



## MEMO

**To :** POLICY AND PROCEDURE COMMITTEE      **Date:** September 14, 2011  
DAVID WILSON, CHAIR  
GLENN STEVENS, MEMBER

**From :** WILLIAM G. BRENNAN  
ROBIN PARKER

**Subject:** DISCUSSION CONCERNING PENDING LEGISLATION

The following provides a brief summary of pending State and Federal legislation that is of general interest to the New Motor Vehicle Board ("Board"). The bill updates are italicized. Pertinent provisions that have been deleted due to recent amendments are identified with strikeout font. The criteria for reporting on "pending legislation of general interest" is that the bill impacts the Vehicle Code, the Board, and/or the automotive industry in general but does not directly impact the Board or its enabling statutes. For purposes of this report "pending legislation of special interest" is that which directly affects the Board's laws or functions.

The following provides a brief overview of the bill as provided by the Legislative Counsel's Digest or the Congressional Research Service, if available. The current status of each bill is also given below.

a. Pending Legislation of Special Interest - none.

(1) **Senate Bill 642 - Senator Padilla** (*Amended June 7, June 30, and July 13, 2011*)

**Status** - On May 19, 2011, the bill passed the Senate and was ordered to the Assembly. *On August 25, 2011, the bill passed the Assembly and was ordered to the Senate for concurrence in the amendments. On August 30, 2011, the Assembly concurred in the Senate amendments. On September 7, 2011, the bill was presented to the Governor for his consideration. Governor Brown has until October 9 to sign or veto the bill.*

**Support** - California New Car Dealers Association (sponsor), Association of California Insurance Companies, *California Motorcycle Dealers Association*, and California Recreational Vehicle Dealers Association.

**Opposition** - ~~Alliance of Automobile Manufacturers, Association of Global Auto Makers, Motorcycle Industry Council, and Nissan North America, Ford Motor Co.~~

**Legislative Counsel's Digest** - Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified activity. Violation of this law is crime.

This bill would provide that it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch, directly or indirectly through an affiliate, to engage in this specified activity.

Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel that would relieve a person from liability, among other things.

This bill would delete this prohibition and instead would prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from obtaining or enforcing, ~~or attempting to obtain or enforce,~~ against a dealer an agreement that, among other things, modifies or disclaims any duty or obligation of a manufacturer, manufacturer branch, distributor, distributor branch, or representative, ~~among other things or a right or privilege of a dealer.~~ The bill would also provide that such an agreement would be unenforceable *and that these provisions do not affect the enforceability of any stipulated order or other order of the board, or of certain provisions in other contracts or prohibit specified voluntary agreements.*

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from competing with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area, with exceptions in limited circumstances, including those circumstances where the manufacturer or distributor owns or operates a dealership for a temporary period, not to exceed one year.

This bill would specify that the above exception applies only at the location of a former dealership of the same line-make that has been out of operation for less than 6 months.

Existing law requires a manufacturer, branch, and distributor branch that owns or operates a dealership for a temporary period, to give written notice to the New Motor Vehicle Board each time it acquires or divests itself of an ownership interest.

This bill would also require a manufacturer, branch, and distributor branch to provide the notice each time it changes an ownership interest.

Existing law requires a manufacturer, branch, and distributor that owns an interest in a dealer, as part of a bona fide dealer development program, to give written notice to the board, annually of the name and location of each dealer in which it has an ownership interest.

This bill would also require the manufacturer, branch, and distributor to give notice regarding the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Existing law prohibits a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating in favor of any 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. Existing law describes unfair discrimination as, among other things, the furnishing to any franchisee or dealer that is owned or controlled, in whole or part, by a manufacturer, branch, or distributor of certain things, including furnishing a vehicle that is not made available to each franchisee, as provided.

This bill would also include furnishing sales or service incentives, among other things, that are not made available to all California franchisees *of the same line-make* on an equivalent *equal* basis, as unfair discrimination.

