

S274625

**IN THE
SUPREME COURT OF CALIFORNIA**

EVERARDO RODRIGUEZ et al.,
Plaintiffs and Appellants,

v.

FCA US, LLC,
Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO
CASE NO. E073766

**EXHIBITS TO MOTION FOR JUDICIAL NOTICE
Volume 16 of 16 • Pages 1841 – 1937 of 1937**

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STATE OF CALIFORNIA

VEHICLE CODE



1980

VEHICLE CODE

**As Recodified and Reenacted by the 1959 Regular Session
of the Legislature and
as Amended to the Close of the 1980 Regular Session
and**

OTHER STATUTES

Relating to the Use and Operation of Motor Vehicles

Published by the

DEPARTMENT OF MOTOR VEHICLES

SACRAMENTO, CALIFORNIA

For sale at all offices of the
DEPARTMENT OF MOTOR VEHICLES
\$2 including tax



A MESSAGE FROM THE DIRECTOR

DORIS V. ALEXIS
Director

The inch-thick volume you hold is a far cry from whatever document was published in 1901 to record the laws regulating operation of motor vehicles. On January 15 of that year legislation was enacted authorizing the licensing of "bicycle, tricycles, automobiles carriages, carts and similar vehicles."

The Department of Motor Vehicles itself was not created until 1915, when there were fewer than 165,000 motor vehicles on the road, and even fewer licensed drivers.

Thus was born the complex system of motor vehicle regulation in California, to evolve many years later as this edition of the 1980 Vehicle Code.

Today, with the number of vehicles approaching twenty million, and with nearly sixteen million licensed drivers, the breadth of this 1980 edition is understandable.

The Department is charged today with responsibility for protecting the public interest and promoting public safety on California's roads and highways, a charge which will be carried out under this collection of laws. This 1980 edition includes more than 270 new or amended Vehicle Code laws enacted by the 1980 Legislature, covering a variety of vehicle-and driver-related matters.

Of all the laws, none is as important as those which contribute to traffic safety. Much of the new legislation recorded in this volume seeks to encourage attention to the urgent need for greater care and concern for the safety of California's people in this motorized world. We in the Department of Motor Vehicles share that concern.

This 1980 Vehicle Code does not make for light reading. A summarized version, written in layman's language, is available in the form of the California Driver's Handbook, available in several languages at any of the Department's 150 field offices.

Doris V. Alexis

III

FOREWORD

The Department of Motor Vehicles of the State of California is directed to publish and sell the Vehicle Code of California by the following statutory provision:

"1656. (a) The department shall publish the complete text of the California Vehicle Code together with other laws relating to the use of highways or the operation of motor vehicles at least once every two years and may republish the code and laws and distribute the same as may be deemed advisable without charge upon written request of any state or local governmental officer or agency, or of any federal agency. Paperback copies of the Vehicle Code may be distributed without charge to any public secondary school in this state in quantities not to exceed one for each driver training and education instructor and one for each public secondary school library. The department shall sell and distribute the California Vehicle Code to all other persons at a charge sufficient to pay the entire actual cost of publishing and distributing the code, except the charge shall not exceed three dollars (\$3). In determining the amount of the charge, a fraction of a dollar shall be disregarded, unless it exceeds fifty cents (\$.50), in which case it shall be treated as one full dollar. The receipts from the sale of such publications shall be deposited in the Motor Vehicle Account.

(b) The department shall publish a synopsis or summary of the laws regulating the operation of vehicles and the use of the highways and may deliver a copy thereof without charge with each original vehicle registration and with each original driver's license. The department shall publish such number of copies of the synopsis or summary in the Spanish language as the director determines are needed to meet the demand for such copies. The department shall furnish both English and Spanish copies to its field offices and to law enforcement agencies for general distribution and, when it does so, shall furnish the copies without charge."

The State Edition of the Vehicle Code contains the text recodified by Chapter 3, Statutes of 1959, as amended by chapters enacted subsequently in the Statutes of 1959 through 1980.

Prior to 1967 the Legislature met every other year (in odd-numbered years) to consider matters of general legislation. Special sessions were also conducted in even-numbered years to consider budgetary items and matters placed before the Legislature by special request of the Governor. The Vehicle Code was published every other year, following the full sessions of the Legislature.

Commencing in 1967, the Legislature met every year.

In 1973, the two-year Legislative Session began. This was the result of Proposition 4, Assembly Constitutional Amendment (ACA) 95 of 1972.

The two-year session formally commences at noon on the first Monday in December of even-numbered years and adjourns *sine die* on midnight of November 30 of the succeeding even-numbered year. There is a mid-session recess from September 15 to January 6.

Generally statutes will take effect on January 1 of each year provided they were enacted 90 days prior to that date and were not urgency measures or bills enacted in Special Session. Urgency statutes take effect upon their enactment and bills enacted at Special Sessions take effect 91 days after adjournment of the Special Session.

An Appendix contains "other laws relating to the use of highways or the operation of motor vehicles," as specified in Section 1656.

A List of Violations of the Vehicle Code, revised and brought up to date every year, is also included in the State Edition.

The textual devices used in past editions are retained. Boldface italics are used to indicate new provisions not contained in former editions. Parentheses in the text—()—indicate that material has been deleted by amendment. Deleted material is printed in seven-point type in the footnotes. Deletions effected by the

1979 Legislature are dropped from the footnotes of the present edition.

Footnotes primarily denote legislative history of the sections codified by Chapter 3, Statutes of 1959, or added to the code since then. In most cases the history is confined to noting the number of the statutory chapter affecting the section, the year of the statutory action, and the effective date or operative date.

For legislative history of the Vehicle Code as enacted in Chapter 27, Statutes of 1935, and of its sections prior to the 1959 recodification, reference may be made to the 1957 or earlier printings of the Vehicle Code in the State Edition, or to an annotated edition. Most editions of the code published in 1959 and 1961 contain Tables of Derivation and Disposition of the sections renumbered in the 1959 recodification. For purposes of the State Edition, these tables were deemed to be of diminishing reference value effective with the 1963 edition, and have not been included in subsequent issues.

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VEHICLE CODE

An act to repeal and re-enact the Vehicle Code.

[Chapter 3, Statutes of 1959, as amended to the close of the Regular Session of the Legislature in 1980.]

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

GENERAL PROVISIONS

Short Title

1. This act shall be known as the Vehicle Code.

Continuation of Existing Law

2. The provisions of this code, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Tenure of Office

3. All persons who, at the time this code goes into effect, hold office under the code repealed by this code, which offices are continued by this code, continue to hold them according to their former tenure.

Pending Proceedings and Accrued Rights

4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure thereafter taken therein shall conform to the provisions of this code so far as possible.

Constitutionality

5. If any portion of this code is held unconstitutional, such decision shall not affect the validity of any other portion of this code.

Construction of Code

6. Unless the provision or the context otherwise requires, these general provisions and rules of construction shall govern the construction of this code.

Effect of Headings

7. Division, chapter, and article headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

Amended Ch. 1966, Stats. 1959. Effective Sept. 18, 1959.

Delegation of Powers and Duties

8. Whenever, by the provisions of this code, a power is granted to a public officer or a duty imposed upon such an officer, the power may be exercised or the duty performed by a deputy of the officer or by a person authorized pursuant to law by the officer.

Required Writings

9. Whenever any notice, report, statement, or record is required by this code, it shall be made in writing in the English language.

References to Statutes

10. Whenever any reference is made to any portion of this code or of any other law, such reference shall apply to all amendments and additions heretofore or hereafter made.

"Section" and "Subdivision"

11. "Section" means a section of this code unless some other statute is specifically mentioned and "subdivision" means a subdivision of the section in which that term occurs unless some other section is expressly mentioned.

the sale of new vehicles to dealers or for directing or supervising in whole or in part the manufacturer's representatives.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.
Amended Ch. 797, Stats. 1978. Effective January 1, 1979.

Manufacturer's Gross Vehicle Weight Rating

390. "Manufacturer's gross vehicle weight rating" means the weight in pounds of the chassis of a truck or truck tractor with lubricants, radiator full of water, full fuel tank or tanks plus the weights of the cab or driver's compartment, body, special chassis and body equipment and pay load as authorized by the chassis manufacturer.

In the event a vehicle is equipped with an identification plate or marker bearing the manufacturer's name and manufacturer's gross vehicle weight rating, the rating stated thereon shall be prima facie evidence of the manufacturer's gross vehicle weight rating.

Metal Tire

395. A "metal tire" is a tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

Mobilehome

396. () *"Mobilehome" is a structure as defined in Section 18008 of the Health and Safety Code. As used in this code, a mobilehome is a trailer coach which is in excess of eight feet in width or in excess of 40 feet in length and is subject to the registration requirements of this code.*

Added Ch. 1248, Stats. 1975. Effective January 1, 1976.
Amended Ch. 1160, Stats. 1979. Effective January 1, 1980. Supersedes Ch. 194.
Repealed and added Ch. 1150, Stats. 1980. Effective January 1, 1981. Supersedes Ch. 1149.
The repealed section read as follows:
"Mobilehome" is a trailer coach designed and equipped to contain one or more dwelling units, as defined in Section 18005.5 of the Health and Safety Code, to be used with or without a permanent foundation system and which is in excess of 8 feet in width or in excess of 40 feet in length."

Motorcycle

400. A "motorcycle" is any motor vehicle other than a tractor having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground and weighing less than one thousand five hundred pounds, except that four wheels may be in contact with the ground when two of the wheels are a functional part of a sidecar.

Amended Ch. 168, Stats. 1967, by terms of an urgency clause, effective May 22, 1967.

Motor-Driven Cycle

405. A "motor-driven cycle" is any motorcycle, including every motor scooter, with a motor which produces less than 15 gross brake horsepower, and every bicycle with motor attached. A motor-driven cycle does not include a motorized bicycle, as defined in Section 406.

Amended Ch. 1915, Stats. 1961. Effective Sept. 15, 1961.
Amended Ch. 422, Stats. 1963. Effective Sept. 20, 1963.
Amended Ch. 987, Stats. 1975. Effective January 1, 1976.

Motorized Bicycle

406. A "motorized bicycle" is any two-wheeled or three-wheeled device having fully operative pedals for propulsion by human power, or having no pedals if powered solely by electrical energy, and an automatic transmission and a motor which produces less than 2 gross brake horsepower and is capable of propelling the device at a maximum speed of not more than 30 miles per hour on level ground.

Added Ch. 987, Stats. 1975. Effective January 1, 1976.

Motorized Quadricycle

407. A "motorized quadricycle" is a four-wheeled device designed to carry not more than two persons, including the driver, and having either an electric motor or a motor with an automatic transmission developing less than two gross brake horsepower and capable of propelling the device at a maximum speed of not more than 30 miles per hour on level ground.

The device shall be utilized only by a person who by reason of physical disability is otherwise unable to move about as a pedestrian or by a senior citizen as defined in Section 13000.

Added Ch. 756, Stats. 1980. Effective January 1, 1981.

Motor Truck

410. A "motor truck" is a motor vehicle designed, used, or maintained primarily for the transportation of property.

Motor Vehicle

415. A "motor vehicle" is a vehicle which is self-propelled.

Muffler

425. A "muffler" is a device consisting of a series of chambers or baffle plates, or other mechanical design, for the purpose of receiving exhaust gas from an internal combustion engine, and effective in reducing noise.

New Motor Vehicle Dealer

426. "New motor vehicle dealer" is a dealer, as defined in Section 285, who, in addition to the requirements of that section, acquires for resale new and unregistered motor vehicles from manufacturers or distributors of such motor vehicles. No distinction shall be made, nor any different construction be given to the definition of "new motor vehicle dealer" and "dealer" except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2. The provisions of Sections 3001 and 3003 shall not, however, apply to a dealer who deals exclusively in motorcycles.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.
Amended Ch. 78, Stats. 1973. Effective Jan. 1, 1974.
Amended Ch. 943, Stats. 1975. Effective Jan. 1, 1976.

New Vehicle

430. A "new vehicle" is a vehicle that has never been sold and operated, or registered with the department, or registered with the appropriate agency of authority, or sold and operated upon the highways of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country. The word "sold" shall not be deemed to include or extend to any sale made by a manufacturer or a distributor to a dealer or by a dealer to another dealer licensed under this code.

Amended Ch. 820, Stats. 1965. Effective Sept. 17, 1965.

Nonresident

435. "Nonresident" is a person who is not a resident of this state.

Official Traffic Control Device

440. An "official traffic control device" is any sign, signal, marking, or device (), *consistent with Section 21400*, placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

Amended Ch. 671, Stats. 1980. Effective January 1, 1981.
The 1980 amendment added the italicized material and at the point (s) indicated deleted the following: "not inconsistent with this code"

Official Traffic Control Signal

445. An "official traffic control signal" is any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and proceed and which is erected by authority of a public body or official having jurisdiction.

Oil Well Production Service Unit

450. An "oil well production service unit" is any vehicle specifically designed for and used exclusively in servicing oil wells which is only incidentally operated or moved on a highway.

Added Ch. 133, Stats. 1969. Effective Nov. 10, 1969.

Unladen Weight Exclusions

661. Unladen weight shall not include the following machinery, equipment or attachment which is attendant to the efficient operation of the body or vehicle:

- (a) Equipment used for loading, compacting, or unloading of refuse.
- (b) Transmix cement equipment.
- (c) Temporary equipment used to contain or support the load which does not change the body classification.
- (d) Any camper unit that is temporarily attached to a vehicle.
- (e) Refrigeration equipment.

Added Ch. 2108, Stats. 1963. Effective Sept. 20, 1963.

Used Vehicle

665. A "used vehicle" is a vehicle that has been sold and operated on the highways of this state, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. The word "sold" shall not be deemed to include or extend to any sale made by a manufacturer or a distributor to a dealer or by a dealer to another dealer licensed under this code.

Amended Ch. 820, Stats. 1965. Effective Sept. 17, 1965.
Amended Ch. 801, Stats. 1967. Effective Nov. 8, 1967.

U-turn

665.5. A "U-turn" is the turning of a vehicle upon a highway so as to proceed in the opposite direction whether accomplished by one continuous movement or not.

Added Ch. 622, Stats. 1970. Effective Nov. 23, 1970.

Utility Trailer

666. A "utility trailer" is any trailer or semitrailer used solely for the transportation of the user's personal property and which does not exceed a gross weight of 6,000 pounds.

Added Ch. 1807, Stats. 1961. Effective Sept. 15, 1961.

Vehicle

670. A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.

Amended Ch. 987, Stats. 1975. Effective Jan. 1, 1976.

Vehicle Manufacturer

672. "Vehicle manufacturer" is any person who produces from raw materials or basic components a vehicle of a type subject to registration under this code, or who permanently alters for purposes of retail sales, new commercial vehicles by converting the vehicles into housecars which display the insignia of approval required by Section 18056 of the Health and Safety Code and any regulations issued pursuant thereto by the Department of Housing and Community Development. As used in this section, "permanently alters" does not include the permanent attachment of a camper to a vehicle.

(b) Unless a vehicle manufacturer either grants franchises to franchisees in this state, or issues vehicle warranties directly to franchisees in this state or consumers in this state, such manufacturer shall have an established place of business or a representative in this state.

(c) The scope and application of this section shall be limited to the provisions of Division 2 (commencing with Section 1500) and Division 5 (commencing with Section 11100).

Added Ch. 873, Stats. 1977. Effective January 1, 1978.

Vehicle Salesman

675. (a) "Vehicle salesman" is a person not otherwise expressly excluded by this section, who does one or a combination of the following:

(1) Is employed as a salesman by a dealer as defined in Section 285, or who, under any form of contract, agreement, or arrangement with a dealer, for commission, money, profit, or other thing of value, sells, exchanges, buys, or offers for sale, negotiates, or attempts to negotiate, a sale, or exchange of an interest in a vehicle required to be registered under this code.

(2) Induces or attempts to induce any person to buy or exchange an interest in a vehicle required to be registered, and who receives or expects to receive a commission, money, brokerage fees, profit, or any other thing of value, from either the seller or purchaser of said vehicle.

(3) Exercises managerial control over the business of a licensed vehicle dealer or who supervises vehicle salesmen employed by a licensed dealer, whether compensated by salary or commission, including but not limited to any person who is employed by said dealer as a general manager, assistant general manager or sales manager, or any employee of a licensed vehicle dealer who negotiates with or induces a customer to enter into a security agreement or purchase agreement or purchase order for the sale of a vehicle on behalf of said licensed vehicle dealer.

(b) The term "vehicle salesman" does not include:

(1) Representatives of insurance companies, finance companies, or public officials who in the regular course of business, are required to dispose of, or sell vehicles under a contractual right or obligation of the employer, or in the performance of an official duty, or in authority of any court of law; provided, such sale is for the purpose of saving the seller from any loss or pursuant to the authority of a court of competent jurisdiction.

(2) Persons who are licensed as a manufacturer, transporter, distributor, or representative.

(3) Persons exclusively employed in a bona fide business of exporting vehicles, or of soliciting orders for the sale and delivery of vehicles outside the territorial limits of the United States.

(4) Persons not engaged in the purchase or sale of vehicles as a business, disposing of vehicles acquired for their own use, or for use in their business when the same shall have been so acquired and used in good faith, and not for the purpose of avoiding the provisions of this code.

(5) Persons regularly employed as salesmen by persons who are engaged in a business involving the purchase, sale or exchange of boat trailers.

(6) Persons regularly employed as salesmen by persons who are engaged in a business activity which does not involve the purchase, sale or exchange of vehicles except incidentally in connection with the purchase, sale or exchange of vehicles of a type not subject to registration under this code, boat trailers or midget autos or racers advertised as being built exclusively for use by children.

(7) Persons licensed as a vehicle dealer under this code doing business as a sole ownership or member of a partnership or a stockholder and director of a corporation licensed as a vehicle dealer under this code, provided, however, that such persons shall engage in the activities of a salesman as defined herein exclusively on behalf of said sole ownership or partnership or corporation in which they own an interest or stock, and those persons owning such stock shall be directors of such corporation; otherwise, they shall be deemed to be vehicle salesmen and subject to the provisions of Article 2 (commencing with Section 11800) of Chapter 4, Division 5.

(8) Persons regularly employed as salespersons by a vehicle dealer authorized to do business in California under Section 11700.1 of the Vehicle Code.

Amended Ch. 1668, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 1038, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 1004, Stats. 1968. Effective Nov. 13, 1968.

Amended Ch. 1286, Stats. 1976. Effective January 1, 1977.

Amended Ch. 1088, Stats. 1979. Effective September 28, 1979, by terms of an urgency clause.

Advisory Committee

2903. The Governor may establish an Advisory Committee on the California Traffic Safety Program which shall consist of various officials of state and local government and other persons who are interested in the establishment of a comprehensive program of traffic safety in this state including, but not limited to, representatives of agriculture, railroads, the Institute of Transportation and Traffic Engineering of the University of California, the motor vehicle manufacturing industry, the automobile aftermarket equipment servicing and manufacturing, industry, automobile dealers, the trucking industry, labor, motor vehicle user organizations, and traffic safety organizations.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Local Programs

2904. The California Traffic Safety Program shall include a local traffic safety program designed to encourage the political subdivisions of this state to establish traffic safety programs consistent with the objectives of the California Traffic Safety Program.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Report to Legislature

2905. On or before the fifth legislative day of the 1968 legislative session and each year thereafter, the Governor shall submit a report to the Legislature through such interim committee or committees as may be designated by legislative resolution. Such report shall include a detailed presentation of the California Traffic Safety Program, a statement concerning the progress made in implementing the program and recommendations concerning possible legislative action deemed necessary or desirable to implement the program.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Fund Created

2906. The California Traffic Safety Program Fund is hereby created in the State Treasury to consist of the funds referred to in Section 2907.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Funds Appropriated

2907. Any funds which are appropriated by Congress for the purposes of carrying out Section 402 of Title 23, United States Code (P.L. 89-564; 80 Stats. 731) and which are apportioned to this state by the Secretary of Commerce pursuant to Section 402 of Title 23, United States Code (P.L. 89-564; 80 Stats. 731) are continuously appropriated for the purposes and uses of the California Traffic Safety Program.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Governor's Apportionment of Funds

2908. The Governor shall apportion any funds contained in the California Traffic Safety Program Fund among the various state agencies and local political subdivisions as shall effectuate the purposes of the program, and, in accordance with any federal formula for apportionment or other federal requirements as contained in federal enactments, regulations, or standards promulgated by the Secretary of Commerce.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Local Participation with Governor's Approval

2909. Any local political subdivision of this state, including, but not limited to, a city, a county, a city and county, a district, or a special district, is authorized to participate in a local traffic safety program within its jurisdiction if such local program is approved by the Governor; provided, however, that any local political subdivision may participate in a traffic safety program other than that promulgated pursuant to the federal Highway Safety Act of 1966.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

Support of Local Program

2910. Such local political subdivision may use, in implementing its local traffic safety program, any funds which are apportioned to it from the California Traffic Safety Program Fund by the Governor pursuant to Section 2908.

Added Ch. 1492, Stats. 1967. Effective Aug. 28, 1967. Urgency measure.

CHAPTER 6. NEW MOTOR VEHICLE BOARD

(Chapter added as Chapter 5 by Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Renumbered as Chapter 6 by Ch. 26, Stats. 1969)

(Limitation on operative term removed by Ch. 1300, Stats. 1970)

(Amended Ch. 545, Stats. 1974. Effective Jan. 1, 1975)

Article 1. Organization of Board**Board in Department**

3000. There is in the Department of Motor Vehicles a New Motor Vehicle Board, which consists of nine members.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

Membership of Board

3001. Four of the appointive members of the board shall be new motor vehicle dealers as defined in Section 426 who have engaged for a period of not less than five years preceding their appointment in activities regulated by Article 1 (commencing with Section 11700) of Chapter 4 of Division 5. Such members shall be appointed by the Governor.

Each of the five remaining appointive members shall be a public member who is not a licentiate under Article 1 (commencing with Section 11700) or 2 (commencing with Section 11800) of Chapter 4 of Division 5 or an employee of such licentiate at the time of such appointment and one of such five appointive members shall have been admitted to practice law in the state for at least 10 years immediately preceding his appointment. One public member shall be appointed by the Senate Rules Committee, one by the Speaker of the Assembly, and three by the Governor.

Each member shall be of good moral character.

The provisions of this section shall not apply to a dealer who deals exclusively in motorcycles.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Effectiveness of Appointments

3002. The appointments of the appointive members shall be made effective as of the effective date of this article.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Terms of Members—Vacancies

3003. Each appointive member of the board shall be appointed for a term of four years and shall hold office until the appointment and qualification of his successor or until six months shall have elapsed since the expiration of the term for which he was appointed, whichever first occurs.

The terms of the members of the board first appointed shall expire as follows: one public member and one new motor vehicle dealer member, January 15, 1969; two public members and one new motor vehicle dealer member, January 15, 1970; two public members and two new motor vehicle dealer members, January 15, 1971. The terms shall thereupon expire in the same relative order.

Vacancies occurring shall be filled by appointment for the unexpired term.

