

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 add section 551.21 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, and 3065.1). 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 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 551.21

PURPOSE OF THE REGULATION

The addition of Section 551.21 formalizes the mechanism for the Board to issue sanctions for bad faith actions.

Section 551.21(a) provides that a Board administrative law judge may recommend ordering a party, a party's representative, or both, to pay reasonable sanctions (attorney's fees and costs) incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

Section 551.21(b) provides that an award of sanctions shall not be recommended without providing notice and an opportunity to be heard.

Section 551.21(c) provides that a determination of bad faith by a party shall be determined by the administrative law judge based upon testimony under oath or other evidence. Furthermore, the proposed order recommending sanctions shall be on the record or in writing, setting forth the factual findings on which the sanctions are based and the factual findings as to the reasonableness of the amount(s) to be paid.

Section 551.21(d) provides that a proposed order recommending an award of sanctions is considered by the Board members at their next regularly scheduled meeting. A determination not to award sanctions is not considered by the Board and is final upon issuance by the administrative law judge.

Section 551.21(e) provides that the Board members' consideration to affirm, reject or modify the administrative law judge's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

NECESSITY

The proposed regulation is reasonably necessary to provide a mechanism for the Board administrative law judge to recommend to the Board the issuance of an award of sanctions against a party, a party's representative or both, as the result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. This regulation is necessary to ensure that litigants are aware of the potential sanctions available in Board proceedings. There is nothing in the Board's regulations that currently provide such a mechanism. The proposed regulation references the recently published opinion in *Nader Automotive Group, LLC, et al. v. New Motor Vehicle Board* (2009) 178 Cal.App.4th 1478. It is consistent with the Administrative Procedure Act (Gov. Code § 11455.30) and the Office of Administrative Hearing's regulation, 1 CCR § 1040.

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

The Board relied upon the provisions of a New Motor Vehicle Board Policy and Procedure Committee Memorandum dated January 25, 2010, in adopting the proposed regulatory text. No other technical, theoretical, and/or empirical studies, reports, or documents 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 an initial draft of the proposed regulations at a noticed meeting held on February 11, 2008. At that meeting comments were received by members of the industry. Based on those comments and those of its members, the Board revised the proposed text. The proposed text was adopted at a noticed meeting held on February 4, 2010. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations 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 38 California New Car Dealers Association Directors. The agenda was also posted on the Board's website. No comments by the public were received at the February 4, 2010, 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 no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation.

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

There are no associated costs with the proposed regulatory amendments; they clarify case management procedures for franchised new motor vehicle dealers and their franchisors (new motor vehicle manufacturers or distributors) that choose to file a protest, petition or appeal with the Board and provide the Board with a mechanism to issue sanctions for bad faith actions.