



MEMO

To: POLICY AND PROCEDURE COMMITTEE **Date:** May 29, 2015
BISMARCK OBANDO, CHAIR
KATHRYN ELLEN DOI, MEMBER

From : WILLIAM G. BRENNAN
DANIELLE R. VARE

Subject: DISCUSSION CONCERNING PENDING LEGISLATION

The following provides a summary of pending State and Federal legislation that is of interest to the New Motor Vehicle Board ("Board"). The criteria for reporting on "legislation of general interest" is that the bill impacts the Vehicle Code, the Board, and/or the automotive industry in general and does not directly impact the Board or its enabling statute. For purposes of this report "legislation of special interest" is that which directly affects the Board's laws or functions.

Bill summaries include a brief overview of the bill as provided by the Legislative Counsel's Digest or the Congressional Research Service, if available, as well as the current status of the bill.¹

a. Pending Legislation of Special Interest.

1) **Assembly Bill 287 - Assembly Members Gordon, Eggman and Mark Stone (Principal Coauthor Assembly Member Wilk)** (Introduced February 11, 2015)

Status: Still in Assembly; ordered returned to second reading.

Support: California New Car Dealers Association, Independent Automobile Dealers Association of California

Opposition: Advocates for Highway and Auto Safety, Association of Global Automakers, California Conference of Machinists, California Rural Legal Assistance Foundation, CALPIRG, Center for Auto Safety, Consumer Action, Consumer Attorneys of California, Consumer Federation of California, Consumer Watchdog, Consumers for Auto Reliability and Safety (CARS), Consumers Union, Courage Campaign, Housing and Economic Rights Advocates (HERA), International Association of Machinists and Aerospace Workers (District Lodge 190), National Association of Consumer Advocates, The Sturdevant Law Firm, The Trauma Foundation

Legislative Counsel's Digest: Vehicles: safety recalls

¹ All statutory references are to the Vehicle Code, unless otherwise indicated.

Existing law generally regulates the transfer and registration of motor vehicles. Existing federal law requires a motor vehicle manufacturer to notify the owner or purchaser of a motor vehicle when the manufacturer determines that the vehicle contains a safety-related defect or when the manufacturer is ordered by the federal Secretary of Transportation to notify vehicle owners and purchasers that a vehicle has a safety-related defect. Existing federal law also prohibits a motor vehicle dealer from selling a vehicle if it has been notified of a safety-related defect by the manufacturer, except as specified.

This bill would enact the Consumer Automotive Recall Safety Act, which would be operative on or after July 1, 2016. The act would require a vehicle manufacturer to display notifications of Stop Sale – Stop Drive recalls, as defined, on the manufacturer's Internet Web site. The act would require a vehicle manufacturer to provide a rental or loaner car for a consumer who seeks to have a vehicle repaired because of a recall but the parts or procedures are not yet available to perform the repair. The act would also require a vehicle manufacturer to compensate its franchisees, as specified, for costs incurred in providing a loaner or rental car and storing a consumer's vehicle that is subject to recall if the parts or procedures are not yet available to perform the repair.

The act would prohibit a vehicle dealer from displaying or offering for sale at retail a used vehicle, unless the dealer has obtained a recall database report within 30 days of the display or offer. The act would prohibit a vehicle dealer from selling or leasing a vehicle at retail if the used vehicle is subject to a Stop Sale – Stop Drive recall, until the recalled vehicle has been repaired, subject to exception. The act would prohibit a rental car company from renting a vehicle that is subject to a recall, until the recalled vehicle has been repaired, as specified. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.

Existing law establishes the New Motor Vehicle Board in the Department of Motor Vehicles, and requires the board to hear and decide certain protests presented by a motor vehicle franchisee in regard to a dispute with the vehicle manufacturer.

This bill would, commencing July 1, 2016, authorize the board to hear and decide protests by franchisees regarding payments for providing a loaner or rental car and storing a consumer's vehicle subject to recall if the parts or procedures are not yet available to perform the repair. The bill would make additional conforming changes.

Existing law prescribes certain instances when the Department of Motor Vehicles may refuse registration, or renewal or transfer of registration, of a vehicle, including, among others, if the applicant has failed to furnish the department with an odometer disclosure statement, as specified.

This bill would additionally authorize the department, commencing July 1, 2016, to refuse registration, or renewal or transfer of registration, of a vehicle if the applicant has failed to furnish the department with a recall disclosure statement, as defined.

Under existing law, a vehicle manufacturer, manufacturer branch, distributor, and distributor branch are prohibited from engaging in specified practices. Existing law makes a violation of these prohibitions a crime.

