California New Car Dealers Association

September 12, 2023

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

FOR ENROLLED BILL FILE

Re: AB 473 (Aguiar-Curry) – New Motor Vehicle Franchise Law Improvements

Position: SIGNATURE REQUESTED

Dear Governor Newsom:

The California New Car Dealers Association (CNCDA) is the nation's largest statewide trade association that represents 1,400 franchised new car and truck dealer members and employs more than 135,000 Californians. CNCDA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also provide customers with automotive products, parts, service and repair. We are writing to express our support as the sponsors of AB 473 (Aguiar-Curry), which would update the laws regulating the relationship between automobile manufacturers and franchised new car dealers. *AB 473 was unanimously approved by both the Assembly and Senate and has negligible state fiscal effect similar to previous dealer franchise measures (AB 179 of 2019, AB 1178 of 2015, SB 155 of 2013, AB 642 of 2011, and SB 424 of 2009).*

Background

The distribution, sale and service of new motor vehicles in the State of California vitally affects the general economy for this state and the public welfare. The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, assures the consuming public of a well-organized distribution system for the availability and sale of new motor vehicles throughout the state, provides a network for quality warranty, recall, and repair facilities to maintain those vehicles, and creates a cost-effective method for the state to police those systems through the licensing and regulation of private sector franchisors and franchisees.

Without a new motor vehicle franchise law, there would be a significant imbalance in bargaining power between large multinational vehicle manufacturers and local independently-owned franchised dealerships. Importantly, dealerships cannot strengthen their bargaining power by banding together, as doing so would run afoul of federal antitrust law. This is why the Legislature regularly updates franchise laws to address the latest manufacturer abuses against dealers and the public.

AB 473 levels the playing field by restoring the proper competitive balance between dealers and their manufacturers so that independent franchised dealers can continue to service the needs of their communities and customers. Specifically, AB 473 updates and protects CA dealer franchise owners in several ways, but we highlight the primary changes in more detail below:

AB 473

Unfair Competition

Current law precludes manufacturers from competing with their dealer franchisees in the "same line make" or in the "relevant market area." (Cal. Vehicle Code section 11713.3(o).) This rule was added by the Legislature in 1973 to protect dealers from unfair competition by their manufacturer partners. It promotes investment in communities throughout California by providing dealers with the confidence to invest millions of dollars in their workforce and facilities without fear that their own manufacturer partners will erode their business through direct competition.

Since the advent of the Internet and new direct to consumer marketing practices by non-franchisor manufacturers (e.g. Tesla and Rivian), the current standard has become outdated and susceptible to workarounds by automakers looking to skirt the law and compete directly with their franchisees. The term "line make" is not defined, thus allowing automakers to simply launch a new brand, argue that it is a separate "line make", and sell that brand directly to consumers, in direct competition with their franchised dealers. For example, several manufacturers have announced "new" brands in coming years, producing vehicles that may be sold directly to consumers when those vehicles would normally be sold by their business partner franchisees. Volkswagen, a franchised automaker that has been subject to the franchise law since its inception, has announced a new brand called Scout Motors, which intends to sell vehicles outside the franchise system beginning in 2026. These manufacturers may argue that it would not run afoul of current law if they were to sell these "new" brands outside of the franchise system. But this position fundamentally undermines the underlying purpose of the motor vehicle franchise law and threatens the very existence of community dealerships in California, who make significant investments to launch and operate vehicle franchises with the reasonable expectation that their franchisors will not compete against them.

The unfair competition provision in AB 473 closes this loophole by eliminating these outdated and ambiguous terms and simply proposes to do what the law has always intended to do: prohibits franchisor manufacturers from competing with their dealers in the sale or service of motor vehicles. This provision does not prevent a manufacturer or their affiliate from selling direct to consumers (e.g. Tesla and Rivian) if they have not entered into a franchise agreement with a California auto dealer. The competition provision guards against franchised automakers from competing against their own franchisees and serves as a critical protection to dealers, whether the potential competitor is seeking to sell electric vehicles, hydrogen fuel cell vehicles, or internal combustion engine vehicles.

Public DC Fast Charging

CNCDA and its members are all-in on the Governor's 2035 ZEV goals and understand the infrastructure needed to continue to make strides toward this crucial benchmark. California dealers—per requirements from and partnerships with their franchisor automakers—are currently making significant financial investments at their own cost to install and maintain the needed charging infrastructure to facilitate the sale and service of EV inventory.