The provisions of this section shall not apply to a dealer who deals exclusively in motorcycles.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Oath of Office

3004. Members of the board shall take an oath of office as provided in the Constitution and the Government Code.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Removal of Members

3005. The appointive authority has the power to remove from office at any time, any member of the board appointed by such appointing authority for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the appointing authority, conferred by any other provision of law, to remove any member of the board.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Board to Elect President

3006. The board shall organize and elect a president from among its members for a term of one year at the first meeting of each year. The newly elected president shall assume his duties at the conclusion of the meeting at which he was elected. Reelection to office during membership is unrestricted.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Frequency of Meetings

3007. The board shall meet at least twice during each calendar year.

Special meetings may be called at any time by the president or by any five members of the board upon notice for such time and in such manner as the board may provide.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Meetings: Open and Executive

3008. (a) All meetings of the board shall be open and public, and all persons shall be permitted to attend any meeting of the board, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) At all meetings of the board, open or executive, involving an appeal from a decision of the Director of Motor Vehicles as hereinafter provided for, the director or his authorized representative may attend, present the position of the department and thereafter shall absent himself from any executive session at the request of any member of the board.

(c) Within the limitations of its powers and authority as herein conferred, and in the event of disagreement between the board and the director regarding the decision to be reached as herein provided, the decision of the board shall be final.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Quorum Defined

3010. Five members of the board shall constitute a quorum for the transaction of business, for the performance of any duty or the exercise of any power or authority of the board, except that three members of the board, who are not new motor vehicle dealers, shall constitute a quorum for the purposes of Article 4 (commencing with Section 3060) of this chapter.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 278, Stats. 1977. Effective July 8, 1977 by terms of an urgency clause.

Vacancy on the Board

3011. A vacancy on the board shall not impair the power of the remaining members to perform all duties and exercise all powers of the board, providing the members remaining constitute a quorum.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Members' Expenses

3012. Each member of the board shall receive a per diem of twenty-five dollars (\$25) for each day actually spent in the discharge of official duties, and he shall be reimbursed for his traveling and other expenses necessarily incurred in the performance of his duties, which per diem and reimbursement shall be wholly defrayed from funds that shall be provided in the annual budget of the department.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Board's Seal

3013. The board shall adopt a seal and such other device as the members may desire thereon, by which they shall authenticate all papers and documents under their control.

Copies of all records and papers in the board's office shall be received in evidence in all cases when certified under the hand and seal of the board, equally and with like effect as the originals.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Department to Supply Staff

3014. The department shall provide the board with the services, as secretary, of a qualified, trained person, who shall, subject to civil service requirements, devote as much time as may be necessary to discharge the functions of the board as herein provided and shall further provide the board with the necessary personnel, office space, equipment and supplies as in the opinion of the board may be necessary to administer this chapter.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Headquarters Office—Meeting Rooms

3015. In addition to the office of the secretary in Sacramento, the department shall, as the need therefor occurs, secure adequate rooms for the meetings of the board in Los Angeles, San Francisco, Sacramento, or such other locations in the state as may be required in the discretion of the board, to administer this chapter.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Article 2. Powers and Duties of Board**Mandates to Board**

3050. The board shall:

(a) Adopt rules and regulations in accordance with the provisions of Chapter 4.5 (commencing with Section 11371), Part 1, Division 3, Title 2 of the Government Code governing such matters as are specifically committed to its jurisdiction.

(b) Hear and consider, within the limitations and in accordance with the procedure hereinafter provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when any such applicant or licensee submits such an appeal provided for in this chapter from a decision arising out of the department.

(c) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person; and, after such consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct such investigation of such matter as the board deems reasonable, and make a written report on the results of such investigation to the board within the time specified by the board;

(2) Undertake to arbitrate amicably or resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative;

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as such license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and consider, within the limitations and in accordance with the procedure hereinafter provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, or 3065. A member of the board who is a new motor vehicle dealer may participate in, hear, and comment or advise other members upon, but may not decide any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060) of this chapter.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended Ch. 384, Stats. 1974. Operative July 5, 1974.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Amended Ch. 278, Stats. 1977. Effective July 8, 1977, by terms of an urgency clause.

Amended Ch. 340, Stats. 1979. Effective July 27, 1979, by terms of an urgency clause.

Oaths, Depositions, Certification to Official Acts, and Issuance of Subpoenas

3050.1. (a) In any proceeding, hearing, or in the discharge of any duties imposed under this chapter, the board (), *its secretary, or a hearing officer designated by the board* may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) *For purposes of discovery, the board or its secretary may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in such discovery procedures as are provided for in civil actions in Article 3 (commencing with Section 2016) and Article 4 (commencing with Section 2037) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2030 of that code. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its secretary, or a hearing officer designated by the board may issue subpoenas to compel attendance at depositions of persons having knowledge of the acts, omissions or events which are the basis for the proceedings, as well as the production of books, records, papers and other documents.*

Added Ch. 1210, Stats. 1972. Effective Mar. 7, 1973.

Amended Ch. 964, Stats. 1980. Effective January 1, 1981.

The 1980 amendment added the italicized material and at the point (s) indicated deleted the following: "or its secretary"

Enforcement of Subpoena

3050.2. (a) Obedience to subpoenas issued ()¹ *to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing* may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 ()² of Part 1 of Division 3 of Title 2 of the Government Code.

(b) *Compliance with such discovery procedures as have been authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the secretary of the board. The secretary may, at the direction of the board, upon a showing of failure to comply with authorized discovery without a showing of good cause for such failure, dismiss the protest or suspend the proceedings pending compliance. Nothing in this section shall prohibit the secretary from making application to the superior court to enforce obedience to subpoenas or compliance with such other discovery procedures as have been authorized pursuant to subdivision (b) of Section 3050.1.*

Added Ch. 1210, Stats. 1972. Effective Mar. 7, 1973.

Amended Ch. 964, Stats. 1980. Effective January 1, 1981.

The 1980 amendment added the italicized material and at the point (s) indicated deleted the following: "in accordance with this chapter"

"", Part 1, Division 3,"

Witness Fees and the Mileage Allowance

3050.3. Each witness, other than an officer or employee of the state or of a political subdivision of the state, who appears by order of the board or its secretary, shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to witnesses in civil cases. The amount shall be paid by the party at whose request the witness is subpoenaed. The mileage and fees, if any, of a witness subpoenaed by the board or its secretary, but not at the request of a party, shall be paid from the funds provided for the use of the board in the same manner that other expenses of the board are paid.

Added Ch. 1210, Stats. 1972. Effective Mar. 7, 1973.

Application of Chapter

3051. The provisions of this chapter are not applicable to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesman under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch or representative. The provisions of this chapter shall not apply to transactions involving "mobilehomes", as defined in Section 18008 of the Health and Safety Code, "recreational vehicles", as defined in Section 18010.5 of the Health and Safety Code, "commercial coaches", as defined in Section 18012 of the Health and Safety Code or off-highway motor vehicles subject to identification as defined in Section 38012. Except as otherwise provided in this chapter, the provisions of this chapter shall be applicable to a new motor vehicle dealer as defined in Section 426, a manufacturer as defined in Section 388, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Amended Ch. 622, Stats. 1979. Effective January 1, 1980.

Article 3. Appeals From Decisions of the Department

Form, Filing, Support of Appeal

3052. (a) On or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered, the respondent may file an appeal with the secretary of the board. The appeal shall be in writing and shall state the grounds therefor. A copy thereof shall be mailed by the appellant to the department which shall thereafter be treated in all respects as a party to the appeal. The right to appeal shall not be affected by failure to seek reconsideration before the department.

(b) An appeal shall be deemed filed on the date it is received in the office of the secretary of the board; provided, however, an appeal mailed to the secretary by means of registered mail shall be deemed to be filed with the secretary on the date of the registry with the United States Post Office.

(c) The appeal shall be accompanied by evidence that the appellant has made application for the administrative record of the department and advanced the cost of preparation thereof. The complete administrative record includes the pleadings, all notices and orders issued by the department, any proposed decision by a hearing officer, the exhibits admitted or rejected, the written evidence and any other papers in the case. All or those parts of the administrative record requested by appellant may be filed with the appeal application, with appellant's points and authorities or upon order of the board, which may order prior payment by appellant of the further cost of providing the additional administrative record so ordered to be filed.

(d) No decision of the department shall become effective during the period an appeal may be filed and the filing of an appeal shall stay the effect of the decision of the department until such time as a final order is made by the board.

Added Ch. 1397, Stats. 1967. Effective Nov. 8, 1967.

Fraud and Other Violations of Law:**Failure to Pay for Vehicles: Priority of Claims**

11711. (a) If any person (1) shall suffer any loss or damage by reason of any fraud practiced on him or fraudulent representation made to him by a licensed dealer or one of such dealer's salesmen acting for the dealer, in his behalf, or within the scope of the employment of such salesman and such person has possession of a written instrument furnished by the licensee, containing stipulated provisions and guarantees which the person believes have been violated by the licensee, or (2) if any person shall suffer any loss or damage by reason of the violation by such dealer or salesman of any of the provisions of Division 3 (commencing with Section 4000) of this code, or (3) if any person is not paid for a vehicle sold to and purchased by a licensee, then any such person shall have a right of action against such dealer, his salesman, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

(b) If the state or any political subdivision thereof shall suffer any loss or damage by reason of any fraud practiced on the state or fraudulent representation made to the state by a licensed dealer, or one of such dealer's representatives acting for the dealer, in his behalf, or within the scope of employment of such representatives, or shall suffer any loss or damage by reason of the violation of such dealer or representative of any of the provisions of Division 3 (commencing with Section 4000) of this code, or Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code, the state or any political subdivision thereof, through the department, shall have a right of action against such dealer, his representative, and the surety upon the dealer's bond in an amount not to exceed the value of the vehicles involved.

(c) The failure of a dealer upon demand to pay the fees and penalties determined to be due as provided in Section 4456 hereof is declared to be a violation of Division 3 (commencing with Section 4000) of this code, and Part 5 (commencing with Section 10701), Division 2 of the Revenue and Taxation Code and to constitute loss or damage to the state in the amounts of such fees and penalties determined to be due and not paid.

(d) The claims of the State under subdivision (b) shall be satisfied first and entitled to preference over all claims under subdivision (a).

(e) The claims of any person under subdivision (a) who is not a licensee shall be satisfied first and entitled to preference over all other claims under subdivision (a).

Amended Ch. 1827, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 35, Stats. 1960. Effective June 25, 1960.

Amended Ch. 1863, Stats. 1963. Effective Sept. 20, 1963.

Amended Ch. 1106, Stats. 1972. Effective Mar. 7, 1973.

Change of Established Place of Business

11712. (a) The department shall not issue a dealer's license to any applicant therefor who has not an established place of business as is defined in this code. Should the dealer change the site or location of his established place of business, he shall immediately upon making such change so notify the department. Should a dealer for any reason whatsoever, cease to be in possession of an established place of business from and on which he conducts the business for which he is licensed, he shall immediately notify the department and upon demand by the department shall deliver to the department such dealer's license, dealer's special plate or plates, and all report of sale books in his possession.

(b) Should the dealer change to, or add another franchise for the sale of new vehicles, or cancel or, for any cause whatever, otherwise lose a franchise for the sale of new vehicles, he shall immediately so notify the department.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Motorcycle Sales: Required Price Information

11712.5. It shall be unlawful and a violation of this code for a dealer issued a license pursuant to this article to sell, offer for sale, or display, any new motorcycle unless there is securely attached thereto a statement as required by Section 24014.

Added Ch. 1089, Stats. 1974. Effective Jan. 1, 1975.

Unlawful Acts

11713. It shall be unlawful and a violation of this code for the holder of any license issued under this article:

(a) To make or disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate or cause to be so disseminated any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of such dealer or available to said dealer from the manufacturer or distributor of such vehicle at the time of the advertisement or offer; provided however, that this subdivision does not apply to advertising or offering for sale or exchange any used mobilehome, as defined by Section 18008 of the Health and Safety Code, or used commercial coach, as defined by Section 18012 of the Health and Safety Code, other than a recreational vehicle, as defined by Section 18010.5 of the Health and Safety Code, where such advertising or offering for sale is not contrary to any terms of a contract between the seller of the mobilehome or commercial coach and the owner of the mobilehome park, and which mobilehome or commercial coach is either in place on a lot rented or leased for human habitation within an established mobilehome park, as defined in Section 18214 of the Health and Safety Code, or is otherwise located, pursuant to a local zoning ordinance or permit, on a lot where its presence has been authorized or its continued presence and such use would be authorized, for a total and uninterrupted period of at least one year.

(c) To fail within 48 hours in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise or represent a vehicle as a new vehicle if such vehicle falls within the purview of Section 665 of this code.

(e) To engage in the business for which licensee is licensed without having in force and effect a good and sufficient bond with corporate surety as hereinbefore provided.

(f) For any licensed dealer to engage in the business for which such dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) To include as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due to the state unless, prior to the sale, such amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of such fees. However, a dealer may collect, from the second purchaser of a vehicle, a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) To employ any person as a salesman who has not been licensed pursuant to Article 2 (commencing with Section 11800) of this chapter, and whose license is not displayed on the premises of the dealer as provided in Section 11812.

(i) To deliver, following sale, a vehicle for operation on California highways, if such vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000) of this code.

(j) To use or permit the use of the special plates assigned to him for any purpose other than permitted by Section 11715.

(k) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on his behalf or at his place of business, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance such downpayment by a

loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(l) To participate in the sale of a vehicle reported to the Department of Motor Vehicles under the provisions of Section 5900 or Section 5901 of this code without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) To permit the use of his dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of his dealer's license, supplies, or books to operate a branch location to be used by any other person, if, in either situation, the licensee has no financial or equitable interest or investment in the vehicles sold by, or the business of, or branch location used by, such person, or has no such interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the dealer's license, supplies, or books to engage in the sale of vehicles.

(n) To violate any of the provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12 of this code.

(o) To fail to deliver or honor the terms and conditions of any warranty as set forth in Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code.

(p) To violate any of the terms or provisions of Chapter 6 (commencing with Section 11950) of Division 5.

(q) Has violated any of the provisions of Part 2 (commencing with Section 18000) of Division 13 of, or Section 18613 of, the Health and Safety Code or any rules and regulations issued pursuant thereto.

Amended Ch. 1827, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 1626, Stats. 1961, superseding Ch. 58 and Ch. 346, Stats. 1961. Effective Sept. 15, 1961.

Amended Ch. 1858, Stats. 1963. Effective July 18, 1963. Operative Oct. 1, 1963.

Amended Ch. 482, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 1021, Stats. 1968. Effective Nov. 13, 1968.

Amended Ch. 522, Stats. 1970. Effective Nov. 23, 1970.

Supersedes Ch. 395, Stats. 1970.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Amended Ch. 799, Stats. 1972, superseding Ch. 475. Effective Mar. 7, 1973.

Amended Ch. 774, Stats. 1973. Effective Sept. 25, 1973, by terms of an urgency clause.

Amended Ch. 1286, Stats. 1974. Effective July 1, 1975.

Amended Ch. 1248, Stats. 1975. Effective January 1, 1976. Supersedes Ch. 842, Stats. 1975.

Amended Ch. 843, Stats. 1976. Effective January 1, 1977.

Amended Ch. 579, Stats. 1977. Effective January 1, 1978.

Amended Ch. 797, Stats. 1978. Effective January 1, 1979.

Additional Unlawful Acts

Note: The following Section 11713.1 added by Chapter 1031, Stats. 1973, relates to the holders of dealer licenses.

Additional Unlawful Acts

11713.1. It shall be unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying such vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, the fee charged by the state for the issuance of the certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed twenty dollars (\$20).

(c) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of the certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charge, mobilehome escrow fees, the

amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer documentary preparation charge.

For purposes of this subdivision, a newspaper display advertisement is any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) To represent the dealer documentary preparation charge as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, the fee charged by the state for the issuance of the certificate of compliance or certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer documentary preparation charge, which charges shall not exceed twenty dollars (\$20) while such vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and such time has elapsed.

Added Ch. 1031, Stats. 1973. Effective Jan. 1, 1974.

Amended Ch. 1162, Stats. 1978. Effective January 1, 1979. Supersedes Ch. 632.

Amended Ch. 278, Stats. 1979. Effective July 1, 1979 by terms of an urgency clause.

Amended Ch. 943, Stats. 1979. Effective January 1, 1980.

Additional Unlawful Acts

11713.2. It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state:

(a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.

(b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(d) To participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(e) To enter into any agreement with the manufacturer, manufacturer branch, distributor, or distributor branch, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and manufacturer, manufacturer branch, distributor, or distributor branch. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.

Supersedes Ch. 373.

Additional Unlawful Acts

11713.3. It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by such franchise, if such vehicle, parts or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require or attempt to prevent or require, by contract or otherwise any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the

dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) To prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that such consent shall not be unreasonably withheld.

(e) To prevent, or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and such other person, other than for compensation for services rendered, unless such benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if such referral would be binding on the dealer. This subdivision shall not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order. In the event of manufacturer price reductions, the amount of any such reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, shall not be subject to the provisions of this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in such dealer's inventory at the time of introduction of new model vehicles. A manufacturer or distributor shall not authorize or enable any new model or series passenger vehicle or station wagon to be delivered by dealers at retail more than 30 days prior to the eligibility date of such model change allowance payment for prior year model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of such dealership or successor dealership under a valid franchise for a reasonable time after the death of such owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(l) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) 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. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of such dealership on reasonable terms and conditions. A distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of such distributor sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, such subsidiary corporation has been a wholly owned subsidiary of such distributor and engaged in the sale of vehicles at retail.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended Ch. 384, Stats. 1974. Operative July 5, 1974 by terms of an urgency clause.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.

Refund of Excess Fees by Dealer

11713.4. If a purchaser of a vehicle pays to the dealer an amount for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the dealer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the dealer shall return such excess amount to the purchaser, whether or not such purchaser requests the return of the excess amount.

Added Ch. 222, Stats. 1974. Effective Jan. 1, 1975.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.

Unlawful Representation of Vehicle Year Model

11713.5. (a) It is unlawful and a violation of this code, for the holder of any license issued under this article to display for sale, offer for sale, or sell, a motor vehicle, representing such motor vehicle to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed vehicle.

(b) It is unlawful and a violation of this code, for the holder of any license issued under this article to directly or indirectly authorize or advise another holder of a license issued under this article to change the year model of a motor vehicle in the inventory of such other holder.

(c) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a housecar which has been manufactured in two or more stages unless the licensee informs the buyer that the housecar has been so manufactured and the licensee provides the buyer with a form, approved by the department, which sets forth the date of chassis and engine manufacture and the date and model year of the other stages of the vehicle. The licensee shall retain a copy of the form, which shall be signed by the purchaser prior to entering into any sales contract, indicating that the purchaser has received a copy of the form.

(d) The provisions of this section shall not apply to the displaying or offering for sale, or selling, of any new motortruck or truck tractor weighing over 10,000 pounds.

Added Ch. 1025, Stats. 1974. Effective Jan. 1, 1975.

Amended Ch. 873, Stats. 1977. Effective January 1, 1978.

Mobilehome Dealers: Listings, Referral Arrangements, and Sales Agreements

11713.6. A mobilehome dealer may solicit or obtain listings of, engage in the multiple listing with other licensed mobilehome dealers of, or engage in payments to another mobilehome dealer, dealers, or multiple groups of dealers, pursuant to cooperative brokering and referral arrangements, or agreements on the sale of, any used mobilehome which has been registered under the authority of this code for at least one year.

Added Ch. 373, Stats. 1976. Effective July 8, 1976 by terms of an urgency clause.

Issuance of License and Special Plates

11714. (a) The department, upon granting a license, shall issue to the applicant a license containing the applicant's name and address and the general distinguishing number assigned to the applicant.

(b) When the department has issued a license pursuant to subdivision (a), the licensee may apply for and the department shall issue special plates which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate from every other plate bearing a like general distinguishing number.

(c) The department shall also furnish books and forms as it may determine necessary. Such books and forms are and shall remain the property of the department and may be taken up at any time for inspection.

Amended Ch. 929, Stats. 1971. Operative May 3, 1972.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975 by terms of an urgency clause.

Operation of Vehicles Displaying Special Plates

11715. (a) A manufacturer, distributor or dealer owning or lawfully possessing any vehicle of a type otherwise required to be registered hereunder may operate or move such vehicle upon the highways without registering each such vehicle upon condition that any such vehicle display thereon special plates issued to such owner as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. Such vehicles may also be moved or operated for the purpose of towing or transporting by any lawful method other vehicles.

(b) A transporter may operate or move any owned or lawfully possessed vehicle of like type by any lawful method upon the highways solely for the purpose of delivery upon condition that there be displayed upon each vehicle in contact with the highway special license plates issued to such transporter as provided in this chapter, in addition to any license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. Such vehicles may be used for the purpose of towing or transporting by any lawful method other vehicles when the towing or transporting vehicle is being delivered for sale or to the owner thereof.

(c) The provisions of this section do not apply to any manufacturer, transporter, distributor or dealer operating or moving a vehicle as provided in Section 11716.

(d) The provisions of this section do not apply to work or service vehicles owned by a manufacturer, transporter, distributor or dealer. They do not apply to vehicles owned and leased by dealers, except those vehicles rented or leased to vehicle salesmen in the course of their employment for purposes of display or demonstration, nor to any unregistered vehicles used to transport more than one load of other vehicles for the purpose of sale.

(e) The provisions of this section do not apply to vehicles currently registered in this State which are owned and operated by a licensed dealer when the notice of transfer has been forwarded to the department by the former owner of record pursuant to Section 5900 and when a copy of the notice is displayed as follows:

(1) For a motorcycle or motor-driven cycle, the notice shall be displayed in a conspicuous manner upon the vehicle.

(2) For a vehicle other than a motorcycle or motor-driven cycle, the notice shall be displayed in the lower right-hand corner of the windshield of the vehicle, as specified in paragraph (3) of subdivision (b) of Section 26708.

(f) Every owner upon receipt of a registration card issued for special plates shall maintain the same or a facsimile copy thereof with the vehicle bearing the special plates.

Amended by Ch. 1391, Stats. 1959, superseding Ch. 421, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 346, Stats. 1961. Effective Sept. 15, 1961.

Amended Ch. 801, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 929, Stats. 1971. Operative May 3, 1972.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975 by terms of an urgency clause.

Amended Ch. 105, Stats. 1977. Effective January 1, 1978.

When a Vehicle May Be Operated Without Plates

11716. A manufacturer, transporter or a dealer in the course of his business may operate or move any vehicle of a type otherwise required to be registered hereunder without registering the same, and without license or special plates attached thereto, from a vessel, railroad depot or warehouse over the highways to a warehouse or salesroom upon first having obtained a written permit authorizing such operation from the department.

Expiration of Special Plates and License

11717. (a) Every special plate and license issued hereunder shall expire at midnight on the 31st day of December of each year and a new plate or plates and license for the ensuing year may be obtained by the person to whom any such expired plate or plates and license were issued upon application to the department and payment of the fee provided in this code.

