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.

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- (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

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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.

(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.

History

Added Stats 1973 ch 996 § 30, operative July 1, 1974, as Veh C § 11713.2. Amended Stats 1974 ch 384 § 13, effective July 5, 1974, operative July 1, 1974. Renumbered by Stats 1979 ch 943 § 3. Amended Stats 1986 ch 1078 § 9, effective September 24, 1986, operative January 1, 1987; Stats 1993 ch 272 § 16 (AB 301), effective July 30, 1993; Stats 1994 ch 1253 § 11 (AB 3539); Stats 1998 ch 662 § 7 (AB 2707); Stats 2000 ch 566 § 6 (AB 1912), ch 789 § 2.5 (SB 1819); Stats 2006 ch 353 § 1 (AB 2291), effective January 1, 2007; Stats 2011 ch 342 § 3 (SB 642), effective January 1, 2012; Stats 2012 ch 162 § 180 (SB 1171), effective January 1, 2013; Stats 2013 ch 512 § 18 (SB 155), effective January 1, 2014; Stats 2015 ch 407 § 18 (AB 759), effective January 1, 2016, ch 526 § 9.1 (AB 1178), effective January 1, 2016; Stats 2019 ch 796 § 18 (AB 179), effective January 1, 2020.

Annotations

Notes

Prior Law:

Amendments:

Note—

Prior Law:

There was another section of this number which was added Stats 1974 ch 222 § 1 and renumbered Veh C § 11713.4 by Stats 1979 ch 943 § 4.

Amendments:

1974 Amendment:

Added "in the same line make" in the first sentence of subd (o).

1986 Amendment:

In addition to making technical changes, (1) Amended the introductory clause by (a) substituting "is" for "shall be" near the beginning; and (b) adding "to do any of the following"; (2) substituted "is" for "shall constitute" in the second sentence of subd (b); (3) deleted "shall" after "reductions" in the fourth sentence of subd (h); and (4) added subd (r).

1993 Amendment:

Substituted “described in subdivision (b) of Section 18010 of the Health and Safety Code” for “defined in Section 799.24 of the Civil Code” in the first sentence of subd (r).

1994 Amendment:

Added subd (s).

1998 Amendment:

(1) Amended subd (d) by adding (a) subdivision designation (d)(1); (b) “Except as provided in subdivision (t),” at the beginning of subd (d)(1); and (c) subds (d)(2) and (d)(3); (2) added “or conditioned upon the release, assignment, novation, waiver, estoppel, or modification of any claim or defense by the dealer” at the end of subd (e); (3) deleted the former second sentence of subd (i) which read: “A manufacturer or distributor shall not authorize or enable any new model or series passenger vehicle or station wagon to be delivered by dealers at retail more than 30 days prior to the eligibility date of the model change allowance payment for prior year model vehicles.”; and (4) added subds (t) and (u).

2000 Amendment:

(1) Substituted subd (o) for former subd (o) which read: “(o) 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. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions. A distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of the distributor 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.”; (2) designated subd (u) to be subd (u)(1); (3) added the last sentence of subd (u)(1); (4) added subds (u)(1)(A) and (u)(2); and (5) added subd (v). (As amended Stats 2000 ch 789, compared to the section as it read prior to 2000. This section was also amended by an earlier chapter, ch 566. See Gov C § 9605.)

2006 Amendment

(1) Amended subd (b) by (a) substituting “if” for “provided that” after “the operation of the dealership”; (b) substituting “if a” for “also provided that no” after “the manufacturer or distributor, and”; and (c) substituting “does not” for “shall” after “change in capital structure”; (2) amended subd (c) by (a) adding the comma after “operator or operators”; (b) adding “to” after “if the franchise was granted”; (c) substituting “that” for “such” after “personal qualifications of”; and (d) deleting “or persons” after “that person”; (3) added “or persons” after “interest of any of them to any other” in subd (d)(1); (4) amended subd (d)(2)(A) by (a) adding the comma after “or transfer of all”; and (b) adding the comma after “or substantially all”; (5) substituted “services” for “service” after “To obtain money, goods,” in subd (f); (6) substituted “that” for “which” after “waiver, or estoppel”; (7) amended subd (h) by (a) substituting “that” for “which” after “prices of motor vehicles”; (b) substituting “that” for “which” after dealer's inventory”; (c) adding “This subdivision does not apply to” after “increase or price decrease”; (d) deleting “(1) the addition to a motor vehicle” after “caused by either ”; (e) deleting “required or optional equipment pursuant to state or federal law, or (2) revaluation of” after “price changes caused by either of”; and (f) substituting “following:” with “United States dollar in the case of foreign make vehicles, are not subject to this subdivision.”; (8) added subds (h)(1) and (h)(2); (9) added “to” after “authority granted” in subd (p);

(10) substituted “that” for “which” after “January 1, 1987, and”; (12) added the comma after “manufacturer, branch” in subd (u)(1)(A); (11) amended subd (u) (1)(A)(ii) by (a) adding “the” after “delivery terms, including”; (b) adding “the” after “time of delivery after”; and (c) adding “an” after “placement of”; (12) deleted the comma after “and any other information which” in subd (u)(1)(A)(iii); and (13) added subds (v)-(w); and (15) redesignated former subd (v) to be subd (x).