This bill would, commencing July 1, 2016, include within those prohibited practices, unfairly discriminating among franchisees with respect to reimbursement for costs incurred in providing a loaner or rental car and storing a consumer's vehicle that is subject to recall if the parts or procedures are not yet available to perform the repair. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

2) Assembly Bill 759 - Assembly Member Linder (Introduced February 25, 2015)

Status: In Senate; Referred to Committee on Transportation and Housing

Support: California Recreation Vehicle Dealers Association (co-sponsor),
Recreational Vehicle Industry Association (co-sponsor)

Opposition: None on file

Legislative Counsel's Digest: Recreational Vehicles

Existing law establishes a New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as specified. Existing law regulates the terms and enforcement of recreational vehicle franchise agreements. Existing law requires a franchisor seeking to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same recreational vehicle line-make is represented, or seeking to relocate an existing motor vehicle dealership, to notify the board of that intention. Existing law allows franchisees in that recreational vehicle line-make in the relevant market area to file with the board a protest to establishing or relocating the dealership.

This bill would revise these provisions and would clarify that the above provisions apply to a franchisor seeking to enter into a franchise establishing an additional recreational vehicle dealership, or seeking to relocate an existing recreational vehicle dealership, that has a relevant market area within which the same recreation vehicle line-make is represented.

Existing law generally requires a manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Existing law allows the department to suspend or revoke a license issued to a dealer upon determining that the person to whom the license was issued has willfully violated specified requirements imposed on new motor vehicle franchisees relating to providing specified information and compensation.

This bill would make the above provisions applicable to a recreational vehicle franchisor.

Existing law makes it a violation, punishable as an infraction, for the holder of a dealer's

license to, among other things, advertise or sell a new vehicle of a line-make for which the dealer does not hold a franchise. Under existing law, this prohibition does not apply to a recreational vehicle, as defined.

This bill would make the above prohibitions applicable to recreational vehicles. By increasing the scope of a crime, this bill would impose a state-mandated local program.

Existing law makes it a violation, punishable as an infraction, for a licensed manufacturer or distributor to modify, replace, enter into, relocate, terminate, or refuse to renew a franchise in violation of specified provisions of law.

This bill would make this prohibition subject to additional provisions of law relating to recreational vehicle manufacturers and distributors. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law prohibits a recreational vehicle manufacturer or distributor from selling a new recreational vehicle through a recreational vehicle dealer without having first entered into a written recreational vehicle franchise.

This bill would, following the termination, cancellation, or non-renewal of a recreational vehicle franchise, allow the sale of any new recreational vehicle inventory that was purchased by the recreational vehicle dealer, or shipped by a manufacturer or distributor, during the period that the written recreational vehicle franchise was in effect.

b. Pending Legislation of General Interest.

3) Assembly Bill 1178 - Assembly Member Achadjian (Introduced February 27, 2015)

Status: Still in Assembly; from consent calendar, ordered to third reading.

Support: California New Car Dealers Association (Sponsor)

Opposition: The Association of Global Automakers

Legislative Counsel's Digest: Vehicles: manufacturers and distributors

Existing law generally requires a manufacturer, distributor, 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 practices, including taking or threatening 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 prior to the sale or lease, 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 at the time of sale or lease. Existing law further provides that 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. A violation of these provisions is a crime.

This bill would recast the provisions relating to export and sale-for-resale prohibitions described above to provide that it would be unlawful 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 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. By expanding the scope of these provisions, the violation of which is a crime, this bill would impose a state-mandated local program. This bill would make additional technical, nonsubstantive changes to those provisions.

c. Pending Federal Legislation of General Interest:

1) United States House of Representatives Bill 679 – U.S. Representative Blumenauer (Introduced February 3, 2015)

Status: Referred to Subcommittee on Highways and Transit (in House Transportation and Infrastructure Committee) and Subcommittee on Energy and Power (in House Energy and Commerce Committee)

Support: None on file

Opposition: None on file

Congressional Summary: Road Usage Charge Pilot Program Act of 2015

This bill directs the Secretary of the Treasury to establish the Road Usage Charge Pilot Program to make competitive grants to state or local governments, or metropolitan planning, regional transportation planning, or tribal organizations to conduct pilot studies on implementing mileage-based fee systems as a method for funding transportation highway projects. The bill directs the Secretary to establish a working group to:

- develop national technology standards for a road usage charge, as well as national privacy standards for such a charge that balance the effectiveness of revenue systems with user privacy; and
- evaluate the potential of the methods studied in the program to manage demand and reduce the emission of greenhouse gases.