(b) Every application for the renewal of a special plate or plates and license which expires on the date above mentioned shall be made by the person to whom issued between November 1st and midnight of November 30th preceding such expiration date and shall be made by presenting the application form provided by the department and by payment of the full annual renewal fee for such plate or plates and license.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Issuance of Probationary License

11718. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

Added Ch. 1827, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Temporary Permit

11719. Pending the satisfaction of the department that the applicant has met the requirements under this article, it may issue a temporary permit to any person applying for a manufacturer's, manufacturer's branch, distributor's, distributor's branch transporter's or dealer's license and special plates. The temporary permit shall permit the operation by the manufacturer, manufacturer branch, distributor, distributor branch, transporter or dealer for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to such license and special plates. The department may cancel such temporary permit when it has determined or has reasonable cause to believe that the application is incorrect or incomplete or the temporary permit was issued in error. Such temporary permit shall be invalid when canceled or when the applicant's license has been issued or refused.

Added Ch. 1827, Stats. 1959. Effective Sept. 18, 1959.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Amended Ch. 215, Stats. 1972. Effective Mar. 7, 1973.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

DIVISION 12. EQUIPMENT OF VEHICLES

CHAPTER 1. GENERAL PROVISIONS

Department

24000. Wherever in this division the word "department" occurs, it means the Department of the California Highway Patrol.

Application of Divisions

24001. This division and Division 13 (commencing at Section 29000), unless otherwise provided, applies to all vehicles whether publicly or privately owned when upon the highways, including all authorized emergency vehicles.

Amended Ch. 1996, Stats. 1959. Effective Sept. 18, 1959.

Golf Cart

24001.5. A golf cart as defined in Section 345 shall only be subject to the provisions of this division which are applicable to a motorcycle.

Added Ch. 1303, Stats. 1968. Effective Nov. 13, 1968.

Amended Ch. 1075, Stats. 1969. Effective Nov. 10, 1969.

Amended Ch. 973, Stats. 1972. Effective Aug. 16, 1972 by terms of an urgency clause.

Vehicle Not Equipped or Unsafe

24002. It is unlawful to operate any vehicle or combination of vehicles which is in an unsafe condition, which is not equipped as required by this code, or which is not safely loaded.

Vehicle With Unlawful Lamps

24003. No vehicle shall be equipped with any lamp or illuminating device not required or permitted in this code, nor shall any lamp or illuminating device be mounted inside a vehicle unless specifically permitted by this code. This section does not apply to:

(a) Interior lamps such as door, brake and instrument lamps, and map, dash, and dome lamps designed and used for the purpose of illuminating the interior of the vehicle.

(b) Lamps needed in the operation or utilization of those vehicles mentioned in Section 25801, or vehicles used by public utilities in the repair or maintenance of their service, or used only for the illumination of cargo space of a vehicle while loading or unloading.

(c) Warning lamps mounted inside an authorized emergency vehicle and meeting requirements established by the department.

Amended Ch. 547, Stats. 1963. Effective Sept. 20, 1963.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Unlawful Operation After Notice by Officer

24004. No person shall operate any vehicle or combination of vehicles after notice by a peace officer, as defined in Section 830.1 or subdivision (a) of Section 830.2 of the Penal Code, that the vehicle is in an unsafe condition or is not equipped as required by this code, except as may be necessary to return the vehicle or combination of vehicles to the residence or place of business of the owner or driver or to a garage, until the vehicle and its equipment have been made to conform with the requirements of this code.

The provisions of this section shall not apply to an employee who does not know that such notice has been issued, and in such event the provisions of Section 40001 shall be applicable.

Amended Ch. 306, Stats. 1965. Effective Sept. 17, 1965.

Amended Ch. 171, Stats. 1979. Effective January 1, 1980.

Sale, Transfer or Installation of Unlawful Equipment

24005. It is unlawful for any person to sell, offer for sale, lease, install, or replace, either for himself or as the agent or employee of another, or through such agent or employee, any glass, lighting equipment, signal devices, brakes, vacuum or pressure hose, muffler, exhaust, or any kind of equipment whatsoever for use, or

with knowledge that any such equipment is intended for eventual use, in any vehicle, that is not in conformity with this code or regulations made thereunder.

Amended Ch. 226, Stats. 1961. Effective Sept. 15, 1961.

Amended Ch. 734, Stats. 1971. Operative May 3, 1972.

Uncertified Synthetic Rope or Webbing Strap Material

24005.5. It is unlawful for any person to sell or offer for sale for use on loads regulated by the department any type of synthetic fiber rope or webbing strap material unless it meets requirements established by the department.

Added Ch. 466, Stats. 1972. Effective Mar. 7, 1973.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Name or Trademark

24006. No person shall sell or offer for sale either separately or as a part of the equipment of a new motor vehicle any equipment or device subject to requirements established by the department unless the equipment or device bears thereon the trademark or name and type or model designation under requirements established by the department and is accompanied by any printed instructions which may be required by the department as to the light source to be used with lamps, any particular methods of mounting or adjustment of lamps or other devices, and any other instructions as determined by the department necessary for compliance with this code.

Amended Ch. 440, Stats. 1967. Effective June 30, 1967, by terms of an urgency clause.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Responsibility of Dealer or Other Person Selling Motor Vehicle

24007. (a) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with the provisions of this code and department regulations adopted pursuant to this code unless the vehicle is (1) sold to another dealer, (2) sold for the purpose of being wrecked or dismantled, or (3) sold exclusively for off-highway use.

(b) No person shall sell, or offer or deliver for sale, to the ultimate purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with the provisions of Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is either (1) sold to a dealer, or (2) sold for the purpose of being wrecked or dismantled. With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to that Part 5, a dealer shall transmit to the Department of Motor Vehicles a valid certificate of compliance from a licensed motor vehicle pollution control device installation and inspection station indicating that such vehicle is properly equipped with a certified device or devices which are in proper operating condition and which are in compliance with the provisions of that Part 5 and the rules and regulations of the board.

With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, having a gross vehicle weight of 6,000 pounds or less, a dealer may transmit, in lieu of such certificate of compliance, a statement, in a form and containing such information as is deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with the provisions of that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

Amended Ch. 2033, Stats. 1965, superseding Ch. 2031, Stats. 1965.

The governing amendment of 1965 was effective Sept. 17, 1965.

Amended Ch. 82, Stats. 1966. Effective Oct. 6, 1966.

Amended Ch. 394, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 764, Stats. 1968. Effective Nov. 13, 1968.

Amended Ch. 766, Stats. 1970. Effective Nov. 23, 1970.

Amended Ch. 1488, Stats. 1971, superseding Ch. 86. Operative May 3, 1972.

Amended Ch. 268, Stats. 1972, superseding Ch. 99. Effective Mar. 7, 1973.

Amended Ch. 957, Stats. 1975. Effective January 1, 1976.

Amended Ch. 1206, Stats. 1976. Effective January 1, 1977.

Amended Ch. 1038, Stats. 1977. Effective September 23, 1977 by terms of an urgency clause.

NO_x Devices: Free Installation for Low-Income Elderly Persons

24007.2. If a dealer, or a person holding a retail seller's permit, sells to an elderly low-income person, as defined in Section 39026.5 of the Health and Safety Code, a 1966 through 1970 model year motor vehicle which is not equipped, as required pursuant to Sections 43654 and 43656 of that code, with a certified device to control its exhaust emission of oxides of nitrogen, the dealer or such person, as the case may be, shall install the required certified device on the motor vehicle without cost to the elderly low-income person.

Added Ch. 231, Stats. 1976. Effective January 1, 1977.

Inspection of Vehicle Prior to Sale by Dealer

24007.3. No dealer or person holding a retail seller's permit shall sell a new or used motor vehicle subject to Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code which has not been inspected within 60 days immediately prior to sale pursuant to subdivision (b) or (d) of Section 9889.55 of the Business and Professions Code, unless the vehicle is sold to another dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use. The dealer or person holding the retail seller's permit shall, with each application for initial registration or transfer of registration of a motor vehicle subject to Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code, transmit to the Department of Motor Vehicles, without charge to the transferee, a valid certificate of compliance or waiver issued pursuant to Section 9889.56 of the Business and Professions Code indicating that such vehicle has passed, within 60 days immediately prior to sale, the inspection conducted pursuant to subdivision (b) or (d) of Section 9889.55 of the Business and Professions Code.

Added Ch. 1154, Stats. 1973. Effective Jan. 1, 1974.

Sale by Auctioneer or Public Agency

24007.5. (a) Except as otherwise provided in subdivisions (c), (d), and (e), no auctioneer or public agency shall sell, at public auction, any vehicle specified in subdivision (a) of Section 24007, which is not in compliance with the provisions of this code, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(b) Except as otherwise provided in subdivision (e), any auctioneer or public agency which sells, at public auction, any vehicle specified in subdivision (b) of Section 24007, shall provide each bidder with a notice in writing that a certificate of compliance is required to be obtained, certifying that the vehicle complies with the provisions of Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, before such vehicle may be registered in this state, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(c) If in the opinion of an auctioneer or public agency, the cost of repairs to a vehicle exceeds the value of the vehicle to the auctioneer or agency, the auctioneer or agency shall, as transferee or owner, surrender the certificates of registration and ownership and license plates last issued for such vehicle to the Department of Motor Vehicles as provided under Section 11521 of this code.

(d) The auctioneer or agency having complied with the provisions of subdivision (c) of this section shall, upon sale of such vehicle, give to the purchaser a bill of sale which shall include, in addition to any other required information, the last issued license plate number.

(e) The provisions of subdivisions (a) and (b) do not apply to any judicial sale conducted pursuant to a writ of execution or order of court.

Added Ch. 1021, Stats. 1971. Operative May 3, 1972.
Amended Ch. 957, Stats. 1975. Effective January 1, 1976.

Modification of Vehicles

24008. It is unlawful to operate any passenger vehicle, or commercial vehicle under 4,000 pounds, which has been modified from the original design so that any portion of such vehicle other than the wheels has less clearance from the surface

of a level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel when in contact with such roadway.

Added Ch. 1791, Stats. 1959. Effective Sept. 18, 1959.
Amended Ch. 1562, Stats. 1961. Effective Sept. 15, 1961.

Unsafe Vehicle Modification

24008.5. An "unsafe condition" within the meaning of Section 24002 includes, but is not limited to, the raising of the center of gravity or other modification of a vehicle so as to unsafely affect its operation or stability.

Added Ch. 300, Stats. 1969. Effective Nov. 10, 1969.

Manufacturer's Name and GVW Rating

24009. No person shall sell or offer for sale a new motor truck, truck tractor, or bus that is not equipped with an identification plate or marking bearing the manufacturer's name and the manufacturer's gross vehicle weight rating of such vehicle.

Added Ch. 1800, Stats. 1959. Effective Sept. 18, 1959.
Repealed Ch. 408, Stats. 1963. Effective Sept. 20, 1963.
Added Ch. 1287, Stats. 1967. Effective Nov. 8, 1967.

Vehicle Rental Responsibility

24010. No person engaged in the rental of any vehicle, for periods of 30 days or less, shall rent, lease or otherwise allow the operation of such vehicle unless all necessary equipment required by this code and regulations adopted hereunder for the operation of such vehicle upon a highway has been provided or offered to the lessee for his use. The contract or rental agreement shall include the name of the person from whom the vehicle is rented, leased or obtained, the address of his place of business in this state where it is rented, leased or delivered, and a statement of any required equipment refused by the person to whom the vehicle is rented, leased, or delivered.

Added Ch. 855, Stats. 1967. Effective Nov. 8, 1967.
Amended Ch. 1536, Stats. 1971. Operative May 3, 1972.
Amended Ch. 88, Stats. 1973. Effective Jan. 1, 1974.

Federal Safety Standard

24011. Whenever a federal motor vehicle safety standard is established under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C., Sec. 1381, et seq.) no dealer shall sell or offer for sale a vehicle to which the standard is applicable, and no person shall sell or offer for sale for use upon a vehicle an item of equipment to which the standard is applicable, unless:

(a) Such vehicle or equipment conforms to the applicable federal standard.

(b) The vehicle or equipment bears thereon a certification by the manufacturer or distributor that it complies with the applicable federal standards. The certification may be in the form of a symbol prescribed in the federal standards or, if there is no federal symbol, by a symbol acceptable to the department.

Added Ch. 192, Stats. 1968. Effective Nov. 13, 1968.

Exhaust and Noise Emission Control Inspection

24011.7. (a) Nothing in Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code, shall be construed as having any effect on the existing inspection program conducted by the department. Rather, it is the intent of the Legislature that such program continue and that a cooperative relationship between the department and the Department of Consumer Affairs be established, under which the department can inform the Department of Consumer Affairs of the results and experiences of the department in order to provide data on exhaust and noise emission control device tampering and performance deterioration following mandatory inspections.

Added Ch. 1154, Stats. 1973. Effective Jan. 1, 1974.

Compliance With Lighting Equipment Mounting Regulations

24012. All lighting equipment or devices subject to requirements established by the department shall comply with the engineering requirements and specifications, including mounting and aiming instructions, determined and publicized by the department.

Amended and renumbered Ch. 341, Stats. 1969. Effective Nov. 10, 1969.
Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Statement of Minimum Octane Number of Gasoline for Motor Vehicle

24013. No new motor vehicle shall be sold unless the seller provides the buyer with a statement of the minimum octane number of the gasoline for such vehicle.

Added Ch. 711, Stats. 1971. Effective Mar. 4, 1972.

Motorcycle Sales: Required Price Information

24014. (a) No dealer shall sell, offer for sale, or display, any new, assembled motorcycle on its premises, unless there is securely attached to its handlebar a label, approved by the Department of Motor Vehicles, furnished by the manufacturer, on which the manufacturer shall clearly indicate the following:

- (1) The recommended retail price of the motorcycle.
- (2) The recommended price for each accessory or item of optional equipment physically attached to the motorcycle at the time of its delivery to the dealer.
- (b) The dealer shall clearly indicate on the label, furnished by the manufacturer, the following:
 - (1) The amount charged, if any, over and above the suggested retail price for transportation to the dealership.
 - (2) The amount charged, if any, for the assembly, preparation, or both, of the motorcycle.
 - (3) The amount charged, if any, for each dealer added accessory or item of optional equipment.
 - (4) The total recommended retail price of the vehicle which shall be the aggregate value of paragraphs (1) and (2) of subdivision (a) and paragraphs (1), (2) and (3) of subdivision (b).

Added Ch. 1089, Stats. 1974. Effective Jan. 1, 1975.
Amended Ch. 623, Stats. 1978. Effective January 1, 1979.

Motorized Bicycle: Safety and Equipment Requirements

24015. (a) Motorized bicycles shall comply with those federal motor vehicle safety standards established under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C., Sec. 1381, et seq.) which are applicable to a motor-driven cycle, as that term is defined in such federal standards. Such standards include, but are not limited to, provisions requiring a headlamp, taillamp, stoplamp, side and rear reflex reflectors, and adequate brakes.

(b) In addition to equipment required in subdivision (a), all motorized bicycles operated upon a highway shall be equipped with a mirror as required in subdivision (a) of Section 26709, a horn as required in Section 27000, and an adequate muffler as required in subdivision (a) of Section 27150.

(c) Except as provided in subdivisions (a) and (b), none of the provisions of this chapter relating to motorcycles and motor-driven cycles, as defined in this code, shall apply to a motorized bicycle.

Added Ch. 987, Stats. 1975. Effective January 1, 1976.
Amended Ch. 421, Stats. 1978. Effective January 1, 1979.

Motorized Quadricycles: Equipment Requirements

24016. Motorized quadricycles, as defined in Section 407, shall comply with the requirements contained in this division which are applicable to motor-driven cycles, as defined in Section 405.

Added Ch. 756, Stats. 1980. Effective January 1, 1981.

CHAPTER 2. LIGHTING EQUIPMENT**Article 1. General Provisions****Lighting During Darkness**

24250. During darkness, a vehicle shall be equipped with lighted lighting equipment as required for the vehicle by this chapter.

Lighting Distance Requirements

24251. Any requirement in this chapter as to the distance from which any lighting equipment shall render a person or vehicle visible or within which any lighting equipment shall be visible shall apply during darkness, directly ahead upon a straight, level unlighted highway, and under normal atmospheric conditions, unless a different time, direction, or condition is expressly stated.

Lighting Equipment Requirements

24252. (a) All lighting equipment of a required type installed on a vehicle shall at all times be maintained in good working order. Lamps shall be equipped with bulbs of the correct voltage rating corresponding to the nominal voltage at the lamp socket.

(b) The voltage at any tail, stop, license plate, side marker or clearance lamp socket on a vehicle shall not be less than 85 percent of the design voltage of the bulb. Voltage tests shall be conducted with the engine operating.

(c) Two or more lamp or reflector functions may be combined, provided each function subject to requirements established by the department meets such requirements.

(1) No turn signal lamp may be combined optically with a stoplamp unless the stoplamp is extinguished when the turn signal is flashing.

(2) No clearance lamp may be combined optically with any taillamp or identification lamp.

Amended Ch. 1276, Stats. 1965. Effective Sept. 17, 1965.
Amended Ch. 980, Stats. 1968. Effective Nov. 13, 1968.
Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Taillamps Which Remain Lighted

24253. (a) All motor vehicles manufactured and first registered after January 1, 1970, shall be equipped so all taillamps are capable of remaining lighted for a period of at least one-quarter hour with the engine inoperative. This requirement shall be complied with by an energy storing system which is recharged by energy produced by the vehicle.

(b) All motorcycles manufactured and first registered after January 1, 1971, shall be equipped so all taillamps, when turned on, will remain lighted automatically for a period of at least one-quarter hour if the engine stops.

Added Ch. 544, Stats. 1967. Effective Nov. 8, 1967.
Amended Ch. 217, Stats. 1970. Effective Nov. 23, 1970.

Mounting Height

24254. Whenever requirement is declared as to the mounted height of lamps or reflectors, the height shall be measured from the center of the lamp or reflector to the level surface upon which the vehicle stands when it is without a load.

Amended and renumbered Ch. 341, Stats. 1969. Effective Nov. 10, 1969.

Article 2. Headlamps and Auxiliary Lamps**Headlamps on Motor Vehicles**

24400. During darkness, every motor vehicle other than a motorcycle, shall be equipped with at least two lighted headlamps, with at least one on each side of the front of the vehicle, and, except as to vehicles registered prior to January 1, 1930, they shall be located directly above or in advance of the front axle of the vehicle. The headlamps and every light source in any headlamp unit shall be located at a height of not more than 54 inches nor less than 24 inches.

address and telephone number of the owner or driver. The letters of the sign shall be not less than 2½ inches in height and the lettering shall be in contrast to the color of the background upon which they are placed.

Taxicab Signs

27908. (a) In every taxicab operated in this state there shall be a sign of heavy material, not smaller than 6 inches by 4 inches, or such other size as the agency regulating the operation of the taxicab provides for other notices or signs required to be in every taxicab, securely attached and clearly displayed in view of the passenger at all times, providing in letters as large as the size of the sign will reasonably allow, all of the following information:

(1) The name, address, and telephone number of the agency regulating the operation of the taxicab.

(2) The name, address, and telephone number of the firm licensed or controlled by the agency regulating the operation of the taxicab.

(b) In the event more than one local regulatory agency has jurisdiction over the operation of the taxicab, the notice required by paragraph (1) of subdivision (a) shall provide the name, address, and telephone number of the agency having jurisdiction in the area where the taxicab operator conducts its greatest volume of business; or, if this cannot readily be ascertained, the agency having jurisdiction in the area where the taxicab operator maintains its offices or primary place of business, provided that the operator conducts a substantial volume of business in such area; or, if neither of the foregoing provisions apply, any agency having jurisdiction of an area where the taxicab operator conducts a substantial volume of business.

(c) As used in this section, "taxicab" means a passenger vehicle designed for carrying not more than eight persons, excluding the driver, and used to carry passengers for hire. "Taxicab" shall not include a charter-party carrier of passengers within the meaning of the Passenger Charter-party Carriers' Act, Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code.

Added Ch. 1158, Stats. 1973. Effective Jan. 1, 1974.

Article 9. Refrigeration Equipment

(Added Ch. 1335, Stats. 1961. Effective Sept. 15, 1961)

Refrigerator Vans

28000. Every refrigerator van equipped with one or more doors designed to lock automatically upon closure shall have at least one door which can be opened from inside the van as an emergency means of exit.

For the purposes of this article, "refrigerator van" means any motor truck, semitrailer, or trailer, with a fully enclosed cargo body having an enclosed volume of 15 cubic feet or more, which utilizes a mechanical refrigeration system to reduce the temperature within the enclosed portion of the vehicle to 32 degrees Fahrenheit or less, or which provides refrigeration by the use of dry ice.

Added Ch. 1335, Stats. 1961. Effective Sept. 15, 1961.

Article 10. Odometers

(Added Ch. 1109, Stats. 1967. Effective Nov. 8, 1967)

True Mileage Driven

28050. It is unlawful for any person to advertise for sale, to sell, to use, or to install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this section the true mileage driven is that mileage driven by the car as registered by the odometer within the manufacturer's designed tolerance.

Added Ch. 1109, Stats. 1967. Effective Nov. 8, 1967.

Operation With Nonfunctional Odometer Prohibited

28050.5. It is unlawful for any person with the intent to defraud to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

Added Ch. 1210, Stats. 1967. Effective Nov. 8, 1967.

Unlawful to Alter Indicated Mileage

28051. It is unlawful for any person to disconnect, turn back, or reset the odometer of any motor vehicle with the intent to alter the number of miles indicated on the odometer gauge.

Added Ch. 1210, Stats. 1967. Effective Nov. 8, 1967.

Amended Ch. 1216, Stats. 1968. Effective Nov. 13, 1968.

Amended Ch. 111, Stats. 1969. Effective Nov. 10, 1969.

Amended Ch. 774, Stats. 1973. Effective Sept. 25, 1973 by terms of an urgency clause.

Device to Turn Back or Reset Odometer

28051.5. It is unlawful for any person to advertise for sale, to sell, or to use, any device designed primarily for the purpose of turning back or resetting the odometer of any motor vehicle to reduce the number of miles indicated on the odometer gauge.

Added Ch. 841, Stats. 1970. Effective Nov. 23, 1970.

New Motor Vehicle Warranty; Mileage

28052. If a manufacturer, distributor, or dealer of a new motor vehicle makes any warranty to the purchaser of, and with respect to, a new motor vehicle which is based on the amount of miles that the motor vehicle is driven, only those miles which the motor vehicle has been driven on and after the date that the motor vehicle has first been sold as new to the purchaser shall be considered for purposes of the warranty.

The mileage indicated upon the odometer of the motor vehicle on the date that the motor vehicle is first sold as new to the purchaser shall, for purposes of the warranty, be the mileage upon which the warranty shall commence.

Nothing in this section shall be construed to relieve any person of any criminal punishment to which he would otherwise be subject under Section 28051.

The provisions of this section shall apply only to motor vehicles which are sold on or after the effective date of this section.

Added Ch. 111, Stats. 1969. Effective Nov. 10, 1969.

Repair of Odometer: Required Information

28053. Any person who works on or repairs an odometer, or who replaces an odometer, of a vehicle under 6,001 pounds, manufacturer's maximum gross vehicle weight rating, shall report the following information to the Department of Motor Vehicles:

(1) The name of the person for whom the work was performed.

(2) Such description of the vehicle in which the odometer is to be installed, as may be required by the Department of Motor Vehicles in an appropriate form provided by it.

(3) Whether the odometer was repaired or whether it was replaced.

(4) The mileage shown on the odometer when the person commences to work on or repair the odometer.