2011 Amendment:

(1) Amended the introductory clause by (a) substituting “a manufacturer” for “any manufacturer”; (b) substituting “pursuant to” for “under”; and (c) adding “, directly or indirectly through an affiliate,”; (2) substituted “a new vehicle” for “any new vehicle” both times it appears in the first sentence of subd (a); (3) amended subd (b) by (a) substituting “a” for “any” after “contract or otherwise,”; and (b) deleting “any” after “all times meets”; (4) amended the first sentence of subd (d)(1) by substituting (a) “a dealer, or an” for “any dealer, or any”; (b) “a” for “any” after “stockholder of” and after “or transfer of”; and (c) “another person” for “any other person”; (5) amended the second sentence of subd (d)(1) by (a) substituting “A” for “No” at the beginning; (b) adding “not,” after “stockholder shall”; and (c) substituting “a right” for “any right”; (6) deleted “any” after “transferee of” in the second sentence of the second paragraph of subd (d)(2)(A); (7) substituted “A” for “Any” at the beginning of the third sentence of subd (d)(2)(B); (8) substituted “an action” for “any action” in subd (d)(3); (9) amended the second sentence of subd (e) by substituting (a) “shall not be a” for “shall be no”; and (b) “a claim” for “any claim”; (10) substituted “another benefit from a” for “any other benefit from any other” in subd (f); (11) substituted subd (g) for former subd (g) which read: “(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.”; (12) substituted “the order” for “each such order” in the second sentence of the introductory paragraph of subd (h); (13) substituted “a payment” for “any payment” in subd (i); (14) amended subd (k) by (a) deleting “any” after “To offer”; (b) substituting “a person” for “any person”; and (c) substituting “a political subdivision of the state” for “any political subdivision thereof”; (15) amended subd (n) by substituting (a) “a dealer” for “any dealer”; and (b) “another dealer for a” for “any other dealer for any”; (16) substituted “an entity” for “any entity” in the introductory clause of subd (o)(2); (17) substituted subd (o)(2)(A) for former subd (o)(2)(A) which read: “Owning or operating a dealership for a temporary period, not to exceed one year. 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. The board shall extend the time period until December 31, 2002, for any manufacturer that meets all of the following requirements: “(i) The manufacturer has no more than 25 franchisees in the state and those franchisees collectively operate dealership facilities in at least 15 counties of the state. “(ii) All of the dealership facilities operated by the manufacturer’s franchisees in the state trade exclusively in the manufacturer’s line-make. “(iii) No fewer than one-half of the manufacturer’s franchisees in the state own and operate two or more dealership facilities in their assigned areas of responsibility. “(iv) The manufacturer holds a temporary ownership interest in no more than two dealerships in the state that are located in the relevant market area of any other franchisee of the same line-make not owned, in whole or part, by the manufacturer.”; (18) substituted “A” for “Every” at the beginning of subds (o)(3)(A) and (o)(3)(B); (19) added “changes,” in subd (o)(3)(A); (20) added “, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage” in subd (o)(3)(B); (21) substituted “a person not licensed pursuant to” for “persons not licensed under” in subd (q); (22) substituted “a park” for “any park” in the first sentence of subd (r); (23) amended the introductory clause of subd (t) by (a) deleting “any” after “first refusal or”; (b)

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substituting “an owner of the franchise” for “any owner thereof”; (c) substituting “a” for “any” after “franchisor, or to” and after “franchisor, all or”; and (d) substituting “of the franchised business” for “thereof” after “the assets”; (24) substituted “of the franchised business” for “thereof” in subd (t)(1); (25) substituted “This paragraph does not limit” for “Nothing contained in this paragraph limits” in the last sentence of subd (t)(4); (26) amended subd (t)(6) by deleting (a) “any” after “proposed transferee for” in the first sentence; and (b) “any” after “investigations of” in the second sentence; (27) substituted “a” for “any” after “in favor of” in the first sentence of the introductory paragraph of subd (u)(1); (28) added “in” after “in whole or” in the first sentence of the introductory paragraph of subd (u)(1) and in the introductory clause of subd (u)(1)(A); (29) substituted “a franchisee” for “any franchisee” in the introductory clause of subd (u)(1)(A) and in the first sentence of subd (u)(1)(A)(iii); (30) substituted “A” for “Any” at the beginning of subds (u)(1)(A)(i) and (u)(1)(A)(ii); (31) substituted “a” for “any” after “uniformly, and” in subd (u)(1)(A)(i); (32) deleted “Any” at the beginning of the first sentence of subd (u)(1)(A)(iii); (33) amended the second sentence of (u)(1)(A)(iii) by (a) substituting “a” for “any” after “service behavior of”; (b) deleting “any” after “customer, and”; and (c) substituting “that, if” for “which, if”; (34) added subds (u)(1)(A)(iv) and (x); (35) substituted “This subdivision does not” for “Nothing in this subdivision shall be interpreted to” in subd (u)(2); and (36) redesignated former subd (x) to be subd (y).

