

INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the California New Motor Vehicle Board (“Board”) to amend section 553 of Article 1, Chapter 2, Division 1 of Title 13 of the California Code of Regulations.

INTRODUCTION

The Board is an agency within the Department of Motor Vehicles (Department) with oversight provided by the Business, Transportation and Housing Agency. The Board consists of nine members, seven are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee (Veh. Code §§ 3000 and 3001).

The duties of the Board including the following:

1. 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 those matters that are specifically committed to its jurisdiction.
2. To hear and determine “appeals” which are filed by specified occupational licensees within the new motor vehicle industry as a result of adverse disciplinary action taken by the (Department) against the license of such entity. (Veh. Code §3050(b)).
3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a “petition”, which may be done by any person. (Veh. Code §3050(c)).
4. To hear and decide “protests” filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Veh. Code §§3050(d), 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

The Board is a quasi-judicial administrative agency with the independent authority to resolve disputes between franchised dealers and manufacturers or distributors of new vehicles (includes in part motorcycles, recreational vehicles, and all-terrain vehicles).

SECTION 553

PURPOSE OF THE REGULATION

Subsection (a) is being amended to reinstate the amount paid (from \$225 to \$300) to the Department by a new motor vehicle dealer or dealer branch for issuance or renewal of its license. The annual Board fee has been at the current annual fee level of \$225 for nine years; however, the proceeds collected are no longer sufficient to fully fund the Board's activities as statutorily required by Vehicle Code section 3016.

Subsection (b) is being amended to reinstate the annual fee paid by a new motor vehicle manufacturer or distributor from \$.338 per new motor vehicle to \$.45 per new motor vehicle. These fees apply to every new motor vehicle manufacturer and distributor and to every vehicle that was sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year. In conjunction with subsection (a), a manufacturer or distributor shall not pay less than \$300.

NECESSITY

Vehicle Code section 3016 authorizes the Board to charge a fee to new motor vehicle dealers and other licensees under its jurisdiction in an amount sufficient to fully fund the Board's activities.

Under this regulatory proposal, new motor vehicle dealers will see an increase in the annual Board fee from \$225 to \$300 per year, as specified in Section 553, subsection (a). Vehicle manufacturers and distributors will see an increase from \$.338 per vehicle to \$.45 per vehicle, with the annual minimum to be raised in conjunction with the dealer fees, as specified in Section 553, subsection (b).

Since the economic downturn, the Board has used its cash reserve to supplement annual income. However, the Board has conservatively forecasted continued slow growth and recovery in the new motor vehicle industry. If these fees are not raised, the Board's cash reserve will be entirely depleted within the next two years.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following documents in drafting and adopting the proposed regulation: (1) New motor vehicle sales in California for 2008-2010, and national sales projections as reported in automotive industry trade magazines and the media; (2) A Fiscal Committee Memorandum dated January 19, 2011, that contained a 17-year fiscal summary (fiscal year 1990-1991

through 2009-2010) along with alternative annual fee projections for five years; and (3) A Policy and Procedure Committee Memorandum dated January 18, 2011. No other technical, theoretical, and/or empirical studies or reports were relied upon in drafting the proposed regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed meeting held on February 4, 2011. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation was mailed to the Board's Public Mailing List and Electronic Public Mailing List, a list of approximately 90 – 100 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters, and the 37 – 38 California New Car Dealers Association Directors. The agendas were also posted on the Board's website. No comments by the public were received at the February 4, 2011, General Meeting, and no further public discussions were held prior to publication of the notice.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has determined that the proposed regulations will have minimal effect on small businesses. The proposed regulations reinstate fees to an amount equal to that which was collected from 1990-2001 (in 1993 and 2000 there were fee reductions to lower the Board's surplus). The only reasonable alternative to the proposed regulatory action that would lessen the anticipated minimal impact on small business is to reduce staff and operating expenditures. These alternatives have been and continue to be implemented. Board operating expenditures are at the same level as 2007. Board staffing is lower than 2007. The fact is, the Board's activities are funded by revenues that are dependent upon the health of the new motor vehicle industry. While times were good, the Board was able to create a cash reserve. As a consequence, in 2000, the Board was able to waive fees for all manufacturers and dealers for a year, and to reduce fees paid by the industry to their present level. Since the economic downturn starting in 2006-2007, the Board has judiciously used its cash reserve to supplement annual income. (In 2006-2007, Board fees collected from manufacturers and distributors in California were \$864,000 compared to \$416,000 in 2010-2011). However, now, the Board has conservatively forecasted continued slow growth and recovery in the new motor vehicle industry. If action is not taken now, the Board's cash reserve will be entirely depleted within the next two years.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

No significant statewide adverse economic impact directly affecting business will occur as a result of the proposed fee reinstatement. The proposed regulation merely reinstates fees that were in place for a number of years. The fees were reduced in 2002 to their current level to lessen the Board's surplus. That goal having been achieved, the Board needs to reinstate fees to the prior level to fully fund its operations.