(5) The mileage shown on the odometer when it was returned to the person for whom the work or repair was performed.

Added Ch. 260, Stats. 1971. Operative May 3, 1972.

Article 11. Fire Extinguishers

Recreational Vehicles and Campers

28060. (a) No person shall sell or offer for sale a new recreational vehicle or new camper which is equipped with cooking equipment or heating equipment, and no dealer or person holding a retail seller's permit shall sell or offer for sale a used recreational vehicle or a used camper which is equipped with cooking or heating equipment, unless such new or used vehicle or new or used camper is

STATE OF CALIFORNIA

VEHICLE CODE



1987

VEHICLE CODE

**As Recodified and Reenacted by the 1959 Regular
Session
of the Legislature and
as Amended to the Close of the 1987 Regular
Session
and
OTHER STATUTES**

Relating to the Use and Operation of Motor Vehicles

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Motorized Quadricycle

407. A “motorized quadricycle” is a four-wheeled device designed to carry not more than two persons, including the driver, and having either an electric motor or a motor with an automatic transmission developing less than two gross brake horsepower and capable of propelling the device at a maximum speed of not more than 30 miles per hour on level ground. The device shall be utilized only by a person who by reason of physical disability is otherwise unable to move about as a pedestrian or by a senior citizen as defined in Section 13000.

Added Ch. 756, Stats. 1980. Effective January 1, 1981.

Motor Carrier

408. “Motor carrier” is the registered owner, lessee, licensee, or bailee of any vehicle set forth in Section 34500, who operates or directs the operation of any such vehicle on either a for-hire or not-for-hire basis.

Added Ch. 860, Stats. 1981. Effective January 1, 1982.

Motor Truck

410. A “motor truck” is a motor vehicle designed, used, or maintained primarily for the transportation of property.

Motor Vehicle

415. A “motor vehicle” is a vehicle which is self-propelled.

Muffler

425. A “muffler” is a device consisting of a series of chambers or baffle plates, or other mechanical design, for the purpose of receiving exhaust gas from an internal combustion engine, and effective in reducing noise.

New Motor Vehicle Dealer

426. “New motor vehicle dealer” is a dealer, as defined in Section 285, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of such motor vehicles or acquires for resale new and unregistered off-highway motorcycles from manufacturers or distributors of the vehicles. No distinction shall be made, nor any different construction be given to the definition of “new motor vehicle dealer” and “dealer” except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2. The provisions of Sections 3001 and 3003 shall not, however, apply to a dealer who deals exclusively in motorcycles.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 78, Stats. 1973. Effective January 1, 1974.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Amended Ch. 1584, Stats. 1982. Effective January 1, 1983.

New Vehicle

430. A “new vehicle” is a vehicle constructed entirely from new parts that has never been sold and operated, or registered with the department, or registered with the appropriate agency of authority, or sold and operated upon the highways of any other state, District of Columbia, territory or possession of the United States, or foreign state, province, or country. The word “sold” does not include or extend to any sale made by a manufacturer or a distributor to a dealer or by a dealer to another dealer licensed under this code.

Amended Ch. 820, Stats. 1965. Effective September 17, 1965.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Nonresident

435. “Nonresident” is a person who is not a resident of this state.

Truss

657. A "truss" is an assemblage of beams, bars, or rods typically arranged in a triangle or combination of triangles to form a rigid framework and used as a structural support in buildings.

Added Ch. 299, Stats. 1979. Effective January 1, 1980.

Unladen Weight

660. The "unladen weight" of a vehicle is the weight equipped and ready for operation on the road including the body, fenders, oil in motor, radiator full of water, with five gallons of gasoline or equivalent weight of other motor fuel; also equipment required by law, and unless exempted under Section 661, any special cabinets, boxes or body parts permanently attached to the vehicle, and any machinery, equipment or attachment which is attendant to the efficient operation of the body or vehicle. Unladen weight shall not include any load or any machinery or mechanical apparatus, such as, but not limited to, wood saws, well-drilling machines, spray apparatus, tow car cranes, and grinding equipment. The unladen weight of a vehicle shall have no application in determining any fee under this code or the Revenue and Taxation Code other than Section 9400 of this code.

Amended Ch. 1576, Stats. 1961. Effective September 15, 1961. Supersedes Ch. 58, Stats. 1961.

Amended Ch. 2108, Stats. 1963. Effective September 20, 1963.

Unladen Weight Exclusions

661. Unladen weight shall not include the following machinery, equipment or attachment which is attendant to the efficient operation of the body or vehicle:

- (a) Equipment used for loading, compacting, or unloading of refuse.
- (b) Transmix cement equipment.
- (c) Temporary equipment used to contain or support the load which does not change the body classification.
- (d) Any camper unit that is temporarily attached to a vehicle.
- (e) Refrigeration equipment.

Added Ch. 2108, Stats. 1963. Effective September 20, 1963.

Used Vehicle

665. A "used vehicle" is a vehicle that has been sold and operated on the highways of this state, or has been registered with the department, or has been sold and operated upon the highways, or has been registered with the appropriate agency of authority, of any other state, District of Columbia, territory or possession of the United States or foreign state, province or country, or unregistered vehicles regularly used or operated as demonstrators in the sales work of a dealer or unregistered vehicles regularly used or operated by a manufacturer in the sales or distribution work of such manufacturer. The word "sold" shall not be deemed to include or extend to any sale made by a manufacturer or a distributor to a dealer or by a dealer to another dealer licensed under this code.

Amended Ch. 820, Stats. 1965. Effective September 17, 1965.

Amended Ch. 801, Stats. 1967. Effective November 8, 1967.

U-turn

665.5. A "U-turn" is the turning of a vehicle upon a highway so as to proceed in the opposite direction whether accomplished by one continuous movement or not.

Added Ch. 620, Stats. 1970. Effective November 23, 1970.

Utility Trailer

666. A "utility trailer" is any trailer or semitrailer used solely for the transportation of the user's personal property and which does not exceed a gross weight of 6,000 pounds.

Added Ch. 1807, Stats. 1961. Effective September 15, 1961.

California Motorcyclist Safety Fund

2934. (a) The California Motorcyclist Safety Fund is hereby created in the State Treasury. The money in the fund is available, when appropriated by the Legislature, to fund programs established pursuant to this article and to defray related costs incurred. Moneys in the fund are and shall be held as trust funds for the exclusive trust purposes specified in this article.

(b) The commissioner shall not in any way encumber moneys in the fund beyond that amount which is actually available in the fund at the time of encumbrance, and shall not in any manner pledge or encumber future revenues to accrue to the fund from any source.

Added Ch. 547, Stats. 1985. Effective January 1, 1986.

Repealed Ch. 547, Stats. 1985. Effective January 1, 1992.

Additional Motorcycle Registration Fees

2935. The Department of Motor Vehicles shall, in addition to other fees, collect a fee of two dollars (\$2) upon initial registration and renewal of registration of every motorcycle subject to registration fees. These additional fees shall be deposited in the fund.

Added Ch. 547, Stats. 1985. Effective January 1, 1986.

Repealed Ch. 547, Stats. 1985. Effective January 1, 1992.

Report of Legislature

2936. (a) The commissioner shall report to the Legislature by January 15 of each year, commencing January 15, 1987, on all of the following:

- (1) The condition of the fund.
- (2) Identification of any contracts or grants made during the year.
- (3) The amount of the grants or contracts.
- (4) The services to be provided pursuant to the grants or contracts.
- (5) The group or agency contracted with to provide the services.

(b) The final report shall be made by January 1, 1992.

Added Ch. 547, Stats. 1985. Effective January 1, 1986.

Repealed Ch. 547, Stats. 1985. Effective January 1, 1992.

Termination of Additional Fees

2937. The fees specified in this article shall not be collected after December 31, 1990. However, the commissioner may continue to execute contracts and grants pursuant to Section 2932 with the remaining moneys in the fund.

Added Ch. 547, Stats. 1985. Effective January 1, 1986.

Repealed Ch. 547, Stats. 1985. Effective January 1, 1992.

Termination of Program

2938. This article shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date.

Added Ch. 547, Stats. 1985. Effective January 1, 1986.

Repealed Ch. 547, Stats. 1985. Effective January 1, 1992.

CHAPTER 6. NEW MOTOR VEHICLE BOARD

(Chapter added as Chapter 5 by Ch. 1397, Stats. 1967. Effective November 8, 1967)

(Renumbered as Chapter 6 by Ch. 26, Stats. 1969)

(Limitation on operative term removed by Ch. 1300, Stats. 1970)

(Amended Ch. 545, Stats. 1974. Effective January 1, 1975)

Article 1. Organization of Board**Board in Department**

3000. There is in the Department of Motor Vehicles a New Motor Vehicle Board, which consists of nine members.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

Membership of Board

3001. Four of the appointive members of the board shall be new motor vehicle dealers as defined in Section 426 who have engaged for a period of not less than five years preceding their appointment in activities regulated by Article 1 (commencing with Section 11700) of Chapter 4 of Division 5. These members shall be appointed by the Governor.

Each of the five remaining appointive members shall be a public member who is not a licentiate under Article 1 (commencing with Section 11700) or 2 (commencing with Section 11800) of Chapter 4 of Division 5 or an employee of such licentiate at the time of such appointment and one of these five appointive members shall have been admitted to practice law in the state for at least 10 years immediately preceding his appointment. One public member shall be appointed by the Senate Rules Committee, one by the Speaker of the Assembly, and three by the Governor.

Each member shall be of good moral character.

The provisions of this section shall not apply to a dealer who deals exclusively in motorcycles.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Amended Ch. 1584, Stats. 1982. Effective January 1, 1983.

Effectiveness of Appointments

3002. The appointments of the appointive members shall be made effective as of the effective date of this article.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Terms of Members: Vacancies

3003. Each appointive member of the board shall be appointed for a term of four years and shall hold office until the appointment and qualification of his successor or until one year has elapsed since the expiration of the time for which he or she was appointed, whichever occurs first.

The terms of the members of the board first appointed shall expire as follows: one public member and one new motor vehicle dealer member, January 15, 1969; two public members and one new motor vehicle dealer member, January 15, 1970; two public members and two new motor vehicle dealer members, January 15, 1971. The terms shall thereupon expire in the same relative order.

Vacancies occurring shall be filled by appointment for the unexpired term.

The provisions of this section shall not apply to a dealer who deals exclusively in motorcycles.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Amended Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Oath of Office

3004. Members of the board shall take an oath of office as provided in the Constitution and the Government Code.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Removal of Members

3005. The appointive authority has the power to remove from office at any time, any member of the board appointed by such appointing authority for continued neglect of duties required by law, or for incompetence, or unprofessional or dishonorable conduct. Nothing in this section shall be construed as a limitation or restriction on the power of the appointing authority, conferred by any other provision of law, to remove any member of the board.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Board to Elect President

3006. The board shall organize and elect a president from among its members for a term of one year at the first meeting of each year. The newly elected president shall assume his duties at the conclusion of the meeting at which he was elected. Reelection to office during membership is unrestricted.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Frequency of Meetings

3007. The board shall meet at least twice during each calendar year. Special meetings may be called at any time by the president or by any five members of the board upon notice for such time and in such manner as the board may provide.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Meetings: Open and Executive

3008. (a) All meetings of the board shall be open and public, and all persons shall be permitted to attend any meeting of the board, except that the board may hold executive sessions to deliberate on the decision to be reached upon the evidence introduced in a proceeding conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) At all meetings of the board, open or executive, involving an appeal from a decision of the Director of Motor Vehicles as hereinafter provided for, the director or his authorized representative may attend, present the position of the department and thereafter shall absent himself from any executive session at the request of any member of the board.

(c) Within the limitations of its powers and authority as herein conferred, and in the event of disagreement between the board and the director regarding the decision to be reached as herein provided, the decision of the board shall be final.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Quorum Defined

3010. Five members of the board shall constitute a quorum for the transaction of business, for the performance of any duty or the exercise of any power or authority of the board, except that three members of the board, who are not new motor vehicle dealers, shall constitute a quorum for the purposes of Article 4 (commencing with Section 3060) of this chapter.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 278, Stats. 1977. Effective July 8, 1977 by terms of an urgency clause.

Vacancy on the Board

3011. A vacancy on the board shall not impair the power of the remaining members to perform all duties and exercise all powers of the board, providing the members remaining constitute a quorum.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Compensation

3012. Each member of the board shall receive a per diem of one hundred dollars (\$100) for each day actually spent in the discharge of official duties, and he shall be reimbursed for his traveling and other expenses necessarily incurred in the performance of his duties, which per diem and reimbursement shall be wholly defrayed from funds that shall be provided in the annual budget of the department.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 1584, Stats. 1982. Effective January 1, 1983. Supersedes Ch. 1273.

Amended Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Board's Seal

3013. The board shall adopt a seal and such other device as the members may desire thereon, by which they shall authenticate all papers and documents under their control.

Copies of all records and papers in the board's office shall be received in evidence in all cases when certified under the hand and seal of the board, equally and with like effect as the originals.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Department Support

3014. The department shall provide the board with the services, as secretary, of a qualified, trained person, who shall, subject to civil service requirements, devote as much time as may be necessary to discharge the functions of the board as herein provided. In addition, the board may appoint an assistant secretary, who shall be exempt from civil service. The department, in addition, shall provide the board with the necessary personnel, office space, equipment, supplies, and services which, in the opinion of the board, may be necessary to administer this chapter. However, the board may contract with the department or another state agency for office space, equipment, supplies, and services, as determined by the board to be appropriate, for the administration of this chapter.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Amended Ch. 247, Stats. 1984. Effective January 1, 1985.

Headquarters Office—Meeting Rooms

3015. In addition to the office of the secretary in Sacramento, the department shall, as the need therefor occurs, secure adequate rooms for the meetings of the board in Los Angeles, San Francisco, Sacramento, or such other locations in the state as may be required in the discretion of the board, to administer this chapter.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Fees

3016. New vehicle dealers and other licensees under the jurisdiction of the board shall be charged fees sufficient to fully fund the board's activities. The fees shall be deposited, and held separate from other moneys, in the Motor Vehicle Account in the State Transportation Fund, and shall not be transferred to the State Highway Account pursuant to Section 42273.

The fees shall be available, when appropriated, exclusively to fund the board's activities. If at the conclusion of any fiscal year the amount of fees collected exceeds the amount of expenditures for this purpose during the fiscal year, the surplus shall be carried over into the succeeding fiscal year.

Added Ch. 327, Stats. 1982. Effective June 30, 1982, by terms of an urgency clause.

Amended Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Amended Ch. 1201, Stats. 1985. Effective September 28, 1985, by terms of an urgency clause.

Article 2. Powers and Duties of Board**Powers and Duties, Generally**

3050. The board shall do all of the following:

(a) 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 such matters as are specifically committed to its jurisdiction.

(b) Hear and consider, within the limitations and in accordance with the procedure provided, an appeal presented by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative when the applicant or licensee submits an appeal provided for in this chapter from a decision arising out of the department.

(c) Consider any matter concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter considered by the board pursuant to this subdivision that involves a dispute between a franchisee and franchisor. After such consideration, the board may do any one or any combination of the following:

(1) Direct the department to conduct investigation of matters that the board deems reasonable, and make a written report on the results of *the* investigation to the board within the time specified by the board.

(2) Undertake to *mediate*, () arbitrate, or *otherwise* resolve any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor branch, or representative.

(3) Order the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as such license is required under Chapter 4 (commencing with Section 11700) of Division 5.

(d) Hear and consider, within the limitations and in accordance with the procedure provided, a protest presented by a franchisee pursuant to Section 3060, 3062, 3064, or 3065. A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide, any matter involving a protest filed pursuant to Article 4 (commencing with Section 3060).

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended Ch. 384, Stats. 1974. Operative July 5, 1974.

Amended Ch. 943, Stats. 1975. Effective January 1, 1976.

Amended Ch. 278, Stats. 1977. Effective July 8, 1977, by terms of an urgency clause.

Amended Ch. 340, Stats. 1979. Effective July 27, 1979, by terms of an urgency clause.

Amended Ch. 454, Stats. 1982. Effective January 1, 1983.

Amended Ch. 1201, Stats. 1985. Effective September 28, 1985, by terms of an urgency clause.

Amended Ch. 1280, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:

"amicably"

Oaths, Depositions, Certification to Official Acts, and Issuance of Subpoenas

3050.1. (a) In any proceeding, hearing, or in the discharge of any duties imposed under this chapter, the board, its secretary, or a hearing officer designated by the board may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) For purposes of discovery, the board or its secretary may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in such discovery procedures as are provided for in civil actions in Article 3 (commencing with Section 2016) and Article 4 (commencing with Section 2037) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2030 of that code. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its secretary, or a hearing officer designated by the board may issue subpoenas to compel attendance at depositions of persons having knowledge of the acts, omissions

or events which are the basis for the proceedings, as well as the production of books, records, papers and other documents.

Added Ch. 1210, Stats. 1972. Effective March 7, 1973.

Amended Ch. 964, Stats. 1980. Effective January 1, 1981.

Enforcement of Discovery

3050.2. (a) Obedience to subpoenas issued to compel attendance of witnesses, or the production of books, records, papers, and other documents at the proceeding or hearing, may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Compliance with such discovery procedures as have been authorized pursuant to subdivision (b) of Section 3050.1 may be enforced by application to the secretary of the board. The secretary may, at the direction of the board, upon a showing of failure to comply with authorized discovery without a showing of good cause for such failure, dismiss the protest or suspend the proceedings pending compliance. The secretary may, at the direction of the board, upon a failure to comply with authorized discovery without a showing of good cause for that failure, require payment of costs incurred by the board. Nothing in this section shall prohibit the secretary from making application to the superior court to enforce obedience to subpoenas or compliance with such other discovery procedures as have been authorized pursuant to subdivision (b) of Section 3050.1.

Added Ch. 1210, Stats. 1972. Effective March 7, 1973.

Amended Ch. 964, Stats. 1980. Effective January 1, 1981.

Amended Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Witness Fees and the Mileage Allowance

3050.3. Each witness, other than an officer or employee of the state or of a political subdivision of the state, who appears by order of the board or its secretary, shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to witnesses in civil cases. The amount shall be paid by the party at whose request the witness is subpoenaed. The mileage and fees, if any, of a witness subpoenaed by the board or its secretary, but not at the request of a party, shall be paid from the funds provided for the use of the board in the same manner that other expenses of the board are paid.

Added Ch. 1210, Stats. 1972. Effective March 7, 1973.

Mandatory Settlement Conference

3050.4. In any protest or petition before the board, the board, its secretary, or a hearing officer designated by the board or its secretary, may order a mandatory settlement conference. The failure of a party to appear, to be prepared, or to have authority to settle the matter may result in any or all of the following:

(a) The board, its secretary, or a hearing officer designated by the board or its secretary, may suspend all proceedings before the board in the matter until compliance.

(b) The board, its secretary, or a hearing officer designated by the board or its secretary, may dismiss the proceedings or any part thereof before the board with or without prejudice.

(c) The board, its secretary, or a hearing officer designated by the board or its secretary, may require all the board's costs to be paid by the party at fault.

(d) The board, its secretary, or a hearing officer designated by the board or its secretary, may deem that the party at fault has abandoned the matter.

Added Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Fees for Appeal, Protest or Petition

3050.5. Pursuant to Section 3016, the board shall establish a fee for the

initial filing by any party in regard to any appeal, protest, or petition filed pursuant to this chapter.

Added Ch. 268, Stats. 1984. Effective June 30, 1984, by terms of an urgency clause.
Amended Ch. 1201, Stats. 1985. Effective September 28, 1985, by terms of an urgency clause.

Cost Assessment

3050.6. The board or its secretary may, in the event of a granting of a continuance of a scheduled matter, assess costs of the board upon the party receiving the continuance.

Added Ch. 1144, Stats. 1983. Effective September 27, 1983, by terms of an urgency clause.

Stipulated Decisions and Orders

3050.7. Whenever the parties to any protest or petition submit a proposed stipulated decision and proposed order of the board, a copy of the proposed stipulated decision and order shall be transmitted by the secretary of the board to each member of the board. The proposed stipulated decision and order shall be deemed to be adopted by the board unless any member of the board notifies the secretary of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

Added Ch. 1201, Stats. 1985. Effective September 28, 1985, by terms of an urgency clause.

Application of Chapter

3051. This chapter does not apply to any person licensed as a transporter under Article 1 (commencing with Section 11700) or as a salesman under Article 2 (commencing with Section 11800) of Chapter 4 of Division 5, or to any licensee who is not a new motor vehicle dealer, motor vehicle manufacturer, manufacturer branch, new motor vehicle distributor, distributor branch or representative. This chapter does not apply to transactions involving "mobilehomes," as defined in Section 18008 of the Health and Safety Code, "recreational vehicles," as defined in Section 18010.5 of the Health and Safety Code, "commercial coaches," as defined in Section 18012 of the Health and Safety Code or off-highway motor vehicles subject to identification, as defined in Section 38012, except off-highway motorcycles. Except as otherwise provided in this chapter, this chapter applies to a new motor vehicle dealer as defined in Section 426, a vehicle manufacturer as defined in Section 672, a manufacturer branch as defined in Section 389, a distributor as defined in Section 296, a distributor branch as defined in Section 297, a representative as defined in Section 512, or an applicant therefor.

Added Ch. 1397, Stats. 1967. Effective November 8, 1967.
Amended Ch. 996, Stats. 1973. Operative July 1, 1974.
Amended Ch. 943, Stats. 1975. Effective January 1, 1976.
Amended Ch. 622, Stats. 1979. Effective January 1, 1980.
Amended Ch. 714, Stats. 1981. Effective January 1, 1982.
Amended Ch. 1584, Stats. 1982. Effective January 1, 1983.

Article 3. Appeals From Decisions of the Department

Form, Filing, Support of Appeal

3052. (a) On or before the 10th day after the last day on which reconsideration of a final decision of the department can be ordered, the respondent may file an appeal with the secretary of the board. The appeal shall be in writing and shall state the grounds therefor. A copy thereof shall be mailed by the appellant to the department which shall thereafter be treated in all respects as a party to the appeal. The right to appeal shall not be affected by failure to seek reconsideration before the department.

(b) An appeal shall be deemed filed on the date it is received in the office of the secretary of the board; provided, however, an appeal mailed to the secretary by means of registered mail shall be deemed to be filed with the secretary on the date of the registry with the United States Post Office.

(b) A new light duty truck with a manufacturer's gross vehicle weight rating of 8,500 pounds or less unless there is affixed to the light duty truck the label required by Section 24013.5.

Added Ch. 1089, Stats. 1974. Effective January 1, 1975.

Amended Ch. 418, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:
"shall be"

Unlawful Acts

11713. It is unlawful and a violation of this code for the holder of any license issued under this article:

(a) To make or disseminate or cause to be made or disseminated before the public in this state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading, or to so make or disseminate or cause to be so disseminated any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) To advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer from the manufacturer or distributor of the vehicle at the time of the advertisement or offer.

(c) To fail within 48 hours in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) To advertise or represent a vehicle as a new vehicle if the vehicle falls within the purview of Section 665.

(e) To engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) For any licensed dealer to engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) To include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which amount is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) To employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or to fail to willfully notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) To deliver, following sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).