2012 Amendment:

(1) Added the commas around “or relating to” in the second sentence of subd (g)(1)(D); (2) substituted “subparagraph (A), (B), (C), or (D)” for “subparagraph (A), (B), (C) or (D)” in subd (g)(3)(F)(ii); (3) added the periods at the end of subds (g)(3)(H)(i)(II) and (g)(3)(H)(i)(III); (4) substituted “waiver” for “wavier” in subd (g)(3)(H)(i)(VI); (5) amended subd (j) by (a) adding “, widower,”; and (b) deleting the comma after “a dealership”; and (6) added the comma after “relocate, terminate” in subd (l).

2013 Amendment:

(1) Added subd (y); and (2) redesignated former subd (y) to be subd (z).

2015 Amendment:

(1) Amended subd (e) by (a) deleting “which consent” at the end of the second sentence; and (b) substituting “. The manufacturer or distributor shall not unreasonably withhold consent or condition consent” for “shall not be unreasonably withheld or conditioned” in the last sentence; (2) added “or Article 5 (commencing with Section 3070)” in subd (l); (3) added subdivision designation (y)(1); (4) amended the first sentence of subd (y)(1) by (a) substituting “at least 48 hours before” for “prior to”; (b) adding “of the vehicle”; and (c) deleting “at the time of sale or lease” at the end; (5) added the last sentence of subd (y)(1); (6) added subds (y)(2) and (y)(3); and (7) substituting “means a geographic” for “is a geographic” in subd (z). (As amended Stats 2015 ch 526, compared to the section as it read prior to 2015. This section was also amended by an earlier chapter, ch 407. See Gov C § 9605.)

2019 Amendment (ch 796):

In (a), substituted “that are of a model offered by the manufacturer or distributor to other franchisees in this state of the same line-make” for “as are covered by the franchise” and deleted “in this state” at the end of the first sentence; substituted “meanings” for “meaning” in (g)(1)(D); redesignated former (p) as (p)(1); added (p)(2) and (p)(3); added “maintenance agreements,” in (x)(1)(A), (x)(1)(C), (x)(1)(D); in (x)(1)(E), substituted “vehicles,” for “vehicles or” and added “maintenance agreements,”; and added (x)(1)(F); added (y)(4); redesignated (z) as (z)(2) and added an introductory paragraph in (z) and added (z)(1).

Note—

Stats 2019 ch 796 provides:

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.

Stats 2015 ch 526 provides:

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

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

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(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) Franchisors sometimes establish strict export policies when a paid sales incentive is subject to being charged back or new vehicle allocation is reduced when a vehicle is exported or resold, even when the dealership did not know, or in the exercise of reasonable diligence should not have known, of the intended exportation or resale. In response, California franchise laws were recently updated to prohibit chargebacks and other adverse actions in circumstances in which the dealer did not have knowledge of, or reason to know of, the intended exportation or resale.

(d) Despite California's franchise law acknowledging that the dealer did not have knowledge or reason to know that a vehicle would be exported or resold, at least one manufacturer is disregarding this franchise law by imposing a strict liability export and sale-for-resale policy against dealers. These actions impose severe sanctions on dealers regardless of the fact that dealers are collecting sales tax and registering these vehicles in California and have no reasonable knowledge of the future fate of those vehicles.

(e) It is the intent of this act to ensure that new motor vehicle dealers are treated fairly by their franchisors, to prohibit franchisors from avoiding state franchise laws, and to ensure that dealers are not subject to adverse action when the dealer did not know or have reason to know vehicles are exported or resold.

Stats 2011 ch 342 provides:

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

(a) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, provides consumers with a well-organized distribution system for the availability and sale of new motor vehicles throughout the state; provides a network of quality warranty 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.

(b) It is the intent of the Legislature, in enacting this act to prohibit franchisors from avoiding state franchise protection laws, to ensure fair competition among new motor vehicle dealer franchisees that are independently owned and those owned by their franchisors, and to clarify that the existing prohibition against franchisor ownership of a dealership located within a 10-mile radius of a nonfranchisor-owned dealership of the same line-make is subject only to certain limited exceptions that may not be used to justify any improper purpose, including the operation of a dealership by a sophisticated investor or operator posing as a dealer development candidate.