This bill would also prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from unfairly discriminating against a franchisee selling a service contract or debt cancellation agreement, among other things, as provided. The bill would describe unfair discrimination as express or implied statements that the dealer is under an obligation to exclusively sell or offer to sell service contracts, among other things. By creating a new crime, the bill would impose a state-mandated local program.

The legislative intent is as follows:

*(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.*

- (2) **Assembly Bill 656 - Assembly Member Huber** (Introduced February 16, 2011; Amended March 31, May 10, June 23, July 1, 2011, and August 16 and 25, 2011)

**Status** - On June 23, 2011, this bill was amended to abolish the New Motor Vehicle Board as of January 1, 2014. At the June 28, 2011, hearing of the Senate Governmental Organization Committee, the California New Car Dealers Association (CNCDA) opposed the bill and as a result, the Committee forced Assembly Member Huber to delete the Board from the bill. On July 1 the bill was amended to delete the provisions pertaining to the Board. This bill was subsequently amended on August 16, and 25, 2011. Since those amendments do not impact the Board they are not reflected in this memo.

**Support** - Pacific Merchant Shipping Association

**Opposition** - CNCDA

**Legislative Counsel's Digest** - Boards and commissions: repeal.

Existing law establishes the Credit Union Advisory Committee in the Department of Financial Institutions. The duties of this committee include advising the commissioner and the Deputy Commissioner of Financial Institutions for the Division of Credit Unions on matters relating to credit unions and the credit union business.

Existing law establishes the Boating and Waterways Commission in the Department of Boating and Waterways. The duties of this committee include advising the department, recommending proposed changes to regulations, and causing studies and surveys to be made of the need for small craft harbors and connecting waterways throughout the state.

Existing law establishes the California Uniform Construction Cost Accounting Commission. The duties of this commission include recommending, for adoption by the Controller, uniform construction cost accounting procedures for implementation by public agencies in the performance of, or in contracting for, construction on public projects.

~~Existing law also establishes the New Motor Vehicle Board in the Department of Motor Vehicles. The duties of which include collecting fees for the administration of the certification of third-party dispute resolution processes for new motor vehicles established under the Business and Professions Code and resolving issues raised by protests or petitions filed with the board pursuant to, among other actions, an appeal from a decision of the Department of Motor Vehicles, and the regulation of franchises subject to the Vehicle Code.~~

This bill would, as of January 1, 2014, abolish those boards and commissions and the duties and responsibilities carried out by each of those boards and commissions.

Existing law provides for the regulation and licensing of pilots for Monterey Bay, and the Bays of San Francisco, San Pablo, and Suisun, and the payment of specified pilotage rates and charges imposed on vessels piloted in those bays. Existing law

*also establishes in the Business, Transportation and Housing Agency, a Board of Pilot Commissioners for Monterey Bay, and the Bays of San Francisco, San Pablo, and Suisun, and prescribes the membership of, and functions and duties of, the board.*

*This bill would, on January 1, 2014, repeal those provisions that require the licensing of pilots in Monterey Bay, and the Bays of San Francisco, San Pablo, and Suisun, and that require the payment of specified pilotage rates and charges imposed on vessels piloted in those bays. The bill would also eliminate the board, and would recast and reenact certain provisions that regulate pilots for those bays, as provided.*

b. Pending Legislation of General Interest.

**(1) Assembly Bill 1215 – Assembly Member Blumenfield** (Amended April 28, May 10, May 27, June 22, July 12, August 15 and 18, 2011)

**Status** - *On June 2, 2011, this bill passed the Assembly and was referred to the Senate. On August 30, 2011, this bill passed the Senate. It will be referred to the Assembly for a concurrence in the amendments. The Assembly concurred in the amendments on September 2. On September 13, 2011, the bill was presented to the Governor for his consideration. Governor Brown has until October 9 to sign or veto the bill.*

