



**MEMO**

**To : EXECUTIVE COMMITTEE  
GLENN STEVENS, CHAIR  
VICTORIA RUSNAK, MEMBER**

**Date: January 13, 2016**

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

**Subject: REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY**

The 1996 Performance Audit conducted by Business, Transportation & Housing Agency<sup>1</sup> recommended that “Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals.”

In November 1996, the Budget and Finance Committee (Joe Drew and Lucille Mazeika) prepared an analysis of the duties of the Board members and staff that was adopted by the Board at its March 18, 1997, General Meeting. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals.

At its November 20, 2008, General Meeting, the members adopted revised delegations with updated statutory language and formal Board delegations of duties that occurred at noticed meetings. From 2008 through 2011, the Board delegations were reviewed by the Board. At the May 26, 2011, General Meeting, the members made this an exception report. The legal staff continues to review these delegations each year.

Effective January 1, 2016, a number of changes were made to separate provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association to file an export or sale-for-resale prohibition policy protest on behalf of two or more impacted dealers.

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<sup>1</sup> Effective July 1, 2013, California State Transportation Agency superseded Business, Transportation & Housing Agency.

The proposed changes to the delegations are in ~~strikeout~~ and *italic/underline* font, and summarized as follows (see attached):

- Sections 3066, 3067, and 3070 were amended and Sections 3080 and 3081 were added to reflect changes separating Article 5 RV protests from Article 4 vehicle protests. (Assembly Bill 759)
- Sections 3072 and 3073 were amended to reflect both the establishment of an additional dealership and the relocation of an existing dealership, and clarify the term “relevant market area”. (Assembly Bill 759)
- Consistency and grammatical changes were made to Sections 3014, 3015, 3074 and 3078. (Assembly Bill 759)
- Section 3050 was amended and Sections 3085, 3085.2, and 3085.4 were added to reflect the addition of Article 6 export or sale-for-resale prohibition policy protests. (Assembly Bill 1178)

This matter is set for Board consideration at the February 10, 2016, General Meeting. If you have any questions or require additional information, please contact me at (916) 324-6197 or Robin at (916) 323-1536.

Attachment

## NEW MOTOR VEHICLE BOARD

### RECOGNITION OF STATUTORY DUTIES AND DELEGATION OF ADMINISTRATIVE DUTIES

The following analysis was prepared as a result of a review of Board duties performed by the Budget and Finance Committee at its meeting held on November 22, 1996. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals. In addition, this analysis recommends which administrative duties should be delegated to staff and the level of Board oversight over these activities. The recommendation also contains an indication as to transaction type and dollar limit for procurement, where applicable.

In 2008, the Board legal staff revised the delegations with updated statutory language but did not modify the existing delegations. It also added formal Board delegations of duties that occurred at noticed meetings. These revised delegations were adopted at the November 20, 2008, General Meeting. ~~The regulations are now reviewed annually by the legal staff and were last reviewed by the Board at the May 26, 2011, General Meeting.~~ From 2008 through 2011, the Board delegations were reviewed by the Board at a noticed meeting. At the May 26, 2011, General Meeting, the members made this an exception report. The legal staff continues to review these delegations each year. Senate Bill 155 (chaptered October 3, 2013 and effective January 1, 2014), made a number of non-substantive and substantive changes that were adopted by the Board at the July 15, 2014, General meeting and that are incorporated throughout. Assembly Bill 759 (chaptered October 1, 2015 and effective January 1, 2016) cleans up a number of inconsistencies in the Vehicle Code and separates Article 5 RV protests from Article 4 vehicle protests. Article 6 (export or sale-for-resale prohibition policy protests filed by an association) was added to the Vehicle Code by Assembly Bill 1178 (chaptered October 6, 2015 and effective January 1, 2016). These changes are incorporated throughout and will be considered by the Board at the February 10, 2016, General Meeting.

- A. Statutory Duties. The following is a list of the statutory duties of the Board and staff, with an indication as to individual or entity to whom these duties have been delegated. Only those code sections which contain a specific duty are listed below.

#### Vehicle Code<sup>1</sup> section 3004. Oath of Office

Members of the board shall take an oath of office as provided in the Constitution and the Government Code.

#### Duties Relating to Section 3004

1. Pursuant to Section 3004, each board member has a duty to personally take an oath as described in this section. This is a duty of the members of the board.

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<sup>1</sup> All statutory references are to the California Vehicle Code unless noted otherwise.

## Vehicle Code section 3006. Board to Elect President

The Board shall organize and elect a president from among its members for a term of one year at the first meeting of each year. The newly elected president shall assume his or her duties at the conclusion of the meeting at which he or she was elected. Reelection to office during membership is unrestricted.

### Duties Relating to Section 3006

1. Pursuant to section 3006, the board members have a duty to elect a president during the first meeting of the year. This is a duty of the members of the board.
2. Pursuant to section 3006, the newly elected Board president has a duty to assume the duties of the position at the conclusion of the meeting through the next election the following year. This is a duty of the President of the Board.

## Section 3007. Frequency of Meetings

The board shall meet at least twice during each calendar year.

Special meetings may be called at any time by the president or by any five members of the board upon notice for such time and in such manner as the board may provide.

### Duties Relating to Section 3007

1. Pursuant to section 3007, the Board members have a duty to make themselves available at least twice a year to conduct the business of the New Motor Vehicle Board. This is a duty of the members of the Board.
2. Pursuant to section 3007, the President or any five Board members have the right to call special meetings.

## Section 3008. Meetings: Open and Executive

(a) All meetings of the board shall be open and public, and all persons shall be permitted to attend any meeting of the board, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) At all meetings of the board, open or executive, involving an appeal from a decision of the Director of Motor Vehicles, the director or his or her authorized representative may attend, present the position of the department<sup>2</sup> and then shall absent himself or herself from any executive session at the request of any member of the Board.

(c) Within the limitations of its powers and authority as herein conferred, and in

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<sup>2</sup> All references to the "department" or "DMV" refer to the Department of Motor Vehicles unless otherwise stated.

the event of disagreement between the board and the director regarding the decision to be reached as herein provided, the decision of the board shall be final.

#### Duties Relating to Section 3008

1. Pursuant to section 3008(a), the Board has a duty to hold open and public meetings, with the exception of the Board's executive sessions held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. This is a duty of the members of the Board.
2. Pursuant to section 3008(b), the Board has a duty to allow the Director of the DMV, or the authorized representative, to present the position of the DMV in an appeal at all meetings, open or executive. Any Board member, in an executive meeting, shall then have the right to request the Director, or representative, absent himself from the session. These are duties of the members of the Board.
3. Pursuant to section 3008(c), in the event of disagreement between the Board and DMV Director regarding the decision to be reached in an appeal, the decision of the Board shall be final. This is a duty of the members of the Board.

#### Section 3013. Board's Seal

The board shall adopt a seal and such other device as the members may desire thereon, by which they shall authenticate all papers and documents under their control.

Copies of all records and papers in the board's office shall be received in evidence in all cases when certified under the hand and seal of the board, equally and with like effect as the originals.

#### Duties Relating to Section 3013

1. Pursuant to section 3013, the Board has the duty to adopt a seal and "such other devices" that the members deem necessary to authenticate all papers and documents. This is a duty of the members of the Board.

#### Section 3014. Department Support

The board may appoint an executive director, who shall be exempt from civil service requirements, and who shall devote as much time as may be necessary to discharge the functions of the board as herein provided. The department shall provide the board with the necessary personnel, office space, equipment, supplies, and services that, in the opinion of the board, may be necessary to administer this chapter. However, the board may contract with the department or another state agency for office space, equipment, supplies, and services, as determined by the board to be appropriate, for the administration of this chapter.

### Duties Relating to Section 3014

1. Pursuant to section 3014, the Board may appoint an Executive Director who shall be exempt from civil service requirements. This is a duty of the members of the Board.
2. Pursuant to section 3014, the Executive Director of the Board has a duty to devote as much time as may be necessary to discharge the functions of the Board. This is a duty of the Executive Director of the Board.
3. Pursuant to section 3014, the Board has the duty to submit to the Department of Motor Vehicles ~~their~~ *its* opinion of what personnel, office space, equipment, supplies, and services may be necessary to administer this chapter. This is a duty which has been delegated to the staff of the Board, with oversight over these activities retained by the Board. The extent of the delegation and the degree of Board oversight are discussed under the headings of Procurement and Personnel, *infra*.
4. Pursuant to section 3014, the Board has an optional duty to contract with the Department of Motor Vehicles or another state agency for office space, equipment, supplies, and services, as determined by the Board to be appropriate, for the administration of this chapter. This is a duty of the members of the Board.