Stats 2000 ch 789 provides:

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

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

(b) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, assures the consuming public of a well organized distribution system for the availability and sale of new motor vehicles throughout the state;

provides a network of quality warranty 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) It is the intent of this act to ensure fair competition among new motor vehicle dealer franchisees that are independently owned and those owned by their franchisors, and to clarify that the prohibition under existing law against franchisor ownership of a dealership located within a 10-mile radius of a nonfranchisor-owned dealership of the same line-make is subject only to certain limited exceptions that may not be used to justify any improper purpose, including the consolidation of privately owned dealerships by a sophisticated investor or operator posing as a dealer development candidate.

Stats 1994 ch 1253 provides:

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

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

(b) The new motor vehicle franchise system, that 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; a network of quality warranty and repair facilities to maintain those vehicles; and a cost-effective method for the state to police those systems through the licensing of private sector franchisors and franchisees.

(c) It is the intent of the Legislature in enacting this act to protect the integrity and benefits of the new motor vehicle franchise system, while also affording consumers the choice and flexibility of utilizing the services of an autobroker to arrange or negotiate new car purchases within a framework that ensures a high level of consumer protection and accountability. This act is intended to legitimize the activity of motor vehicle brokering by defining that activity and permitting any holder of a motor vehicle dealer license to register with the Department of Motor Vehicles as an autobroker and thereafter engage in brokering activities pursuant to the provisions of this act.

Stats 1993 ch 272 provides:

SECTION 1. This act shall be known and may be cited as the Omnibus Transportation Act of 1993.

Notes to Decisions

1. Generally

2. Construction with Other Law

3. Notice

4. Right of Action

1. Generally

Cal Veh Code § 11713.3

A franchisee's complaint against an automobile company for wrongful refusal to approve a sale of the franchise was dismissed, where refusal to consent to the sale on the ground that the buyer's dealership was too close to an existing dealership of the company, was not unreasonable, and was a legitimate, performance related criteria, under Veh C § 11713.3(e). A franchisor's refusal to consent must be supported by more than a subjective claim of good faith; there must be substantial evidence the proposed buyer is materially deficient in one or more appropriate, performance related criteria; and a reviewing court should not substitute its judgment for that of the franchisor, but only look for a substantial basis. While the burden of presenting plausible reasons for the refusal to consent must be on the franchisor, the ultimate burden of persuasion is on the franchisee to establish that the refusal is unreasonable. *Pacesetter Motors v. Nissan Motor Corp.* (W.D.N.Y. 1996), 913 F. Supp. 174, 1996 U.S. Dist. LEXIS 999.

In a case in which plaintiff, a car dealership, intervened as an additional plaintiff in a franchisee's suit against defendant, a car manufacturer, because neither Veh C § 11713.3(d)(1), nor (e), creates a cause of action for potential transferees, such as plaintiff, defendant's demurrer to plaintiff's complaint was properly sustained. *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (Cal. App. 4th Dist. 2009), 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389, 2009 Cal. App. LEXIS 298.

In context, Veh C § 11713.3(g)(1)(B) precludes a manufacturer or distributor from limiting a dealer's right to submit evidence in connection with a protest, if that protest is before the New Motor Vehicle Board. *Subaru of America, Inc. v. Putnam Automotive, Inc.* (Cal. App. 1st Dist. 2021), 275 Cal. Rptr. 3d 120, 60 Cal. App. 5th 829, 2021 Cal. App. LEXIS 119.

Veh C § 11713.3(g)(1)(C) obviously is not a blanket prohibition against a manufacturer or distributor requiring a dealer to terminate a franchise. The provision bars such a termination without legal process. *Subaru of America, Inc. v. Putnam Automotive, Inc.* (Cal. App. 1st Dist. 2021), 275 Cal. Rptr. 3d 120, 60 Cal. App. 5th 829, 2021 Cal. App. LEXIS 119.

2. Construction with Other Law

In an action by a franchised automobile dealer against the automobile franchisor, the trial court properly granted summary judgment for defendant on plaintiff's allegation that defendant's refusal to approve the sale of plaintiff's franchise was based on a policy requiring racial discrimination in violation of B & P C § 16721. The defendant's minority recruitment policy coupled with its practice of recommending only one franchise candidate at a time did not lead to an inference of racial exclusion as contemplated by the statute; therefore there was no triable issue of fact. *Burke v. Superior Court* (Cal. App. 3d Dist. 1982), 128 Cal. App. 3d 661, 180 Cal. Rptr. 537, 1982 Cal. App. LEXIS 1255.