2) United States House of Representatives Bill 910 – U.S. Representative Miller (Introduced February 12, 2015)

Status: Referred to Subcommittee on Highways and Transit (in House Committee on Transportation and Infrastructure)

Support: None on file

Opposition: None on file

Congressional Summary: Vehicle-to-Infrastructure Safety Technology Investment Flexibility Act of 2015

This bill makes eligible for funding under the National Highway Performance Program, the Surface Transportation Program, and the Highway Safety Improvement Program projects for the installation of vehicle-to-infrastructure communication equipment.

“Vehicle-to-infrastructure communication equipment” means equipment that provides a wireless exchange of critical safety and operational data between highway infrastructure and vehicles in order to avoid or mitigate vehicle collisions and enable a wide range of other safety, mobility, and environmental benefits.

3) United States House of Representatives Bill 1181 – U.S. Representative Schakowsky (Introduced February 27, 2015)

Status: Referred to Subcommittee on Commerce, Manufacturing, and Trade (in House Committee on Energy and Commerce)

Support: None on file

Opposition: None on file

Congressional Summary: Vehicle Safety Improvement Act of 2015

This bill provides for increased and improved public access to motor vehicle safety information, enhanced tools and accountability for the National Highway Traffic Safety Administration, and protection of motor vehicle consumers, and for other purposes.

No further summary is available from the Congressional Research Service at the time of this memo.

4) United States Senate Bill 304 – U.S. Senator Thune (Introduced February 29, 2015)

Status: Passed Senate with an amendment by Unanimous Consent; referred to House Committee on Energy and Commerce

Support: None on file

Opposition: None on file

Congressional Summary: Motor Vehicle Safety Whistleblower Act

This bill prescribes certain whistleblower incentives and protections for motor vehicle manufacturer, part supplier, or dealership employees or contractors who voluntarily provide the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation of any notification or reporting requirement which is likely to cause unreasonable risk of death or serious physical injury.

This bill also authorizes the Secretary to pay awards to one or more whistleblowers in an aggregate amount of up to 30% of total monetary sanctions collected pursuant to an administrative or judicial action resulting in aggregate monetary sanctions exceeding \$1 million.

This bill denies an award to any whistleblower who:

- is convicted of a criminal violation related to such administrative or judicial action;

- contributes to the alleged violation of a requirement under this Act;
- submits to the Secretary information based on facts previously submitted by another whistleblower;
- fails to provide original information to the Secretary in the appropriate form; or
- fails to report or attempt to report the information internally to the motor vehicle manufacturer, parts supplier, or dealership, unless the whistleblower reasonably believed it would have resulted in retaliation or was already known by the manufacturer, part supplier, or dealership.

This bill also prohibits an award to any whistleblower who knowingly and willfully makes false representations and subjects such a whistleblower to criminal penalties.

This bill requires nondisclosure of a whistleblower's identity, except in specified circumstances.

This bill also authorizes a whistleblower to appeal Secretary determinations in the appropriate U.S. court of appeals.

5) United States Senate Bill 617 – U.S. Senator Markey (Introduced March 2, 2015)

Status: Referred to Committee on Commerce, Science, and Transportation

Support: None on file

Opposition: None on file

Congressional Summary: Repairing Every Car to Avoid Lost Lives Act (RECALL Act)

This bill declares that a state is in compliance with safety recall requirements if the state agency responsible for motor vehicle registration ensures, by a motor vehicle identification number search of the National Highway Traffic Safety Administration's recall database, that each registered owner of a motor vehicle registered in the state is notified of all recalls issued by the vehicle's manufacturer by certain deadlines, depending on when the vehicle is registered.

A state must also require that owners complete all recall remedies as a prerequisite for motor vehicle registration renewal, with the following exceptions:

- the owner had not been notified of the recall before being notified of the need to renew;
- the manufacturer, through a local dealership, has not given the owner reasonable opportunity to complete a recall remedy because of a shortage of parts or qualified labor; or
- the owner demonstrates to the state that he or she has not had reasonable opportunity to complete the recall remedies, in which case the state may grant a temporary registration for 60 days during which time the owner must complete the recall remedies.

The Secretary of Transportation shall withhold 5% of federal highway funds from a state

that is not in compliance with these requirements.

This matter is for information only at the June 17, 2015, General Meeting. If you have any questions or require additional information, please contact me at (916) 324-6197 or Danielle at (916) 327-3129.

cc: Glenn Stevens