

INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the New Motor Vehicle Board ("Board") of the State of California to amend section 551.8, adopt section 551.10, amend section 553, and amend section 553.40 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 of who 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 include 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, and 3066). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

SECTION 551.8

PURPOSE OF THE REGULATION

Vehicle Code section 3050(d) provides the statutory authority for the Board to “(h)ear 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, or 3065.1”. Over the years, protest hearings have periodically been adjudicated at the pre-trial stage, including dismissal prior to a full hearing on the merits. The courts have upheld the Board’s authority to dismiss protests (Automotive Management Group, Inc. [Santa Cruz Mitsubishi] v. New Motor Vehicle Board; Real Party In Interest, Mitsubishi Motor Sales of America, Inc. (1993) 20 Cal.App.4th 1002; 24 Cal.Rptr.2d 904. A more recent decision affirming the Board’s implicit authority to dismiss protests was filed December 18, 2002, (Duarte & Witting, Inc., v. New Motor Vehicle Board, Defendant and Respondent; DaimlerChrysler Motors Corp., Real Party in Interest and Respondent. (2002) 104 Cal. App. 4th 626; 128 Cal. Rptr. 2d 501.

For hearings on appeals (Veh. Code §3050(b)) and petitions (Veh. Code §3050(c)), section 551.8 presently contains express authority to dismiss either type of action, under specified conditions. The amendment of section 551.8 would provide the express authority for the Board to dismiss protests, specify conditions to do so, and make the procedure for pre-trial dismissal of protests consistent with that of other actions before the Board.

NECESSITY

The proposed regulation is necessary to ensure procedural consistency for pre-trial dismissals of the various types of actions that can be brought before the Board. The proposed amendment to section 551.8 would give the Board explicit regulatory authority to dismiss protests thereby providing certainty for the parties that practice before the Board, and diminish the frequency of dilatory challenges that delay the prompt resolution of protests. Further, explicit dismissal authority would vitiate the need for the Board to engage in lengthy and expensive litigation as exemplified by the two above cited cases.

SECTION 551.10

PURPOSE OF THE REGULATION

The addition of section 551.10 would implement and make specific Vehicle Code section 3015, and explicitly provide authority for litigants to request a change or changes in venue and provide authority for the Board to recover travel, personnel, and facilities' costs when the party requesting the change cancels the proceeding at the new venue.

NECESSITY

Vehicle Code section 3015 gives the Board broad venue authority, to secure "such ... locations in the state as may be required in the discretion of the board, to administer this chapter." In the past, the Board has incurred unnecessary costs when changes in venue were requested by a party or parties and the hearing facilities and attendant costs were paid by the Board although the parties settled or otherwise caused the facilities at the new venue to go unused. The proposed regulation is necessary as there is no process in place that formally describes allocation of costs for changes in venue requested by and made unnecessary by action of the parties. This regulation would be in accord with the State's current conservative fiscal perspective resulting from the large budgetary shortfall.

SECTION 553

PURPOSE OF THE REGULATION

The Board's authority for collection of fees is in Vehicle Code section 3016, as implemented and made specific by section 553. The statute and implementing regulation are silent on issues of exempting certain manufacturers or distributors from Board fees. The Board as a matter of policy, and in practice, does not collect fees from vehicle manufacturers or distributors licensed in California that do not sell vehicles and/or have dealers in California. This regulation will implement, and provide the Board with authority for current equitable practices and procedures.

NECESSITY

In early 1991, as part of the staffs' ongoing review of Board operations, the staff thoroughly reviewed the list of manufacturers and distributors from which the Board collects annual fees. During the review, it was determined that not all manufacturers and distributors were properly being assessed fees. As a result of that review the Board voted in the April 27, 2001, General Meeting to not collect fees from those licensees that were legally outside of its jurisdiction. Following a staff recommendation at the September 6, 2001, General Meeting the Board voted to waive fees for manufacturers and distributors, which have no dealer networks, or do not sell vehicles within California.

The waivers are based on considerations of equity and good government which dictate that if licensed manufacturers or distributors have no independent dealers in California and/or no vehicle sales in California, it is virtually impossible for disputes that can be brought before the Board to arise and thus are not beneficiaries of the Board as a forum for dispute resolution. Consequently they should not be required to financially support the Board, and the requirement that such entities pay fees should be waived. Further, the proposed amendment allows for maximum flexibility for equitable fee collection with changing circumstances, i.e., fees would either commence if a manufacturer or distributor begins selling vehicles in California or sets up independent dealerships, or be waived in the event sales completely stop or all dealerships for that line make close or are factory owned.

SECTION 553.40

PURPOSE OF THE REGULATION

Litigants that file and respond to a request for informal mediation, a petition, an appeal, or a protest each pay a filing fee of \$200.00. The amendment to section 553.40 gives the Board the authority to collect filing fees by means of a credit card payment.

NECESSITY

The proposed regulation is necessary to allow parties to pay fees in an expeditious manner, and reflects current sound business practices in both the private and the public sectors. Accepting credit card payments would also bring the Board into compliance with the provisions of the State Payment Card Act, Government Code Sections 6160-6166, hereinafter "Act". The Act, passed in 1995, requires that all state agencies, with limited exceptions, accept credit cards or other direct payment devices for goods and services. Technically, the Board is currently in compliance with the Act pursuant to the Department participation. Section 6160 of the Act provides:

"The Legislature finds and declares that there are costs associated with all forms of payment, including cash and checks. The Legislature further finds and declares that by accepting payment by credit card or other payment devices, state agencies will be able to take advantage of new technologies that will improve their efficiency and will increase consumer convenience and choice by providing state consumers with an alternative method of payment."

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

The regulatory changes proposed for sections 551.8, 551.10 and 553 in this rulemaking result from a nearly one-year effort whereby the Board solicited input from its constituency. On March 15, 2002, Board staff sent a letter to Interested Parties (judges, practitioners, lawyers, industry personnel), with a request and suggested format for comments (summary of current law, proposal for change, how changes would improve Board's efficiency, why proposed changes are not favorable to either side, source of proposal, e.g., federal practice, civil law), as to how the Board could improve its procedures while maintaining a neutral forum for the resolution of disputes. Responses were tabulated and summarized and provided to the Board's constituency for further review and comment. The regulatory changes proposed herein for sections 551.8, 551.10 and 553 were approved by the Board at its October 29, 2002, General Meeting.

The proposed amendment to section 553.40, permitting the Board to accept credit card payment for filing fees was approved by the Board at its January 8, 2003, General Meeting. Board approval was based in part on a 1991 staff review of the manufacturers and distributors from which the Board collects annual fees and the resultant memos analyzing the nature of licensees subject to Board fees and consideration of requests to waive fees.

ALTERNATIVES TO THE REGULATION

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At both the October 29, 2002, and the January 8, 2003, General Meetings, wherein the Board preliminarily adopted the proposed regulatory texts, no other alternatives were considered. The Board President, Frederick (Fritz) Hitchcock advised the Board Members that members of the public would be invited to submit written and oral comments during the Public Notice and Comment Period, and or the Public Hearing on the proposed regulatory changes. Further, Mr. Hitchcock indicated that although the Board instructed staff to go forward with the proposed rulemaking, it did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written

or oral comments received, then the rulemaking process will proceed without further Board involvement.

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