### Section 3015. Headquarters Office – Meeting Rooms

In addition to the office of the executive director in Sacramento, the department shall, as the need therefore occurs, secure adequate rooms for the meetings of the board in Los Angeles, San Francisco, Sacramento, or other locations in the state as may be required in the discretion of the board, to administer this chapter.

### Duties Relating to Vehicle Code Section 3015

1. Pursuant to section 3015, the Board has a duty to provide adequate information to the Department of Motor Vehicles about what requirements the Board has relating to Board meetings so that the Department of Motor Vehicles can perform ~~their~~ *its* above-mentioned duty. This is a duty which has been delegated to the staff of the Board.

### Section 3016. Fees

(a) New motor vehicle dealers and other licensees under the jurisdiction of the board shall be charged fees sufficient to fully fund the activities of the board other than those conducted pursuant to Section 472.5 of the Business and Professions Code. The Board may recover the direct cost of the activities required by Section 472.5 of the Business and Professions Code by charging the Department of Consumer Affairs a fee which shall be paid by the Department of Consumer Affairs with funds appropriated from

the Certification Account in the Consumer Affairs Fund. All fees shall be deposited and held separate from other moneys, in the Motor Vehicle Account in the State Transportation Fund, and shall not be transferred to the State Highway Account pursuant to Section 42273.

(b) The fees shall be available, when appropriated, exclusively to fund the activities of the board. If, at the conclusion of any fiscal year, the amount of fees collected exceeds the amount of expenditures for this purpose during the fiscal year, the surplus shall be carried over into the succeeding fiscal year.

#### Duties Relating to Section 3016

1. Pursuant to section 3016, the Board has a duty to charge new motor vehicle dealers and other licensees, under the jurisdiction of the Board, fees sufficient to fully fund the Board's activities other than those conducted pursuant to Section 472.5 of the Business and Professions Code. Establishment of the fee by regulation is a duty of the members of the Board. Ensuring that the fees have been collected in a timely manner is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3016, the Board has the right to recover the direct cost of the activities required by Section 472.5 of the Business and Professions Code by charging the Department of Consumer Affairs a fee. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3016, the Board has a duty to deposit all fees collected in a separate Motor Vehicle Account in the State Transportation Fund. This is a duty which has been delegated to the staff of the Board.

#### Section 3050. Powers and Duties, Generally

The board shall do all of the following:

(a) Adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.

(b) Hear and determine, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.

(c) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor.

After that consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of the investigation to the Board within the time specified by the board.

(2) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.

(e) Hear and decide, within the limitations and in accordance with the procedure provided, a protest presented by an association challenging a policy of a manufacturer, manufacturer branch, distributor or distributor branch pursuant to Section 3085. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 6 (commencing with Section 3085), unless all participants to the protest stipulate otherwise.

~~(e)(f)~~ Notwithstanding subdivisions ~~(e) and (d)~~, (c), (d), and (e), the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

#### Duties Relating to Section 3050

1. Pursuant to section 3050(a), the Board has a duty to adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing such matters as are specifically committed to its jurisdiction. This is a duty of the members of the Board.
2. Pursuant to section 3050(b), the Board has a duty to hear and determine an appeal presented by an applicant for a license or a licensee, when the applicant or licensee submits an appeal from a decision arising out of the DMV. This is a duty of the members of the Board.

3. Pursuant to section 3050(c), the Board has a duty to consider any matter concerning the activities or practices of any person applying for or holding a license pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The staff is responsible for the administration of petitions filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty of first considering these matters, pursuant to section 557 of the Board's regulations, as well as rendering the final decision on the merits of the dispute.
4. Pursuant to section 3050(c), the dealer members of the Board have a duty not to participate in, hear, comment, advise other members upon, or decide any matter considered pursuant to section 3050(c) that involves a dispute between a franchisee and franchisor. This is a duty of the members of the Board.
5. Pursuant to section 3050(c)(1), the Board has a right to direct the DMV to conduct an investigation of matters that the Board deems reasonable, and make a written report on the results to the Board. This is a duty of the members of the Board.
6. Pursuant to section 3050(c)(2), the Board has a right to undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. This is a duty of the members of the Board. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The duty to mediate these matters has been delegated to the staff of the Board. The staff also has the responsibility for the administration of petitions filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty of rendering the final decision on the merits of the disputes.
7. Pursuant to section 3050(c)(3), the Board has a right to order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5. This is a duty of the members of the Board.
8. Pursuant to section 3050(d), the Board has a right to hear and decide a protest presented by a franchisee pursuant to Sections 3060, 3062, 3064, 3065, or 3065.1, 3070, 3072, 3074, 3075, or 3076. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff.

The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

9. Pursuant to section 3050(d), the dealer members of the Board have a duty not to participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise. This is a duty of the members of the Board.
10. Pursuant to section 3050(e), the Board has a right to hear and decide a protest presented by an association challenging a policy of a manufacturer or distributor pursuant to Section 3085. This provision contains duties which are retained by the Board as well as duties which have been delegated to staff. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.
11. Pursuant to section 3050(e), the dealer members of the Board have a duty not to participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 6 (commencing with Section 3085), unless all parties to the protest stipulate otherwise. This is a duty of the members of the Board.
- ~~10-12.~~ Pursuant to section 3050(~~e~~)(f) notwithstanding section 3050 subdivisions (c), (d) and (e) (~~d~~) above, the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. The members of the Board have a duty not to require the exhaustion of administrative remedies over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.
13. Only those provisions pertaining to Article 6 protests (Sections 3085, et seq.) sunset on January 1, 2019. All other provisions remain in effect.

#### Section 3050.1. Oaths, Depositions, Certification to Official Acts, and Issuance of Subpoenas

(a) In any proceeding, hearing, or in the discharge of duties imposed under this chapter, the board, its executive director, or an administrative law judge designated by the Board may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) For purposes of discovery, the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in the civil action discovery procedures in Title 4 (commencing with Section 2016.010) of Part

4 of the Code of Civil Procedure, excepting the provisions of Chapter 13 (commencing with Section 2030.010) of that title. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its executive director, or an administrative law judge designated by the board may issue subpoenas to compel attendance at depositions of persons having knowledge of the acts, omissions, or events that are the basis for the proceedings, as well as the production of books, records, papers, and other documents.

#### Duties Relating to Section 3050.1

1. Pursuant to section 3050.1(a), the Board, the Executive Director, or the Board's administrative law judges have the right, in any proceeding, hearing, or in the discharge of any duties imposed under this chapter, to (a) administer oaths, (b) take depositions, (c) certify to official acts, (d) issue subpoenas to compel attendance of witnesses, and (e) issue subpoenas duces tecum. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3050.1(b), the Board or the Executive Director have the right to authorize the parties to engage in such discovery procedures as are provided for in civil actions in Title 4 (commencing with Section 2016.010) of the Code of Civil Procedure, excepting the provisions of Chapter 13 (commencing with Section 2030.010) of that title. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3050.1(b), the Board has the duty to end discovery no later than 15 days prior to the commencement of the proceeding or hearing before the Board. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to section 3050.1(b), the Board, the Executive Director, or the Board's administrative law judges have the right to (a) issue subpoenas to compel attendance at depositions, and (b) issue subpoenas duces tecum for production at depositions. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.2. Enforcement of Subpoenas and Discovery

(a) Obedience to subpoenas issued to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing, may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Compliance with discovery procedures authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the executive director of the board. The executive director may, at the direction of the board, upon a showing of failure to comply with authorized discovery without substantial justification for that failure, dismiss

the protest or petition or suspend the proceedings pending compliance. The executive director may, at the direction of the board, upon a failure to comply with authorized discovery without substantial justification for that failure, require payment of costs incurred by the board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. Nothing in this section precludes the executive director from making application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1.

