

STATE OF CALIFORNIA

MEMO



To: All Licensed Vehicle Manufacturers/Distributors
Public Mailing List

From: New Motor Vehicle Board
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Date: January 2015

Subject: (1) Statutory Notice Re: Factory Ownership of Dealership
(2) Annual Statutory Notice Re: Dealer Development Stores
(3) New Legislation (Assembly Bill 988 - effective January 1, 2015)

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 page 3). 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:

(1) Statutory 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.

(2) 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.).

NEW LEGISLATION

(3) Assembly Bill 988 (effective January 1, 2015)

Assembly Bill 988 amends the definition of all-terrain vehicle (Veh. Code § 111) to include recreational off-highway vehicles (ROHVs) as defined in Vehicle Code section 500 and utility terrain vehicles (UTVs) as defined in Vehicle Code section 531. Dealers, manufacturers and distributors of these vehicles would be subject to DMV licensing requirements and fall within the jurisdiction of the Board.

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.

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:

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(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.

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