Car manufacturer's action against a dealer for breach of an agreement to waive its protest rights was not subject to a motion to strike under CCP § 425.16, the anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute. The waiver was not void under Veh C § 11713.3. *DaimlerChrysler Motors Co. v. Lew Williams, Inc.* (Cal. App. 3d Dist. 2006), 142 Cal. App. 4th 344, 48 Cal. Rptr. 3d 233, 2006 Cal. App. LEXIS 1308.

Absent a statement of decision and objections under CCP §§ 632, 634, the doctrine of implied findings required an inference that the trial court made factual findings necessary to determine that a manufacturer reasonably withheld consent to transfer an auto dealership under Veh C § 11713.3(e), and that ruling was supported by substantial evidence of the dealers' dishonesty by making an unauthorized transfer in violation of § 11713.3(d)(2)(A) and allowing the transferee to use the dealer's license of the transferor in violation of Veh C § 11713(m). *Fladeboe v. American Isuzu Motors Inc.* (Cal. App. 4th Dist.

Cal Veh Code § 11713.3

2007), 150 Cal. App. 4th 42, 58 Cal. Rptr. 3d 225, 2007 Cal. App. LEXIS 638, modified, (Cal. App. 4th Dist. Apr. 24, 2007), 2007 Cal. App. LEXIS 651.

Restitution was properly awarded to a manufacturer under B & P C § 17203 for an unfair business practice because a transferee wrongfully obtained dealer sales incentive payments from the manufacturer after an unauthorized transfer was made in violation of Veh C § 11713.3(d)(2)(A) and the transferee used the dealer's license of the transferor in violation of Veh C § 11713(m). *Fladeboe v. American Isuzu Motors Inc.* (Cal. App. 4th Dist. 2007), 150 Cal. App. 4th 42, 58 Cal. Rptr. 3d 225, 2007 Cal. App. LEXIS 638, modified, (Cal. App. 4th Dist. Apr. 24, 2007), 2007 Cal. App. LEXIS 651.

Damages and attorney fee remedies specified in Veh C § 11726, are only available to transferors frustrated by manufacturer conduct violating Veh C § 11713.3(e), not prospective transferees. *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (Cal. App. 4th Dist. 2009), 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389, 2009 Cal. App. LEXIS 298.

Under Veh C § 11713.3(d)(1), a manufacturer may not prevent or require, or attempt to prevent or require, by contract or otherwise, with any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person; these plain terms, as in § 11713.3(e), do not include potential transferees. *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (Cal. App. 4th Dist. 2009), 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389, 2009 Cal. App. LEXIS 298.

Veh C § 11726, merely specifies the remedy available for violations of Veh C § 11713.3(e), and does not expand or restrict the scope of those entitled to sue under it. *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (Cal. App. 4th Dist. 2009), 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389, 2009 Cal. App. LEXIS 298.

Subdivision (l) of this section is not limited to "licensees," but rather, it governs the conduct of parties to a franchise agreement whose termination is subject to the protections of Veh C §§ 3060 et seq. Thus, the subdivision is designed to protect dealers/franchisees whose franchises have been terminated by a manufacturer/franchisor in violation of the procedures set forth in § 3060 et seq., and allowing a private cause of action under the subdivision promotes the purposes of the statutory scheme whether or not the franchisee is licensed. *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (Cal. App. 1st Dist. 2017), 218 Cal. Rptr. 3d 454, 11 Cal. App. 5th 1066, 2017 Cal. App. LEXIS 469.

In a case in which an arbitrator found that a new motor vehicle distributor had good cause for terminating an agreement with a car dealer to operate a satellite service-only facility satellite service, the appellate court concluded that under both the current and former versions of Veh C § 11713.3, the arbitration provision in the satellites service agreement controlled. The trial court correctly granted the distributor's petition to compel arbitration and its subsequent petition to confirm the arbitrator's final award. *Subaru of America, Inc. v. Putnam Automotive, Inc.* (Cal. App. 1st Dist. 2021), 275 Cal. Rptr. 3d 120, 60 Cal. App. 5th 829, 2021 Cal. App. LEXIS 119.

3. Notice

Where proposed purchasers sought to purchase a vehicle dealership from a franchisee and the manufacturer exercised a right of first refusal (ROFR) contained in its dealership agreement, the purchasers' tortious interference claims failed because the manufacturer timely and lawfully exercised its ROFR since, inter alia, nothing in Veh C § 11713.3(t)(6) implied that a proposed transferee was entitled to notice of the manufacturer's exercise of a ROFR, and the receipt of the notice by electronic mail and

facsimile constituted written notice. *Fresno Motors, LLC v. Mercedes Benz USA, LLC* (9th Cir. Cal. 2014), 771 F.3d 1119, 2014 U.S. App. LEXIS 21127.