#### Duties Relating to Section 3050.2

1. Pursuant to section 3050.2(b), the Board has a right to decide whether or not to dismiss a protest or petition or suspend proceedings upon a showing of failure to comply with authorized discovery without substantial justification. This is a duty of the members of the Board.
2. Pursuant to section 3050.2(b), the Board has a duty to direct the Executive Director of the Board to dismiss a protest or petition or suspend the proceedings upon a showing of failure to comply with authorized discovery without substantial justification. This is a duty of the members of the Board.
3. Pursuant to section 3050.2(b), the Executive Director of the Board has a duty to dismiss a protest or petition or suspend the proceedings upon the direction of the Board. The duty to direct the Executive Director to dismiss or suspend the proceedings has been retained by the Board. The duty to follow the Board's direction in this regard has been delegated to the Executive Director.
4. Pursuant to section 3050.2(b), the Board has a right to decide whether or not to require payment of costs incurred by the Board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery, without substantial justification for that failure. This is a duty of the members of the Board.
5. Pursuant to section 3050.2(b), the Board has a duty to direct the Executive Director of the Board to require payment of costs incurred by the Board, as well as attorney's fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery, without substantial justification for that failure. The duty to direct the Executive Director to require payment of costs incurred by the Board has been retained by the Board. The duty to follow the Board's direction in this regard has been delegated to the Executive Director.
6. Pursuant to section 3050.2(b), the Executive Director of the Board has the right to make application to the superior court to enforce obedience to subpoenas or compliance with other discovery procedures authorized pursuant to subdivision (b) of Section 3050.1. This is a duty which has been statutorily delegated to the staff of the Board.

### Section 3050.3. Witness Fees and the Mileage Allowance

A witness, other than an officer or employee of the state or of a political subdivision of the state, who appears by order of the board or its executive director, shall receive for his or her attendance the same fees and the same mileage allowed by law to witnesses in civil cases. The amount shall be paid by the party at whose request the witness is subpoenaed. The mileage and fees, if any, of a witness subpoenaed by the board or its executive director, but not at the request of a party, shall be paid from the funds provided for the use of the board in the same manner that other expenses of the board are paid.

#### Duties Relating to Section 3050.3

1. Pursuant to section 3050.3, the Board has a duty to pay the mileage and fees of a witness subpoenaed by the Board or the Executive Director of the Board, but not at the request of a party. This is a duty which has been delegated to the staff of the Board.

### Section 3050.4. Mandatory Settlement Conference

In any protest or petition before the board, the board, its executive director, or an administrative law judge designated by the board or its executive director, may order a mandatory settlement conference. The failure of a party to appear, to be prepared, or to have authority to settle the matter may result in one or more of the following:

(a) The board, its executive director, or an administrative law judge designated by the board or its executive director, may suspend all proceedings before the board in the matter until compliance.

(b) The board, its executive director, or an administrative law judge designated by the board or its executive director, may dismiss the proceedings or any part thereof before the board with or without prejudice.

(c) The board, its executive director, or an administrative law judge designated by the board or its executive director, may require all the board's costs to be paid by the party at fault.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, may deem that the party at fault has abandoned the matter.

#### Duties Relating to Section 3050.4

1. Pursuant to section 3050.4, the Board, the Executive Director, or a Board Administrative Law Judge may order a mandatory settlement conference. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3050.4, the Board, the Executive Director, or a Board Administrative Law Judge has the right to (a) suspend all proceedings before the Board in the matter until compliance, (b) dismiss the proceedings or any part

thereof before the Board with or without prejudice, (c) require all the Board's costs to be paid by the party at fault, or (d) deem that the party at fault has abandoned the matter, if any party fails to appear, to be prepared, or to have authority to settle the pending action. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.5. Fees for Appeal, Protest or Petition

Pursuant to section 3016, the board shall establish a fee for the initial filing by any party in regard to any appeal, protest, or petition filed pursuant to this chapter.

#### Duties Relating to Section 3050.5

1. Pursuant to section 3050.5, the Board has a duty to establish a fee for the initial filing by any party in regard to any appeal, protest, or petition filed pursuant to this chapter. Establishment of the fee by regulation is a duty of the members of the Board. Ensuring that the fees have been collected in a timely manner is a duty which has been delegated to the staff of the Board.

#### Section 3050.6. Cost Assessment

The board or its executive director may, in the event of a granting of a continuance of a scheduled matter, assess costs of the board upon the party receiving the continuance.

#### Duties Relating to Section 3050.6

1. Pursuant to section 3050.6, the Board or the Executive Director have the right to assess costs of the Board upon a party receiving a continuance of a scheduled matter, if the matter is actually continued. This is a duty which has been delegated to the staff of the Board.

#### Section 3050.7. Stipulated Decisions and Orders

(a) The board may adopt stipulated decisions and orders, without a hearing pursuant to Section 3066, to resolve one or more issues raised by a protest or petition filed with the board. Whenever the parties to a protest or petition submit a proposed stipulated decision and order of the board, a copy of the proposed stipulated decision and order of the board shall be transmitted by the executive director of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(b) If the board adopts a stipulated decision and order to resolve a protest filed pursuant to Section 3060 or 3070 in which the parties stipulate that good cause exists for the termination of the franchise of the protestant, and the order provides for a

conditional or unconditional termination of the franchise of the protestant, paragraph (2) of subdivision (a) of Section 3060 and paragraph (2) of subdivision (a) of Section 3070, which require a hearing to determine whether good cause exists for termination of the franchise, is inapplicable to the proceedings. If the stipulated decision and order provides for an unconditional termination of the franchise, the franchise may be terminated without further proceedings by the board. If the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the conditions have not been met. If the stipulated decision and order provides for the termination of the franchise conditioned upon the occurrence of specified conditions, the franchise may be terminated upon a determination, according to the terms of the stipulated decision and order, that the stipulated conditions have occurred.

#### Duties Relating to Section 3050.7

1. Pursuant to section 3050.7(a), when the parties to a protest or petition submit a proposed stipulated decision and order of the Board, the Executive Director has a duty to transmit a copy of the proposed stipulated decision and order to each Board member.
2. Pursuant to section 3050.7(b), upon request by a party to a stipulation, if the stipulated decision and order provides for the termination of the franchise, conditioned upon the failure of a party to comply with specified conditions, or the occurrence of specified conditions, the Board has a duty to determine whether or not the terms and conditions have been met. This duty has been delegated to the staff of the Board to the extent that the provisions of the stipulated decision and order delegate the duty to make such determination to specified individuals.

#### Section 3052. Form, Filing, Support of Appeal: Effectiveness of Decision

(a) On or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered, the applicant or licensee may file an appeal with the executive director of the board. The appeal shall be in writing and shall state the grounds therefor. A copy of the appeal shall be mailed by the appellant to the department, and the department shall thereafter be considered as a party to the appeal. The right to appeal is not affected by failure to seek reconsideration before the department.

(b) An appeal is considered to be filed on the date it is received in the office of the executive director of the board, except that an appeal mailed to the executive director by means of registered mail is considered to be filed with the executive director on the postmark date.

(c) The appeal shall be accompanied by evidence that the appellant has requested the administrative record of the department and advanced the cost of preparation of that record. The complete administrative record includes the pleadings, all notices and orders issued by the department, any proposed decision by an

administrative law judge, the exhibits admitted or rejected, the written evidence, and any other papers in the case. All parts of the administrative record requested by the appellant may be filed with the appeal together with the appellant's points and authorities. If the board orders the filing of additional parts of the administrative record, the board may order prior payment by the appellant of the cost of providing those additional parts.

(d) Except as provided in subdivisions (e) and (f), a decision of the department may not become effective during the period in which an appeal may be filed, and the filing of an appeal shall stay the decision of the department until a final order is made by the board.

(e) When a decision has ordered revocation of a dealer's license, the department may, on or before the last day upon which an appeal may be filed with the board, petition the board to order the decision of the department into effect.

(f) With respect to the department's petition filed pursuant to subdivision (e), the department shall have the burden of proof. The board shall act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The board may order oral argument on the petition before the board.

#### Duties Relating to Section 3052

1. Pursuant to section 3052(a), the Executive Director of the Board has a duty to accept an appeal of a decision of the DMV, on or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered.
2. Pursuant to section 3052(b), the Executive Director of the Board has a duty to consider an appeal filed when it is received in the office of the Executive Director, or the Executive Director has a duty to consider an appeal filed on the postmark date when it is mailed to the Executive Director by registered mail.
3. Pursuant to section 3052(c), the Board has the right to order the filing of additional parts of the administrative record, and may order prior payment by the appellant of the cost of providing those additional parts. This is a duty of the members of the Board.
4. Pursuant to section 3052(f), if the DMV petitions the Board pursuant to section 3052(e), to order the decision of the department into effect, the Board has a duty to act upon the petition within 14 days or prior to the effective date of the department's decision, whichever is later. The Board has the right to order oral argument before the Board. This is a duty of the members of the Board.

#### Section 3053. Determination of Appeal

The board shall determine the appeal upon the administrative record of the department, any evidence adduced at any hearing of the board, and upon any briefs filed by the parties. If any party to the appeal requests the right to appear before the

board, the board shall set a time and place for such hearing, the production of any relevant evidence and argument.

