



MEMO

To : POLICY AND PROCEDURE COMMITTEE **Date:** February 26, 2013
DAVID WILSON, CHAIR
GLENN STEVENS, MEMBER

From : WILLIAM G. BRENNAN
DANA F. WINTERROWD

Subject: DISCUSSION CONCERNING PENDING LEGISLATION

The following provides a summary of pending State and Federal legislation that is of interest to the New Motor Vehicle Board ("Board"). For purposes of this memorandum, "legislation of special interest" means pending legislation that directly affects the Board's laws or functions. "Legislation of general interest" includes pending legislation that impacts the Vehicle Code, the Board, or the automotive industry in general but does not directly impact the Board or its enabling statutes.

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

a. Legislation of Special Interest.

(1) Assembly Bill 988 – Assembly Member Jones
(Introduced February 22.)

Status – *On February 25, the bill was read a first time.*

Support – *California Motorcycle Dealers Association (sponsor).*

Opposition – *None on file*

Legislative Counsel's Digest – *New Motor Vehicle Board: recreational off-highway vehicles.*

Existing law establishes the New Motor Vehicle Board that regulates the activities or practices of a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, as those terms are defined by the Vehicle Code. Existing law requires licensing by the Department of Motor Vehicles to do these activities for specified types of vehicles.

Existing law defines a recreational off-highway vehicle as a motor vehicle designed by the manufacturer for operation primarily off of the highway that has a steering

¹ All dates are for the year 2013, unless otherwise stated.

wheel, nonstraddle seating, a maximum speed capability of greater than 30 miles an hour, and an engine displacement equal to or less than 1,000cc.

This bill would include the activities and practices of recreational off-highway vehicle dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives within the scope of regulation by the board.

This bill would require these entities to make application to the Department of Motor Vehicles for a license, but would exempt them from the written examination and education program requirements. The bill would require an applicant for a dealer's license for a dealer who deals exclusively in recreational off-highway vehicles to procure and file a bond with the department in the amount of \$10,000 before a license is issued or renewed. The bill would also require the holders of these licenses and the dealers, manufacturers, manufacturer branches, distributors, distributor branches, and representatives to pay fees for the issuance and renewal of a license.

(2) Senate Bill 155 – Senator Padilla
(Introduced January 31.)

Status – On January 31, the bill was read a first time and referred, for committee assignment, to the Senate Rules Committee. On February 14, the bill was referred to the Senate Committee on Judiciary.

Support – California New Car Dealers Association (sponsor).

Opposition – None on file.

Summary – SB 155 would amend the Vehicle Code to augment, clarify and standardize several procedures to be followed by specific franchisors, specific franchisees, and the Board relative to, (1) claims for reimbursement of labor and parts costs incurred by a franchisee in the fulfillment of a franchisor's specific warranty agreement (warranty reimbursement claims), and (2) franchisee claims for compensation arising from the franchisee's performance of a franchise incentive program (incentive compensation claims). Pertinent existing law contains several ambiguities, some of which have been the subject of litigation before the Board during the previous two years. Many of the proposed changes are directed at resolving many of the ambiguities in existing law, by establishing specific requirements, thus further standardizing those claims procedures.

SB 155 would also amend the Vehicle Code to clarify and supplement specifications of unlawful conduct, if undertaken by a manufacturer, manufacturer branch, distributor, or distributor branch. Existing law fails to provide protection from some acts that may be viewed as inappropriate, relative to required facility modifications, restrictions on product sales, and warranty repair labor rates. The proposed changes are directed at limiting such acts, by providing standards that would be applied to aid a determination of whether any of the acts occurred.

The bill would also make several minor, non-substantial changes in grammar and style.

The following is a discussion and summary of the significant amendments proposed by SB 155.

Sections 3065 and 3065.1

Current Statute

These sections concern procedures to be followed by franchisors, franchisees, and the Board relative to claims for warranty reimbursement (section 3065) and incentive compensation (section 3065.1) involving specific new motor vehicles other than recreational vehicles. Both sections contain similar provisions that authorize franchisors to conduct audits of franchisee warranty records (§ 3065), and incentive records (§3065.1) on a reasonable basis. Section 3065.1 authorizes a franchisor to audit the franchisee's incentive records for 18 months after a claim is paid or credit issued. Section 3065 authorizes a franchisor to audit the franchisee's warranty records for 12 months after a claim is paid or credit issued. Both sections prohibit the disapproval of franchisee claims except for good cause, as specified, and require that a notice of disapproval state the specific grounds upon which the disapproval is based. Also, section 3065.1 gives a franchisee one year from receipt of the notice of disapproval of an incentive compensation payment to appeal the disapproval to the franchisor and file a protest with the Board.