**Support** *Auto Data Direct, AutoNation, California Association of Highway Patrolmen, California Motorcycle Dealers Association, the California New Car Dealers Association (sponsor), California Public Interest Research Group, CARCO, CarMax Auto Superstores, Center for Auto Safety, Coalition of Vehicle Registration Services, Consumer Action, Consumers for Auto Reliability and Safety (CARS), Metropolitan Transportation Committee, National Association of Consumer Advocates, National Salvage Vehicle Reporting Program (NSVRP); North American Export Committee, Peace Officers Research Association of California*

**Opposition** - *Consumers for Auto Reliability and Safety (contest the documentation fee increase). African American Chamber of Commerce, California Urban Partnership, Carfax, Experian, Greater Sacramento Urban League, and West Angeles Community Development Corp*

**Legislative Counsel's Digest** - Vehicles: electronic processing of documents: titling and registration.

Existing law imposes specified licensing and regulatory requirements on dealers of motor vehicles and requires that specified fees and charges be disclosed in a conditional sales contract for the purchase of a motor vehicle. Existing law also prohibits any person from driving, moving, or leaving upon a highway any motor vehicle subject to registration under the Vehicle Code, unless it is registered and the appropriate fees have been paid under that code and authorizes the Department of Motor Vehicles to establish contracts for electronic programs that allow qualified industry partners to join the department in providing services that include processing and payment programs for vehicle registration and titling transactions.

Existing law makes it a violation of the Vehicle Code for the holder of any vehicle dealer's license to commit specified actions, including, to advertise the total price of a vehicle without including all costs to the purchaser at the time of sale, except taxes, vehicle registration fees, the California tire fee, as defined, emission testing fees not exceeding \$50, actual fees charged for certificates, finance charges, and any dealer document preparation charge, and prohibits the dealer document preparation charge from exceeding \$55.

This bill would, beginning July 1, 2012, revise and recast these provisions and would require a motor vehicle sold or leased by a new motor vehicle dealer to be registered by the dealer using electronic programs provided by a qualified private industry partner would require the dealer to disclose any document processing charge or electronic registration or transfer charge, and would establish the ~~amounts of these charges a dealer that may be charged to~~ charge the purchaser or lessee of a vehicle.

The bill would, after October 1, 2012, make it a violation of the Vehicle Code for the holder of a dealer's license to sell or lease a new motor vehicle unless the dealer has a contractual agreement with the department to be a private industry partner, except as specified. The bill would make other conforming changes to these provisions.

*The bill would, beginning July 1, 2012, prohibit a dealer from displaying or offering for sale at retail a used vehicle unless the dealer first obtains a vehicle history report from the National Motor Vehicle Title Information System (NMVTIS). If the NMVTIS report indicates that the vehicle is or has been a junk or salvage automobile, or the vehicle has been reported as such by a junk or a salvage yard, or an insurance carrier, or the certificate of title contains a brand, the bill would require the dealer to post a specified disclosure and provide the retail purchaser with a copy of the report upon request prior to sale. These requirements associated with obtaining a NMVTIS vehicle history report would become inoperative if all NMVTIS data providers cease to make these reports available to the public.*

Because this bill would create a new crime, the bill would impose a state-mandated local program.

The legislative intent of the bill as to section 1 is as follows:

(a) There are more than 30 million vehicles registered in the State of California. Maintenance by the Department of Motor Vehicles of accurate registration records for those vehicles is of vital importance to registered owners, legal owners that hold liens on vehicles, law enforcement agencies that police vehicles, tax collection agencies that collect taxes and fees assessed on vehicles, and pollution control agencies that regulate emissions produced by vehicles.

(b) As authorized by the Legislature in 2001, the department administers the Business Partner Automation Program, pursuant to Section 1685 of the Vehicle Code, to improve the quality of registration products and services by licensing qualified private industry partners to provide secure electronic portals to licensed

dealers and registration services so that they may perform required registration tasks electronically.

(c) Electronic vehicle registration under the Business Partner Automation Program results in multiple benefits. The department benefits through increased accuracy of records that are recorded and transmitted electronically and also benefits through processing efficiencies that reduce wait times in field offices for nonelectronic transactions. Electronic registration also aids law enforcement, other government agencies, and consumers by accelerating the issuance of permanent license plates from a period of weeks or months to days.