#### Duties Relating to Section 3053

1. Pursuant to section 3053, the Board has the duty to determine an appeal upon the administrative record of the DMV, any evidence adduced at any hearing of the Board, and upon any briefs filed by the parties. This is a duty of the members of the Board.
2. Pursuant to section 3053, if any party to the appeal requests the right to appear before the board, the board has a duty to set a time and place for a hearing, the production of any relevant evidence and argument. This is a duty of the members of the board.

#### Section 3054. Amendment or Reversal of Department's Decision

The board shall have the power to reverse or amend the decision of the department if it determines that any of the following exist:

- (a) The department has proceeded without or in excess of its jurisdiction.
- (b) The department has proceeded in a manner contrary to the law.
- (c) The decision is not supported by the findings.
- (d) The findings are not supported by the weight of the evidence in the light of the whole record reviewed in its entirety, including any and all relevant evidence adduced at any hearing of the Board.
- (e) There is relevant evidence, which in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing.
- (f) The determination or penalty, as provided in the decision of the department is not commensurate with the findings.

#### Duties Relating to Section 3054

1. Pursuant to section 3054, the Board has the right to reverse or amend the decision of the DMV, if the Board determines that any of the circumstances delineated in section 3054 (a) through (f) exist. This is a duty of the members of the Board.

#### Section 3055. Power Relative to Penalty

The board shall also have the power to amend, modify, or reverse the penalty imposed by the department.

#### Duties Relating to Section 3055

1. Pursuant to section 3055, the Board has the right to amend, modify, or reverse the penalty imposed by the DMV. This is a duty of the members of the Board.

### Section 3056. Procedure Following Reversal

When the order reverses the decision of the department, the board may direct the department to reconsider the matter in the light of its order and may direct the department to take any further action as is specially enjoined upon it by law. In all cases the board shall enter its order within 60 days after the filing of the appeal, except in the case of unavoidable delay in supplying the administrative record, in which event the board shall make its final order within 60 days after receipt of the record.

#### Duties Relating to Section 3056

1. Pursuant to section 3056, the Board has the right to direct the DMV to reconsider the matter and direct the DMV to take any further action as is specially enjoined upon it by law, when the Board order reverses the decision of the DMV. This is a duty of the members of the Board.
2. Pursuant to section 3056, the Board has the duty to enter its order, in any case, within 60 days after the filing of the appeal, except in the case of unavoidable delay in supplying the administrative record, in which event the Board shall make its final order within 60 days after receipt of the record. This is a duty of the members of the Board.

### Section 3057. Effective Date of Orders of Board: Final Orders

The board shall fix an effective date for its orders not more than 30 days from the day the order is served upon the parties or remand the case to the department for fixing an effective date. A final order of the board shall be in writing and copies of the order shall be delivered to the parties personally or sent to them by registered mail. The order shall be final upon its delivery or mailing and no reconsideration or rehearing by the board shall be permitted.

#### Duties Relating to Section 3057

1. Pursuant to section 3057, the Board has a duty to fix an effective date for its orders not more than 30 days from the day the order is served upon the parties or remand the case to the DMV for fixing an effective date. This is a duty of the members of the Board.
2. Pursuant to section 3057, the Board has the duty to provide a written final order delivered to the parties personally or sent to them by registered mail. This is a duty which has been delegated to the staff of the Board.

### Section 3060. Termination of Franchise

(a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, no franchisor shall terminate or refuse to continue any

existing franchise unless all of the following conditions are met:

(1) The franchisee and the board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

(To be inserted when a 60-day notice of termination is given.)

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(To be inserted when a 15-day notice of termination is given.)

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section 3066. The franchisee may file a protest with the board within 30 days after receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not terminate or refuse to continue until the board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the

appropriate period for filing a protest has elapsed.

(b)(1) Notwithstanding Section 20999.1 of the Business and Professions code or the terms of any franchise, no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of the notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the board and the modification or replacement does not become effective until there is a finding by the board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived."

#### Duties Relating to Section 3060

1. Pursuant to section 3060(a)(1) and (b)(1), the Board has a duty to receive written notice from the franchisor in accordance with Vehicle Code section 3060. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3060(a)(2), the Board has a duty to advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Vehicle Code section 3066, and that the franchisor may not terminate or refuse to continue until the Board makes its findings. This is a duty which has been delegated to the staff of the Board.

#### Section 3061. Good Cause

In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(b) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(c) Permanency of the investment.

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.

(g) Extent of franchisee's failure to comply with the terms of the franchise.

#### Duties Relating to Section 3061

1. Pursuant to section 3061, the Board has a duty, in determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in section 3061 (a) through (g). The staff is responsible for the administration of the protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3062. Establishing or Relocating Dealerships

(a)(1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make is then represented, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the proposed dealership establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish the proposed dealership or relocate the existing dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the establishment of the proposed dealership or relocation of the existing dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) If a franchisor seeks to enter into a franchise that authorizes a satellite warranty facility to be established at, or relocated to, a proposed location that is within two miles of a dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. Within 20 days of receiving the notice satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the establishing or relocating of the satellite warranty facility. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish or relocate the proposed satellite warranty facility until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the satellite warranty facility. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(3) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to either of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and within one mile from, the existing dealership location.

(2) The establishment at a location that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.

(c) Subdivision (a) does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. This subdivision may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though the event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership.

(e) As used in this section, the following definitions apply:

(1) “Motor vehicle dealership” or “dealership” means an authorized facility at which a franchisee offers for sale or lease, displays for sale or lease, or sells or leases new motor vehicles.

(2) “Satellite warranty facility” means a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.

#### Duties Relating to Section 3062

1. Pursuant to section 3062(a)(1), the Board has a duty to receive written notice from the franchisor in accordance with section 3062(a)(1). This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3062(a)(1), the Board or the Executive Director has the right to grant an additional 10 days to file a protest, upon receipt of a request for additional time, and upon a showing of good cause. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3062(a)(1), the Board has the duty to inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to section 3066, and that the franchisor may not establish or relocate the proposed dealership until the Board has held a hearing as provided in Section 3066, nor thereafter, if the Board has determined that there is good cause for not permitting the dealership. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to section 3062(a)(2), the Board has a duty to receive written notice from the franchisor in accordance with section 3062(a)(2). This is a duty which has been delegated to the staff of the Board.
5. Pursuant to section 3062(a)(2), the Board or the Executive Director has the right to grant an additional 10 days to file a protest, upon receipt of a request for additional time, and upon a showing of good cause. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to section 3062(a)(2), the Board has the duty to inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to section 3066, and that the franchisor may not establish or relocate the proposed satellite warranty facility until the Board has held a hearing as provided in Section 3066, nor thereafter, if the Board has determined that there is good cause for not permitting the satellite warranty facility. This is a duty which has been delegated to the staff of the Board.

### Section 3063. Good Cause

In determining whether good cause has been established for not entering into a franchise or relocating an existing dealership of the same line-make, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) Permanency of the investment.
- (b) Effect on the retail motor vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.
- (d) Whether the franchisees of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.
- (f) For purposes of this section, the terms “motor vehicle dealership” and “dealership” shall have the same meaning as defined in Section 3062.

### Duties Relating to Section 3063

1. Pursuant to section 3063, the Board has the duty, in determining whether good cause has been established for not entering into a franchise or relocating an existing dealership of the same line-make, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in section 3063 (a) through (e). The staff is responsible for the administration of the protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3064. Delivery and Preparation Obligations

(a) Every franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with those delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, if a franchisee files a notice of protest with the

board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that the franchisee has fulfilled these obligations.

#### Duties Relating to Section 3064

1. Pursuant to section 3064(a), the Board has a duty to receive a copy of the delivery and preparation obligations, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with such delivery and preparation obligations. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3064(a), if a franchisee files a notice of protest with the Board, the Board has a duty to determine the reasonableness of the schedule of compensation. This is a duty of the members of the Board.
3. Pursuant to section 3064(a), in determining the reasonableness of the schedules, the Board has a duty to consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate. This is a duty of the members of the Board.
4. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3065. Warranty Reimbursement

(a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, and servicing, and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a protest with the board. A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time and compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time and compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the franchisee. Any protest challenging a reduction

in time and compensation applicable to specific parts or labor operations shall be filed within six months following the franchisee's receipt of notice of the reduction, and the franchisor shall have the burden of establishing the reasonableness of the reduction and adequacy and fairness of the resulting compensation.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria. If in a protest permitted by this section filed by any franchisee the board determines that the warranty reimbursement schedule or formula fails to provide adequate and fair compensation or fails to conform with the other requirements of this section, within 30 days after receipt of the board's order, the franchisor shall correct the failure by amending or replacing the warranty reimbursement schedule or formula and implementing the correction as to all franchisees of the franchisor that are located in this state.