(j) To use or permit the use of the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on behalf of or at the place of business of the license holder, that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(l) To participate in the sale of a vehicle reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) To permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of vehicles required to be registered under this code, or to permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles sold by, or the business of, or branch location used by, the other person.

(n) To violate any of the provisions of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

Amended Ch. 1827, Stats. 1959. Effective September 18, 1959.

Amended Ch. 1626, Stats. 1961. Effective September 15, 1961. Supersedes Ch. 58 and Ch. 346.

Amended Ch. 1858, Stats. 1963. Operative October 1, 1963.

Amended Ch. 482, Stats. 1967. Effective November 8, 1967.

Amended Ch. 1021, Stats. 1968. Effective November 13, 1968.

Amended Ch. 522, Stats. 1970. Effective November 23, 1970. Supersedes Ch. 395.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Amended Ch. 799, Stats. 1972. Effective March 7, 1973. Supersedes Ch. 475.

Amended Ch. 774, Stats. 1973. Effective September 25, 1973 by terms of an urgency clause.

Amended Ch. 1286, Stats. 1974. Effective July 1, 1975.

Amended Ch. 1248, Stats. 1975. Effective January 1, 1976. Supersedes Ch. 842.

Amended Ch. 843, Stats. 1976. Effective January 1, 1977.

Amended Ch. 579, Stats. 1977. Effective January 1, 1978.

Amended Ch. 797, Stats. 1978. Effective January 1, 1979.

Amended Ch. 535, Stats. 1982. Effective January 1, 1983. Supersedes Ch. 517.

Amended Ch. 18, Stats. 1983. Effective April 21, 1983.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Amended Ch. 1342, Stats. 1984. Effective January 1, 1985.

Amended Ch. 1136, Stats. 1985. Effective January 1, 1986.

Additional Unlawful Acts

11713.1. It is unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying the vehicle by either its vehicle identification number or license number.

(b) To advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except sales tax, vehicle registration fees, certificate of compliance or noncompliance fees not exceeding ()¹ **twenty-five dollars (\$25)** pursuant to any statute or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary preparation charge. The dealer documentary preparation charge shall not exceed ()¹ **twenty-five dollars (\$25)**.

(c) To exclude from the newspaper display advertisement of a vehicle for sale that there will be added to the advertised total price at the time of sale, charges for sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, and any dealer documentary preparation charge.

For purposes of this subdivision, "newspaper display advertisement" means any advertisement in a newspaper which is two or more newspaper columns in width or one newspaper column in width and more than seven inches in length.

(d) To represent the dealer documentary preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) To fail to sell a vehicle to any person at the advertised total price, exclusive of sales tax, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute or a certificate of waiver pursuant to Section 9889.56 of the Business and Professions Code, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a

mobilehome, and any dealer documentary preparation charge, which charges shall not exceed ()¹ *twenty-five dollars (\$25)* while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

(f) To advertise for sale as new any new vehicle of a line-make for which the dealer does not hold a franchise, unless the dealer discloses, prior to the sale of the new vehicle, that the dealer is not franchised to sell the vehicle and that the dealer will receive a commission or other compensation as a result of the sale.

This subdivision does not apply to any transaction involving a mobilehome as defined in Section 396 of this code, a recreational vehicle as defined in Section 18010.5 of the Health and Safety Code, a commercial coach as defined in Section 18012 of the Health and Safety Code, an off-highway motor vehicle subject to identification as defined in Section 38012, or a commercial vehicle as defined in Section 260 ()².

(g) To sell a park trailer, as defined in subdivision (f) of Section 799.24 of the Civil Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

Added Ch. 1031, Stats. 1973. Effective January 1, 1974.

Amended Ch. 1162, Stats. 1978. Effective January 1, 1979. Supersedes Ch. 632.

Amended Ch. 278, Stats. 1979. Effective July 1, 1979 by terms of an urgency clause.

Amended Ch. 943, Stats. 1979. Effective January 1, 1980.

Amended Ch. 456, Stats. 1983. Effective January 1, 1984.

Amended Ch. 1342, Stats. 1984. Effective January 1, 1985.

Amended Ch. 1566, Stats. 1985. Effective October 2, 1985, by terms of an urgency clause.

Amended Ch. 1078, Stats. 1986. Effective January 1, 1987.

Amended Ch. 503, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:

¹ "twenty dollars (\$20)"

² "of this code"

Additional Unlawful Acts

11713.2. It shall be unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to coerce or attempt to coerce any dealer in this state:

(a) To order or accept delivery of any motor vehicle, part or accessory thereof, appliance, equipment or any other commodity not required by law which shall not have been voluntarily ordered by the dealer.

(b) To order or accept delivery of any motor vehicle with special features, appliances, accessories or equipment not included in the list price of such motor vehicles as publicly advertised by the manufacturer or distributor.

(c) To order for any person any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever.

(d) To participate in an advertising campaign or contest, any promotional campaign, promotional materials, training materials, showroom or other display decorations or materials at the expense of the dealer.

(e) To enter into any agreement with the manufacturer, manufacturer branch, distributor, or distributor branch, or to do any other act prejudicial to the dealer by threatening to cancel a franchise or any contractual agreement existing between the dealer and manufacturer, manufacturer branch, distributor, or distributor branch. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of such franchise or contractual agreement shall not constitute a violation of this article.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980. Supersedes Ch. 373.

Additional Unlawful Acts

11713.3. It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do any of the following:

(a) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of any new vehicle sold or distributed by the manufacturer or distributor, any new vehicle or parts or accessories to new vehicles as are covered by the franchise, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(b) To prevent or require, or attempt to prevent or require, by contract or otherwise, any change in the capital structure of a dealership or the means by or through which the dealer finances the operation of the dealership, provided that the dealer at all times meets any reasonable capital standards agreed to by the dealer and the manufacturer or distributor, and also provided that no change in capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor.

(c) To prevent or require, or attempt to prevent or require, a dealer to change the executive management of a dealership, other than the principal dealership operator or operators if the franchise was granted the dealer in reliance upon the personal qualifications of such person or persons.

(d) To prevent or require, or attempt to prevent or require, by contract or otherwise, any dealer, or any officer, partner, or stockholder of any dealership, the sale or transfer of any part of the interest of any of them to any other person or persons. No dealer, officer, partner, or stockholder shall, however, have the right to sell, transfer, or assign the franchise, or any right thereunder, without the consent of the manufacturer or distributor except that the consent shall not be unreasonably withheld.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall be no transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, which consent shall not be unreasonably withheld.

(f) To obtain money, goods, service, or any other benefit from any other person with whom the dealer does business, on account of, or in relation to, the transaction between the dealer and that other person, other than for compensation for services rendered, unless the benefit is promptly accounted for, and transmitted to, the dealer.

(g) To require a dealer to prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability to be imposed by this article or to require any controversy between a dealer and a manufacturer, distributor, or representative, to be referred to any person other than the board, if the referral would be binding on the dealer. This subdivision does not, however, prohibit arbitration before an independent arbitrator.

(h) To increase prices of motor vehicles which the dealer had ordered for private retail consumers prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer is evidence of each such order. In the event of manufacturer price reductions, the amount of the reduction received by a dealer shall be passed on to the private retail consumer by the dealer if the retail price was negotiated on the basis of the previous higher price to the dealer. Price reductions apply to all vehicles in the dealer's inventory which were subject to the price reduction. Price differences applicable to new model or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase or price decrease. Price changes caused by either (1) the addition to a motor vehicle of required or optional equipment pursuant to state or federal law, or (2) revaluation of the United States dollar in the case of foreign-make vehicles, are not subject to this subdivision.

(i) To fail to pay to a dealer, within a reasonable time following receipt of a valid claim by a dealer thereof, any payment agreed to be made by the manufacturer or distributor to the dealer by reason of the fact that a new vehicle of a prior year model is in the dealer's inventory at the time of introduction of new model vehicles. A manufacturer or distributor shall not authorize or enable any new model or series passenger vehicle or station wagon to be delivered by dealers at retail more than 30 days prior to the eligibility date of the model change allowance payment for prior year model vehicles.

(j) To deny the widow or heirs designated by a deceased owner of a dealership, the opportunity to participate in the ownership of the dealership or successor dealership under a valid franchise for a reasonable time after the death of the owner.

(k) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line-make to be sold to the state or any political subdivision thereof without making the same offer to all other dealers in the same line-make within the relevant market area.

(l) To modify, replace, enter into, relocate, terminate or refuse to renew a franchise in violation of Article 4 (commencing with Section 3060) of Chapter 6 of Division 2.

(m) To employ a person as a representative who has not been licensed pursuant to Article 3 (commencing with Section 11900) of Chapter 4 of Division 5.

(n) To deny any dealer the right of free association with any other dealer for any lawful purpose.

(o) 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. A manufacturer or distributor shall not, however, be deemed to be competing when operating a dealership either temporarily for a reasonable period, or in a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price, or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions. A distributor shall not be deemed to be competing when a wholly owned subsidiary corporation of the distributor 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.

(p) To unfairly discriminate among its franchisees with respect to warranty reimbursement or authority granted its franchisees to make warranty adjustments with retail customers.

(q) To sell vehicles to persons not licensed under this chapter for resale.

(r) To fail to affix an identification number to any park trailer, as defined in Section 799.24 of the Civil Code, which is manufactured on or after January 1, 1987, and which does not clearly identify the unit as a park trailer to the department. The configuration of the identification number shall be approved by the department.

Added Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended Ch. 384, Stats. 1974. Operative July 5, 1974 by terms of an urgency clause.

Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.

Amended Ch. 1078, Stats. 1986. Effective January 1, 1987.

Refund of Excess Fees by Dealer

11713.4. If a purchaser of a vehicle pays to the dealer an amount for the licensing or transfer of title of the vehicle, which amount is in excess of the actual fees due for such licensing or transfer, or which amount is in excess of the amount which has been paid, prior to the sale, by the dealer to the state in order to avoid penalties that would have accrued because of late payment of such fees, the dealer shall return such excess amount to the

purchaser, whether or not such purchaser requests the return of the excess amount.

Added Ch. 222, Stats. 1974. Effective January 1, 1975.
Amended and renumbered Ch. 943, Stats. 1979. Effective January 1, 1980.

Unlawful Representation of Vehicle Year Model

11713.5. (a) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a motor vehicle, representing the motor vehicle to be of a year model different from the year model designated at the time of manufacture or first assembly as a completed vehicle.

(b) It is unlawful and a violation of this code for the holder of any license issued under this article to directly or indirectly authorize or advise another holder of a license issued under this article to change the year model of a motor vehicle in the inventory of the other holder.

(c) It is unlawful and a violation of this code for the holder of any license issued under this article to display for sale, offer for sale, or sell, a housecar which has been manufactured in two or more stages, unless the licensee informs the buyer that the housecar has been so manufactured and the licensee provides the buyer with a form, approved by the department, which sets forth the date of chassis and engine manufacture and the date and model year of the other stages of the vehicle. The licensee shall retain a copy of the form, which shall be signed by the purchaser prior to entering into any sales contract, indicating that the purchaser has received a copy of the form.

(d) This section does not apply to the displaying or offering for sale, or selling, of any new motortruck or truck tractor weighing over 10,000 pounds.

(e) This section does not apply to a vehicle which has been remanufactured by a licensed remanufacturer. The year model of a remanufactured vehicle will be the year the vehicle was remanufactured.

Added Ch. 1025, Stats. 1974. Effective January 1, 1975.
Amended Ch. 873, Stats. 1977. Effective January 1, 1978.
Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Mobilehome Dealers: Listings, Referral Arrangements, and Sales Agreements

11713.6.

Added Ch. 373, Stats. 1976. Effective July 8, 1976 by terms of an urgency clause.
Repealed Ch. 1342, Stats. 1984. Effective January 1, 1985.

Disclosure: Remanufactured Vehicle

11713.7. Disclosure to a buyer that a vehicle has been remanufactured is required. Disclosure shall be accomplished by all of the following:

(a) Oral notification to the buyer.

(b) The statement "THIS VEHICLE HAS BEEN REMANUFACTURED AND CONTAINS USED OR RECONDITIONED PARTS" shall appear in a type size at least the same as the bulk of the text on the purchase order or conditional sales contract signed by the buyer.

(c) The statement that the vehicle is remanufactured and contains used or reconditioned parts shall appear in any advertisement pertaining to remanufactured vehicles.

(d) Remanufactured vehicles displayed for retail purposes shall be clearly designated as remanufactured. The disclosure statement required in subdivision (b) shall appear on the vehicle or at the location where the vehicles are displayed.

Added Ch. 1286, Stats. 1983. Effective January 1, 1984.

Unlawful Acts: Remanufacturer

11713.8. It is unlawful and a violation of this code for a remanufacturer licensed under this code to fail to do any of the following:

(a) Report to the department an existing vehicle identification number when a used frame is utilized.

(b) Die stamp the vehicle identification number to the frame of the vehicle when a new vehicle identification number is assigned.

(c) Disclose that a vehicle is remanufactured and contains used or reconditioned parts as required by Section 11713.7.

(d) Remove the trade name of the original manufacturer from the vehicle, unless the remanufacturer and the original manufacturer are same.

(e) Maintain for three years bills of sale or invoices for used parts utilized in a remanufactured vehicle.

(f) Maintain for three years proof that the vehicle was reported dismantled, as required by Section 5500 or 11520, when a used frame is utilized in a remanufactured vehicle.

(g) Disclose, on the vehicle identification number plate or label, that the vehicle is remanufactured and includes used parts.

(h) Disclose to the dealer on a document signed by the dealer that the vehicle is remanufactured and contains used parts.

Added Ch. 1286, Stats. 1983. Effective January 1, 1984.

Disclosure: Engine Manufacturer

11713.9. (a) It is unlawful and a violation of this code for the holder of a dealer's license to knowingly display for sale or offer for sale any new motor vehicle specified in subdivision (b) with an engine manufactured by a manufacturer that is not the same as the vehicle manufacturer, as defined in Section 9980, unless the vehicle is prominently labeled as specified in Section 9981.

(b) This section applies only to new passenger vehicles and to new motortrucks with an unladen weight under 6,000 pounds, except housecars.

Added Ch. 1264, Stats. 1984. Effective January 1, 1985.

Issuance of License, Special Plates, and Forms: Prohibited Sales

11714. (a) The department, upon granting a license, shall issue to the applicant a license containing the applicant's name and address and the general distinguishing number assigned to the applicant.

(b) *A dealer shall not sell any vehicle at retail at a location that is not posted pursuant to Section 11709.*

(c) *A dealer who is authorized by the department to sell motor vehicles only at wholesale shall not sell any vehicle at retail and shall report every sale to the department on the wholesale report of sale form prescribed by the department.*

()¹ (d) When the department has issued a license pursuant to subdivision (a), the licensee may apply for and the department shall issue special plates which shall have displayed thereon the general distinguishing number assigned to the applicant. Each plate so issued shall also contain a number or symbol identifying the plate from every other plate bearing a like general distinguishing number.

()² (e) The department shall also furnish books and forms as it may determine necessary. Such books and forms are and shall remain the property of the department and may be taken up at any time for inspection.

Amended Ch. 929, Stats. 1971. Operative May 3, 1972.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975 by terms of an urgency clause.

Amended Ch. 444, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:

¹ "(b)"

² "(c)"

Operation With Special Plates: Exceptions

11715. (a) A manufacturer, remanufacturer, distributor, or dealer owning or lawfully possessing any vehicle of a type otherwise required to be registered under this code may operate or move the vehicle upon the highways without registering each such vehicle upon condition that any such vehicle display thereon special plates issued to the owner as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may also be moved or operated for the purpose of towing or transporting by any lawful method other vehicles.

(b) A transporter may operate or move any owned or lawfully possessed vehicle of like type by any lawful method upon the highways solely for the purpose of delivery, upon condition that there be displayed upon each vehicle in contact with the highway special license plates issued to the transporter as provided in this chapter, in addition to any license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may be used for the purpose of towing or transporting by any lawful method other vehicles when the towing or transporting vehicle is being delivered for sale or to the owner thereof.

(c) This section does not apply to any manufacturer, remanufacturer, transporter, distributor, or dealer operating or moving a vehicle as provided in Section 11716.

(d) This section does not apply to work or service vehicles owned by a manufacturer, remanufacturer, transporter, distributor, or dealer. This section does not apply to vehicles owned and leased by dealers, except those vehicles rented or leased to vehicle salesmen in the course of their employment for purposes of display or demonstration, nor to any unregistered vehicles used to transport more than one load of other vehicles for the purpose of sale.

(e) This section does not apply to vehicles currently registered in this state which are owned and operated by a licensed dealer when the notice of transfer has been forwarded to the department by the former owner of record pursuant to Section 5900 and when a copy of the notice is displayed as follows:

(1) For a motorcycle or motor-driven cycle, the notice is displayed in a conspicuous manner upon the vehicle.

(2) For a vehicle other than a motorcycle or motor-driven cycle, the notice is displayed in the lower right-hand corner of the windshield of the vehicle, as specified in paragraph (3) of subdivision (b) of Section 26708.

(f) Every owner, upon receipt of a registration card issued for special plates, shall maintain the same or a facsimile copy thereof with the vehicle bearing the special plates.

Amended by Ch. 1391, Stats. 1959. Effective September 18, 1959. Supersedes Ch. 421, Stats. 1959.

Amended Ch. 346, Stats. 1961. Effective September 15, 1961.

Amended Ch. 801, Stats. 1967. Effective November 8, 1967.

Amended Ch. 929, Stats. 1971. Operative May 3, 1972.

Amended Ch. 182, Stats. 1975. Effective July 3, 1975 by terms of an urgency clause.

Amended Ch. 105, Stats. 1977. Effective January 1, 1978.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Operation Without Registration: Permit

11716. A manufacturer, remanufacturer, transporter, or a dealer, in the course of his business, may operate or move any vehicle of a type otherwise required to be registered under this code without registering the vehicle, and without license or special plates attached thereto, from a vessel, railroad depot, or warehouse over the highways to a warehouse or salesroom upon first having obtained a written permit authorizing such operation from the department.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

Expiration and Renewal of Special Plates and License

11717. (a) Every occupational license and special plate issued under this article shall be valid for a period of one year from midnight of the last day of the month of issuance. Except as provided in subdivision (c), renewal of the occupational license and special plates for the ensuing year may be obtained by the person to whom the occupational license and special plates were issued upon application to the department and payment of the fee provided in this code.

(b) Every application for the renewal of an occupational license and special plates which expire pursuant to this section shall be made by the person to whom issued not more than 90 days prior to the expiration date,

and shall be made by presenting the completed application form provided by the department and by payment of the full annual renewal fee for the occupational license and special plates.

(c) If the application for renewal of the occupational license and special plates is not made by midnight of the expiration date, the application may be made within 30 days following expiration of the license by paying the annual renewal fee and a penalty fee equal to the amount of the original application fee for each occupational license held. A penalty as specified in Sections 9553 and 9554 shall also be added to each special plate renewed during the 30-day period following expiration of the special plates.

(d) In no event may the licensee renew the occupational license or special plates after the expiration of the 30-day period authorized in subdivision (c).

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Amended Ch. 571, Stats. 1982. Effective January 1, 1983.

Amended Ch. 499, Stats. 1984. Effective January 1, 1985.

Conversion: Renewal Period

11717.1. In order to accomplish the conversion of the license from the term in effect on December 31, 1982, to the term prescribed in Section 11717, the director may either establish an initial renewal period of less than one year or extend the renewal period to more than one year during the conversion period, except that any new or reinstated license issued on or after January 1, 1983, shall be for the term prescribed in Section 11717.

Added Ch. 571, Stats. 1982. Effective January 1, 1983.

Issuance of Probationary License

11718. Except where the provisions of this code require the refusal to issue a license, the department may issue a probationary license subject to conditions to be observed by the licensee in the exercise of the privilege granted. The conditions to be attached to the exercise of the privilege shall not appear on the face of the license but shall be such as may, in the judgment of the department, be in the public interest and suitable to the qualifications of the applicant as disclosed by the application and investigation by the department of the information contained therein.

Added Ch. 1827, Stats. 1959. Effective September 18, 1959.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Temporary Permit

11719. Pending the satisfaction of the department that the applicant has met the requirements under this article, it may issue a temporary permit to any person applying for a manufacturer's, manufacturer's branch, remanufacturer's, remanufacturer's branch, distributor's, distributor's branch, transporter's, or dealer's license and special plates. The temporary permit shall permit the operation by the manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, transporter, or dealer for a period not to exceed 120 days while the department is completing its investigation and determination of all facts relative to the qualifications of the applicant to the license and special plates. The department may cancel the temporary permit when it has determined, or has reasonable cause to believe, that the application is incorrect or incomplete or the temporary permit was issued in error. The temporary permit is invalid when canceled or when the applicant's license has been issued or refused.

Added Ch. 1827, Stats. 1959. Effective September 18, 1959.

Amended Ch. 1214, Stats. 1971. Operative May 3, 1972.

Amended Ch. 215, Stats. 1972. Effective March 7, 1973.

Amended Ch. 996, Stats. 1973. Operative July 1, 1974.

Amended Ch. 1286, Stats. 1983. Effective January 1, 1984.

whatsoever for use, or with knowledge that any such equipment is intended for eventual use, in any vehicle, that is not in conformity with this code or regulations made thereunder.

Amended Ch. 226, Stats. 1961. Effective September 15, 1961.

Amended Ch. 734, Stats. 1971. Operative May 3, 1972.

Uncertified Synthetic Rope or Webbing Strap Material

24005.5. It is unlawful for any person to sell or offer for sale for use on loads regulated by the department any type of synthetic fiber rope or webbing strap material unless it meets requirements established by the department.

Added Ch. 466, Stats. 1972. Effective March 7, 1973.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Name or Trademark

24006. No person shall sell or offer for sale either separately or as a part of the equipment of a new motor vehicle any equipment or device subject to requirements established by the department unless the equipment or device bears thereon the trademark or name and type or model designation under requirements established by the department and is accompanied by any printed instructions which may be required by the department as to the light source to be used with lamps, any particular methods of mounting or adjustment of lamps or other devices, and any other instructions as determined by the department necessary for compliance with this code.

Amended Ch. 440, Stats. 1967. Effective June 30, 1967, by terms of an urgency clause.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Responsibility of Dealer or Other Person Selling Motor Vehicle

24007. (a) No dealer or person holding a retail seller's permit shall sell a new or used vehicle which is not in compliance with () this code and departmental regulations adopted pursuant to this code, unless the vehicle is (1) sold to another dealer, (2) sold for the purpose of being wrecked or dismantled, or (3) sold exclusively for off-highway use.

(b) *Except as provided in Section 24007.5*, no person shall sell, or offer or deliver for sale, to the ultimate purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with () that Part 5 and the rules and regulations of the State Air Resources Board, unless the vehicle is either (1) sold to a dealer, or (2) sold for the purpose of being wrecked or dismantled.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to that Part 5, a dealer shall transmit to the Department of Motor Vehicles a valid certificate of compliance from a licensed motor vehicle pollution control device installation and inspection station indicating that the vehicle is properly equipped with a certified device or devices which are in proper operating condition and which are in compliance with () that Part 5 and the rules and regulations of the state board.