4. Right of Action

Where a distributor failed to approval an application for transfer of dealership within the 60–day period specified in Veh C § 11713.3(d)(2)(B), the California New Motor Vehicle Board could not review the matter. The Board’s jurisdiction did not extend to private dealer–distributor disputes not affecting the public interest. *Mazda Motor of America, Inc. v. New Motor Vehicle Bd.* (Cal. App. 3d Dist. 2003), 110 Cal. App. 4th 1451, 2 Cal. Rptr. 3d 866, 2003 Cal. App. LEXIS 1170.

Auto dealer’s claim for statutory violations of Veh C § 11713.3 failed as a matter of law where the dealer had essentially sought to plead around the court’s prior order granting the auto manufacturer’s motion to dismiss a previous version of the same claim. *Los Feliz Ford, Inc. v. Chrysler Group, LLC* (C.D. Cal. Apr. 9, 2012), 2012 U.S. Dist. LEXIS 147370, aff’d in part and rev’d in part, vacated in part, (9th Cir. Cal. 2014), 571 Fed. Appx. 546, 2014 U.S. App. LEXIS 7709.

Dismissal of an administrative protest as untimely did not preclude a new motor vehicle dealer from filing a civil action asserting statutory and common law claims arising from the franchisor’s refusal to approve a sale of the dealership and franchise. *Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp., U.S.A.* (Cal. App. 2d Dist. 2013), 221 Cal. App. 4th 867, 164 Cal. Rptr. 3d 811, 2013 Cal. App. LEXIS 949, modified, (Cal. App. 2d Dist. Dec. 24, 2013), 2013 Cal. App. LEXIS 1043.

Nonsuit was properly granted as to a claim asserted by a shareholder of a dealership’s owner because the shareholder did not personally own an interest in the dealership and franchise, even though the sale included a leasehold interest in a building owned by the shareholder. *Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp., U.S.A.* (Cal. App. 2d Dist. 2013), 221 Cal. App. 4th 867, 164 Cal. Rptr. 3d 811, 2013 Cal. App. LEXIS 949, modified, (Cal. App. 2d Dist. Dec. 24, 2013), 2013 Cal. App. LEXIS 1043.

Regarding proposed purchasers’ claim for reimbursement for expenses incurred in negotiating an asset purchase agreement that was usurped when the manufacturer exercised its right of first refusal, the purchasers had an implied right of action under Veh C § 11713.3(t)(6) because the plain language made clear that it was the proposed transferee that had standing to sue, and not the current franchisee. *Fresno Motors, LLC v. Mercedes Benz USA, LLC* (9th Cir. Cal. 2014), 771 F.3d 1119, 2014 U.S. App. LEXIS 21127.

As the franchisee in a franchise agreement over which the California New Motor Vehicle Board had jurisdiction, a franchisee was a member of the class protected by this section, upon which its claim against the franchisee for the termination of its vehicle franchise without good cause was based. Because the franchisee had standing under subdivision (l) of this section, its claim was not defeated by its status as non-licensee. *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (Cal. App. 1st Dist. 2017), 218 Cal. Rptr. 3d 454, 11 Cal. App. 5th 1066, 2017 Cal. App. LEXIS 469.

Notes to Unpublished Decisions

1. Generally

1. Generally

Unpublished decision: Vehicle dealership's claim against a manufacturer lacked merit because a protest waiver in the letter of intent was valid, enforceable, and not statutorily violative, such that a statutory section that was based on statutory violations was inapplicable. *Los Feliz Ford, Inc. v. Chrysler Group, LLC* (9th Cir. Cal. 2014), 571 Fed. Appx. 546, 2014 U.S. App. LEXIS 7709, amended, (9th Cir. Cal. May 22, 2014), 2014 U.S. App. LEXIS 9574, reprinted, sub. op., (9th Cir. Cal. May 22, 2014), 2014 U.S. App. LEXIS 9575.

Unpublished decision: District court did not err by granting judgment to the automobile manufacturer on a dealer's claim under Veh C § 11713.3 where protest waivers like the one included in the dealer's letter of intent were valid and enforceable in California during the relevant times, because such waivers were consistent with the scheme contained in Veh C §§ 3060- 3069.1, requiring such a waiver did not constitute a violation of those sections, and thus, Veh C § 11713.3(l) did not apply. *Los Feliz Ford, Inc. v. Chrysler Group, LLC* (9th Cir. Cal. May 22, 2014), 2014 U.S. App. LEXIS 9575.

Research References & Practice Aids

Cross References:

"Distributor": Veh C § 296.

"Distributor branch": Veh C § 297.

"Manufacturer branch": Veh C § 389.

Violation of division as misdemeanor: Veh C § 40000.11.

"Misdemeanor": Pen C § 17.

Punishment for misdemeanor: Pen C §§ 19, 19.2.

