

Introduced by Senators Padilla, Florez, and Harman
(Coauthor: Assembly Member Fuentes)

February 26, 2009

An act to add Section 11713.13 to the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 424, as introduced, Padilla. Vehicles: manufacturers and distributors.

(1) Existing law generally requires a manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to, among other things, dishonor a warranty, rebate, or other incentive offered to the public or a dealer, as specified, or to unfairly discriminate in favor of a dealership owned or controlled, in whole or part, by a manufacturer or an entity that controls or is controlled by a manufacturer or distributor.

This bill would enact the Dealer Franchise Fairness Act of 2009 and would prohibit a manufacturer, manufacturer branch, distributor, or distributor branch from preventing, or attempting to prevent, by contract or otherwise, a dealer from acquiring, adding, or maintaining a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the dealer currently operates a dealership, provided that the dealer complies with any reasonable facilities requirements of the manufacturer or distributor, or requiring a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including economic conditions. In any

proceeding under these provisions in which the reasonableness of a facility requirement is an issue, the manufacturer or distributor would have the burden of proof.

The bill would also prohibit additional specified unlawful acts by a manufacturer, manufacturer branch, distributor, or distributor branch against a dealer.

(2) Under existing law, a violation of the above provisions relating to occupational licensing and business regulations in the Vehicle Code is a misdemeanor.

Because this bill would create a new crime, it would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The distribution, sale, and service of new motor vehicles in
4 the State of California vitally affects the general economy of this
5 state and the public welfare.

6 (b) The new motor vehicle franchise system, which operates
7 within a strictly defined and highly regulated statutory scheme,
8 assures the consuming public of a well-organized distribution
9 system for the availability and sale of new motor vehicles
10 throughout the state; provides a network of quality warranty, recall,
11 and repair facilities to maintain those vehicles; and creates a
12 cost-effective method for the state to police those systems through
13 the licensing and regulation of private sector franchisors and
14 franchisees.

15 (c) In 2008, over 125 new motor vehicle dealerships closed their
16 doors in California. Those closures triggered job losses in the
17 communities those dealerships served; diminished sales tax and
18 other tax revenues for those communities; reduced the number of
19 service bays necessary to perform warranty, recall, and other

1 service repairs; and weakened interbrand and intrabrand price
2 competition for consumers.

3 (d) Many of those closures stemmed from the expense of
4 unreasonable franchisor facilities requirements that denied dealers
5 enough flexibility to configure their dealerships in a manner that
6 would have permitted them to remain in business and continue to
7 service the needs of their communities and customers.

8 (e) It is the intent of this act to ensure that new motor vehicle
9 dealers are treated fairly by their franchisors, that facility
10 requirements imposed by franchisors are reasonable, that assistance
11 for dealers upon termination, nonrenewal, or cancellation of a
12 franchise is adequate, and that dealers are properly indemnified
13 for actions of auto manufacturers or distributors that are beyond
14 their control.

15 SEC. 2. This act shall be known and may be cited as the
16 “Dealer Franchise Fairness Act of 2009.”

17 SEC. 3. Section 11713.13 is added to the Vehicle Code, to
18 read:

19 11713.13. It is unlawful and a violation of this code for any
20 manufacturer, manufacturer branch, distributor, or distributor
21 branch licensed under this code to do, directly or indirectly through
22 an affiliate, any of the following:

23 (a) Prevent, or attempt to prevent, by contract or otherwise, a
24 dealer from acquiring, adding, or maintaining a sales or service
25 operation for another line make of motor vehicles at the same or
26 expanded facility at which the dealer currently operates a
27 dealership, provided that the dealer complies with any reasonable
28 facilities requirements of the manufacturer or distributor.

29 (b) Require a dealer to establish or maintain exclusive facilities,
30 personnel, or display space if the imposition of the requirement
31 would be unreasonable in light of all existing circumstances,
32 including economic conditions. In any proceeding under this
33 subdivision or subdivision (a) in which the reasonableness of a
34 facility requirement is an issue, the manufacturer or distributor
35 shall have the burden of proof.

36 (c) Require, by contract or otherwise, a dealer to make a material
37 alteration, expansion, or addition to any dealership facility, unless
38 the required alteration, expansion, or addition is reasonable in light
39 of all existing circumstances, including economic conditions. In
40 any proceeding in which a required facility alteration, expansion,

1 or addition is an issue, the manufacturer or distributor shall have
2 the burden of proof.

3 (d) Fail to pay to a dealer, within 90 days of termination,
4 cancellation, or nonrenewal of a franchise, all of the following:

5 (1) The dealer cost, plus any charges made by the manufacturer
6 or distributor for vehicle distribution or delivery and the cost of
7 any dealer-installed original equipment accessories, less any
8 amount invoiced to the vehicle and paid by the manufacturer or
9 distributor to the dealer, for all new and undamaged vehicles in
10 the dealer's inventory that were acquired by the dealer from the
11 manufacturer, distributor, or another new motor vehicle dealer
12 franchised to sell vehicles of the same line-make, within 24 months
13 of termination, cancellation, or nonrenewal of the franchise.

14 (2) The dealer cost for all unused and undamaged supplies,
15 parts, and accessories listed in the manufacturer's current parts
16 catalog and in their original packaging, except that sheet metal
17 may be packaged in a comparable substitute for the original
18 package.

19 (3) The fair market value of each undamaged sign owned by
20 the motor vehicle dealer and bearing a common name, trade name,
21 or trademark of the manufacturer or distributor if acquisition of
22 such sign was recommended or required by the manufacturer or
23 distributor.

24 (4) The fair market value of all special tools, computer systems,
25 and equipment that were recommended, required, or purchased
26 from the manufacturer or distributor that are in usable condition,
27 excluding normal wear and tear.

28 (5) The dealer costs of handling, packing, loading, and
29 transporting any items or inventory for repurchase by the
30 manufacturer or distributor.

31 (e) Fail, upon demand, to indemnify any existing or former
32 franchisee and the franchisee's successors and assigns from any
33 and all damages sustained and attorneys fees and other expenses
34 reasonably incurred by the franchisee that result from or relate to
35 any claim made or asserted by a third party against the franchisee
36 to the extent the claim results from any of the following:

37 (1) The condition, characteristics, manufacture, assembly, or
38 design of any vehicle, parts, accessories, tools, or equipment, or
39 the selection or combination of parts or components manufactured
40 or distributed by the manufacturer or distributor.

1 (2) Service systems, procedures, or methods the franchisor
2 required or recommended the franchisee to use.

3 (3) Improper use of nonpublic personal information obtained
4 from a franchisee concerning any consumer, customer, or employee
5 of the franchisee.

6 (4) Any act or omission of the manufacturer or distributor for
7 which the franchisee would have a claim for contribution or
8 indemnity under applicable law or under the franchise, irrespective
9 of and without regard to any prior termination or expiration of the
10 franchise.

11 SEC. 4. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.