(2) With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicles compliance with () that Chapter 2. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

Amended Ch. 2033, Stats. 1965. Effective September 17, 1965. Supersedes Ch. 2031.

Amended Ch. 82, Stats. 1966. Effective October 6, 1966.

Amended Ch. 394, Stats. 1967. Effective November 8, 1967.

Amended Ch. 764, Stats. 1968. Effective November 13, 1968.

Amended Ch. 766, Stats. 1970. Effective November 23, 1970.

Amended Ch. 1488, Stats. 1971. Operative May 3, 1972. Supersedes Ch. 86.

Amended Ch. 268, Stats. 1972. Effective March 7, 1973. Supersedes Ch. 99.

Amended Ch. 957, Stats. 1975. Effective January 1, 1976.

Amended Ch. 1206, Stats. 1976. Effective January 1, 1977.

Amended Ch. 1038, Stats. 1977. Effective September 23, 1977, by terms of an urgency clause.

Amended Ch. 246, Stats. 1984. Effective January 1, 1985.

Amended Ch. 1091, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:

"the provisions of"

NO_x Devices: Free Installation for Low-Income Elderly Persons

24007.2. If a dealer, or a person holding a retail seller's permit, sells to an elderly low-income person, as defined in Section 39026.5 of the Health and Safety Code, a 1966 through 1970 model year motor vehicle which is not equipped, as required pursuant to Sections 43654 and 43656 of that code, with a certified device to control its exhaust emission of oxides of nitrogen, the dealer or such person, as the case may be, shall install the required certified device on the motor vehicle without cost to the elderly low-income person.

Added Ch. 231, Stats. 1976. Effective January 1, 1977.

Inspection of Vehicle Prior to Sale by Dealer

24007.3. No dealer or person holding a retail seller's permit shall sell a new or used motor vehicle subject to Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code which has not been inspected within 60 days immediately prior to sale pursuant to subdivision (b) or (d) of Section 9889.55 of the Business and Professions Code, unless the vehicle is sold to another dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use. The dealer or person holding the retail seller's permit shall, with each application for initial registration or transfer of registration of a motor vehicle subject to Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code, transmit to the Department of Motor Vehicles a valid certificate of compliance or waiver issued pursuant to Section 9889.56 of the Business and Professions Code indicating that the vehicle has passed, within 60 days immediately prior to sale, the inspection conducted pursuant to subdivision (b) or (d) of Section 9889.55 of the Business and Professions Code.

Added Ch. 1154, Stats. 1973. Effective January 1, 1974.

Amended Ch. 76, Stats. 1981. Effective January 1, 1982.

Sale by Auctioneer or Public Agency

24007.5.. (a) Except as otherwise provided in subdivisions (c), (d), and (e), no auctioneer or public agency shall sell, at public auction, any vehicle specified in subdivision (a) of Section 24007, which is not in compliance with ()¹ this code, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(b) Except as otherwise provided in subdivision (e), any auctioneer or public agency which sells, at public auction, any vehicle specified in subdivision (b) of Section 24007, shall provide each bidder with a notice in writing that a certificate of compliance is required to be obtained, certifying that the vehicle complies with ()¹ Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, before ()² *the* vehicle may be registered in this state, unless the vehicle is sold to a dealer or for the purpose of being wrecked or dismantled or is sold exclusively for off-highway use.

(c) If, in the opinion of an auctioneer or public agency, the cost of repairs to a vehicle exceeds the value of the vehicle to the auctioneer or agency, the auctioneer or agency shall, as transferee or owner, surrender the certificates of registration ()³, *documents satisfactory to the department showing proof of ownership, and any unexpired* license plates ()⁴ issued for ()² *the* vehicle to the Department of Motor Vehicles ()⁵.

(d) The auctioneer or agency having complied with ()¹ subdivision (c) ()⁶ shall, upon sale of ()² *the* vehicle, give to the purchaser a bill of sale

which ()⁷ *includes*, in addition to any other required information, the last issued license plate number.

(e) ()¹ Subdivisions (a) and (b) do not apply to any judicial sale conducted pursuant to a writ of execution or order of court.

(f) *The exceptions in this section do not apply to any requirements for registration of a vehicle pursuant to Section 4000.1, 4000.2, or 4000.3.*

Added Ch. 1021, Stats. 1971. Operative May 3, 1972.

Amended Ch. 957, Stats. 1975. Effective January 1, 1976.

Amended Ch. 1091, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:

¹ "the provisions of"

² "such"

³ "and"

⁴ "last"

⁵ "as provided under Section 11521 of this code"

⁶ "of this section"

⁷ "shall include"

Modification of Vehicles

24008. It is unlawful to operate any passenger vehicle, or commercial vehicle under 6,000 pounds, which has been modified from the original design so that any portion of the vehicle, other than the wheels, has less clearance from the surface of a level roadway than the clearance between the roadway and the lowermost portion of any rim of any wheel in contact with the roadway.

Added Ch. 1791, Stats. 1959. Effective September 18, 1959.

Amended Ch. 1562, Stats. 1961. Effective September 15, 1961.

Amended Ch. 462, Stats. 1984. Effective January 1, 1985.

Frame and Floor Height

24008.5. (a) No person shall operate any motor vehicle with a frame height or body floor height greater than specified in subdivisions (b) and (c).

(b) The maximum frame height is as follows:

<i>Vehicle Type</i>	<i>Frame Height</i>
(1) Passenger vehicles, except housecars	23 inches
(2) All other motor vehicles, including housecars, as follows:	
Up to 4,500 pounds GVWR	27 inches
4,501 to 7,500 pounds GVWR	30 inches
7,501 to 10,000 pounds GVWR	31 inches

(c) The lowest portion of the body floor shall not be more than () *five* inches above the top of the frame.

(d) The following definitions govern the construction of this section:

(1) "Frame" means the main longitudinal structural members of the chassis of the vehicle or, for vehicles with unitized body construction, the lowest main longitudinal structural members of the body of the vehicle.

(2) "Frame height" means the vertical distance between the ground and the lowest point on the frame, measured when the vehicle is unladen on a level surface at the lowest point on the frame midway between the front axle and the second axle on the vehicle.

(3) "GVWR" means the manufacturer's gross vehicle weight rating, as defined in Section 390, whether or not the vehicle is modified by use of parts not originally installed by the manufacturer.

Added Ch. 300, Stats. 1969. Effective November 10, 1969.

Repealed and Added Ch. 835, Stats. 1985. Effective January 1, 1986.

Amended Ch. 718, Stats. 1987. Effective January 1, 1988.

The 1987 amendment added the italicized material and at the point(s) indicated deleted the following:

"four"

Manufacturer's Name and GVW Rating

24009. No person shall sell or offer for sale a new motor truck, truck tractor, or bus that is not equipped with an identification plate or marking bearing the manufacturer's name and the manufacturer's gross vehicle weight rating of such vehicle.

Added Ch. 1800, Stats. 1959. Effective September 18, 1959.

Repealed Ch. 408, Stats. 1963. Effective September 20, 1963.

Added Ch. 1287, Stats. 1967. Effective November 8, 1967.

Vehicle Rental Responsibility

24010. No person engaged in the rental of any vehicle, for periods of 30 days or less, shall rent, lease or otherwise allow the operation of such vehicle unless all necessary equipment required by this code and regulations adopted hereunder for the operation of such vehicle upon a highway has been provided or offered to the lessee for his use. The contract or rental agreement shall include the name of the person from whom the vehicle is rented, leased or obtained, the address of his place of business in this state where it is rented, leased or delivered, and a statement of any required equipment refused by the person to whom the vehicle is rented, leased, or delivered.

Added Ch. 855, Stats. 1967. Effective November 8, 1967.

Amended Ch. 1536, Stats. 1971. Operative May 3, 1972.

Amended Ch. 88, Stats. 1973. Effective January 1, 1974.

Federal Safety Standard

24011. Whenever a federal motor vehicle safety standard is established under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C., Sec. 1381, et seq.) no dealer shall sell or offer for sale a vehicle to which the standard is applicable, and no person shall sell or offer for sale for use upon a vehicle an item of equipment to which the standard is applicable, unless:

(a) Such vehicle or equipment conforms to the applicable federal standard.

(b) The vehicle or equipment bears thereon a certification by the manufacturer or distributor that it complies with the applicable federal standards. The certification may be in the form of a symbol prescribed in the federal standards or, if there is no federal symbol, by a symbol acceptable to the department.

Added Ch. 192, Stats. 1968. Effective November 13, 1968.

Exhaust and Noise Emission Control Inspection

24011.7. (a) Nothing in Chapter 20.4 (commencing with Section 9889.50) of Division 3 of the Business and Professions Code, shall be construed as having any effect on the existing inspection program conducted by the department. Rather, it is the intent of the Legislature that such program continue and that a cooperative relationship between the department and the Department of Consumer Affairs be established, under which the department can inform the Department of Consumer Affairs of the results and experiences of the department in order to provide data on exhaust and noise emission control device tampering and performance deterioration following mandatory inspections.

Added Ch. 1154, Stats. 1973. Effective January 1, 1974.

Compliance With Lighting Equipment Mounting Regulations

24012. All lighting equipment or devices subject to requirements established by the department shall comply with the engineering requirements and specifications, including mounting and aiming instructions, determined and publicized by the department.

Amended and renumbered Ch. 341, Stats. 1969. Effective November 10, 1969.

Amended Ch. 723, Stats. 1979. Effective January 1, 1980.

Statement of Minimum Octane Number of Gasoline for Motor Vehicle

24013. No new motor vehicle shall be sold unless the seller provides the buyer with a statement of the minimum octane number of the gasoline for such vehicle.

Added Ch. 711, Stats. 1971. Effective March 4, 1972.

Information Disclosure: Light Duty Truck Sales

24013.5. (a) No dealer shall sell, offer for sale, or display for sale any new light duty truck with a manufacturer's gross vehicle weight rating of 8,500 pounds or less unless there is securely affixed to the windshield or side window of the light duty truck a label on which the manufacturer has endorsed clearly, distinctly, and legibly, true and correct entries disclosing the following information concerning the light duty truck:

(1) The make, model, and serial or identification number or numbers.

(2) The retail price of the light duty truck as suggested by the manufacturer.

(3) The retail delivered price, as suggested by the manufacturer, for each accessory or item of optional equipment which is physically attached to the light duty truck at the time of its delivery to the dealer and which is not included within the price of the light duty truck as stated pursuant to paragraph (2).

(4) The amount charged, if any, to the dealer for the transportation of the light duty truck to the location at which it is delivered to the dealer.

(5) The total of the amounts specified pursuant to paragraphs (2), (3), and (4).

(b) Subdivision (a) applies to every light duty truck sold, offered for sale, or displayed in California which is manufactured on or after September 1, 1988.

Added Ch. 418, Stats. 1987. Effective January 1, 1988.

Motorcycle Sales: Required Price Information

24014. (a) No dealer shall sell, offer for sale, or display, any new, assembled motorcycle on its premises, unless there is securely attached to its handlebar a label, approved by the Department of Motor Vehicles, furnished by the manufacturer, on which the manufacturer shall clearly indicate the following:

(1) The recommended retail price of the motorcycle.

(2) The recommended price for each accessory or item of optional equipment physically attached to the motorcycle at the time of its delivery to the dealer.

(b) The dealer shall clearly indicate on the label, furnished by the manufacturer, the following:

(1) The amount charged, if any, over and above the suggested retail price for transportation to the dealership.

(2) The amount charged, if any, for the assembly, preparation, or both, of the motorcycle.

(3) The amount charged, if any, for each dealer added accessory or item of optional equipment.

(4) The total recommended retail price of the vehicle which shall be the aggregate value of paragraphs (1) and (2) of subdivision (a) and paragraphs (1), (2) and (3) of subdivision (b).

Added Ch. 1089, Stats. 1974. Effective January 1, 1975.

Amended Ch. 623, Stats. 1978. Effective January 1, 1979.

Motorized Bicycle: Safety and Equipment Requirements

24015. (a) Motorized bicycles shall comply with those federal motor vehicle safety standards established under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C., Sec. 1381, et seq.) which are applicable to a motor-driven cycle, as that term is defined in such federal standards. Such standards include, but are not limited to, provisions requiring a

Article 10. Odometers

(Added Ch. 1109, Stats. 1967. Effective November 8, 1967)

True Mileage Driven

28050. It is unlawful for any person to advertise for sale, to sell, to use, or to install on any part of a motor vehicle or on an odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this section the true mileage driven is that mileage driven by the car as registered by the odometer within the manufacturer's designed tolerance.

Added Ch. 1109, Stats. 1967. Effective November 8, 1967.

Operation With Nonfunctional Odometer Prohibited

28050.5. It is unlawful for any person with the intent to defraud to operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

Added Ch. 1210, Stats. 1967. Effective November 8, 1967.

Unlawful to Alter Indicated Mileage

28051. It is unlawful for any person to disconnect, turn back, or reset the odometer of any motor vehicle with the intent to alter the number of miles indicated on the odometer gauge.

Added Ch. 1210, Stats. 1967. Effective November 8, 1967.

Amended Ch. 1216, Stats. 1968. Effective November 13, 1968.

Amended Ch. 111, Stats. 1969. Effective November 10, 1969.

Amended Ch. 774, Stats. 1973. Effective September 25, 1973 by terms of an urgency clause.

Device to Turn Back or Reset Odometer

28051.5. It is unlawful for any person to advertise for sale, to sell, or to use, any device designed primarily for the purpose of turning back or resetting the odometer of any motor vehicle to reduce the number of miles indicated on the odometer gauge.

Added Ch. 841, Stats. 1970. Effective November 23, 1970.

New Motor Vehicle Warranty; Mileage

28052. If a manufacturer, distributor, or dealer of a new motor vehicle makes any warranty to the purchaser of, and with respect to, a new motor vehicle which is based on the amount of miles that the motor vehicle is driven, only those miles which the motor vehicle has been driven on and after the date that the motor vehicle has first been sold as new to the purchaser shall be considered for purposes of the warranty.

The mileage indicated upon the odometer of the motor vehicle on the date that the motor vehicle is first sold as new to the purchaser shall, for purposes of the warranty, be the mileage upon which the warranty shall commence.

Nothing in this section shall be construed to relieve any person of any criminal punishment to which he would otherwise be subject under Section 28051.

The provisions of this section shall apply only to motor vehicles which are sold on or after the effective date of this section.

Added Ch. 111, Stats. 1969. Effective November 10, 1969.

Repair of Odometer: Required Information

28053. (a) Nothing in this article prevents the service, repair, or replacement of an odometer, if the mileage indicated thereon remains the same as before the service, repair, or replacement. If the odometer is incapable of registering the same mileage as before the service, repair, or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left doorframe of the vehicle by the person performing the service, repair, or replacement specifying the mileage prior to the service, repair or replacement of the odometer and the date on which it was serviced, repaired, or replaced.

3 Civil CO18430

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

LISA A. JENSEN,

Plaintiff, Respondent & Cross-Appellant

vs.

BMW OF NORTH AMERICA, INC.,

Defendant, Appellant & Cross-Respondent

Appeal from the Superior Court
of California, County of Placer
Hon J Richard Couzens, Judge

RESPONDENT'S & CROSS APPELLANT'S BRIEF

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I. QUESTIONS PRESENTED

Does the Song-Beverly Consumer Warranty Act provide warranty protection to the second lessee of an automobile leased with the balance of the manufacturer's new car warranty?

Is there substantial evidence to support the judgment?

Is the civil penalty time barred?

Do any of the other matters raised by BMW of North America ("BMW") constitute prejudicial error?

II. STATEMENT OF FACTS

A. Ms JENSEN LEASED A BMW MODEL 528e WITH 7,565 MILES ON THE ODOMETER AND WITH THE BALANCE OF THE BMW NEW CAR 36,000 MILE, THREE YEAR WARRANTY

In response to a newspaper advertisement announcing a sale on BMW demonstrator automobiles, respondent Ms Lisa Jensen¹, leased a 1988 BMW 528e with 7,565 miles on it on January 11, 1989, for her personal use from Stevens Creek BMW, a franchised BMW dealer.² The BMW dealer told Ms Jensen that she would get the BMW "new car" 36,000 mile, three year warranty.³ At the time, the BMW dealer gave her copies of the BMW of North America "Consumer Warranty Information" booklet (which describes the BMW new car express warranty), the new car BMW owner's guide, and the new car BMW Service Booklet.⁴ The lease itself is entitled "New Motor Vehicle

¹ By the time of the trial, Ms Jensen had remarried and changed her name to Lisa Scott. She is here referred to as Ms Jensen.

² RT 47-48

³ RT 50-51

⁴ RT 51, CT 9, 13, 14, 96, 97

Lease Agreement."⁵

The BMW salesman told her the car had been used as a demonstrator⁶ and the dealer wrote "factory demo" on Ms Jensen's credit application.⁷ However, unknown to Ms Jensen, the car had never been used as a demonstrator, but instead had been owned by BMW Leasing Corp and leased to a third party. The dealer had purchased the car at an Atlanta auto auction.⁸

B. Ms JENSEN'S BMW 528e HAD A BRAKE-INDUCED FRONT END SHIMMY WHICH BMW & ITS DEALERS WERE NEVER ABLE TO REPAIR

A few weeks after taking delivery, while driving on a Bay Area freeway, Ms Jensen hit the brakes and the steering wheel began to shake. She felt like the "tires were going to fall off the car" and she was "scared to death."⁹ Ms Jensen had put just 1,551 miles on the car at the time.

Ms Jensen sought repairs for the brake shimmy defect at Stevens Creek BMW on one occasion¹⁰ and at Roseville BMW on five occasions. The last repair attempt was at the latter dealership on January 9, 1991.¹¹ In the end, the condition was never repaired. The Roseville BMW dealer service manager admitted this was the

⁵ RT 48, CT 7

⁶ RT 50, 52, 104. This testimony was unopposed. See RT 317-318, 328-34

⁷ RT 51, 325, CT 10

⁸ CT 1-3

⁹ RT 53

¹⁰ RT 53-56, CT 24

¹¹ RT 58, 60-61, 65-71, CT 28, 32, 35, 37, 38, 40-42, 80

case.¹²

On each visit to Roseville BMW, the dealer recorded Ms Jensen's complaint with such as notations as "has a vibration in steering while braking,"¹³ "shimmy when braking--has been here for this,"¹⁴ "shimmy when braking,"¹⁵ and "vibration in front end when braking."¹⁶ Each time, Roseville BMW worked on the brake system changing rotors, brake pads and other brake parts.¹⁷

The BMW area service representative, its technical specialist, and a Roseville BMW service writer test drove the car on various occasions and confirmed that it had a brake shimmy.¹⁸

The brake shimmy was severe. Ms Jensen's grandmother said the shimmy "almost snapped her neck."¹⁹ Tom Stark, Ms Jensen's expert witness, said it "shuddered rather violently" when he drove the car and if it were his car, he would not let his wife drive it.²⁰ The shimmy was severe enough that Ms Jensen stopped driving the car altogether in August 1991.²¹

¹² RT 434

¹³ CT 24

¹⁴ CT 32

¹⁵ RT 66, CT 40

¹⁶ CT 42, 52

¹⁷ RT 69, 142; CT 24, 28, 32, 35, 37, 38, 40-42

¹⁸ RT 345, 365, 504-05

¹⁹ RT 257

²⁰ RT 186

²¹ RT 73

Rolf Hangii, the BMW area service manager, told his boss William Butler that the cause of the brake shimmy was the brake pads.²² According to Ms Jensen's expert, the cause was in the combination of the brake rotors and pads.²³

C. BRAKE-INDUCED SHIMMY WAS A DEFECT IN MANY BMW MODELS

Brake shimmy in model 300 and 500 series BMWs was a condition well known to BMW and its dealers at the time Ms Jensen was seeking repairs. BMW's factory service managers for this area (Hangii & Butler) admitted that other model 528e owners had the same brake shimmy problem.²⁴ So did Roseville BMW's service manager.²⁵

In October 1990, BMW had even published a technical service bulletin to all its dealers describing the very problem experienced by Ms Jensen.²⁶ The bulletin states that

"some vehicles equipped with Jurid 506 brake pads may exhibit a brake induced steering vibration (usually when decelerating in the 60 -> 40 mph range), especially when brakes are hot. . . . The cause for this complaint was found to be that some brake pads were produced in production lots that were excessively hardened. These hard pads would exaggerate any surface differences in the brake disc material causing vibration." CT 86²⁷

Roseville BMW performed the repairs recommended by the service

²² RT 366

²³ RT 205-06

²⁴ RT 79, 266, 269, 312, 390

²⁵ RT 433-34

²⁶ RT 307-310

²⁷ The term Jurid refers to the name of BMW's brake pad vendor. The 506* pads were made of the same material as the 506 models. The asterisk just means that better production procedures were (supposedly) used. RT 461, 506, 523-24

bulletin, but the repairs did not resolve the shimmy problem.²⁸

D. AT TRIAL, BMW BLAMED THE BRAKE SHIMMY ON Ms JENSEN'S DRIVING HABITS, THE AFTER-MARKET TIRES & WHEELS & LACK OF MAINTENANCE, BUT IN FACT NONE OF THESE FACTORS WERE TO BLAME

BMW blamed Ms Jensen for the brake shimmy. BMW's expert claimed she rode the brakes causing the disc rotors to overheat and become uneven. However, there was substantial evidence that this was not the case. Ms Jensen was taught to drive by her father, a car buff and engineer, who taught her not to ride the brakes and she was careful not to do so.²⁹ Tom Stark, Ms Jensen's independent³⁰ expert, observed her driving without telling her he was doing so. He confirmed that she did not ride the brakes.³¹ He also testified that his examination of the brake rotors showed no evidence that the brakes had been overheated--that the rotor metal was not blue in color, which would be an indication of overheating.³²

Until trial, no one at BMW or any of its dealer told Ms Jensen that the brake shimmy problem was caused by her driving.³³ Instead,

²⁸ RT 73, 316, 421, 481, CT 42, 52.

²⁹ RT 98-99

³⁰ Mr Stark is head of the automotive department at American River College. Besides teaching, he conducts manufacturer sponsored seminars for technicians. RT 174-75

³¹ RT 184-85, 213

³² RT 190-91, 210. Pictures taken by Mr Stark in evidence show no bluing. CT 82-85

³³ RT 142, 590

they always said it was the rotors and brake pads.³⁴ All the repairs were performed under the BMW express warranty which is an indication BMW believed the problem was a manufacturing defect; no one ever told Ms Jensen BMW was doing the repairs on a "goodwill" basis.³⁵ There is nothing in the car's service files stating the work was on a goodwill basis although it is Roseville BMW's practice to write goodwill on the repair order when the work is being done on that basis.³⁶

Peter Barron, BMW's in-house expert, testified that the after-market tires and rims (wheels) on the car contributed to the brake shudder.³⁷ However, as Ms Jensen's expert pointed out, the brake shudder was present in the car before the after-market tires and rims were put on the car; they were not the problem.³⁸ BMW has never warned consumers that the type of tires and rims Ms Jensen put on her car were inappropriate.³⁹

Mr Barron has testified in two other BMW cases in which the owners were complaining of brake-induced front-end vibration. In both cases, as here, he testified that the owners' after-market

³⁴ RT 69, 142

³⁵ RT 580

³⁶ RT 428-30

³⁷ RT 488-90, 497-502

³⁸ RT 209, 253, 275, 486.