Note: The Board also has authority to adjudicate administrative claims relative to warranty reimbursement (section 3075) and incentive compensation (section 3076), arising in relation to certain recreational vehicles. Current sections 3075 and 3076 are, respectively, very similar to sections 3065 and 3065.1, discussed below. However, SB 155 makes no proposal to amend sections 3075 or 3076. Thus, should the current version of SB 155 be adopted, without similar changes to sections 3075 and 3076, substantially different rules would apply to claims involving warranty reimbursement and incentive compensation, depending on the model of motor vehicle involved in the claim.

Accordingly, the following analysis applies only to claims relative to motor vehicles (other than recreational vehicles) within the Board's jurisdiction.

Proposed Changes to Section 3065, alone

The bill would clarify and supplement the procedures relative to claims for warranty reimbursement in the following significant respects:

- 1. The franchisor would be required to adequately and fairly compensate each of its franchisees for labor and parts used to provide diagnostic services under a warranty; and*
- 2. If the warranty reimbursement schedule or formula provides franchisee labor compensation on a flat-rate basis, the franchisor would be required to allow the franchisee to use a published, nationally recognized, flat-rate labor time guide as the basis for determining the amount of time allocable for warranty diagnostics and repairs if the franchisee primarily uses the time guide to compute technician flat-rate compensation and charges for nonwarranty labor.*

Proposed Changes to Sections 3065 and 3065.1

The bill would, through similar amendments to both sections 3065 and 3065.1, clarify and supplement the procedures relative to claims for warranty reimbursement and claims for incentive compensation, in the following significant respects:

- 1. The bill would require the franchisor to provide the franchisee with the specific grounds upon which any previously approved claims will be charged back, if the franchisor disapproves of a previously approved claim after an audit,*
- 2. The bill would prohibit a previously approved claim from being charged back to the franchisee except for good cause, as specified;*
- 3. The bill would require the franchisor to provide a reasonable appeal process to allow the franchisee to respond to any disapproval with additional supporting documentation or information rebutting the disapproval;*
- 4. The bill would authorize the audit of a franchisee's records for 6 months after a claim is paid or credit is issued;*
- 5. The bill would give a franchisee one year from the later of the date of receipt of the notice of disapproval or the completion of any franchisor appeal process to file a protest with the Board, and*
- 6. The bill would specify that, in the protest proceeding, the franchisor has the burden of proof.*

Section 11713.3

Current Statute

Under relevant aspects of this section, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to act in specified ways, including requiring a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.

Proposed Changes

The bill would clarify and supplement the section by prohibiting a required facility alteration, expansion, or addition from being deemed reasonable if it requires that the dealer purchase goods or services from a specific vendor if substantially similar goods or services are available from another vendor.

Section 11713.13

Current Statute

Under relevant aspects of this section, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to act in specified ways.

Proposed Changes

The bill would supplement the section by,

- 1. Prohibiting the establishment or maintenance of a performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance that may materially affect the dealer, including, but not*

limited to, the dealer's right to payment under any incentive or reimbursement program, unless certain requirements are satisfied; and

2. *Prohibiting a manufacturer, manufacturer branch, distributor, or distributor branch from taking or threatening to take any adverse action against a dealer because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle, unless the adverse action is permitted by contractual terms binding on the dealer and the dealer had actual knowledge of the customer's intent to export or resell the vehicle, as specified.*

Impact on the Board

It is anticipated that the proposed changes will have little to no impact on the Board. The proposed changes would create no new types of protests or programs. Rather, the proposed changes to sections 3065 and 3065.1 would largely supplement and modify procedures currently assimilated into the Board's practices. Thus, the proposed changes to those sections would, if adopted, be assimilated into the Board's practices. The proposed changes to sections 11713.3 and 11713.13 could have the effect, in some protest proceedings, of modifying the range of issues to be determined and the nature and extent of evidence that parties may offer. Thus, the proposed changes would likely have no significant impact on Board operations.

- b. Legislation of General Interest.

**(1) Assembly Bill 225 – Assembly Member Nestande
(Principal Coauthor: Assembly Member Medina)
(Introduced February 4.)**

Status – On February 4, the bill was read a first time. On February 15, the bill was referred to the Assembly Committee on Transportation.

Support – None on file.

Opposition – None on file.

Legislative Counsel's Digest - Medium-speed electric vehicles.

Existing law defines "low-speed vehicle" as a motor vehicle, other than a motor truck, with 4 wheels that is capable of a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour on a paved level surface and that has a gross vehicle weight rating of less than 3,000 pounds. Existing law imposes certain restrictions on the use of low-speed vehicles on public streets and highways, and generally requires an operator of a low-speed vehicle to have a driver's license. A violation of these provisions is a crime.

This bill would authorize the operation of a medium-speed electric vehicle, as defined, at speeds of no more than 35 miles per hour on a roadway with a speed limit that does not exceed 45 miles per hour. The bill would require that the driver of a medium-speed electric vehicle possess a class A, class B, or class C driver's license. Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program by creating a new crime.

This matter will be identified as an informational item on the agenda for the March 13,

2013, General Meeting. If you have any question or require additional information, please contact me at (916) 324-6197 or Dana at (916) 327-3129.

cc: Bismarck Obando