

**STATE OF CALIFORNIA
MEMO**



**To: All Licensed Vehicle Manufacturers/Distributors
Public Mailing List**

From: New Motor Vehicle Board

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Date: January 2022

**Subject: Delivery and Preparation Obligations/Schedule of Compensation
Warranty Reimbursement Schedule (or Formula for Recreation
Vehicles)**

Statutorily Required Notices:

- (1) Statutory Notice Re: Factory Ownership of Dealership**
- (2) Annual Statutory Notice Re: Dealership Development Stores**

**Delivery and Preparation Obligations/Schedule of Compensation
Warranty Reimbursement Schedule (or Formula for Recreational Vehicles)**

As part of the Board's educational outreach efforts, the industry is reminded that Vehicle Code sections 3064¹ and 3074² require that every franchisor **shall** file a copy of their delivery and preparation obligations, as well as, a schedule of compensation, with the New Motor Vehicle Board ("Board"). Additionally, Vehicle Code section 3065³ requires

¹ Section 3064(a) provides, in part, that "[a] copy of the delivery and preparation obligations...and a schedule of compensation to be paid to franchisees for the work and services they shall be required to perform in connection with those delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule." This provision applies to manufacturers and distributor of cars, motorcycles, all-terrain vehicles, buses, and heavy-duty trucks.

² The requirements in Section 3074(a) are almost identical to Section 3064(a) but apply to recreational vehicle manufacturers and distributors.

³ Section 3065(a) provides, in part, that "[e]very franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to satisfy the warranty obligations of the franchisor, including, but not limited to, diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule with the board." This provision applies to manufacturers and distributor of cars, motorcycles, all-terrain vehicles, buses, and heavy-duty trucks.

that every franchisor shall file a copy of its warranty reimbursement schedule with the Board. Section 3075⁴ requires that every franchisor shall file a copy of its warranty reimbursement schedule or formula with the Board.

All filings in this regard are maintained for three years. Therefore, it is incumbent that each manufacturer and distributor file a copy of their current delivery and preparation obligations (PDI), PDI schedule of compensation, and warranty reimbursement schedule (or formula for RV manufacturers/distributors) with the Board.

If you do not provide PDI reimbursement or warranty reimbursement, or do not have dealers in California, please indicate as such in a letter to the Board. Otherwise, please file the above documents with the Board by Friday, April 29, 2022. These documents should be filed with the Board at least every three years, or more often if they are modified

Statutorily Required Notices

Subdivision (o) of Vehicle Code section 11713.3 prohibits factory-owned dealerships within a 10-mile radius (relevant market area) of a privately-owned dealership of the same line-make. There are two limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)). The statutorily required notices that are filed with the Board provide as follows:

(1) Statutory Notice Re: Factory Ownership of Dealership

Vehicle Code section 11713.3(o)(3)(A) requires every manufacturer, branch, and distributor that owns or operates a dealership for a temporary period (not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months) shall give written notice to the Board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(2) Annual Statutory Notice Re: Dealer Development Stores

Vehicle code section 11713.3(o)(3)(B) requires every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined shall give written notice to the Board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

Filings Subject to Public Disclosure

The Board maintains all of these filings as public records subject to disclosure under the California Public Records Act (Gov. Code § 6250 et seq.).

⁴ The requirements in Section 3075(a) apply to recreational vehicle manufacturers and distributors and reference the filing of a warranty reimbursement schedule or formula with the Board.

Please see the attachment titled “What needs to be filed?” for further information. If you have any questions or require additional information, please do not hesitate to contact Danielle Phomsopha, Senior Staff counsel at Danielle.Phomsopha@nmvb.ca.gov or (916) 327-3129.

California Vehicle Code Section 3064

(a) Every franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new motor vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee’s only responsibility for product liability between the franchisee and the franchisor but shall not in any way affect the franchisee’s responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid to franchisees for the work and services they shall be required to perform in connection with those delivery and preparation obligations shall be filled with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, if a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

...
(Amended by Stats. 2013, Ch. 512, Sec. 12. (SB 155) Effective January 1, 2014.)

California Vehicle Code Section 3065

(a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to satisfy the warranty obligations of the franchisor, including, but not limited to, diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule with the board. The warranty reimbursement schedule shall be reasonable with respect to the time and compensation allowed to franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a warranty repair.

(1) The franchisor shall use time allowances for the diagnosis and performance of work and service that are reasonable and adequate for a qualified technician to perform the work of services. ...

(2) A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time or compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time or compensation applicable to a specific warranty repair only upon 15 days’ prior written notice to the franchisee.

...
(b) In determining what constitute a reasonable warranty reimbursement schedule under the section, a franchisor shall compensate each of its franchisees for parts and

labor at rates equal to the franchisee's retail labor rate and retail parts rate, as established pursuant to Section 3065.2. Nothing in this subdivision prohibits a franchisee and a franchisor from entering into a voluntary written agreement signed by both parties that compensates for labor and parts used to satisfy the warranty obligations of the franchisor at rates other than the franchisee's retail rates, provided that the warranty reimbursement schedule adequately and fairly compensates the franchisee.

...
(Amended by Stats. 2019, Ch. 796, Sec. 11. (AB 179) Effective January 1, 2020.)

California Vehicle Code Section 3074

(a) A franchisor shall specify to its franchisees the delivery and preparation obligations of the franchisees prior to delivery of new recreational vehicles to retail buyers. A copy of the delivery and preparation obligations, which shall constitute the franchisee's only responsibility for product liability between the franchisee and the franchisor but which shall not in any way affect the franchisee's responsibility for product liability between the purchaser and either the franchisee or the franchisor, and a schedule of compensation to be paid franchisees for the work and services they shall be required to perform in connection with the delivery and preparation obligations shall be filed with the board by franchisors, and shall constitute the compensation as set forth on the schedule. The schedule of compensation shall be reasonable, with the reasonableness thereof being subject to the approval of the board, in a franchisee files a notice of protest with the board. In determining the reasonableness of the schedules, the board shall consider all relevant circumstances, including, but not limited to, the time required to perform each function that the dealer is obligated to perform and the appropriate labor rate.

...
(Amended by Stats. 2015, Ch. 407, Sec. 10. (AB 759) Effective January 1, 2016.)

California Vehicle Code Section 3075

(a) A franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of repair and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed the franchisee for the warranty work and all other conditions of the obligation. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a notice of protest with the board.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria.

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(Added by Stats. 2003, Ch. 703, Sec. 11. Effective January 1, 2004.)

California Vehicle Code Section 11713.3(o)

It is unlawful and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

...

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor, or an entity that controls or is controlled by a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) A manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(B) A manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

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