

AB 2107

PROTECTING THE FRANCHISE SYSTEM

AB 2107, a comprehensive franchise bill sponsored by the California New Car Dealers Association (CNCDA), seeks to continue to protect the franchise system and California new car buyers by:

- STRENGTHENING** California's franchise laws
- ADDRESSING** inappropriate treatment of dealers by manufacturers
- ENFORCING** manufacturer accountability for unlawful actions against dealers
- CONFORMING** California franchise laws to recent actions in other states

California's new motor vehicle franchise system vitally affects the general economy of this state and the public welfare by providing the consuming public with a well-organized distribution system for the availability and sale of new vehicles and ensuring a network of quality warranty, recall, and repair facilities to maintain those vehicles.

Over multiple decades, California franchise laws have been enacted in response to onerous requirements continuously imposed by manufacturers upon their franchised dealers. AB 2107 contains multiple provisions designed to improve California's franchise laws; key components include:

1 RETAIL REIMBURSEMENT ON WARRANTY



Existing law states that dealers should be reasonably compensated for warranty work and customer retail pay should be included in assessing such reasonableness. **AB 2107:**

- › **Clarifies** reasonableness by establishing a process for how a dealer can demonstrate the retail rates for parts and labor and be reimbursed at those retail rates for warranty work.
- › **Defines** how the factory can respond to a request for retail rates including notification guidelines and a timeline.
- › **Establishes** protections for dealers pursuing this newly established retail reimbursement on warranty process from adverse actions and penalties from the manufacturer including assessing surcharges, limiting vehicle or parts allocations and conducting audits.

2 AUTOMAKER COMPETITION AGAINST DEALERS

Currently an automaker cannot compete against a dealer within a relevant market area. **AB 2107:**

- › **Expands** this to a statewide prohibition.
- › **Establishes** that this also includes subscription-type programs in California unless the automaker uses franchisees to operate the programs.
- › **Clarifies** what are "affiliates" under the Vehicle Code to ensure all factory affiliates are captured.

3 NEW DEALER PROTEST AUTHORITY AT THE NEW MOTOR VEHICLE BOARD

The New Motor Vehicle Board has limited authority to hear only certain types of protests from a dealer – franchise terminations, additional dealership locations, and warranty reimbursement claims. **AB 2107:**

- › **Expands** the types of protests that a dealer can file at the Board, including reviews of performance standards of incentive programs, automaker competition against a dealer and retail warranty reimbursement rates.
- › **Clarifies** that the NMVB can hear relevant franchise law violations by a manufacturer when a dealer files a protest.
- › **Grants** protests filed by a dealer priority over any relevant lawsuit filed by the manufacturer in Superior Court.

4 15 YEAR FACILITY UPGRADE STANDARD

Presently, California only requires a dealer to upgrade their facility if the requirement is reasonable in light of existing circumstances, including economic conditions and advancements in vehicular technology. **AB 2107:**

- › **Adds** a new standard that a required facility upgrade is not reasonable if the dealer has modified their facility in the last 15 years.
- › **Expands** the current Buy California provisions to signs thereby prohibiting the manufacturer from requiring the use of a specific vendor if local vendors are available.
- › **Clarifies** that a manufacturer cannot limit a dealer's method of payment for signs.



5 ASSOCIATION PROTEST ABILITY AT THE NEW MOTOR VEHICLE BOARD

Following CNCDA's last franchise bill, the Association was granted the authority to bring a protest against an automaker's export and sale-for-resale policies. CNCDA filed a protest against Jaguar Land Rover and won. **AB 2107:**

- › **Extends** this protest authority beyond 2019, which is when this authority is currently set to end.
- › **Clarifies** the definition of "adverse actions" to include manufacturer threats or actions taken in response to questions raised by the NMVB.
- › **Deters** against future egregious export and sale-for-resale policies by the manufacturers.



6 UPDATING PERFORMANCE STANDARD RESTRICTIONS

Despite specific performance standards criteria enacted just five years ago, recent factory performance standards have been used in ways that raise questions about the fairness and equity of how dealers are treated. **AB 2107:**

- › **Builds** upon existing law which requires all performance standards be reasonable with a dealer's demographics, market characteristics, allocation, local and statewide economic circumstances and historical performance of the line-make.
- › **Clarifies** that factory programs where dealers have to pay any money in order to participate in the program is not a valid incentive program.
- › **Prohibits** any performance standard that measures a dealer's retail customer sales in the service department.



7 ADDRESSING BRAND SPIN-OFFS AND AFFILIATES

When a manufacturer is allowed to spin-off a new line-make of an existing product or allege that a new model can be sold directly by the manufacturer's affiliate solely to exclude dealers who previously sold those same vehicles, California's franchise laws are undermined. **AB 2107:**

- › **Specifies** that a dealer, who sold a vehicle to a customer, can continue to provide service, parts and accessories for the vehicle as long as the dealer maintains the same franchise.
- › **Restricts** the manufacturer's ability to force dealers to repair a vehicle that the dealer is not allowed to sell or lease.

8 NON-FACTORY SERVICE CONTRACTS

California allows dealers to sell ancillary products - like service contracts or debt cancellation agreements - to customers free of any penalty from the manufacturer for not selling the manufacturer's approved or endorsed product. **AB 2107:**

- › **Clarifies** that treating dealers differently when providing financing or advancing money because the dealer sold a non-approved product is prohibited.
- › **Preserves** the existing statutory disclosure that dealers must give to customers when selling an ancillary product that is not approved or endorsed by the manufacturer.

9 INDEMNIFICATION OF DEALERS

While manufacturers indemnify their dealers for causes that result in the dealers being sued, manufacturers and their affiliates are increasingly requiring dealers to indemnify them for actions that the dealers are forced to perform. **AB 2107:**

- › **Provides** indemnification to dealers for any act that the manufacturer or affiliate imposes on the dealer.
- › **Prohibits** requiring a dealer to indemnify the manufacturer or affiliate for any program or requirement imposed on the dealer.

10 OTHER FRANCHISE LAW CHANGES



AB 2107 has several other provisions that seek to balance the inequities imposed by manufacturers upon dealers. **AB 2107:**

- › **Restricts** the manufacturer's ability to select specific vendors for a dealer's digital services including websites, data management systems, and advertising.
- › **Adds** new protections for dealers relating to the manufacturer's ability to exercise a right of first refusal when selling a franchise.
- › **Prevents** the manufacturer's ability to restrict or discourage dealers from verifying customer service bulletins and campaigns.