

LEGISLATIVE UPDATE

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Assembly Bill 759

(Sponsored by RVIA and CalRVDA)

Assembly Bill 1178

(Sponsored by CNCDA)

Types of Protests by Article in the Vehicle Code

- Article 4 protests pertain to vehicles other than RVs like cars, motorcycles, ATVs, and heavy-duty trucks (Veh. Code §§ 3060-3069.1).**
- Article 5 protests pertain to RVs (Veh. Code §§ 3070-3082).**
- Article 6 protests pertain to export or sale-for-resale prohibition policies and are filed by associations, as defined (Veh. Code §§ 3085-3085.10).**

Assembly Bill 759

- ❑ **This bill cleans up a number of inconsistencies in the Vehicle Code.**
 - In Section 3072, it reflects both the establishment of an additional RV dealership and the relocation of an existing RV dealership, and clarifies the terms “relevant market area”.
 - These changes reflect what is done in practice and is consistent with Section 3062.
 - It deletes subdivision (b)(5) of Section 3072.
 - The notice requirements for establishments and relocations do not apply to 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.”
 - In *Mega RV v. Roadtrek Motorhomes*, this subdivision created a lot of confusion and required lengthy law and motion hearings and orders. It was also argued at length in the writ proceedings.

Vehicle Code Amendments

- ❑ **Clarifies that the good cause factors in Section 3073 apply to both establishment and relocation protests. This is consistent with Section 3063 in Article 4.**
- ❑ **All references to Article 5 RV protests are deleted in Sections 3066 (hearings) and 3067 (decisions).**
 - ❑ **Parallel provisions are added to Article 5 (Sections 3080 and 3081). These provisions are nearly identical.**
- ❑ **Section 11705 allows the DMV to suspend or revoke a dealer, manufacturer or distributor license for willful violations of Section 3064 and 3065. References were added to Sections 3074 and 3075 making this section applicable to the RV industry.**

Vehicle Code Amendments

Continued-

- ❑ **Section 11713.3, subdivision (l) provides it is unlawful and a violation of the Vehicle Code for any manufacturer or distributor to: modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4. Assembly Bill 759 added a reference to Article 5 protests.**
- ❑ **Section 11713.23 requires an RV dealer to have a written recreational vehicle franchise prior to selling a new RV in California. Renumbered subdivision (e) allows any new RV inventory that was purchased by the RV dealer, or shipped by a manufacturer or distributor, during the period that the written RV franchise was in effect to be sold even after that franchise has been terminated, cancelled or not renewed.**
 - ❑ This is a common practice in the RV industry

Impact on Case Management

- It is not anticipated that the number of protests filed will increase as a result of these amendments.**
- All updates to Board publications and the website are done.**

Assembly Bill 759

Questions and Comments

Assembly Bill 1178

In general, Assembly Bill 1178:

- Established an export or sale-for-resale prohibition policy protest.
- Added Article 6 to the Vehicle Code. (Veh. Code §§ 3085-3085.10)
- Amended subdivision (y) of Section 11713.3.
- Allows a protest to be filed by an association as defined.

What is an Association?

- An association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, 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 (herein “manufacturer” or “distributor”) at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. (Veh. Code § 3085)
- The Board’s authority to hear protests submitted by an association sunsets on January 1, 2019. (Veh. Code § 3085.10)

Definition of Protest and Protestant

- ❑ The definitions in Section 550 of the regulations are in the process of being amended to reflect:
 - ❑ (v) "Protest" means an action filed with the board by a franchisee pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076. A protest also means an action filed with the board by an association pursuant to Vehicle Code section 3085.
 - ❑ (w) "Protestant" means any licensed new motor vehicle dealer as defined in Vehicle Code section 426 who files a protest with the board. For purposes of Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.

Section 11713.3(y)

- ❑ **Subdivision (y)(1) of Section 11713.3 allows a manufacturer or distributor to take an adverse action against a dealer who sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition only if:**
 - ❑ (1) the export or sale-for-resale prohibition policy was provided to the dealer in writing at least 48 hours before the sale or lease of the vehicle; and
 - ❑ (2) the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition.

