



By David Gurnick

California's New Motor Vehicle Board: Representing Car Makers and Dealers

A LITTLE-KNOWN CALIFORNIA AGENCY regulates supplier-dealer relationships in a big business—namely new car sales.¹

The agency is the California New Motor Vehicle Board, a part of the well-known Department of Motor Vehicles (DMV) that regulates car makers and their relationships with their dealers.

Car Manufacturers v. Their Dealers

Historically, car sales in the U.S. have been made through dealer franchises.²

In franchising, a manufacturer or supplier, called the franchisor, grants rights to an independent businessperson, called the franchisee or dealer, to market and sell the manufacturer's goods and services.

The manufacturer sets standards how the products will be distributed and serviced and lets the dealer adopt the product brand as the dealer's identification, or lets the dealer tell the public that the dealer is authorized to sell products of the brand.

Franchising lets a manufacturer establish distribution with the investment in facilities and personnel paid for largely by franchisees. Franchisees, as owners of each dealership, are motivated to grow profits by working to grow sales.

Franchisees or dealers are often more familiar with the locality where they operate, compared to the manufacturer. The franchisee or dealer enjoys the confidence and stability of being affiliated with an established product brand, rather than building a new brand.³



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In automobile distribution, a long history of legal warfare characterizes relationships between auto makers and their dealers.⁴

“The public tends to see the dealer-manufacturer relationship as symbiotic and unitary: the manufacturer designs and builds vehicles; the dealer sells and repairs them, all to their greater economic advantage. Beneath the surface, however, is an uneasy, often roiling relationship.”⁵

Regulatory History

In 1939, the Federal Trade Commission found that GM, Chrysler, Ford, and other car makers imposed unfair conditions on their dealers. The forced dealers to sign agreements that did not clearly define the parties’ rights and obligations.

They conducted unfair inspections of dealer facilities, forced dealers to buy more cars than could be sold, and forced dealers to invest in facilities without a long-term agreement and without assuring dealers would be provided enough cars to sell.⁶

In response to these concerns, in 1956, Congress enacted the Automobile Dealers’ Day in Court Act (DCA).⁷

The DCA requires car makers to act in good faith in performing or complying with the parties’ agreement, and in terminating, canceling, or not renewing a dealer franchise.⁸

The DCA lets dealers sue in federal court. But courts have tended to set a high bar for relief, ruling that a manufacturer must have engaged in coercion. Arbitrary or bad faith conduct by a manufacturer is not sufficient to obtain relief, without showing coercion.⁹

Limited effectiveness of the DCA led car dealers to seek protective legislation at the state level.¹⁰

Eventually, each state passed a law to protect automotive dealers in that state.¹¹

Most of these laws protect auto dealers from arbitrary terminations, non-renewals, encroachment on the dealer’s territory and other unfair tactics.

A New Motor Vehicle Board

In 1967, California established the New Car Dealers Policy and Appeals Board. Six years later, the agency was renamed the New Motor Vehicle Board.^{12 13}

Over time, the agency’s role evolved. Today, the Board hears and decides disputes whether there is good cause for a manufacturer to terminate or refuse to continue a dealer franchise, or good cause not to establish or relocate a motor vehicle dealership in a relevant market area, disputes regarding delivery and vehicle preparation obligations, and warranty reimbursement.¹⁴

The Board is an agency with nine members, four of whom must be licensed new motor vehicle dealers, each appointed by the Governor.

Five members are from the general public; three are appointed by the Governor, and one by the Senate Rules Committee, and one by the Speaker of the Assembly. At least one public member must be an attorney admitted to practice in California for at least ten years.¹⁵

The Board has jurisdiction over anyone applying for or holding a new motor vehicle dealer or manufacturer license. The Board’s jurisdiction is limited to matters within the scope of its authorizing statute.¹⁶

Courts have concurrent jurisdiction with the Board over disputes arising from the dealer franchise relationship.¹⁷

Two kinds of proceedings may be brought to the Board—a protest or a petition.