³⁹ RT 548-49

tires and rims and driving habits were to blame.⁴⁰

Mr Barron has testified 50 times for BMW and in none of these cases did he find that the BMW automobile had a defect which substantially affected its use, value or safety.⁴¹ In contrast, in instances in which the BMW is not in litigation, he has found defects on "many, many occasions."⁴² Given Mr Barron's biased testimony, it is not remarkable that the jury did not believe him.

E. BMW REFUSED Ms JENSEN'S REQUESTS FOR A REFUND OR REPLACEMENT

After it became evident to Ms Jensen that further repair attempts would be futile, she parked the car and asked BMW for a refund or a replacement.⁴³ Ms Jensen attended three meetings on this subject with BMW employees in October, November and December 1991.

At the first meeting in October, Ms Jensen asked for her money back or a replacement. Mr Hangii responded that she should consider a less expensive model 300 series BMW as a replacement and that he needed more time to investigate the matter.⁴⁴ At the second meeting in November 1991, Hangii continued to suggest that Ms

⁴⁰ RT 551-52. One of these owners obtained a jury verdict against BMW, which was upheld on appeal. Suman v BMW of North America (1994) 23 CA4th 1, 28 CR2d 133.

⁴¹ RT 447, 544-46. Mr Barron came to the trial of this case directly from a BMW lemon law trial in a Los Angeles Superior Court. RT 545.

⁴² RT 556

⁴³ RT 73-75

⁴⁴ RT 78, 280-81

Jensen should accept a 325 model in place of her 500 series model.⁴⁵ They walked around the Roseville BMW lot looking at the 325 models with different colors and options. BMW loaned Ms Jensen a 325 on a temporary basis while they continued discussions.⁴⁶

A third and final meeting was held at Roseville BMW in early December 1991 between Ms Jensen, Hangii and Bill Butler. Ms Jensen presented them with a letter asking for a refund or replacement of the car. Both Hangii and Butler flatly refused to refund her money even though Ms Jensen made it clear that a refund was her preference.⁴⁷ In that meeting, BMW promised to get Ms Jensen "into a another car"--a BMW model 325, but then reneged citing her poor credit rating.⁴⁸

On December 26, 1991, Mr Hangii of BMW called Ms Jensen and told her that BMW had decided that all they would do for her would be to change the brake pads and give her some new tires. Ms Jensen "could not believe it." She then returned her temporary loaner BMW and got her old car back, which she returned to storage.⁴⁹

⁴⁵ The difference in value between the 300 and 500 series was significant. The 300 series ran about \$6,000 less than the 500 series BMWs. RT 388-89

⁴⁶ RT 81, CT 48, 54

⁴⁷ RT 83-85, CT 54

⁴⁸ RT 85-89 There was no proof Ms Jensen had credit problems. She was not aware of any. RT 172

⁴⁹ The car remained in storage until after suit was filed and the parties' experts inspected it. By arrangement with counsel, the car was given to BMW Leasing Co which entity resold the car and paid down the lease leaving a deficiency by the time of trial of \$13,000. RT 92, CT 79, 81, 89

F. BMW'S TRADE ASSISTANCE OFFER WAS A SHAM

The only thing BMW offered Ms Jensen towards getting another car was "trade assistance."⁵⁰

In the automobile industry, "trade assistance" is a euphemism for a form of damage control, which almost never makes the consumer whole. The assistance is typically a small cash payment from the manufacturer to the dealer to make it easier for the consumer to trade in her car on a new one.

BMW's offer was insufficient to enable Ms Jensen to lease another car. Unknown to her, the amount BMW was willing to pay in trade assistance was only \$2,000.⁵¹

BMW had to know that \$2,000 in trade assistance was insufficient to allow Ms Jensen to switch to a new BMW 325 for these reasons: Roseville BMW offered \$12,000 for Ms Jensen's 1988 BMW while the lease payoff at the time was about \$23,000.⁵² This would leave a lease deficiency of \$11,000 in order to gain clear title. BMW was willing to pay \$2,000 in trade assistance which would merely reduce the deficiency to \$9,000.⁵³

To get Ms Jensen a new model 325, she would have to somehow finance the dealer cost of \$25,000 plus \$1,500 for tax & license

⁵⁰ RT 363-64

⁵¹ RT 374

⁵² RT 303-04, 373-74, CT 89

⁵³ RT 374-76. BMW prepared a work sheet on this transaction at the time, but did not keep it. RT 375

and the \$9,000 lease deficiency for a total of \$35,500.⁵⁴ Mr Butler of BMW admitted that a consumer would not be wise to lease a new model 325 based on a price (to be lease financed) of \$35,500 when the retail value of the lease was only \$29,000.⁵⁵ He agreed that a normal lease would be based on \$25,000 to \$27,000. Id. Nor would any leasing company write such a lease because of insufficient collateral.

G. BMW'S POLICY WAS TO REFUSE TO REFUND OR REPLACE ITS LEMON VEHICLES

BMW's conduct in this case was in accord with its corporate policy of never buying back or replacing its defective cars. In 1991, its policy was only to offer another repair attempt or offer trade assistance. If the customer refused further repairs or trade assistance, BMW considered its responsibility "finished."⁵⁶

Consistent with this policy, in the period October 1991 to February 1993, Bill Butler had never authorized a "buy-back" or replacement of a BMW in any case.⁵⁷ Yet Bill Butler was the BMW authorized to buy-back or replace Ms Jensen's automobile.⁵⁸

BMW had no written policy as to whether or under what circumstances it would buy back or replace its persistently

⁵⁴ RT 375-78

⁵⁵ RT 377-380.

⁵⁶ RT 386-87

⁵⁷ RT 387-88

⁵⁸ RT 302, 357, 646

defective cars.⁵⁹

III. STATEMENT OF THE CASE

Ms Jensen filed her complaint against BMW and two of its dealers on April 10, 1992. Just before trial, Ms Jensen dismissed the dealers and all causes of action except those based on the Song-Beverly Act and the federal Magnuson-Moss Warranty Act.⁶⁰ Trial took place over six days.

The parties stipulated the jury instructions were correct with the exception of one concerning the Song-Beverly Act coverage issue and one not involved in this appeal.⁶¹

After deliberations, the jury answered the following special verdict by the votes indicated:

1. What is the total amount, if any, of actual damage suffered by plaintiff, less any amount directly attributable either to use by plaintiff prior to the discovery of the nonconformity or use by plaintiff after the date of her effective revocation or acceptance of the vehicle?

<u>Type of Damage</u>	<u>Amount</u>
Payoff to BMW Leasing Corp	\$13,000
Initial payment on lease	1,500
Payments on lease	14,500
DMV registration fees	1,492
Insurance while car stored	450
Subtotal of damages:	30,942
Less amount attributable to plaintiff's use	1,591
Total amount of damages, if any:	29,351 (12-0)

⁵⁹ RT 388

⁶⁰ RT 6

⁶¹ RT 541-42

2. Do you find that defendant BMW of North America, Inc. willfully failed to meet its obligations under the Song-Beverly Warranty Act?

Answer: Yes (12-0).

3. If answer to question No. 2 is "yes," what amount do you award as a civil penalty (limited to a maximum of two times the amount specified in answer No. 1): \$58,702.00. (10-2).⁶²

Dated: March 23, 1994.

(signed) Foreperson

After judgment was entered the court awarded Ms Jensen attorneys' fees and court costs, except that the court refused to award Ms Jensen her expert witness fees which she had requested as "expenses" pursuant to Civil Code § 1794(d).⁶³

BMW's motion for a JNOV or new trial was denied. In doing so, Judge Couzens stated that his recollection was that the form of the special verdict had been stipulated, but that in any event it was sufficiently instructive to the jury; that there was no reason to believe that the jury did not read and follow the instructions;⁶⁴ that the Song-Beverly Act amendment does apply to cars sold with the balance of the new car warranty; and there was no misconduct by Ms Jensen's counsel in using the term "lemon law."⁶⁵

The Court also stated there was sufficient evidence for the jury to find that BMW's conduct was a willful violation of the Song-Beverly Act, the predicate to awarding a civil penalty.

⁶² CT 494-95

⁶³ RT 685-86

⁶⁴ RT 696

⁶⁵ RT 697

IV. ARGUMENT

The Song-Beverly Act protects buyers or lessees of used vehicles sold with the balance of the manufacturer's new car warranty. There is substantial evidence to support the judgment. The civil penalty is not time barred. BMW has not identified any prejudicial error in the trial.

A. THE SONG-BEVERLY ACT APPLIES TO Ms JENSEN'S VEHICLE

The plain language of an 1987 amendment to the definition of the term "new motor vehicle" in the Song-Beverly Act placed cars sold with the balance of the new motor vehicle warranty under the Act's coverage.

If any interpretation of the statute is deemed necessary, interpretation must be in favor of coverage in light of the purpose of the Act, which is to protect consumers such as Ms Jensen.

BMW is estopped from arguing that Ms Jensen's car is not covered by the Act. The BMW dealer represented the car had been a demonstrator, a category of vehicle BMW admits is covered by the Act. BMW should be bound by its dealer agent's representation. Another reason BMW is estopped is that it accepted the terms of its own warranty as applied to Ms Jensen's car by making repeated repairs under the warranty.

1. THE PLAIN LANGUAGE OF THE 1987 AMENDMENT IS THAT CARS SOLD OR LEASED WITH THE BALANCE OF THE MANUFACTURER'S NEW CAR WARRANTY ARE COVERED BY THE ACT

The heart of the Song-Beverly Act is the mandatory requirement that a manufacturer "buy-back" or replace its vehicles when it is unable to repair them after a reasonable number of attempts:

If the manufacturer . . . is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle . . . or promptly make restitution to the buyer. (emphasis added) Civil Code § 1793.2(d)(1).

In 1987, the Legislature amended⁶⁶ the definition of "new motor vehicle" as follows:

. . . "'New motor vehicle' includes . . . a dealer-owned vehicle and a demonstrator or other motor vehicle sold with a manufacturer's new car warranty (emphasis added) Civil Code § 1793.22(e)(2).

The plain language of this amendment is that three classes of used vehicles were added to the coverage of the Song-Beverly Act: dealer-owned vehicles, demonstrators, or⁶⁷ "other" vehicles "sold with a manufacturer's new car warranty."

(The fact that Ms Jensen leased the car as opposed to purchasing it is of no consequence in this analysis. Civil Code § 1795.4 states that a lessee has the same rights under the Act as purchasers).

As noted above, there is no question but that Ms Jensen leased

⁶⁶ Stats. 1987, Ch. 1280. The amendment originally appeared at Civil Code § 1793.2(e)(2). Effective January 1, 1993, it was moved without change to Civil Code § 1793.22(e)(2). Prior to the 1987 amendment, "new motor vehicle" was defined as a "new motor vehicle used or bought" for consumer purposes.

⁶⁷ BMW argues that the conjunction "or" used in the amendment means that the Legislature intended the phrase "or other motor vehicle sold with a manufacturer's new car warranty" to be synonymous with the term "demonstrator." This is not correct. Use of the word "or" in a statute indicates an intention to use it disjunctively so as to designate alternative or separate categories. White v County of Sacramento (1982) 31 C3d 676, 680, 183 CR 520, 522.

a vehicle "with a manufacturer's new car warranty." So unless these words may be proven to mean something they do not plainly mean, the trial court's ruling in favor of coverage should be upheld.

BMW makes a feeble argument that the plain meaning of the 1987 amendment supports its position. Without citation to any authority, it states that the terms factory executive model, dealer-owned model, demonstrator and "other motor vehicle sold with a manufacturer's new car warranty" are synonymous with the latter category of vehicles having no separate meaning (BMW's Open Brf 15). This is not correct. A factory executive model is one formerly owned by the manufacturer for an employee's use. A dealer-owned model might have been used as a daily rental car. A demonstrator is for the purpose of demonstrating the qualities of the model to prospective customers.⁶⁸

BMW would have this Court interpret the phrase "other motor vehicle sold with a manufacturer's new car warranty" as having no separate meaning. This contravenes the basic rule that "every word, phrase and provision employed in a statute is intended to have meaning and to perform a useful function." White v County of Sacramento (1982) 31 C3d 676, 681, 183 CR 520, 522.

The plain meaning of the phrase, "other motor vehicle sold with a manufacturer's new car warranty" is a separate category of vehicle with no history of use by a manufacturer's employee, as a daily rental car or as a demonstrator.

When the language of the statute is plain, there is no need to

⁶⁸ Civil Code § 1793.22(e)(2)

engage in construction because the language controls; there is nothing to interpret or construe. Halbert's Lumber v Lucky Stores (1992) 6 CA4th 1233, 1239, 8 CR2d 298, 301. The language of the 1987 amendment is plain and its meaning should be applied to uphold the trial court's ruling.

2. IF INTERPRETATION OF THE PHRASE "OR OTHER MOTOR VEHICLE SOLD WITH A MANUFACTURER'S NEW CAR WARRANTY" IS NECESSARY, THE PHRASE MUST BE INTERPRETED SO AS TO EXPAND COVERAGE OF THE ACT TO PROTECT CONSUMERS

BMW broadly admits that the Song-Beverly Act must be interpreted so as to promote rather than defeat the interests of consumers (BMW's Open. Brf 18). The only interpretation of the 1987 amendment which would protect consumers is that used vehicles purchased with the balance of the new car warranty are covered by the Act.

A contrary interpretation would mean that buyers who receive the balance of the manufacturers' new vehicle warranties would have no recourse when the manufacturers and their dealers are unable to repair their vehicles within a reasonable time or after a reasonable number of repair attempts.

BMW states that interpreting the 1987 amendment in favor of no coverage is in the interests of consumers (BMW's Open Brf 19). To reach that conclusion, BMW states that second or third owners' Song-Beverly Act claims would be almost indefensible because BMW could not find previous owners from whom BMW would need to get evidence to show they abused the vehicles. Based on this premise, BMW deduces that its liability will be "staggering" and then concludes that "consumers will be hurt when it and other

manufacturers react to limit the new exposure" by raising prices on the affected used cars and shortening warranties (Id. at 19-20).

This is all nonsense because BMW can easily identify prior owners of its cars through its own warranty records or DMV records. After identifying the owners, BMW could easily depose them to determine if there was any abuse. As for the idea that used car prices might increase in the face of this supposed new liability, manufacturers do not sell used cars, dealers do. Dealers price used cars according to the market, not some fear the manufacturers might have to pay Song-Beverly Act claims.

The idea that BMW will shorten its warranty periods because of fear of Song-Beverly Act claims by subsequent owners is ridiculous unless one assumes that BMW is swamped with such claims, which it is not. If BMW wants to shorten its warranty period to avoid this claimed new liability, it is free to do so.

3. THE CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS HAS INTERPRETED THE ACT TO COVER VEHICLES SOLD WITH THE BALANCE OF THE MANUFACTURER'S WARRANTY

BMW's interpretation of the Act is in conflict with the California Department of Consumer Affairs' interpretation of the Song-Beverly Act. The Department certifies the manufacturers' arbitration programs, which are an alternative forum for buyers of many lemon vehicles.⁶⁹ The Department's regulations⁷⁰ set minimum standards for the programs, one of which is that buyers of used vehicles who receive the balance of the new vehicle warranty are

⁶⁹ BMW of North America has no arbitration program.

⁷⁰ 16 Cal Code of Regs §§ 3396.1-3399.6.

protected by the Song-Beverly Act. 16 Cal Code of Regs § 3396.1(g).

When an executive branch agency is charged with enforcement of a statute, its interpretation of the statute is entitled to great weight. Pacific Legal Foundation v California Unemployment Ins Appeals Bd (1981) 29 C3d 101, 172 CR 194. The Department's interpretation should therefore be taken as one more reason to uphold the trial court's rulings on this issue.

4. BMW IS ESTOPPED FROM ARGUING THAT Ms JENSEN'S CAR IS NOT COVERED BY THE NEW CAR WARRANTY

Ms Jensen leased her BMW with the balance of the new car warranty provided by BMW, BMW and its dealers attempted to repair the car under the new car warranty, warranty repairs were paid by BMW, and at no time during the entire time Ms Jensen was dealing with BMW and its dealers did anyone tell Ms Jensen that she did not have the benefit of the new car warranty.⁷¹ BMW began arguing to the contrary only after Ms Jensen filed suit. Based on principles of estoppel, BMW should not now be allowed to argue against Song-Beverly Act coverage.

Another reason BMW is estopped from arguing the Act does not cover Ms Jensen's car is that the leasing dealer told Ms Jensen that the car had been a demonstrator,⁷² a category of vehicle BMW concedes falls under the Song-Beverly Act.⁷³ The dealer was an agent of BMW for purposes of the Song-Beverly Act. Ibrahim v Ford

⁷¹ RT 50-51, 428-30, 580

⁷² RT 47-48, 50, 52, 104

⁷³ BMW's Opening Brief 14:25-27

Motor Co (1989) 214 CA3d 878, 889, 263 CR 64, 70. BMW is bound by its agent's representation and therefore is estopped from arguing that there is no Song-Beverly coverage.

5. BMW'S OTHER ARGUMENTS CONCERNING THE SONG-BEVERLY ACT COVERAGE ISSUE HAVE NO MERIT

BMW refers to definitions of new and used in the Vehicle Code and to other states' lemon laws and makes arguments not supported by the law or the record in an attempt to bolster its argument that Ms Jensen's car is not covered by the Song-Beverly Act. None of these arguments has any merit.

The Vehicle Code defines new vehicles as those never registered and used vehicles as those registered or sold and operated on the highways. §§ 430, 665. These Vehicle Code definitions help classify dealers as either new or used car dealers, Vehicle Code § 426, and for other purposes under that code. The Vehicle Code definitions have no bearing on what vehicles are covered by the Song-Beverly Act.

BMW makes extensive reference to the general definition of "consumer goods" of the Song-Beverly Act which specifies that the goods must be "new." Civil Code § 1791(a). This definition dates back to 1971. However, the later enacted and more specific and governing definition is that of a "new motor vehicle" found at Civil Code § 1793.22(e)(2). That definition was modified by the 1987 amendment which added the three classes of vehicles--demonstrators, dealer owned cars and other motor vehicles sold with a manufacturer's new car warranty.

The specific definition of new motor vehicle governs over the

more general definition of consumer goods because it is the specific provision dealing with the matter at issue. Natural Resources Defense Council v Arcata Nat'l Corp (1976) 59 CA3d 959, 965, 131 CR 172.

The legislative history relative to the 1987 amendment does not support BMW's position. One report simply repeats the language of the amendment. Otherwise, the history is silent as to what the Legislature intended (Appendix, Exh A). The best BMW can do is refer to a "digest" which does not mention the amendment.

Other states' warranty laws discussed by BMW are simply not relevant to the Song-Beverly Act.

There is nothing in the record or law to support BMW's assertion that the leasing dealer (rather than BMW) extended the new car express warranty to Ms Jensen (BMW's Open Brf 24:9-11). The leasing dealer told Ms Jensen that she would get the benefit of the manufacturer's warranty and it gave her a copy of it. BMW paid for all brake shimmy repairs under that warranty and its technical representative (Rolf Hangii) tried to assist the dealer with repairs.⁷⁴ For this reason, Civil Code § 1795.5 providing remedies to consumers who receive express warranties from retail dealers has no application to this case.

BMW argues that privity is a barrier towards Ms Jensen's claims. However, the Song-Beverly Act abolished privity as a defense in warranty actions, based on the express or implied warranties. Civil Code §§ 1791.2; 1793, 1793.2.

⁷⁴ RT 50, 51, CT 9, 13, 14

B. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE JUDGMENT

Whether there is substantial evidence to support the judgment turns on whether the record as a whole demonstrates substantial evidence in support of the judgment. Bowers v Bernards (1984) 150 CA3d 870, 872-73, 197 CR 925, 926-27. The gist of the substantial evidence rule is as follows:

"When a trial court's factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court begins and ends with the determination as to whether, on the entire record, there is substantial evidence, contradicted or uncontradicted, which will support the determination. .
 . " Id. at 873-74."

So long as there is "substantial evidence," the appellate court must affirm . . . even if the reviewing justices personally would have ruled differently had they presided over the proceedings below, and even if other substantial evidence would have supported a different result. Stated another way, when there is substantial evidence in support of the trial court's decision, the reviewing court has no power to substitute its deductions. Id. at 874. California Practice Guide, Civil Appeals & Writs, ¶ 8:38, pp. 8-12, 13 (Rutter Grp 1994)).

1. THERE IS SUBSTANTIAL EVIDENCE THAT THE BRAKE SHIMMY WAS A MANUFACTURING DEFECT WHICH WAS NEVER REPAIRED BY BMW

BMW argues Ms Jensen did not present substantial evidence in support of her claim of a statutory breach of warranty (BMW Open Brf 34-35). This argument is frivolous. The evidence is set forth in the Statement of Facts and will not repeated here except in capsule form: Ms Jensen experienced a severe, intermittent front

end shimmy when she used the brakes a freeway speeds. Six repair attempts at two BMW dealers with the intervention of the technical specialist at BMW did not resolve the problem as admitted by the service manager at Roseville BMW. The BMW personnel and Ms Jensen's expert test-drove the car and confirmed the problem existed and that the cause was in the brake rotors and pads.

Brake shimmy in this model BMW was a known problem. BMW published a service bulletin to its dealers in October 1990 describing the exact condition of which Ms Jensen complained.⁷⁵

2. THERE WAS SUBSTANTIAL EVIDENCE THAT THE BRAKE SHIMMY WAS NOT Ms JENSEN'S FAULT

BMW argues that there was substantial evidence that Ms Jensen's driving overheated the brakes causing the brake shimmy problem. (BMW Open Brf 36-39). However, in making this argument, BMW ignores or misapprehends the substantial evidence rule. It is not enough for BMW to point to what it believes to be substantial evidence in its favor. It must instead show there is no substantial evidence to support Ms Jensen's verdict. It has not done so.

The Statement of Facts sets forth the evidence that Ms Jensen did not ride the brakes causing them to overheat and that the after-market tires & rims and lack of maintenance had nothing to do with the problem. This evidence is that Ms Jensen and her expert testified that she did not ride the brakes, her expert testified that he inspected the brake rotors and they were not blue in color which would indicate overheating, no one ever blamed Ms Jensen for

⁷⁵ See Statement of Facts, pp 2-4.

the brake shimmy problem (until trial), and none of the repair orders have anything written on them blaming the owner.⁷⁶

3. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE JURY'S FINDING THAT BMW WILLFULLY VIOLATED THE SONG-BEVERLY ACT

The heart of the Song-Beverly Act is the requirement that a manufacturer must reimburse a buyer what she paid for a vehicle or replace it (at the buyer's option) when it has not been repaired after it and its dealers have had a reasonable opportunity to repair it. Civil Code § 1793.2(d)(2). When a manufacturer fails to comply with this requirement, the finder of fact may find that it has acted in willful violation of its obligations and may then impose a civil penalty of up to two times the buyer's damages. Civil Code § 1794(c). Kwan v Mercedes-Benz of North America, Inc. (1994) 23 CA4th 174, 185, 28 CR2d 371, 378.

