

INITIAL STATEMENT OF REASONS

This Initial Statement of Reasons has been prepared relative to the proposal of the California New Motor Vehicle Board ("Board") to amend sections 553 and 553.20 of Article 1 of Chapter 2 of Division 1 of Title 13 of the California Code of Regulations.

INTRODUCTION

The Board is an agency within the Department of Motor Vehicles with oversight provided by the California State Transportation 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 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. 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(b))
3. 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(c), 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 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).
4. The Board also has authority to hear protests filed by an association (an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers) challenging the legality of a manufacturer, manufacturer branch, distributor or distributor branch's export or sale-for-resale prohibition policy. (Veh. Code §§ 3050(d) and 3085)

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, cars, motorcycles, recreational vehicles, and all-terrain vehicles).

PURPOSE OF THE REGULATIONS - SECTION 553

The proposed amendments to subdivision (a) of section 553 would raise the amount paid (from \$300 to \$425) to the Department of Motor Vehicles by a new motor vehicle dealer or dealer branch for issuance or renewal of its license. This annual fee has been at its current level of \$300 since March 30, 2012.

The proposed amendments to subdivision (b) of section 553 would raise the annual fee paid to the Board by a new motor vehicle manufacturer or distributor by raising the numerical coefficient, on which the fee is based, from \$0.45 to \$0.65 per new motor vehicle that was sold, leased or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year. The coefficient has been at its current level of \$0.45 since March 30, 2012.

Subdivision (b) of section 553 sets the minimum annual fee paid to the Board by a manufacturer or distributor. The proposed amendments to subdivision (b) would raise this minimum amount from \$300 to \$425. The \$300 minimum annual fee has been at its current level since March 30, 2012.

The Board now must confront the problem that the proceeds generated by the currently authorized annual fees are insufficient to fully fund the Board's activities, as required by Vehicle Code section 3016.

PURPOSE OF THE REGULATIONS - SECTION 553.20

Section 553.20 specifies the method for calculating the annual fee paid to the Board by a manufacturer or distributor of new motor vehicles sold, leased or otherwise distributed in California to consumers of such new motor vehicles during the preceding calendar year. The proposed amendments to section 553.20 repeat the minimum fee proposed to increase in Section 553 from \$300 to \$425. Consistency in these fees will avoid any misunderstanding in connection with the calculation of fees

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THAT THE REGULATORY ACTION IS INTENDED TO ADDRESS

The Board is a special fund agency which derives its operating income from fees assessed on new motor vehicle dealers, manufacturers, and distributors within its jurisdiction that are licensed in California by the Department of Motor Vehicles. None of the Board's annual budget is derived from the General Fund.

Historically, the Annual Board Fee per manufacturer or distributor has been \$.45 per vehicle with a minimum of \$300 and the dealer fee has been \$300. In an effort to reduce the Board's excessive surplus, the Annual Board Fee was reduced to \$0 in 2000. Those fees were reinstated in 2001 and ultimately reduced in 2002 to \$.338 per vehicle with a minimum fee of \$225 per manufacturer or distributor and the dealer fee was reduced to \$225. This fee structure was in place from 2002-2011.

The reduced fees coupled with the economic downturn of 2007-2008, made it necessary for the Board to supplement its annual income with its cash reserves. In 2011, the Board forecasted continued slow growth and recovery in the new motor vehicle industry. The Annual Board Fee per manufacturer or distributor was reinstated from \$.338 to \$.45 per vehicle with a minimum of \$300 instead of \$225, and the dealer fee was reinstated from \$225 to \$300. This fee reinstatement became effective in March 2012.

From 2013 through 2019, on average, 2.04 million new motor vehicle sales occurred each year in California subject to the Board's fee collection. Since the onset of the Covid-19 pandemic and the global supply chain shortage, annual sales have now averaged 1.78 million. With roughly 50% of the Board's revenue tied directly to these vehicle distributions, its funds in reserve have been depleting since 2020 to cover the revenue shortfall. Operating costs and personal services expenditures have increased over this same period, exacerbating the issue and making fund insolvency a fast-approaching certainty.