A protest is an action filed with the Board by a franchisee—that is, a dealer—asks the Board to decide a franchisor-franchisee dispute.¹⁸

A dealer may bring a protest to the Board against the new car manufacturer in the following circumstances:

- Protest the termination, non-renewal, replacement, or modification of a dealership as being without good cause.¹⁹
- Protest establishment or relocation of another dealership—or warranty service facility—in the same market area as the protesting dealer.²⁰
- Protest the reasonableness of the dealer’s obligations for preparation and delivery of newly purchased cars and the manufacturer’s compensation to the dealer.²¹
- Protest reduced time and compensation for warranty repairs;²²
- Protest disapproval of a dealer’s claim for payment under a manufacturer incentive program.²³

The Vehicle Code says the Board must hear and decide protests by a dealer.²⁴

Proceedings are scheduled and may be conducted before the Board, or may be referred to an Administrative Law Judge.

As a quasi-judicial body, the Board is empowered to administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses or production of documents. Its actions can be enforced in court.



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A petition is a written request filed with the Board concerning activities or practices of an applicant or holder of a new car dealer license.²⁵

It can concern disputes between dealers or between a member of the public and a dealer.

In a petition proceeding, the Board can direct the Department of investigate and make a written report, conduct a mediation or arbitration or in some other way resolve differences of opinion or viewpoints between the public and a dealer, or direct the DMV to exercise authority it may have over licensing a dealer.²⁶

A protest or petition is an adversary proceeding. The Board, its Executive Director, or an Administrative Law Judge has authority to require the parties to engage in a settlement conference.²⁷

The Board can punish a party's failure to appear, or to be prepared, or to have authority to settle by suspending proceedings, dismissing a claim or requiring payment of the Board's costs and ruling that the offending party abandoned its claim. It may also issue subpoenas and authorize discovery.^{28 29}

For failure to comply with a subpoena or discovery procedures, a party may be sanctioned by being required to pay damages, attorney fees or being subject to injunctive relief.³⁰


The Vehicle Code authorizes a dealer or other Department of Motor Vehicles licensee who suffers loss due to another licensee's failure to comply with a requirement of the Code or a rule or decision of the Board, to recover damages, injunctive relief and attorney fees. An action for this relief must be brought in court.^{31 32}

A quorum is of three of the five Public Members for protests; a quorum is five of the nine members for protests.

Dealer members of the Board are not permitted to hear, comment, or advise public members on, or decide any matter involving a protest, unless the parties consent by stipulation.³³

Dealer members may take part in certain protests— Article V, RV matters, for example.

They may also participate in matters that do not involve a dispute between a franchisee and a franchisor, such as a petition by a member of the public or an appeal from a Department decision.

The Board has its own rules of procedure, found at Title 13 of the California Code of Regulations. Not unlike court rules, the Board's rules of procedure address a wide range of administrative matters and hearing procedures. 

¹ In 2021 U.S. consumers bought or leased more than 15 million new cars. The average transaction price was about \$45,000. U.S. Bureau of Transportation Statistics, Table 1-17 "New and Used Passenger Car and Light Truck Sales and Leases" (2021 data Rows 4 and 20) (www.bts.gov/content/new-and-used-passenger-car-sales-and-leases-thousands-vehicles, last visited 10/22/22). According to the American Automotive Policy Council (AAPC), Chrysler, Ford and General Motors produced 5.8 million vehicles in the U.S. in 2018, employing 238,000 workers at

260 manufacturing and assembly facilities, labs, distribution centers and other facilities in 31 states, and sold these through nearly 9,700 car dealerships. AAPC claims U.S. automakers and their suppliers are the nation's largest manufacturing sector, responsible for 3 percent of U.S. GDP. AAPC, *State of the U.S. Automotive Industry 2020* at 6, 8. (www.americanautomakers.org/sites/default/files/AAPC%20ECR%20Q3%202020.pdf, last visited 10/22/22).

² See e.g., Harold Brown, Michael Dady et al, *Franchising: Realities and Remedies* § 7.04A. (2d Ed., 2021, Law Journal Press) ("As has been the case for the majority of the auto industry's existence, new car dealerships operate as automobile manufacturer franchisees, entrusted with almost all new car retailing to consumers in the nation.")

³ Jason R. Parnell and Robert W. Emerson, *Bankruptcies and Bailouts: the Continuing Impact of the Financial Crisis on the Franchise Auto Dealer Industry*, 21 U. Pa. J. Bus. L. 288, 305-306 (2018).