In Kwan, the Court of Appeal stated that the penalty was important as a

deterrent to deliberate violations. Without such a provision, a seller or manufacturer who knew the consumer was entitled to a refund or replacement might nevertheless be tempted to refuse compliance in the hope the consumer would not persist, secure in the knowledge its liability was limited to refund or replacement. Any interpretation that would significantly vitiate the incentive to comply should be avoided. 23 CA4th at 184.

One important inquiry in determining whether the manufacturer is liable for a civil penalty is whether the manufacturer knew, at the time the consumer requests a buy-back or replacement, that the vehicle had not been repaired within a reasonable period or after a reasonable number of repairs. Kwan, 23 CA4th at 185.

⁷⁶ Statement of Facts, pp 5-7.

BMW knew the car had not been repaired after a series of repair attempts. The BMW personnel test drove the car and confirmed it had a brake shimmy, the repair orders recorded that the car had a brake shimmy, and Mr Hangii of BMW told his superior that the cause of the brake shimmy was in the brake pads. Brake shimmy was a known defect in these model BMWs. BMW had issued a bulletin on this very defect. No one blamed Ms Jensen for the brake shimmy.⁷⁷ The Roseville BMW service manager admitted they never did fix the problem.⁷⁸

In sum, BMW knew the car had a substantial defect which had not been repaired after repeated attempts. Under Civil Code, § 1793.2(d)(2), BMW was required to buy back or replace the car.

Nevertheless, BMW refused to buy-back Ms Jensen's car in spite of her repeated requests. BMW would not even consider it.⁷⁹ Nor did BMW ever offer Ms Jensen a replacement, which would have meant giving her credit for her lease payments and a new car with financing based on what she owed on her BMW. BMW tacitly admits as much.⁸⁰

All BMW ever offered Ms Jensen was trade assistance of \$2,000, which BMW knew was not sufficient to allow her to finance a new

⁷⁷ Statement of Facts, pp 7-10.

⁷⁸ RT 434

⁷⁹ RT 83-85, CT 54

⁸⁰ BMW tries to avoid the fact that it refused to offer a buy back or replacement by making the frivolous statement that Ms Jensen's requests for a buy back or replacement are not relevant to the civil penalty issue. (Open Brf 43)

car.⁸¹ Judge Couzens summed up the evidence on this point by stating that BMW "did not respond in a straight forward manner to really assist in a trade, but attempted to talk her into a financial scheme that was, in fact, extremely onerous." ⁸² This behavior was not only willful, but fraudulent.

BMW's refusal to buy-back or replace Ms Jensen's car was consistent with its policy that it would only offer buyers of its lemon cars another repair attempt or trade assistance.⁸³ A manufacturer with a policy of refusing to refund or replace lemon cars under any circumstances is engaged in willful violation of the Song-Beverly Act because the Act requires manufacturers to buy back or replace persistently defective vehicles. (The jury was instructed that this was a factor they could consider).⁸⁴

The Court of Appeal in Kwan noted that a trier of fact may consider whether a manufacturer has a written policy on compliance with the Song-Beverly Act in determining whether the manufacturer was acting willfully. 28 CR2d at 378-79.

BMW admitted it did not have a written policy on repurchase and replacement of its vehicles.⁸⁵ This is evidence BMW willfully violated the Act. Kwan, 23 CA4th at 186.

⁸¹ Statement of Facts, pp. 8-12

⁸² RT 701

⁸³ RT 386-87. Butler of BMW had never authorized a refund or replacement over the period October 1991 through February 1993. RT 387-88

⁸⁴ RT 670:24-28

⁸⁵ RT 388

In its appellate brief, for the first time, BMW argues that BMW did not agree to refund or replace because Ms Jensen's used car did not fall under the Song-Beverly Act (BMW Brf 43-44). BMW cites nothing in the record to support the idea that this was BMW's belief in 1991 or anytime. No BMW employee so testified. Therefore, the argument is baseless.

C. THE CIVIL PENALTY IS NOT TIME BARRED

BMW argues that the civil penalty verdict is time barred based on the one year statute of limitations for a penalty or forfeiture. CCP § 340(1) (BMW Open Brf 40-42).⁸⁶

A fatal problem with this argument is that BMW waived this defense by (1) not having specified that code section as a defense in its answer to the complaint,⁸⁷ Mysel v Gross (1977) 70 CA3d Supp 10, 138 CR 873; 5 Witkin, California Procedure, Pleading, § 1041, p. 456 (3d Ed 1985) and (2) not raising the issue at trial. 5 Witkin, California Procedure, Appeal, § 311, p. 321 (3d Ed 1985).

This is not a question of law which might provide an exception to the waiver rule. Ms Jensen would contend that the statute of limitations for civil penalty purposes began running in December 1991 when BMW refused to buy-back or replace the vehicle; this behavior triggered Ms Jensen's right to a civil penalty. On the other hand, BMW contends that the statute began to run much earlier. The date the statute began to run is a factual issue which

⁸⁶ BMW based its argument on Cole v Sea Ray Boats; however, that opinion was depublished by the Supreme Court on October 13, 1994, as BMW later reported to this Court.

⁸⁷ CT 33

was never determined in the court below because BMW never raised the issue.

Even if BMW had not waived the limitations defense, its argument has no merit. The correct statute of limitations for Song-Beverly Act claims is four years. Commercial Code § 2725; Krieger v Nick Alexander Imports, Inc. (1991) 234 CA3d 205, 218, 285 CR 717.

CCP § 340(1), the one year statute of limitations for penalties and forfeitures, only applies when the penalty is mandatory; the Song-Beverly Act civil penalty is discretionary. Menefee v Ostawari (1991) 228 CA3d 239, 243, 278 CR 805, 807; Civil Code § 1794(c). G.H.I.I. v MTS, Inc. (1983) 147 CA3d 256, 277-79, 195 CR 211, 225-26 is distinguishable as it involved a mandatory civil penalty.

D. THE SPECIAL VERDICT FORM WAS STIPULATED & PROPER AS TO FORM

The trial court noted that the form of the special verdict was stipulated.⁸⁸ Accordingly, BMW cannot object to it. Even absent a stipulation, BMW waived any objection to it by failing to object to it before the jury was discharged, Woodcock v Fontana Scaffolding & Equip Co (1968) 69 C2d 452, 457, 72 CR 217, 219, n.2, and by failing to explain any ambiguity or potential confusion during closing arguments. Bly-Magee v Budget Rent A Car (1994) 24 CA4th 318, 326, 29 CR2d 330, 334-35.

The Special Verdict was proper as to form. The special verdict

⁸⁸ RT 696, CT 748

in this case⁸⁹ does not ask the jury to assume liability. Question 1 asks what damages, "if any," are due plaintiff. The words "if any" plainly tell the jury that they need not find any damage at all. BMW also ignores the role of the jury instructions which (as stipulated by the parties) covered each element Ms Jensen had to prove, including, of course, all elements of liability. If the jury did not believe the Song-Beverly Act had been violated, they would have answered with a "0" in response to Question No. 1. BMW has admitted that the jury could have done so.⁹⁰

BMW is incorrect in stating that a special verdict must cover all issues in the case. California Code of Civil Procedure § 625 states that the court may direct the jury "to find a special verdict in writing, upon all, or any of the issues"

Falls v Superior Court (1987) 194 CA3d 851, 239 CR 862 is distinguishable. In that case, the jury had resolved two questions against the defendant in a negligence case, but did not reach the question of contributory negligence. The jury hung on the damage question. The plaintiff wanted liability established on the basis of the special verdict, but the Court held that could not be done because the jury did not make findings to completely dispose of liability in the plaintiff's favor. BMW in this case takes out of context the statement in the Falls case that the jury must resolve every controverted issue in the special verdict. Contreras v Goldrich (1992) 10 CA4th 1431, 1434, 13 CA2d 394, 396

⁸⁹ CT 494-95

⁹⁰ RT 693:27

(distinguishing the Falls case).

E. THE TRIAL COURT'S INADVERTENT FAILURE TO READ ONE SENTENCE OF THE CIVIL PENALTY INSTRUCTION WAS NOT PREJUDICIAL

The trial court inadvertently failed to read subparagraph i of the civil penalty instruction, which is as follows:

i. Whether BMW of North America reasonably believed that the vehicle conformed to the applicable express warranty and that there were no unresolved problems with the vehicle.⁹¹

This did not prejudice BMW for two reasons. First, the trial court cured the error by informing the jury they should read page 45 of the instructions, the civil penalty instruction, and "go over [the instructions] again carefully" in the jury room.⁹²

Secondly, BMW knew that the trial judge had inadvertently failed to read subparagraph i, yet it failed to even mention it to the jury during closing argument.⁹³ The reason it did not do so is that the omitted instruction was not part of BMW's defense. BMW did not defend the case on the ground that the car had been permanently repaired. Instead, BMW admitted there was a brake shudder, which it blamed on Ms Jensen. BMW's closing argument proves this point.⁹⁴

⁹¹ CT 175

⁹² RT 672. BMW's argument that the jury did not read the instructions is speculation (BMW Open Brf 29).

⁹³ RT 624-650

⁹⁴ "What we have tried to do is . . . show you . . . what actually caused the problem." "We have a brake [problem] because of the way [Ms Jensen] utilizes this car . . ." RT 628. "Her usage . . . caused it to come back." RT 629. "I have no doubt the vibrations did bother [Ms Jensen]." RT 633. "[t]his was a problem that was created primarily because of the unusual circumstances and

When a litigant does not reasonably inform the jury about a theory, the litigant waives the chance to advance the theory. Richmond v Dart Industries, Inc. (1987) 196 CA3d 869, 242 CR 184. BMW should not now be allowed to argue that it was prejudiced because part of an instruction was not read when it had no application to BMW's defense theory.

F. BMW Stipulated that the Burden of Proof Instruction Was Satisfactory

BMW argues that its burden of proof instruction should have been given (BMW Open Brf 31). However, BMW stipulated that all of the instructions with two exceptions not relevant to the burden of proof instruction were satisfactory.⁹⁵ Even if it had not done so, BMW's objections to the burden of proof instruction as given⁹⁶ have no merit.

BMW's points to its proposed instruction that Ms Jensen was the lessee of a "new motor vehicle." This is just a restatement of the Song-Beverly Act coverage issue. See above.

BMW also raises the issue of the notice that Ms Jensen was required to give to BMW. However, Ms Jensen gave BMW ample notice of the inability of its dealers to repair her automobile both

this particular customer's use." RT 644. "Mr Barron [BMW's expert] explained the vibrations were harmonic resonance vibration and how [Ms Jensen] set this up." RT 645.

"This case is here because of Ms [Jensen's] sensitivity to the characteristics of the automobile and which were exacerbated . . . by her lack of maintenance [and] by her usage of the vehicle." RT 648. "Ms [Jensen] is solely responsible for the brake and vibration complaints." RT 649.

⁹⁵ RT 541-42

⁹⁶ RT 664-65

before and after she stopped trying to get it repaired.⁹⁷

BMW states the burden of proof instruction should have stated that the breach of warranty must have taken place within the warranty period (BMW Open Brf 32). This is not the law. All that is required is that the consumer take the vehicle in for repair during the warranty period to trigger warranty and Song-Beverly coverage. The warranty is extended for defects not fixed in warranty period. Civil Code § 1795.6; Jury Instruction No. 26.

G. Ms JENSEN'S COUNSEL WAS NOT GUILTY OF MISCONDUCT

BMW wants this Court to reverse the judgment based on Ms Jensen's counsel use of the terms "lemon law" and "lemon" (BMW Open Brf 45-48). BMW states that the trial court ruled that these terms are inflammatory and highly prejudicial, but that is false. In response to BMW's in limine motion, the trial court said that counsel could use the term "lemon law" once.⁹⁸ Although counsel inadvertently used these terms more than once, after the trial, the trial court ruled that counsel did not abuse its admonition relative to these terms.⁹⁹

BMW's counsel did not object to Ms Jensen's counsel's use of the terms in question. Not having done so, BMW waived its objection. Grimshaw v Ford Motor Co (1981) 119 CA3d 757, 798, 174 CR 348, 371.

In any case, these terms are not inflammatory or highly

⁹⁷ RT 73-75, 78, 81, 280-81, 338, 345, 365, 504-05, CT 48, 54

⁹⁸ This ruling is not part of the record.

⁹⁹ RT 697

prejudicial. The lemon law is the common name for the Song-Beverly Act. Ibrahim v Ford Motor Co (1989) 214 CA3d 878, 891, 263 CR 64, 72 (reference to lemon law); Civil Code § 1795.8 (reference to "lemons.")¹⁰⁰

V. Ms JENSEN REQUESTS AN AWARD OF FEES & COSTS FOR THIS APPEAL

If fees are recoverable pursuant to statute, they are also recoverable on appeal. Morcos v Board of Retirement (1990) 51 C3d 924, 927, 275 CR 187, 189. Fees are recoverable for this appeal since the Song-Beverly Act provides for an award of fees to the prevailing consumer. Civil Code § 1794(d). Statutory authorization for the recovery of attorney fees incurred in trial court proceedings necessarily includes attorney fees incurred on appeal, unless the statute states otherwise (which the Act does not). The statute need not specifically authorize fees on appeal. California Practice Guide, Civil Appeals & Writs, ¶ 14:114, p. 14-20 (Rutter Grp 1994).

The appellate courts have awarded attorney fees to the prevailing consumer for appellate work in Song-Beverly Act cases, Suman v BMW of North America (1994) 23 CA4th 1, 13, 28 CR2d 133, 140; Jernigan v Ford Motor Co (1994) 24 CA4th 488, 29 CR2d 348, 351, and in a Magnuson-Moss Warranty Act case, Drouin v Fleetwood Enterprises (1985) 163 CA3d 486, 493, 209 CR 623, 627-28.

Ms Jensen requests that this Court determine that she is

¹⁰⁰ The dictionary defines "lemon" as something which proves to be inferior or unsatisfactory as in, "His car turned out to a lemon." The Random House Dictionary of the English Language, p. 820 (Unabr Ed 1977)

entitled to additional fees and costs for this appeal and include in its opinion directions to the trial court to determine the amount of the appellate fees and costs.

VI. EVEN IF THE SONG-BEVERLY ACT DOES NOT COVER Ms JENSEN'S AUTOMOBILE, THE JUDGMENT WITH THE EXCEPTION OF THE CIVIL PENALTY SHOULD BE AFFIRMED

If this Court were to find that the Song-Beverly Act does not cover Ms Jensen's automobile, the judgment should still be affirmed, with the exception of the civil penalty portion of the judgment, on the basis of the federal Magnuson-Moss Warranty Act ("MMA"), 15 U.S.C. § 2301 et seq.¹⁰¹

The MMA, which was pled by Ms Jensen, covers all new and used consumer products sold with a written warranty. 15 U.S.C. § 2301(1). The Congressional Conference Report states: "Conforming changes in the definition of 'consumer' were made to eliminate any possible construction that Title I did not apply to the commercial sale of used consumer products." H.R. Rep., No. 1606, 93d Cong., 2d Sess. 29 (1974).

Except for the civil penalty, the MMA gives a buyer of a consumer product the same basic rights to sue for damages for breach of the express and implied warranties and for attorneys' fees. 15 U.S.C. § 2310(d). Damages obtainable are those provided by the UCC, McKenzie v. Chrysler Corp (5th Cir 1972) 607 F.2d 1162, including so much of the price as was paid, Commercial Code § 2711, and incidental damages, Commercial Code §§ 2714, 2715. See Ventura

¹⁰¹ Contrary to BMW's statement that Ms Jensen dismissed all causes of action except those based on the Song-Beverly Act, she did preserve her MMA claims. RT 6

v. Ford Motor Co. (1981), 180 N J Super 45, 433 A.2d 801, 811.

Because the Song-Beverly Act and the MMA are so similar except for the civil penalty issue, if the case had been tried solely on the basis of the MMA, the jury instructions would not have been significantly different. Therefore, no retrial should be necessary if this Court were to rule there is no Song-Beverly coverage. Instead, the civil penalty could just be stricken.

The award of attorney fees by the trial court is not challenged by BMW in this appeal; therefore, absent reversal of the entire judgment, the award of attorney fees should be affirmed, because even if there were remittitur of some of the damages, Ms Jensen would still be the prevailing party. Civil Code § 1794(d)(2).

Ms JENSEN'S OPENING BRIEF ON HER CROSS-APPEAL

The following is Ms Jensen's opening brief on her cross-appeal relating to the trial court's denial of an award of her expert witness fees.

I. QUESTION PRESENTED

Does the Civil Code § 1794(c) provision for an award of "expenses" to the prevailing buyer include her expert witness fees?

II. STATEMENT OF FACTS & PROCEDURAL HISTORY

Ms Jensen incurred \$2,525 in expert witness fees.¹⁰² After the verdict, Ms Jensen applied for an award of these fees, which the trial court denied on the theory that these costs were not

¹⁰² CT 609-12

specified in CCP § 1033.5.¹⁰³ Ms Jensen filed a timely notice of her cross-appeal on this matter.¹⁰⁴

The trial court's order denying Ms Jensen her expert witness fees is an order following an appealable judgment and so is itself appealable. CCP § 904.1(b).

This Court may independently review the trial court's refusal to award the expert witness fees because the refusal was made as a matter of law. Bussey v Affleck (1990) 225 CA3d 1162, 1165, 275 CR 646, 648.

III. ARGUMENT

Civil Code § 1794(d) is as follows in pertinent part:

If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses,

The Legislature intended that buyers be able to able to recover something more than costs when it added the term "expenses." According to the legislative history, what it mainly had in mind was the buyer's expert witness fees. The Assembly Committee on Labor, Employment & Consumer Affairs report on A.B. 3374 (Lockyer) states that the bill would add a provision to the Song-Beverly Act for an award of costs and expenses because:

The addition of awards of 'costs and expenses' by the court to the consumer to cover such out-of-pocket expenses as filing fees, expert witness fees, marshall's fees, etc., should open the litigation process to everyone. CT 612.

¹⁰³ RT 686

¹⁰⁴ Supplemental CT 1-2

The Department of Consumer Affairs report on the same bill states that the bill would amend Civil Code § 1794 of the Song-Beverly Act to provide that a "prevailing consumer may be awarded costs (court costs, i.e. filing and process fees) and expenses (i.e. expert witness fees)."¹⁰⁵

CCP § 1033.5(b)(1) does not allow an award of experts fees (unless ordered by the court). However, CCP § 1033.5(b) begins with the statement that the listed items are not allowed "except when expressly authorized by law." This is the requisite authority for the courts to look to other applicable statutes in allowing awards of costs specifically not allowed by § 1033.5. Bussey v Affleck (1990) 225 CA3d 1162, 1167, 275 CR 646, 649 (allowing expert witness fees in a Civil Code § 1717 fee case).

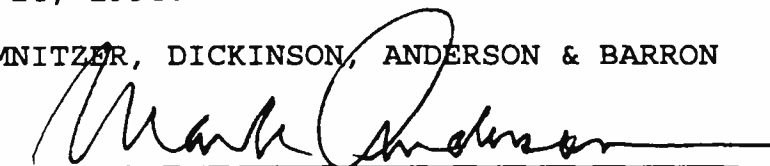
Similarly, the Court of Appeal in Beasley v Wells Fargo Bank (1991) 235 CA3d 1407, 1419, 1 CR2d 459, 466 held that expert witness fees may be awarded under the private attorney general statute, CCP § 1021.5, notwithstanding CCP § 1033.5.

Based on Civil Code § 1794(c), cross-appellant asks that this Court reverse the trial court's ruling on her request for an award of her expert witness fees.

Dated: December 14, 1994.

KEMNITZER, DICKINSON, ANDERSON & BARRON

By



Mark F. Anderson

Attorney for Respondent & Cross-Appellant
Lisa Jensen

¹⁰⁵ CT 616

ASSEMBLY ACTIONS:

COMMITTEE CON. PRO. VOTE 5-0 COMMITTEE W. & M. VOTE 20-1

Ayes:

Ayes: Vasconcellos, Baker, Agnos,
Bader, Calderon, Connelly, Eaves,
Herger, Hill, Isenberg, Johnson,
Johnston, Leonard, Lewis,
Margolin, McClintock, O'Connell,
Peace, Roos, M. Waters

Nays:

Nays: D. Brown

DIGEST

Existing law generally provides that a manufacturer who is unable to service or repair consumer goods, including motor vehicles, so that they conform to the applicable express warranties after a reasonable number of attempts - must either replace those goods or reimburse the buyer in an amount equal to the purchase price, less the amount directly attributable to the buyer's use prior to the discovery of the nonconformity (defect).

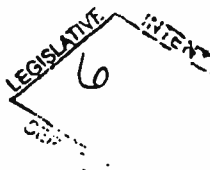
In 1982, the law was amended by AB 1787 (Tanner), commonly referred to as the "lemon" bill or "lemon" law. That legislation specifies that for new motor vehicles, a "reasonable number of attempts" is presumed to be either four or more repair attempts on the same major defect or more than 30 days out of service for service/repair of one or more major defects, within the first year or 12,000 miles of use.

That law also contains provisions which, under specified circumstances, require a buyer to notify the manufacturer directly of a continuing defect and to use a dispute resolution program meeting specified minimum standards, prior to asserting the "lemon presumption" (4 times/30 days = "reasonable number of repair attempts") in a legal action to obtain a vehicle replacement or refund.

This bill amends that law and related laws to:

- 1) Amend the definition of a "new motor vehicle" which is covered by the "lemon" law, to specifically include a dealer-owned vehicle and a "demonstrator" or other vehicle that is sold with a manufacturer's new car warranty, and to substitute a more specific definition for excluded off-road and commercial vehicles.

- continued -



AB 3611

Appendix, Exhibit A

CERTIFICATE OF SERVICE, Case No. 3 Civil CO18430

I am a member of the State Bar of California and not a party to this action. My business address is 368 Hayes Street, San Francisco, CA 94102-4477.

I am "readily familiar" with my business' practice for collection and processing for mailing with the United States Postal Service. Pursuant to such business practice, on December 15, 1994, I served the within RESPONDENT'S & CROSS-APPELLANT'S BRIEF by placing a true copy thereof in an envelope for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Such envelope will be sealed and deposited with the United States Postal Service on this date in the ordinary course of business, with postage fully prepaid, at San Francisco, CA. addressed as follows:

Henry D. Nanjo
Lewis, D'Amato, Brisbois & Bisgaard
2720 Gateway Oaks Drive, Ste 250
Sacramento, CA 95833-3501

Ms Lisa Jensen
5069 Gregg Way
Auburn, CA 95602


Clerk, Court of Appeal (Original + 4)
Third Appellate District
900 N Street, Room 400
Sacramento, CA 95814

Hon J Richard Couzens
Judge of the Superior Court
Placer County Courthouse
101 Maple Street
Auburn, CA 95603

Clerk, California Supreme Court (5 copies)
303 Second Street, South Tower
San Francisco, CA 94107

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 15, 1994


Mark F. Anderson

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RODRIGUEZ v. FCA
US**

Case Number: **S274625**

Lower Court Case Number: **E073766**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **smckenzie@horvitzlevy.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION	S274625_MJN_FCA.PDF
ADDITIONAL DOCUMENTS	Vol. 07 MJN Exhs. 1-256.PDF
ADDITIONAL DOCUMENTS	Vol. 08 MJN Exhs. 257-367.PDF
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