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d)(1) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. All claims made by franchisees under this section and Section 3064 for labor and parts shall be paid within 30 days after approval.

(2) A franchisor shall not disapprove a claim unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(3) When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the notice to cure any material noncompliance. If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(6) Within six months after either receipt of the written notice described in paragraph (3) or (4), whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with the requirements of this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(e)(1) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis for a period of nine months after a claim is paid or credit issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no more than one random audit of a franchisee in a nine-month period. The franchisor's notification to the franchisee of any additional audit within a nine-month period shall be accompanied by written disclosure of the basis for that additional audit.

(2) Previously approved claims shall not be disapproved or charged back to the franchisee unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

(3) If the franchisor disapproves of a previously approved claim following an audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a written disapproval notice stating the specific grounds upon which the claim is disapproved. The franchisor shall provide a reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period to be commensurate with the volume of claims under consideration. If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) The franchisor shall not chargeback the franchisee until 45 days after receipt of the written notice described in paragraph (3) or paragraph (4), whichever is later. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of receipt of that written notice. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. If the board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written disapproval notice or completion of the franchisor's appeal process, whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(f) If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### Duties Relating to Section 3065

1. Pursuant to section 3065(a), the Board has a duty to receive a copy of a franchisor's warranty reimbursement schedule or formula. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3065(a), if a protest is filed with the Board, the Board has a duty to determine the reasonableness of the warranty reimbursement schedule or formula. This is a duty for the members of the Board.
3. Pursuant to section 3065(a), if a protest challenging the reduction in time and compensation applicable to specific parts or labor operations is filed with the Board, the Board has a duty to determine the reasonableness of the reduction, and adequacy and fairness of the resulting compensation. This is a duty for the members of the Board.
4. Pursuant to section 3065(d)(3), if a protest challenging the initial disapproval of a warranty claim is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065(d). This is a duty for the members of the Board.
5. Pursuant to section 3065(d)(4), if a protest challenging the final denial of a warranty claim following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065(d). This is a duty for the members of the Board.
6. Pursuant to section 3065(e)(3), if a protest challenging the warranty claim disapproval of a previously approved claim following an audit is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065(e). This is a duty for the members of the Board.
7. Pursuant to section 3065(e)(4), if a protest challenging the final denial of a warranty claim following an audit following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065(e). This is a duty for the members of the Board.

8. Pursuant to section 3065(f), the Board has a duty to receive filings relating to a request for an order in accordance with section 3065(f). This is a duty which has been delegated to the staff of the Board.
9. Pursuant to section 3065(f), the Board has the duty to review any request for an extension of time to conduct the warranty audit. This duty is for the members of the Board.
10. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3065.1. Franchisor Incentive Program

(a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Franchisee claims for incentive program compensation shall not be disapproved unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(b) Franchisee claims for incentive program compensation shall not be disapproved unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(c) The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the written disapproval notice to cure any material noncompliance. If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

(d) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim, and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(e) Following the disapproval of a claim, a franchisee shall have six months from

receipt of the written notice described in either subdivision (a) or (d), whichever is later, to file a protest with the board for determination of whether the franchisor complied with subdivisions (a), (b), (c), and (d). In any hearing pursuant to this subdivision or subdivision (a), (b), (c), or (d), the franchisor shall have the burden of proof.

(f) All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(g) (1) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of nine months after a claim is paid or credit issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no more than one random audit of a franchisee in a nine-month period. The franchisor's notification to the franchisee of any additional audit within a nine-month period shall be accompanied by written disclosure of the basis for that additional audit.

(2) Previously approved claims shall not be disapproved and charged back unless the claim is false or fraudulent, the claim is ineligible under the terms of the incentive program as previously communicated to the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove a claim or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

(3) If the franchisor disapproves of a previously approved claim following an audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a written disapproval notice stating the specific grounds upon which the claim is disapproved. The franchisor shall provide a reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure any material noncompliance, with the period to be commensurate with the volume of claims under consideration. If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim, and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) The franchisor shall not chargeback the franchisee until 45 days after the franchisee receives the written notice described in paragraph (3) or (4), whichever is later. If the franchisee cures any material noncompliance relating to a claim, the franchisor shall not chargeback the dealer for that claim. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days after the franchisee receives that written notice. If the board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the

dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written notice described in paragraph (3) or (4), a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(h) If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

#### Duties Relating to Section 3065.1

1. Pursuant to section 3065.1(a), if a protest challenging the initial disapproval of a franchisor incentive program claim is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065.1(a)-(d). This is a duty for the members of the Board.
2. Pursuant to section 3065.1(d), if a protest challenging the final denial of a franchisor incentive program claim following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065.1(a)-(d). This is a duty for the members of the Board.
3. Pursuant to section 3065.1(g)(3), if a protest challenging franchisor incentive program claim disapproval of a previously approved claim following an audit is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065.1(g). This is a duty for the members of the Board.
4. Pursuant to section 3065.1(g)(4), if a protest challenging the final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process is filed with the Board, the Board has a duty to determine whether the franchisor complied with the requirements of section 3065.1(g). This is a duty for the members of the Board.
5. Pursuant to section 3065.1(h), the Board has a duty to receive filings relating to a request for an order in accordance with section 3065.1(h). This is a duty which has been delegated to the staff of the Board.
6. Pursuant to section 3065.1(h), the Board has the duty to review any request for an extension of time to conduct the franchisor incentive program audit. This duty is for the members of the Board.
7. The staff is responsible for the administration of protests filed under this section,

including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3066. Hearings on Protests

(a) Upon receiving a protest pursuant to Section 3060, 3062, 3064, 3065, or 3065.1, 3070, 3072, 3074, 3075, or 3076, the Board shall fix a time within 60 days of the order, and place of hearing, and shall send by ~~registered~~ certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. Except in a case involving a franchisee who deals exclusively in motorcycles, the Board or its Executive Director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing ~~may~~ shall not be rescheduled more than 90 days after the Board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The Board, or an administrative law judge designated by the Board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the Board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section ~~3060, 3062, 3070, or 3072,~~ 3060 or 3062 the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing an additional motor vehicle dealership or relocating an ~~additional~~ existing motor vehicle dealership.

(c) Except as otherwise provided in this chapter, in a hearing on a protest alleging a violation of, or filed pursuant to, Section 3064, 3065, ~~3065.1, 3074, 3075, or 3076~~ 3065.1, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor ~~where~~ when the issue is material to a protest filed pursuant to Section ~~3065, 3065.1, 3075, or 3076.~~ 3065 or 3065.1.

(d) A member of the Board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

### Duties Relating to Section 3066

1. Pursuant to section 3066(a), the Board has a duty, upon receiving a protest pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, or 3065.1, ~~3070, 3072, 3074, 3075, or 3076~~, to fix a time within 60 days of the order, and place of

hearing, and shall send by registered certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. This is a duty which has been delegated to the staff of the Board.

2. Pursuant to section 3066(a), the Board, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3066(a), except in any case involving a franchisee who deals exclusively in motorcycles, the Board or its Executive Director, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but the hearing ~~may~~ shall not be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to section 3066(a), the Board or an administrative law judge of the Board has a duty to hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty which has been delegated to the staff of the Board.
5. Pursuant to section 3066(a), the Board has the duty to make its decision solely on the record established at a hearing conducted in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty of the members of the Board.
6. Pursuant to section 3066(d), unless all parties to the protest stipulate otherwise, a new motor vehicle dealer member may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to Article 4. This is a duty of the dealer members of the Board. ~~The dealer members of the Board may participate in Article 5 protests.~~ The staff of the Board is delegated with the duty of determining whether or not the parties to an Article 4 protest want to stipulate to allow dealer Board member participation.

### Section 3067. Decision

(a) The decision of the Board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the Board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. ~~article or Article 5 (commencing with Section 3070).~~ If the Board fails to act within 30 days after the hearing, within 30 days after the Board receives a proposed decision

~~where~~ when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the Board's decision shall be delivered to the parties personally or sent to them by ~~registered~~ certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. The Board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney.