Law Review Articles:

Review of Selected 2007 California Legislation: Vehicle: Chapter 353 Protects Auto Dealers from Lawsuits and Prohibits Computer Vendors from Contracting Around Consumer Privacy Rights, but Does it Do Enough?. 38 *McGeorge L. Rev.* 330.

Treatises:

Cal. Forms Pleading & Practice (Matthew Bender) ch 515 "Securities And Franchise Regulation".

Cal. Antitrust and Unfair Comp. Law, ch 4, Joint Ventures and Franchises, § 4.07[C].

Annotations:

Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees. 82 *A.L.R.4th* 624.

Damages for wrongful termination of automobile dealership contracts. 54 *ALR3d* 324.

Fraud in connection with franchise or distributorship relationship. 64 *ALR3d* 6.

Liability for interference with franchise. 97 *ALR3d* 890.

Hierarchy Notes:

Cal Veh Code Div. 5

Cal Veh Code Div. 5, Ch. 4, Art. 1

Deering's California Codes Annotated
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End of Document

Cal Veh Code § 11713.13

Deering's California Codes are current through Chapter 27 with the exception of Chapter 21 of the 2022 Regular Session.

Deering's California Codes Annotated > VEHICLE CODE (§§ 1 — 42277) > Division 5 Occupational Licensing and Business Regulations (Chs. 1 — 11) > Chapter 4 Manufacturers, Transporters, Dealers, and Salesmen (Arts. 1 — 3) > Article 1 Issuance of License and Certificates to Manufacturers, Transporters, and Dealers (§§ 11700 — 11740)

§ 11713.13. Additional unlawful acts by manufacturer, manufacturer branch, distributor, distributor branch, or affiliate

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.

History

Added Stats 2009 ch 12 § 3 (SB 424), effective July 2, 2009. Amended Stats 2013 ch 512 § 19 (SB 155), effective January 1, 2014; Stats 2019 ch 796 § 19 (AB 179), effective January 1, 2020.

Annotations

Notes

Editor's Notes—**Amendments:****Note—****Editor's Notes—**

For legislative findings and declarations, see 2019 note following Veh C § 11713.3.

Amendments:**2013 Amendment:**

(1) Substituted “line-make” for “line make” in subd (a); (2) deleted “under this subdivision or subdivision (a)” after “any proceeding” in the second sentence of subd (b); (3) amended the first paragraph of subd (c) by (a) adding “and advancements in vehicular technology” in the first sentence; and (b) substituting the second sentence for the former second sentence which read: “In any proceeding in which a required facility alteration, expansion, or addition is an issue, the manufacturer or distributor shall have the burden of proof.”; and (4) added subds (c)(1), (c)(2), and (g).

2019 Amendment (ch 796):

In (c)(1), substituted “distributor branch, or affiliate” for “or distributor branch” four times and “payments toward a” for “payments of a”; added (c)(3); added (f)(2); redesignated former (f)(2) as (f)(3); and added (h)–(j).

Note—

Stats 2009 ch 12 provides:

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

- (a) The distribution, sale, and service of new motor vehicles in the State of California vitally affects the general economy of this state and the public welfare.
- (b) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, assures the consuming public of a well-organized distribution system for the availability and sale of new motor vehicles throughout the state; provides a network of quality warranty, recall, and repair facilities to maintain those vehicles; and creates a cost-effective method for the state to police those systems through the licensing and regulation of private sector franchisors and franchisees.
- (c) Since January of 2008, over 170 new motor vehicle dealerships have closed their doors in California. These closures have resulted in job losses, diminished sales tax and other tax revenues, and a reduction in the number of new motor vehicle dealerships that service the consuming public.
- (d) It is the intent of this act to ensure that facility requirements imposed by franchisors are reasonable, that assistance for dealers upon termination, nonrenewal, or cancellation of a

franchise is adequate, and that dealers are properly indemnified for actions of auto manufacturers or distributors that are beyond the control of dealers.

Research References & Practice Aids

Hierarchy Notes:

Cal Veh Code Div. 5

Cal Veh Code Div. 5, Ch. 4, Art. 1

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End of Document

Cal Veh Code § 11726

Deering's California Codes are current through Chapter 27 with the exception of Chapter 21 of the 2022 Regular Session.

Deering's California Codes Annotated > VEHICLE CODE (§§ 1 — 42277) > Division 5 Occupational Licensing and Business Regulations (Chs. 1 — 11) > Chapter 4 Manufacturers, Transporters, Dealers, and Salesmen (Arts. 1 — 3) > Article 1 Issuance of License and Certificates to Manufacturers, Transporters, and Dealers (§§ 11700 — 11740)

§ 11726. Recovery of damages; Injunctive relief

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.

History

Added Stats 1973 ch 996 § 34, operative July 1, 1974. Amended Stats 2019 ch 796 § 20 (AB 179), effective January 1, 2020.

