

STATE OF CALIFORNIA

MEMO



**To:** All Licensed Vehicle Manufacturers/Distributors  
Public Mailing List

**From:** New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, California 95811  
(916) 445-1888  
(916) 323-1632 (fax)  
[nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov)

**Date:** January 2014

**Subject :** Notice Re: Factory Ownership of Dealership  
Annual Statutory Notice Re: Dealer Development Stores  
Senate Bill 155 (effective January 1, 2014)

---

**STATUTORILY REQUIRED NOTICES**

Subdivision (o) of Vehicle Code section 11713.3 prohibits factory-owned dealerships within a 10-mile radius of a privately owned dealership of the same line-make (see attached). There are two limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)). The statutorily required notices that are filed with the Board provide as follows:

**Notice Re: Factory Ownership of Dealership**

Vehicle Code section 11713.3(o)(3)(A) requires every manufacturer, branch, and distributor that owns or operates 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) 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;

**Annual Statutory Notice Re: Dealer Development Stores**

Vehicle Code section 11713.3(o)(3)(B) requires every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined 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.

**Filings Subject to Public Disclosure**

The Board maintains all of these filings as public records subject to disclosure under the California Public Records Act (Gov. Code § 6250 et seq.).

**SENATE BILL 155 (effective January 1, 2014)**

Senate Bill 155 was sponsored by the California New Car Dealers Association (CNCDA) and makes a number of non-substantive and substantive changes that are summarized in the attached charts.

It is important to note that the changes to Vehicle Code sections 3065 and 3065.1 only impact Article 4 protests (cars, motorcycles, ATVs) and not Article 5 RV protests.

There are a number of new requirements for manufacturers and distributors that pertain to warranty and franchisor incentive program claims approval, disapproval, appeals, audits and chargebacks. Additional educational materials are available on the Board's website at [www.nmvb.ca.gov](http://www.nmvb.ca.gov) on the home page under "NMVB Featured Pages" "2014 Attorney Roundtable Materials." The text of Senate Bill 155 is also available on the Board's website or at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

The legal staff is working to update the website, various publications including the *Guide to the New Motor Vehicle Board* and *Informational Guide for Manufacturers and Distributors*, and the sample notices and protests. We anticipate the updates being completed in the next several months.

If you have any questions or comments, please do not hesitate to contact Robin Parker, Senior Staff Counsel, at (916) 323-1536 or [rparker@nmvb.ca.gov](mailto:rparker@nmvb.ca.gov).

Enclosures

## CALIFORNIA VEHICLE CODE SECTION 11713.3(o)

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:

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

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

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

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

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

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

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

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

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

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

...

## NON-SUBSTANTIVE AMENDMENTS: SENATE BILL 155

VEHICLE CODE SECTION(S)	AMENDMENT
3006, 3008, and 3012	Reflects both genders and makes grammatical changes.
3050(c)(2)	Adds "distributor".
3050(d)	Incorporates Article 5 recreational vehicle protests.
3050.7	Incorporates the RV industry and Section 3070 termination protests in Proposed Stipulated Decisions and Orders.
3052	Corrects an inaccurate reference to respondent (should be applicant or licensee) and deletes an obsolete sentence in Section 3052(f) pertaining to oral arguments before the Board via a conference call. Allowing such oral arguments with a quorum of the Board would have to comply with the Bagley-Keene Open Meeting Act.
3056 and 3057	Makes grammatical changes.
3062	Reflects both the establishment of an additional dealership and the relocation of an existing dealership, and clarifies the use of "relevant market area". These changes reflect what is done in practice.
3063	Clarifies that the good cause factors apply to both establishments and relocations. Adds new subdivision (f) to indicate that the terms "motor vehicle dealership" and "dealership" have the same meaning as defined in Section 3062.
3064	Makes grammatical changes and changes "he" to "franchisee".
3066	Deletes an obsolete reference to "notice of protest"; the correct reference is "protest".
3067	Adds Article 5 RV protests to Decisions.
3069.1	Corrects an inaccurate reference to subdivision (e)(1) of Section 3072; the correct reference is subdivision (d).

## SUBSTANTIVE CHANGES: WARRANTY CLAIMS PROTESTS

SECTION	TYPE OF PROTEST	NOTICE	TIME TO FILE	BURDEN
3065(a)	<u>Pre-Repair</u> Challenge to the reduction in time and compensation applicable to specific parts or labor operations	Written notice of reduction provided by the franchisor to the franchisee; no notice to the Board; the format and content of the notice is not specified	Within 6 months following the franchisee's receipt of the written notice of reduction	Franchisor has burden to establish the reasonableness of the reduction and adequacy and fairness of the resulting compensation (3065(a))
3065(a) 3065(b)	<u>Pre-Repair</u> Adequacy and fairness of the compensation schedule (reasonableness of the compensation)	No	None specified	The franchisee has the burden of proof (3066(c))
3065(d)(3)	<u>Post-Repair/Initial Disapproval</u> Warranty claim disapproval	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a warranty claim submitted by a franchisee; no notice to the Board; format and content of the notice is not specified	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(d)(4)	<u>Post-Repair/Post-Appeal/Final Denial</u> Final denial of a warranty claim following franchisor's appeal process	Notice of Final Denial to the franchisee; format is not specified other than "Final Denial" on first page; no notice to the Board	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(e)(3)	<u>Post-Audit/Disapproval</u> Warranty claim disapproval of a previously approved claim following an audit	Franchisor provides a written Notice of Disapproval within 30 days after the audit stating the specific grounds	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))
3065(e)(4)	<u>Post-Audit/Post-Appeal/Final Denial</u> Final denial of a warranty claim following an audit following franchisor's appeal process	Notification of the Final Denial to the franchisee; format is not specified other than "Final Denial" on first page; no notice to the Board	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))

## SUBSTANTIVE CHANGES: FRANCHISOR INCENTIVE PROGRAM PROTESTS

SECTION	TYPE OF PROTEST	NOTICE	TIME TO FILE	BURDEN
3065.1(a)	<u>Disapproval</u> Franchisor incentive program claim disapproval	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a claim submitted by a franchisee	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(d)	<u>Disapproval/Post-Appeal</u> Final denial of a franchisor incentive program claim following franchisor's appeal process	Written notice of Final Denial to the franchisee; format is not specified other than "Final Denial" on first page; no notice to the Board	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(g)(3)	<u>Post-Audit</u> Franchisor incentive program claim disapproval of a previously approved claim following an audit	Franchisor provides a written notice of disapproval within 30 days after the audit stating the specific grounds	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))
3065.1(g)(4)	<u>Post-Audit/Post-Appeal/Final Denial</u> Final denial of a franchisor incentive program claim following an audit following franchisor's appeal process	Written notification of the Final Denial to the franchisee; format is not specified other than "Final Denial" on first page; no notice to the Board	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))