#### Duties Relating to Section 3067

1. Pursuant to section 3067(a), the Board has a duty to provide ~~their~~ its decisions in writing, with findings of facts and a determination of the issues presented. This is a duty for the members of the Board.
2. Pursuant to section 3067(a), the Board has a duty to provide a conclusion in ~~their~~ its decision that shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. This is a duty for the members of the Board.
3. Pursuant to section 3067(a), the Board has a duty to only provide conditions that are for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. This is a duty for the members of the Board.
4. Pursuant to section 3067(a), the Board has a duty to act within 30 days after a hearing, within 30 days after the Board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by section 11517 of the Government Code or as may be mutually agreed upon by the parties. This is a duty for the members of the Board.
5. Pursuant to section 3067(a), the Board has a duty to deliver copies of the decision to the parties personally or ~~sent~~ send it to them by ~~registered~~ certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to section 3067(b), notwithstanding Government Code section 11517(c), if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney. This is a duty

which has been delegated to the staff of the Board.

### Section 3070. Termination of Franchise

(a) Notwithstanding Section 20999.1 of the Business and Professions Code or the terms of any franchise, a franchisor of a dealer of new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, except a dealer who deals exclusively in truck campers, may not terminate or refuse to continue a franchise unless all of the following conditions are met:

(1) The franchisee and the Board have received written notice from the franchisor as follows:

(A) Sixty days before the effective date thereof setting forth the specific grounds for termination or refusal to continue.

(B) Fifteen days before the effective date thereof setting forth the specific grounds with respect to any of the following:

(i) Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent may not be unreasonably withheld.

(ii) Misrepresentation by the franchisee in applying for the franchise.

(iii) Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.

(iv) Any unfair business practice after written warning thereof.

(v) Failure of the dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the recreational vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the recreational vehicle dealer or by order of the department.

(C) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, one of the following statements, whichever is applicable:

(i) To be inserted when a 60-day notice of termination is given.

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the Board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(ii) To be inserted when a 15-day notice of termination is given.

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the Board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived."

(2) Except as provided in Section 3050.7, the Board finds that there is good cause for termination or refusal to continue, following a hearing called pursuant to Section ~~3066~~ 3080. The franchisee may file a protest with the Board within 30 days after

receiving a 60-day notice, satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, or within 10 days after receiving a 15-day notice, satisfying the requirements of this section, or within 10 days after the end of any appeal procedure provided by the franchisor. When a protest is filed, the Board shall advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section ~~3066~~ 3080, and that the franchisor may not terminate or refuse to continue until the Board makes its findings.

(3) The franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has elapsed.

(b)(1) Notwithstanding Section 20999.1 of the Business and Professions code or the terms of any franchise, a franchisor of a dealer of recreational vehicles may not modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment, unless the franchisor has first given the Board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement. Within 30 days of receipt of a notice satisfying the requirements of this section, or within 30 days after the end of any appeal procedure provided by the franchisor, a franchisee may file a protest with the Board and the modification or replacement does not become effective until there is a finding by the Board that there is good cause for the modification or replacement. If, however, a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the Board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the Board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the ~~franchisor~~ franchisor or your protest rights will be waived."

#### Duties Relating to Section 3070

1. Pursuant to section 3070(a)(1) and (b)(1), the Board has a duty to receive written notice from the franchisor in accordance with section 3070. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3070(a)(2), the Board has a duty to advise the franchisor that a timely protest has been filed, that a hearing is required pursuant to Vehicle Code section ~~3066~~ 3080, and that the franchisor may not terminate or refuse to continue until the Board makes its findings. This is a duty which has been delegated to the staff of the Board.

## Section 3071. Good Cause

In determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise of a dealer of new recreational vehicles, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(a) The amount of business transacted by the franchisee, as compared to the business available to the franchisee.

(b) The investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.

(c) The permanency of the investment.

(d) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.

(e) Whether the franchisee has adequate new recreational vehicle sales and, if required by the franchise, service facilities, equipment, vehicle parts, and qualified service personnel, to reasonably provide for the needs of the consumers of the recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public.

(f) Whether the franchisee fails to fulfill the warranty obligations agreed to be performed by the franchisee in the franchise.

(g) The extent of franchisee's failure to comply with the terms of the franchise.

## Duties Relating to Section 3071

1. Pursuant to section 3071, the Board has a duty, in determining whether good cause has been established for modifying, replacing, terminating, or refusing to continue a franchise, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in section 3071 (a) through (g). The staff is responsible for the administration of the protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

## Section 3072. Establishing or Relocating Recreational Vehicle Dealerships

(a)(1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional ~~motor vehicle dealership within recreational vehicle dealership, or seeks to relocate an existing recreational vehicle dealership, that has~~ a relevant market area ~~where~~ in which the same recreational vehicle line-make is ~~then represented, or seeks to relocate an existing motor vehicle dealership, represented,~~ the franchisor shall, in writing, first notify the Board and each franchisee in that recreational vehicle line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership ~~within or into that market area~~. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of any appeal procedure provided by the franchisor, any franchisee required to be given the notice may file with the Board a protest to ~~establishing or relocating the dealership~~ the proposed dealership

establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the Board a request for additional time to file a protest, the Board or its ~~secretary~~ executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the Board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section ~~3066~~ 3080, and that the franchisor shall not establish the proposed dealership or relocate the ~~proposed~~ existing dealership until the Board has held a hearing as provided in Section ~~3066~~ 3080, nor thereafter, if the Board has determined that there is good cause for not permitting the establishment of the proposed recreational vehicle dealership or relocation of the existing recreational vehicle dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

(2) The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the Board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If, within this time, you file with the Board a request for additional time to file a protest, the Board or its ~~secretary~~ executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest."

(b) Subdivision (a) does not apply to any of the following:

(1) The relocation of an existing dealership to any location that is both within the same city as, and within one mile of, the existing dealership location.

(2) The establishment at any location that is both within the same city as, and within one-quarter mile of, the location of a dealership of the same recreational vehicle line-make that has been out of operation for less than 90 days.

(3) A display of vehicles at a fair, exposition, or similar exhibit if no actual sales are made at the event and the display does not exceed 30 days. This paragraph may not be construed to prohibit a new vehicle dealer from establishing a branch office for the purpose of selling vehicles at the fair, exposition, or similar exhibit, even though that event is sponsored by a financial institution, as defined in Section 31041 of the Financial Code, or by a financial institution and a licensed dealer. The establishment of these branch offices, however, shall be in accordance with subdivision (a) where applicable.

(4) An annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Section 11713.15.

~~(5) A motor vehicle dealership protesting the location of another dealership with the same recreational vehicle line-make within its relevant market area, if the dealership location subject to the protest was established on or before January 1, 2004.~~

(c) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional ~~motor~~ recreational vehicle dealership.

(d) For the purposes of this section and Section 3073, a ~~motor~~ "recreational vehicle dealership" or "dealership" is any authorized facility at which a franchisee offers

for sale or lease, displays for sale or lease, or sells or leases new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code. A "motor recreational vehicle dealership" or "dealership" does not include a dealer who deals exclusively in truck campers.

#### Duties Relating to Section 3072

1. Pursuant to section 3072(a)(1), the Board has a duty to receive written notice from the franchisor in accordance with Vehicle Code section 3072(a)(1). This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3072(a)(1), the Board or the Executive Director ~~Secretary~~<sup>3</sup> has the right to grant an additional 10 days to file a protest, upon receipt of a request for additional time, and upon a showing of good cause. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3072(a)(1), the Board has the duty to inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section ~~3066~~ 3080, and that the franchisor may not establish or relocate the proposed dealership until the Board has held a hearing as provided in Section ~~3066~~ 3080, nor thereafter, if the Board has determined that there is good cause for not permitting the establishment of the proposed recreational vehicle dealership or relocation of the existing recreational vehicle dealership. This is a duty which has been delegated to the staff of the Board.

#### Section 3073. Good Cause

In determining whether good cause has been established for not entering into a recreational vehicle franchise or relocating an ~~additional franchise for~~ existing dealership of the same recreational vehicle line-make, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

- (a) The permanency of the investment.
- (b) The effect on the retail recreational vehicle business and the consuming public in the relevant market area.
- (c) Whether it is injurious to the public welfare for an additional recreational vehicle franchise to be established or an existing dealership be relocated.
- (d) Whether the franchisees of the same recreational vehicle line-make in ~~that~~ the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the recreational vehicle line-make in the market area. In making this determination, the Board shall consider the adequacy of recreational vehicle sales and, if required by the franchise, service facilities, equipment, supply of vehicle parts, and qualified service personnel.
- (e) Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.

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<sup>3</sup> Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary."