⁴ *American Motors Sales Corp. v. New Motor Vehicle Bd.* (1977) 69 Cal. App. 3d 983, 986-987.

⁵ *Alliance of Auto. Mfrs. v. Gwadosky*, 304 F. Supp. 2d 104, 106 (D. Maine 2004). 1939 FTC Ann. Rep. 22, 25-26.

⁷ 15 U.S.C. §§ 1221-1225.

⁸ *Id.* § 1222.

⁹ *Wallace Motor Sales, Inc. v. Am. Motors Sales Corp.*, 780 F.2d 1049, 1056 (1st Cir. 1985) (summarizing case law in the circuits on duty of good faith under DCA); *Autohaus Brugger, Inc. v. Saab Motors, Inc.*, 567 F.2d 901, 911 (9th Cir. 1978) (an element of a DCA claim is lack of good faith in which coercion, intimidation, or threats thereof, are present).

¹⁰ *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 439 U.S. 96, 100-101 (1978) (disparity in bargaining power between manufacturers and dealers prompted Congress and states to pass legislation to protect car dealers from abusive and oppressive acts by manufacturers); Christian J. Scali, Halbert Rasmussen and Monica Baumann, *An American Solution: Automotive Franchise Laws Serve Local Communities and Consumers* 40 ABA Fran. L. J.665 (Spring 2021) ("the franchise system and franchise law are a result of a long history of conflict between manufacturers and dealers"); see also, Gordon L. Ohlsson, 2 *Business Torts* § 21.04 (2022). As a result of many years of urging by trade associations of automobile dealers, almost every state has a law protecting the dealers from unfair termination or from arbitrary actions of the franchisor.

¹¹ See, *Scali et al*, supra note 10, at 670. All states ultimately passed dealer protection laws.

¹² *Miller v. Superior Court* (1996) 50 Cal. App. 4th 1665, 1668 n.2.

¹³ *Id.*

¹⁴ Veh. Code § 3060; 3062, 3064, 3065; see also, *American Motors Sales Corp. v. New Motor Vehicle Bd.* (1977) 69 Cal. App. 3d 983, 986-987.

¹⁵ *Id.* § 3001.

¹⁶ *Hardin Oldsmobile v. Superior Court* (1997) 52 Cal. App 4th 585, 590 (the Board "is a quasi-judicial administrative agency of limited jurisdiction"). See e.g., *Tovas v. American Honda Motor Co.* (1997) 57 Cal. App. 4th 506, 508. The Board does not have jurisdiction over cause of action for interference based on tortious business practices independent of a franchise agreement.

¹⁷ Veh. Code 3050(e) (courts have concurrent jurisdiction over common law and statutory claims. For those claims, a party may bring an action in court. *Hardin Oldsmobile v. Superior Court* (1997) 52 Cal. App 4th 585, 591 ("The Legislature did not intend to replace the courts with the Board in presiding over traditional litigation involving a broad range of statutory and common law causes of action.").

¹⁸ 13 Cal. Code of Regs. § 550(t).

¹⁹ Veh. Code § 3060.

²⁰ *Id.* § 3062.

²¹ *Id.* § 3064.

²² *Id.* § 3065.

²³ *Id.* § 3065.1. See also, *Mazda Motor of America, Inc. v. New Motor Vehicle Bd.* (2003) 110 Cal. App. 4th 1451, 1458. Summarizing disputes the Board is empowered to decide.

²⁴ *Id.* § 3050(d) provides for decision by the Board of a protest by a dealer under Vehicle Code Secs. 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076.

²⁵ *Id.* § 3050(b).

²⁶ *Id.* § 3050(b)(1) – (3). These provisions apply also with regard to other types of DMV licenses: manufacturer, manufacturer branch, distributor, distributor branch and representative. *Id.* They apply with regard to DMV's authority to issue, renew, refuse to renew, suspend or revoke any such license. *Id.* See also, *Mazda Motor of America, Inc. v. Calif. New Motor Vehicle Bd.* (2003) 110 Cal. App. 4th 1451, 1454 (discussing the statute).

²⁷ *Id.* § 3050.4.

²⁸ *Id.* § 3050.4.

²⁹ *Id.* § 3050.1.

³⁰ *Id.* § 3050.2.

³¹ *Id.* § 11726.

³² *Id.* § 11726.

³³ *Id.* § 3066(d).