Based on the Department of Motor Vehicles' assessment, if the fees remain at current levels, the Board will lack sufficient operating funds, and by the end of the 2028-29 fiscal year, the Board's cash reserves will be depleted.

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. This rulemaking is therefore necessary to allow the Board to comply with its statutory obligation to fully fund its operations, as indicated above. The revenues collected under the existing fee structure are not sufficient for the Board to remain viable.

Based on the Board's current assessment of its financial condition and expected growth rate of the new motor vehicle industry, if the subject fees remain at current levels, the Board will lack sufficient operating funds, and by the end of the 2028-29 fiscal year, the Board's cash reserves will be depleted.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The fees are being increased so the Board continues to fully fund its operations as required by Vehicle Code section 3016, which in turn benefits California's vitally important automotive/vehicle industry. This means the Board will continue to resolve statutorily enumerated disputes quickly and economically between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. Additionally, the Board issues uniform orders and decisions throughout California thereby allowing franchisors and their dealers to conduct their business in compliance with California law. Lastly, the Consumer Mediation Program will continue to efficiently resolve disputes between

members of the public and any new motor vehicle dealer, manufacturer, or distributor at no cost to the consumer.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE:

The Board has determined that the proposed amendments will not have an impact on the creation of new jobs or businesses, the elimination of any jobs or existing businesses, or the expansion of businesses currently doing business in California. The proposed amendments only impact licensed new motor vehicle dealers, manufacturers, and distributors within the Board's jurisdiction. This includes approximately 2,700 new car, motorcycle, all-terrain vehicle, low-speed vehicle, and recreational vehicle dealers and approximately 150-175 manufacturers or distributors. In the last 20 years, there have been on average 45 protests filed each year. Only 12 petitions have been filed since 2005.

CREATION OF NEW OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE:

The proposed amendments will not impact the creation of new businesses or cause the elimination of existing businesses in California. The proposed amendments only impact licensed new motor vehicle dealers, manufacturers, and distributors within the Board's jurisdiction. This includes approximately 2,700 new car, motorcycle, all-terrain vehicle, low-speed vehicle, and recreational vehicle dealers and approximately 150-175 manufacturers or distributors. In the last 20 years, there have been on average 45 protests filed each year. Only 12 petitions have been filed since 2005.

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE:

The proposed amendments will not impact the business climate in the state, and therefore, will not result in the expansion of businesses doing business in California. The proposed amendments only impact licensed new motor vehicle dealers, manufacturers, and distributors within the Board's jurisdiction. This includes approximately 2,700 new car, motorcycle, all-terrain vehicle, low-speed vehicle, and recreational vehicle dealers and approximately 150-175 manufacturers or distributors. In the last 20 years, there have been on average 45 protests filed each year. Only 12 petitions have been filed since 2005.

BENEFITS TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE'S ENVIRONMENT:

The Board does not anticipate any impact on the health and welfare of California residents.

The proposed amendments will not benefit worker safety because it does not regulate worker safety standards.

The proposed amendments will not benefit the state's environment because it does change any applicable environmental standards.

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

The Board relied on the following documents in drafting and proposing the adoption of the proposed regulations:

- (1) Fiscal Committee Memorandum dated October 10, 2024 pertaining to amendments to sections 553 and 553.20.
- (2) Policy and Procedure Committee Memorandum dated October 16, 2024, pertaining to amendments to sections 553 and 553.20.

The Board relied upon the following documents for historical background on its annual fee collection, and its revenue and expenditures from fiscal years 2019-20 to the present:

- (1) California New Car Dealers Association 2016 Economic Impact.
- (2) California New Car Dealers Association 2017 Economic Impact.
- (3) California New Car Dealers Association "California Auto Outlook" released August 2020 covering 2nd quarter 2020.
- (4) California New Car Dealers Association "California Auto Outlook" released February 2023 covering 4th quarter 2022.
- (5) Fund Condition Statement [FY 19_20 Expenditure Revenue] 2021-22 State Budget.
- (6) Fund Condition Statement [FY 20_21 Expenditure Revenue] 2022-23 State Budget.
- (7) Fund Condition Statement [FY 21_22 Expenditure Revenue] 2023-24 State Budget.
- (8) Fund Condition Statement [FY 22_23 Expenditure Revenue] 2024-25 State Budget.
- (9) Fund Condition Statement [FY 23_24 Expenditure Revenue] 2024-25 State Budget.
- (10) Department of Motor Vehicles, Expenditure Management Plan – 1st Qtr. (Jul-Sep), New Motor Vehicle Board, FY 2024/25.
- (11) Department of Motor Vehicles, Expenditure Management Plan – 2nd Qtr. (Oct-Dec), New Motor Vehicle Board, FY 2024/25.
- (12) DMV Expenditure Report; Report Date: 20-Mar-25 [New Motor Vehicle Board].
- (13) Department of Motor Vehicles, Revenue Summary Year to Date, Month Ending Jun 30, 2020, New Motor Vehicle Board, Dealer Fees.
- (14) Department of Motor Vehicles, Revenue Summary Year to Date, Month Ending Jun 30, 2021, New Motor Vehicle Board, Dealer Fees.
- (15) Department of Motor Vehicles, Revenue Summary Year to Date, Month Ending Jun 30, 2022, New Motor Vehicle Board, Dealer Fees.

- (16) Department of Motor Vehicles, Revenue Summary Year to Date, Month Ending Jun 30, 2023, New Motor Vehicle Board, Dealer Fees.
- (17) Department of Motor Vehicles, Revenue Summary Year to Date, Month Ending Jun 30, 2024, New Motor Vehicle Board, Dealer Fees.
- (18) DMV Expenditure Report; Report Date: 02-Sept-22 [New Motor Vehicle Board], Rent.
- (19) DMV Expenditure Report; Report Date: 30-Aug-23 [New Motor Vehicle Board], Rent.
- (20) Governor's Proposed Budget, Fund Condition, Statement fiscal year 2025-26.

No other technical, theoretical, and/or empirical studies or reports were relied upon in drafting the proposed regulations.

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

Prior to the publication of this notice, and at a noticed General Meeting held on November 1, 2024, the Board considered potential amendments to the regulations that are the subject of this rulemaking action. After discussion, the Board considered and adopted the proposed regulations. Fifteen days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to all individuals and entities on the Board's Public Mailing list and Electronic Public Mailing list. The agenda and materials were also posted on the Board's website.

The public was invited to comment at the General Meeting in relation to the proposed changes to the regulations in this notice. No comments by the public were received at the November 1, 2024, General Meeting, and no further public discussion was held prior to publication of the notice. No other alternatives were presented to or considered by the Board.

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 modestly raise fees. The same fees have not been increased since 2012 while expenditures for personal services and other essential operating costs have increased. 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 of the Board. However, the Board has already reduced expenditures, where possible, to offset those increases. These alternatives have been and continue to be implemented. Board staffing is at a historical low with only seven full-time employees. The Board is currently not paying rent, has cancelled various subscriptions, not hired behind staff that left, and duties are being absorbed by existing staff.

The Board's activities are funded by revenues that are dependent upon the vitality of the new motor vehicle industry. The Board's Reserve for economic uncertainties began to decline beginning in fiscal year 2021-22. Subsequent Fund Condition Statements through this fiscal year 2024-25, demonstrate a steady decline in funds. The Fund Condition Statement for fiscal year 2025-26 displays an extreme decline in the Board's Reserve for economic uncertainties. During previous years when sales of new motor vehicles were robust, the Board was able to create an adequate cash reserve. As indicated above, the Board was able to waive all Board fees for all manufacturers, distributors, and dealers for one year. The Board then reduced the fees paid by the industry for nine years prior to reinstating them to their present level.

If action is not taken now, the Board's cash reserve will be entirely depleted by the end of the 2028-29 fiscal year. Conversely, if the proposed regulations are adopted, the Board expects that the benefits of the proposed regulations will be the continued, fully funded operations of the Board.

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

The proposed regulations would not have a significant statewide adverse economic impact directly affecting business. The proposed regulations raise fees by very modest amounts. In light of the economic forecast, the current fees fail to provide income sufficient to fully fund the Board's operations.