Annotations

Notes

Editor's Notes—

Amendments:

Editor's Notes—

For legislative findings and declarations, see 2019 note following Veh C § 11713.3.

Amendments:

2019 Amendment (ch 796):

Deleted "Article 3 (commencing with Section 3052) of Chapter 6 of Division 2 or" following "Division 5 or".

Notes to Decisions

1. Generally

2. Construction with Other Law

3. Applicability

1. Generally

Willful conduct supporting an attorney fee award under this section was shown with regard to a franchisor's refusal to approve a sale of a dealership and franchise; however, denying fees incurred in an untimely administrative protest proceeding was not error. *Powerhouse Motorsports Group, Inc. v. Yamaha Motor Corp., U.S.A.* (Cal. App. 2d Dist. 2013), 221 Cal. App. 4th 867, 164 Cal. Rptr. 3d 811, 2013 Cal. App. LEXIS 949, modified, (Cal. App. 2d Dist. Dec. 24, 2013), 2013 Cal. App. LEXIS 1043.

2. Construction with Other Law

The cross-complaint of a motorcycle dealer against its franchiser for damages for unfair dealings with respect to the franchise, unauthorized termination of the relationship, unwarranted interference in the sale of a dealership, and economic duress to compel dismissal of the dealers' protest to the New Motor Vehicle Board, was barred by the dealers' failure to exhaust the administrative remedies before the board as provided in Veh C § 3050(c), giving the board authority to consider "any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer... distributor..." The judicial remedy provided in Veh C § 11726, contemplates a prior administrative finding that a licensee is in violation of the statutes or board rules, before the judicial relief there provided may be invoked. The fact the dealers no longer had a franchise relationship was irrelevant to the application of the exhaustion doctrine. The dealers previously had a right to and did invoke the Board administrative remedy, and their failure to complete the process barred their present claim. *Yamaha Motor Corp. v. Superior Court* (Cal. App. 6th Dist. 1987), 195 Cal. App. 3d 652, 240 Cal. Rptr. 806, 1987 Cal. App. LEXIS 2222.

Damages and attorney fee remedies specified in Veh C § 11726, are only available to transferors frustrated by manufacturer conduct violating Veh C § 11713.3(e), not prospective transferees. *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (Cal. App. 4th Dist. 2009), 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389, 2009 Cal. App. LEXIS 298.

Veh C § 11726, merely specifies the remedy available for violations of Veh C § 11713.3(e), and does not expand or restrict the scope of those entitled to sue under it. *Larry Menke, Inc. v. DaimlerChrysler Motors Co., LLC* (Cal. App. 4th Dist. 2009), 171 Cal. App. 4th 1088, 90 Cal. Rptr. 3d 389, 2009 Cal. App. LEXIS 298.

Regarding proposed purchasers' claim for reimbursement for expenses incurred in negotiating an asset purchase agreement that was usurped when the manufacturer exercised its right of first refusal, the purchasers had an implied right of action under Veh C § 11713.3(t)(6) because the plain language made clear that it was the proposed transferee that had standing to sue, and not the current franchisee. *Fresno Motors, LLC v. Mercedes Benz USA, LLC* (9th Cir. Cal. 2014), 771 F.3d 1119, 2014 U.S. App. LEXIS 21127.

Veh C § 11713.3(l), is not limited to “licensees,” but rather, it governs the conduct of parties to a franchise agreement whose termination is subject to the protections of Veh C §§ 3060 et seq. Thus, § 11713.3(l), is designed to protect dealers/franchisees whose franchises have been terminated by a manufacturer/franchisor in violation of the procedures set forth in §§ 3060 et seq., and allowing a private cause of action under § 11713.3, subd. (l), promotes the purposes of the statutory scheme whether or not the franchisee is licensed. *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (Cal. App. 1st Dist. 2017), 218 Cal. Rptr. 3d 454, 11 Cal. App. 5th 1066, 2017 Cal. App. LEXIS 469.

3. Applicability

As the franchisee in a franchise agreement over which the California New Motor Vehicle Board had jurisdiction, a franchisee was a member of the class protected by Veh C § 11713.3, upon which its claim for the termination of its vehicle franchise without good cause was based. Because the franchisee had standing under § 11713.3(l), its claim was not defeated by its status as non-licensee. *Guarantee Forklift, Inc. v. Capacity of Texas, Inc.* (Cal. App. 1st Dist. 2017), 218 Cal. Rptr. 3d 454, 11 Cal. App. 5th 1066, 2017 Cal. App. LEXIS 469.

Research References & Practice Aids

Cross References:

Injunctions: CCP §§ 525 et seq.

Hierarchy Notes:

Cal Veh Code Div. 5

Cal Veh Code Div. 5, Ch. 4, Art. 1

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