### Duties Relating to Section 3073

1. Pursuant to section 3073, the Board has the duty, in determining whether good cause has been established for not entering into a recreational vehicle franchise or relocating an existing dealership of additional franchise for the same recreational vehicle line-make, to take into consideration the existing circumstances, including, but not limited to, all of the following subsections delineated in Vehicle Code section 3073 (a) through (e). The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3074. Delivery and Preparation Obligations

(a) A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the Board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the Board, ~~providing~~ if a franchisee files a notice of protest with the Board. In determining the reasonableness of the schedules, the Board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

(b) Upon delivery of the vehicle, the franchisee shall give a copy of the delivery and preparation obligations to the purchaser and a written certification that ~~he or she~~ the franchisee has fulfilled these obligations.

### Duties Relating to Section 3074

1. Pursuant to section 3074(a), the Board has a duty to receive a copy of the delivery and preparation obligations, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3074(a), if a franchisee files a notice of protest with the Board, the Board has a duty to determine the reasonableness of the schedule of compensation. This is a duty of the members of the Board.

3. Pursuant to section 3074(a), in determining the above-referenced reasonableness of the schedules, the Board has a duty to consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate. This is a duty of the members of the Board.
4. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

### Section 3075. Warranty Reimbursement

(a) A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the Board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the Board if a franchisee files a notice of protest with the Board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

(c) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. A claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and the notice shall state the specific grounds upon which the disapproval is based. All claims made by franchisees under this section and Section 3074 for labor and parts shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(e) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or credit issued. Franchisee claims for warranty compensation shall not be disapproved except for good cause, including, but not limited to, performance of nonwarranty repairs, lack of material documentation, or fraud. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. If a false claim was submitted by a franchisee with intent to defraud the franchisor, a longer period

for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

#### Duties Relating to Section 3075

1. Pursuant to section 3075(a), the Board has a duty to receive a copy of a franchisor's warranty reimbursement schedule or formula. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3075(a), if a notice of protest is filed with the Board, the Board has a duty to determine the reasonableness of the warranty reimbursement schedule or formula. This is a duty for the members of the Board.
3. Pursuant to section 3075(e), the Board has a duty to receive filings relating to a request for an order in accordance with Vehicle Code section 3075(e). This is a duty which has been delegated to the staff of the Board.
4. Pursuant to section 3075(e), the Board has the duty to review any request for an extension of time to conduct the warranty audit. This duty is for the members of the Board.
5. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3076. Franchisor Incentive Program

(a) All claims made by a franchisee for payment under the terms of a franchisor incentive program shall be either approved or disapproved within 30 days after receipt by the franchisor. When a claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. A claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal the disapproval to the franchisor and file a protest with the Board. All claims made by franchisees under this section shall be paid within 30 days following approval. Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article.

(b) Audits of franchisee incentive records may be conducted by the franchisor on a reasonable basis, and for a period of 18 months after a claim is paid or credit issued. Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of the completion of the audit. If a false

claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board.

#### Duties Relating to Section 3076

1. Pursuant to section 3076(a), the Board has a duty to receive a protest relating to a disapproval of a claim in accordance with Vehicle Code section 3076(a). This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3076(b), the Board has a duty to receive filings relating to a request for an order in accordance with Vehicle Code section 3076(b). This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3076(b), the Board has the duty to review any request for an extension of time to conduct the franchisor incentive program audit. This duty is for the members of the Board.
4. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision. The members of the Board have the duty to render the final decision on the merits of the protest.

#### Section 3078. Consumer Complaints: Referral to Department of Consumer Affairs

(a) If the Board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a ~~motor~~ *recreational* vehicle dealership, as defined in ~~paragraph (1) of subdivision (e)~~ *(d)* of Section 3072, the Board shall recommend that the complainant consult with the Department of Consumer Affairs.

(b) ~~Nothing in this chapter affects~~ *This chapter does not affect* a person's rights regarding a transaction involving a recreational vehicle as defined in subdivision (a), to maintain an action under any other statute, including, but not limited to, applicable provisions of Title 1.7 (commencing with Section 1790) of Part 4 of Division 3 of the Civil Code.

#### Duties Relating to Section 3078

1. Pursuant to section 3078(a), if the Board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined, from a motor vehicle dealership as defined in Section 3072(d)<sup>4</sup>, the Board has a duty to recommend that the complainant

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<sup>4</sup>The statutory reference to Vehicle Code section 3072(e) is inaccurate as this subdivision was deleted during the legislative process and renumbered Section 3072(d). Therefore, the proper reference in the Board delegation should be Section 3072(d).

consult with the Department of Consumer Affairs. This is a duty which has been delegated to the staff of the Board.

### Section 3080. Hearings on Protests

(a) Upon receiving a protest pursuant to Section 3070, 3072, 3074, 3075, or 3076, the board shall fix a time and place of hearing within 60 days of the order, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the board of protests and decisions of the board. The board or its executive director may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3070 or 3072, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing an additional recreational vehicle dealership or relocating an existing recreational vehicle dealership.

(c) Except as otherwise provided in this chapter, in a hearing on a protest alleging a violation of, or filed pursuant to, Section 3074, 3075, or 3076, the franchisee shall have the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when that issue is material to a protest filed pursuant to Section 3075 or 3076.

### Duties Relating to Section 3080

1. Pursuant to section 3080(a), the Board has a duty, upon receiving a protest pursuant to Vehicle Code sections 3070, 3072, 3074, 3075, or 3076, to fix a time and place of hearing within 60 days of the order, and shall send by certified mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. This is a duty which has been delegated to the staff of the Board.
2. Pursuant to section 3080(a), the Board, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but in

no event shall the hearing be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.

3. Pursuant to section 3080(a), the Board or its Executive Director, upon a showing of good cause, has the right to accelerate or postpone the date initially established for a hearing, but the hearing shall not be rescheduled more than 90 days after the Board's initial order. This is a duty which has been delegated to the staff of the Board.
4. Pursuant to section 3080(a), the Board or an administrative law judge of the Board has a duty to hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty which has been delegated to the staff of the Board.
5. Pursuant to section 3080(a), the Board has the duty to make its decision solely on the record established at a hearing conducted in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty of the members of the Board.

#### Section 3081. Decisions

(a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. If the board fails to act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved. Copies of the board's decision shall be delivered to the parties personally or sent to them by certified mail, as well as to all individuals and groups that have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

#### Duties Relating to Section 3081

1. Pursuant to section 3081(a), the Board has a duty to provide its decisions in

writing, with findings of facts and a determination of the issues presented. This is a duty for the members of the Board.

2. Pursuant to section 3081(a), the Board has a duty to provide a conclusion in its decision that shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. This is a duty for the members of the Board.
3. Pursuant to section 3081(a), the Board has a duty to only provide conditions that are for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. This is a duty for the members of the Board.
4. Pursuant to section 3081(a), the Board has a duty to act within 30 days after a hearing, within 30 days after the Board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by section 11517 of the Government Code or as may be mutually agreed upon by the parties. This is a duty for the members of the Board.
5. Pursuant to section 3081(a), the Board has a duty to deliver copies of the decision to the parties personally or send it to them by certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to section 3081(b), notwithstanding Government Code section 11517(c), if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney. This is a duty which has been delegated to the staff of the Board.

#### Section 3085. Protest of Export or Sale-for-Resale Prohibition Policy

(a) An association may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3.

(b) For the purpose of this article, an association is an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers.

(c) Relief for a protest pursuant to this section is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association.

(d) In a protest pursuant to this section, the association shall have the burden

of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3.

#### Duties Relating to Section 3085

1. Pursuant to section 3085(a), if a protest is filed with the Board, the Board has a duty to make sure it is filed by an association as defined on behalf of two or more dealers subject to the challenged export or sale-for-resale prohibition policy. This is a duty which has been delegated to the staff of the Board. The staff is responsible for the administration of protests filed under this section, including the proceedings up to and including the evidentiary hearing and preparation of the proposed decision.
2. Pursuant to section 3085(c), the Board has a duty to limit the relief awarded to protestant to a declaration that an export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The Board is not authorized to award monetary relief. The members of the Board have the duty to render the final decision on the merits of the protest that does not exceed these limits.

#### Section 3085.2. Hearings on Protest

(a) Upon receiving a protest pursuant to Section 3085, the board shall fix a time and place of hearing within 60 days, and shall send by certified mail a copy of the order to the manufacturer, manufacturer branch, distributor, distributor branch, the protesting association, and all individuals and groups that have requested notification by the board of protests and decisions of the board. The board or an administrative law judge designated by the board shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code and Sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517 of the Government Code apply to these proceedings.