Burden of Proof

- ❑ **In a proceeding challenging an adverse action, the manufacturer or distributor has the burden of proof by a preponderance of the evidence to show that:**
 - ❑ (1) the vehicle was exported or resold in violation of a prohibition policy;
 - ❑ (2) that the prohibition policy was provided to the dealer in writing at least 48 hours prior to the sale or lease; and
 - ❑ (3) that the dealer knew or reasonably should have known of the customer's intent to export the vehicle to a foreign country at the time of the sale or lease. (Veh. Code § 11713.3(y)(1))

Rebuttable Presumption

- ❑ **A rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle in violation of the prohibition if:**
 - ❑ (1) the dealer causes the vehicle to be registered in this or any other state; and
 - ❑ (2) collects or causes to be collected any applicable sales or use tax due to this state. (Veh. Code § 11713.3(y)(1))
- ❑ **Subdivision (y)(3) requires an export or sale-for-resale prohibition policy include a provision stating the above rebuttable presumption. A policy that is in violation of this paragraph is void and unenforceable.**

Prohibitions

- ❑ Subdivision (y)(2) specifies that a manufacturer's or distributor's prohibition policy is precluded from including provisions that expressly or implicitly require a dealer to make further inquiries into a customer's intent, identity, or financial ability to purchase or lease a vehicle based on any of the customer's characteristics listed or defined in Section 51 of the Civil Code "Unruh Civil Rights Act."**
- ❑ A policy that is in violation of this subdivision is void and unenforceable. (Veh. Code § 11713.3(y)(2))**

Board's Powers and Duties

❑ Changes to Powers and Duties of the Board:

- ❑ Renumbered Section 3050(e) adds the authority for the Board to hear 3085 protests.
 - Dealer members are precluded from participating in these protests absent a stipulation of the parties.
- ❑ Section 3050.1 authorizes discovery and the issuance of subpoenas.
- ❑ Section 3085 protests can file Stipulated Decisions and Orders pursuant to Section 3050.7.

Section 3085 Protest

- ❑ **Relief for a 3085 protest is limited to:**
 - ❑ A declaration that an export or sale-for-resale prohibition policy of a manufacturer or distributor 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.
 - ❑ The association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3.

Merits Hearing

- ❑ **In an Article 4 (includes motorcycle, ATVs, heavy duty trucks) or Article 5 RV protest, a hearing is set within 60 days of order and place of hearing.**
 - This allows litigants to stipulate to a hearing that works for counsel and their clients. Once the order is issued, the litigants are required to go to hearing within 90 days of the order except in cases involving motorcycles. (Veh. Code § 3066(a) and 3080(a))
- ❑ **In an Article 6 protest, “[u]pon receiving a protest pursuant to Section 3085, the board shall fix a time and place of hearing within 60 days,…” (Veh. Code § 3085.2(a))**
 - Therefore, a merits hearing is set for 60 days after the protest is filed. This doesn’t allow a lot of time for discovery or depositions. The continuance restrictions above are not applicable nor is Section 592 of the regulations. However, it is unclear whether the parties can stipulate to a hearing date beyond 60 days from the filing of the protest.

Applicable Regulations

- ❑ **There are a number of provisions in Article 1. Administration that apply to 3085 protests including:**
 - 13 CCR § 551.1. Challenge
 - 13 CCR § 551.2. Subpoenas; Motion to Quash
 - 13 CCR § 551.6. Testimony by Deposition
 - 13 CCR § 551.7. Reporting of Proceedings
 - 13 CCR § 551.8. Dismissals of Petitions, Appeals, and Protests
 - 13 CCR § 551.10. Costs for Change of Venue
 - 13 CCR § 551.11. Settlement Conference
 - 13 CCR § 551.12. Peremptory Challenges

Applicable Regulations

continued-

- ❑ **Provisions in Article 1 of the Board's Regulations that apply to 3085 protests:**
 - 13 CCR § 551.13. Intervention
 - 13 CCR § 551.19. Motions; Form, Briefing, and Hearings
 - 13 CCR § 551.20. Conduct of Hearing; Protective Orders
 - 13 CCR § 551.21. Sanctions
 - 13 CCR § 551.22. Adoption and Objection to Proposed Stipulated Decision and Order
 - 13 CCR § 551.23. Interpreters and Accommodation
 - 13 CCR § 551.24. Service; Proof of Service
 - 13 CCR § 551.25. Substitution or Withdrawal of Counsel

Regulations Not Applicable

❑ The following provisions which pertain to protests are not applicable to Section 3085 protests:

- 13 CCR § 584 Service of Protest upon Franchisor
- 13 CCR § 587 Stipulation of Fact
- 13 CCR § 590 Hearings by Board or ALJ*
- 13 CCR § 591 Notice of Hearing of Protest
[Conflicts with Vehicle Code section 3085.2]
- 13 CCR § 592 Continuances
- 13 CCR § 598 Acceptance of Filing

* The Board is proceeding through the rulemaking process to make this provision applicable to Article 5 RV protests and Article 6 Association protest.

Impact on Case Management

- ☐ It is not anticipated that the number of protests filed will increase as a result of these amendments.**

Website and Publications

- ❑ **The website has been updated to reflect all of the legislative and regulatory changes effective January 1, 2016 (www.nmvb.ca.gov).**

- ❑ **Publications:**
 - Export or Sale-For-Resale Prohibition Policy Protest Guide

Assembly Bill 1178

Questions and Comments