(d) It is the intent of the Legislature in enacting this act to further increase the registration benefits and efficiencies of the department's Business Partner Automation Program by requiring all eligible vehicles sold or leased by a new motor vehicle dealer to be registered electronically. It is also the intent of the Legislature that the department continues to improve and expand the quality and efficiency of the Business Partner Automation Program to permit existing department personnel to increase customer service in other areas without a workforce reduction.

The legislative intent of the bill as to section 2 is as follows:

*(a) The electronic National Motor Vehicle Title Information System (NMVTIS) is a national federally mandated vehicle history database maintained by the United States Department of Justice to ensure that states, law enforcement agencies, and consumers have access to vehicle titling, branding, and other information that enable them to verify the accuracy and legality of motor vehicle titles before transfer or registration of the vehicle occurs.*

*(b) According to a cost-benefit analysis commissioned by the United States Department of Justice, full implementation of NMVTIS will save the American public between \$4.3 billion and \$11.7 billion by helping to curb automobile-related salvage fraud, theft, and related crimes.*

*(c) All automobile insurers, self-insured entities, salvage pools, automobile auctions, and recyclers, are required to report vehicles that are deemed a total loss to NMVTIS and update the data at least every 30 days.*

*(d) According to NMVTIS, 87 percent of departments of motor vehicle titling data from the entire United States, including all of the California Department of Motor Vehicles titling data, is currently represented in NMVTIS and the database is expanding daily.*

*(e) Federal law provides that NMVTIS must be supported through user fees from government and private users and may not be dependent on federal funding. The NMVTIS operator is authorized to assess and collect user fees not to exceed the cost of operating the system, not permitting any profits to be made by the operator. Federal funding and investments by the NMVTIS operator account for over \$40 million in support of operations since 1997. Fees to state government users are not projected to be adequate to provide sufficient revenue to defray all anticipated operating costs. It is crucial to the success of NMVTIS that new applications be developed to generate sufficient nonstate government user fees so that NMVTIS may continue its operations.*

*(f) It is the intent of the Legislature in enacting Section 17 of this act to ensure that every motor vehicle dealer licensed in this state obtain a NMVTIS vehicle history*

*report for every used vehicle that will be offered for retail sale and that any used vehicle that has been titled or reported as salvage or junk as indicated by the NMVTIS vehicle history report be identified as such. By becoming the first and largest state in the country to require the use of NMVTIS vehicle history reports by dealers in retail used vehicle transactions, this act will not only benefit the California consumer, it will also strengthen and financially support NMVTIS.*

c. Pending Federal Legislation of General Interest.

**(1) United States House of Representatives Bill 75 – U.S. Representative Jackson-Lee** (Introduced January 5, 2011)

**Status** - On January 5, 2011, this bill was referred to the House Committee on Energy and Commerce; on February 1, 2011, this bill was referred to the Subcommittee on Commerce, Manufacturing, and Trade.

**Short Title** - Automobile Dealers Fair Competition Act of 2011

**Congressional Research Service Summary:** Makes it unlawful for any new automobile manufacturer to unreasonably discriminate against or deny a franchise to an automobile dealer who applies for the retention of its franchise. Permits an automobile dealer to file an expedited action in a U.S. district court to restore its franchise.

Defines: (1) "new automobile manufacturer" as an automobile manufacturing company established in 2009 that is the successor to another automobile manufacturing company and acquires the assets of the predecessor company in a transaction governed by federal bankruptcy law; and (2) "automobile dealer" as any automobile dealer in the United States that, on January 1, 2009, held a franchise granted by an automobile manufacturing company that was the predecessor company to a new automobile manufacturer to sell that company's automobiles, but has not entered into an agreement with the new manufacturer to continue serving as a franchisee.

This matter is being agendized for information at the September 27, 2011, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

cc: Ramon Alvarez C.