(b) In a hearing on a protest filed pursuant to Section 3085, the association shall have the burden of proof to establish a violation of the applicable section by the subject manufacturer, manufacturer branch, distributor, or distributor branch.

(c) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article unless all parties to the protest stipulate otherwise.

#### Duties Relating to Section 3085.2

1. Pursuant to section 3085.2(a), the Board has a duty, upon receiving a protest pursuant to Vehicle Code section 3085 to fix a time and place of hearing within 60 days, and shall send by certified mail a copy of the order to the manufacturer

or distributor, the protesting association, and all individuals and groups that have requested notification by the Board of protests and decisions of the Board. This is a duty which has been delegated to the staff of the Board.

2. Pursuant to section 3085.2(b), the Board or an administrative law judge of the Board has a duty to hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty which has been delegated to the staff of the Board.
3. Pursuant to section 3085.2(b), the Board has the duty to make its decision solely on the record established at a hearing conducted in accordance with Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 11515, and 11517. This is a duty of the members of the Board.
4. Pursuant to section 3085.2(d), unless all parties to the protest stipulate otherwise, a new motor vehicle dealer member may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to Article 6. This is a duty of the dealer members of the Board. The staff of the Board is delegated with the duty of determining whether or not the parties to an Article 6 protest want to stipulate to allow dealer Board member participation.

#### Section 3085.4. Decision

(a) The decision of the board shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. Conditions imposed by the board shall be for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. The board shall act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties. Copies of the board's decision shall be delivered to the parties personally or sent to them by certified mail, as well as to all individuals and groups that have requested notification by the board of protests and decisions by the board. The board's decision shall be final upon its delivery or mailing and a reconsideration or rehearing is not permitted.

(b) Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone, 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney.

Duties Relating to Section 3085.4

1. Pursuant to section 3085.4(a), the Board has a duty to provide its decisions in writing, with findings of facts and a determination of the issues presented. This is a duty for the members of the Board.
2. Pursuant to section 3085.4(a), the Board has a duty to provide a conclusion in its decision that shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. This is a duty for the members of the Board.
3. Pursuant to section 3085.4(a), the Board has a duty to only provide conditions that are for the purpose of assuring performance of binding contractual agreements between franchisees and franchisors or otherwise serving the purposes of this article. This is a duty for the members of the Board
4. Pursuant to section 3085.4(a), the Board has a duty to act within 30 days after a hearing, within 30 days after the Board receives a proposed decision where the case is heard before an administrative law judge alone, or within such period as may be necessitated by section 11517 of the Government Code or as may be mutually agreed upon by the parties. This is a duty for the members of the Board
5. Pursuant to section 3085.4(a), the Board has a duty to deliver copies of the decision to the parties personally or send it to them by certified mail, as well as to all individuals and groups that have requested notification by the Board of protests and decisions by the Board. This is a duty which has been delegated to the staff of the Board.
6. Pursuant to section 3085.4(b), notwithstanding Government Code section 11517(c), if a protest is heard by an administrative law judge alone, 10 days after receipt by the Board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the Board as a public record and a copy shall be served by the Board on each party and his or her attorney. This is a duty which has been delegated to the staff of the Board.

B. Delegation of administrative Duties. The following is a list of the non-statutory or administrative duties of the Board and staff, with an indication as to individual or entity to whom these duties have been delegated.

1. Personnel.
  - a. The members of the Board have the duty to recruit, interview, and hire for the positions of Executive Director as well as the General Counsel and Administrative Law Judges.
  - b. The Executive Director has been delegated with the responsibility of recruiting, interviewing, and hiring all individuals associated with the legal

operations of the Board.

- c. The Staff Services Manager I has been delegated with the responsibility of recruiting, interviewing, and hiring all individuals associated with the clerical operations of the Board. Any candidate selected by the Staff Services Manager I shall be approved by the Executive Director prior to processing the hiring documents.
- d. Any hiring done by the staff of the Board in accordance with the procedures as set forth above shall be reported to the Board at the next General Meeting of the Board which ensues such hiring.

2. Procurement.

Subject to the limitations set forth below, the Executive Director has been delegated with the responsibility of procuring all necessary equipment, supplies, and services which are deemed necessary to administer the responsibilities of the Board.

- a. Limitations on procurement authority.  
The Executive Director is delegated the authority to procure of any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board's approved budget. If, due to extenuating circumstances, the necessary expenditure exceeds the amount budgeted, the Executive Director shall contact the members of the Fiscal Committee by telephone and discuss this matter. The Committee may authorize the procurement which may then be ratified by the full Board at its next regularly scheduled meeting.

3. Budget Change Proposals.

All budget change proposals shall be submitted with the concurrence of the Fiscal Committee, and ultimately considered by the full Board at its next regularly scheduled meeting.

4. Formal Board Delegations at Noticed Meetings.<sup>5</sup>

- a. Amicus Curiae Briefs.

The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency<sup>6</sup> ("Agency") and approval of the Governor's Office of Legal Affairs. As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent

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<sup>5</sup> The Board Meeting(s) in which the delegation occurred is noted in parenthesis after the formal delegation.

<sup>6</sup> Business, Transportation & Housing Agency was superseded by the California State Transportation Agency on July 1, 2013.

request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board determines that it does not want to file the amicus brief, the request for consent will be withdrawn.

(July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 4)

b. Audit Compliance Officer.

The Board has designated the General Counsel<sup>7</sup> to service as its Audit Compliance Officer to ensure compliance with all facets of the 1996 Agency Performance Audit. This includes the Corrective Action Plan Committee's proposal which was adopted by the Board at its December 8, 1998, General meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions which were adopted at the May 25, 2000, General meeting. An annual report shall be provided to the Board each June updating the Board's compliance. This report was subsequently made an exception report.

(July 12, 1996; December 8, 1998; May 25, 2000; November 20, 2008; and May 26, 2011)

c. Bagley-Keene Open Meeting Act Compliance Officer.

The General Counsel<sup>8</sup> is the Bagley-Keene Open Meeting Act compliance Officer.

(July 12, 1996; May 25, 2000)

d. Bagley-Keene Opening Meeting Act: Closed Meeting Minutes.

The Bagley-Keene Open Meeting Act requires that all state bodies designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. In order to ensure compliance, the General Counsel<sup>9</sup> is

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<sup>7</sup> Robin Parker, Senior Staff Counsel, is performing all of the duties previously assigned to the Board's General Counsel including but not limited to the Audit Compliance Officer, the Bagley-Keene Compliance Officer, and maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act.

<sup>8</sup> See footnote 5 6.

<sup>9</sup> See footnote 5 6.

responsible for maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act. (July 12, 1996; May 25, 2000)

e. Decision Cover Sheet.

The presiding Administrative Law Judge shall prepare a decision cover sheet/analysis which is provided to the Board members with their meeting materials when a proposed decision or ruling (order) is agendized. The decision cover sheet should be limited to two pages and not contain a recommendation.

(December 8, 1998; May 25, 2000)

f. Court Participation on Issues of Interest to the Board.

The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important State interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court and keep it on the proof of service list. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General.

However, in mandamus actions in which an important State issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the State interest. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his or her designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff and the matter would be scheduled for discussion at either the next general meeting of the Board or, if three public members request, then at a special meeting of the Board. Any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's own counsel.

(October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5)

g. Document Requests – Waiver of Fees.

The Board will charge fees for document requests that are consistent with Evidence Code section 1563, and all fees for document requests that total \$10.00 or less (less than 40 pages and less than 15 minutes of actual labor) will be waived by the Board, subject to review and approval by the Executive Director.

(October 22, 1996; September 6, 2001; December 13, 2006)

h. Liaison Information Security Officer.

The Executive Director is the Liaison Information Security Officer and responsible for ensuring compliance with information security procedures. This ensures that the Board complies with the Government Code that requires that each agency have an officer who is responsible for insuring that the organization's systems and procedures are in compliance.

(August 20, 1996; December 12, 2000)

i. Promulgating Regulations.

The Board delegated to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law (“OAL”) would be brought before the members at the next meeting. Non-substantive changes suggested by OAL or staff would be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.

(April 26, 2002)

j. Public Member Designee if President is Dealer Member.

When a Dealer Member is President, only those matters in which a Dealer Member would be disqualified from having heard in the first place are delegated. Furthermore, if a Dealer Member is Board President, and a Public Member is Vice President, then the designation would automatically go to the Vice President.

(October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5; June 26, 2008)