

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 add section 551.26 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 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 including 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 the 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).

SECTION 551.26

PURPOSE OF THE REGULATION

The Board proposes to add Section 551.26 relating to representation in protests or petitions. Previously the Board's regulations have contained references to attorneys, agents and representatives that infer representation by a non-attorney or non-California-attorney. However, there is not a regulation pertaining to representation in protests or petitions. Non-California-attorneys have appeared before the Board for decades.

NECESSITY

A revised practice expressly allowing for non-attorney representatives, including out-of-state attorneys, would benefit parties, particularly those that often retain counsel who specialize in this practice area but are located outside of California and are not licensed by the California State Bar.

In the absence of a regulation, the Board has relied on the *pro hac vice* provisions in the California Rules of Court with out-of-state attorneys submitting an application to appear *pro hac vice* identifying associated California counsel. The Board is seeking to eliminate this process by proposing to add Section 551.26 to Title 13 of the California Code of Regulations.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

The Board has determined that the proposed regulation 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 regulation only impacts licensed new motor vehicle dealers, manufacturers, and distributors within the Board's jurisdiction that file a Protest or Petition with the Board. This includes approximately 1,500 to 2,000 new car, motorcycle, all-terrain vehicle, low-speed vehicle and recreational vehicle dealers and approximately 150-200 manufacturers or distributors. In the last 10 years, there have been on average 46 protests filed per year and there have been only 5 petitions filed in the last 10 years.

BENEFITS OF PROPOSED REGULATION:

Procedures regarding representation in protests or petitions are being clarified for litigants that appear before the Board to have the information necessary to effectively represent themselves or their clients. This means the Board will continue to quickly and economically resolve statutorily enumerated disputes 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. There are no known benefits to the Board of this proposed regulation to the health and welfare of California residents, worker safety and the state's environment.

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 regulation:

- (1) Memorandum dated September 30, 2022, from Timothy M. Corcoran and Robin P. Parker to the Policy and Procedure Committee regarding Discussion and Consideration of Proposed Regulation Regarding Representation in Protests or Petitions (13 CCR § 551.26)

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

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed General Meeting held on November 7, 2022. Fourteen (14) days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the November 7, 2022, General Meeting in relation to the regulation in this notice, and no further public discussion was 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 regulation will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulations, are legally required to enforce the regulations, or derive a benefit from or incur an obligation from the enforcement of the regulations.

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

There are no associated costs with the proposed regulatory amendment; they clarify mailing procedures for franchised new motor vehicle dealers and their franchisors (new motor vehicle manufacturers or distributors) who choose to file a protest or petition with the Board.