Unfortunately, Ford Motor Company is the only franchised automaker requiring their dealers to install *public-facing* DC fast chargers on their lots at the sole cost of the dealer. Specifically, the Ford "Model E" program requires dealers to spend up to $1.2 million on public-facing chargers; if dealers are unable to make such a significant investment, then Ford imposes crippling penalties on its dealers in the form of a 25 EV per year allocation cap. The program further implements draconian timelines that do not consider financial, grid and geographical constraints that could seriously impact 2035 goals by withholding EV allocation simply because a dealer is unable to make the significant financial commitment or meet the timelines to comply.

AB 473 incorporates a level of fairness into manufacturer-imposed DC fast charging programs—specifically Ford's--by requiring manufacturers that require their dealers to install *public facing* DC fast chargers on dealer lots to split the cost of and take into consideration supply constraints, time constraints, advancements in technology, and electric grid integration. Importantly, the cost splitting provision would *not* apply to programs wherein the manufacturer required its dealers to pay for the cost of DC fast chargers for the sale and service of dealership vehicles.

NOTE: In response to criticism that the cost-sharing requirement could lead to a windfall for dealers, the bill was amended to require dealers to split 50% of all revenue from said public DC chargers.

Vehicle Subscription Services

Current law does not regulate or restrict the ability of manufacturers to offer vehicle equipment subscription services. This occurs when a manufacturer (1) "disables" vehicle features that are built into the vehicle and capable of functioning at the time of purchase, and (2) "unlocks" those features for consumer use only if the consumer agrees to pay an annual or monthly fee, often in perpetuity. This lack of regulation could lead some manufacturers to artificially limit the functionality of vehicles at the time of sale, so that the manufacturer can offer a post-sale "subscription" to enable these features. In 2019, BMW launched a program to charge customers $80 per year to connect smartphones to vehicle infotainment systems using CarPlay. BMW also introduced a program in the Korean and U.K. markets that requires customers to pay $18 per month (£15 per month in the U.K.) to enable heated seats. After significant consumer backlash, BMW suspended its CarPlay subscription and indicated it will not offer a subscription for heated seats in the United States. However, Mercedes recently

announced a $1,200 annual "subscription" to remove artificial performance bottlenecks that they place on their electric vehicles. The subscription will "unlock" substantially more horsepower on their electric vehicles. These vehicle feature subscriptions harm both dealers and consumers, as these features are no longer included in the price of the vehicle, even though they are physically present in the vehicle at the time of sale, whether initially as a new vehicle or subsequently as used.

Recent surveys indicate that consumers are not interested in being "nickeled and dimed" by post-sale subscriptions, especially features that are preloaded and ready to function upon purchase of the vehicle. To this end, dealerships are increasingly concerned about consumers directing their dissatisfaction with these subscription programs to their local dealer, rather than the manufacturer that introduced and managed the program, as many consumers understandably believe they are the same entity. For this reason, AB 473 would restrict the ability of manufacturers to offer post-sale subscriptions that enable features that are physically built into the vehicle, thereby protecting consumers from fees to access features in the vehicle they believed came equipped upon purchase. The provision is narrowly tailored to only apply to subscription services that are hardwired into the vehicle and do NOT require software updates or any ongoing costs to function. Additionally, we take issue with some who have suggested that this provision "bans" subscription services. This provision does not limit an automaker from providing post-sale services on the vehicle if it is a one-time purchase to activate the feature. In response to concerns expressed by various stakeholders, AB 473 also contains a multitude of exemptions, such as navigation system updates, satellite radio, roadside assistance, software-dependent driver assistance or driver automation features, and vehicle-connected services that rely on cellular or other data networks for continued operation.

In conclusion, AB 473 has been carefully crafted to assist dealers and consumers with needed statutory protections, while at the same time ensuring that the compliance with its provisions is reasonable for manufacturers. In striking this balance, AB 473 will provide relief to dealers, their employees and their communities, enabling them to continue to be the robust engine of economic activity that employs over 135,000 Californians and generates over $12 billion in sales taxes to the state.

Based upon the foregoing, we respectfully urge you to sign AB 179. Should you or your staff have any questions or comments, please do not hesitate to give me a call.

Sincerely,

Kenton Stanhope
Director of Government Affairs

cc: The Honorable Cecilia Aguiar-Curry
Christy Bouma, Legislative Secretary
Ronda Paschal, Deputy Legislative Secretary
Samson Advisors