

SA2005RF0049

January 21, 2005

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Tricia Knight

RECEIVED
JAN 21 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: *The Car Buyer's Bill of Rights (Version 2)*

Dear Ms. Knight:

Pursuant to Elections Code section 9002, we request that the Attorney General prepare a title and summary of version 2 of a measure entitled "The Car Buyer's Bill of Rights." The text of the measure, a check for \$200.00 and the address at which we are registered to vote are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Roberta B. Johansen
James C. Harrison
Remcho, Johansen & Purcell
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
FAX: (510) 346-6201

Sincerely,

James C. Harrison

Douglas G. Denton

THE CAR BUYER'S BILL OF RIGHTS

SECTION 1. This act shall be known and may be cited as the "Car Buyer's Bill of Rights."

SECTION 2. Findings and Declarations.

The people of the State of California find and declare as follows:

(a) For most Californians, owning a car is a necessity of life. Buying a used car is also a major expense. Unlike many other products consumers buy, they often do not have the right to return a used car within three days of purchase. There is no "cooling off period," even when a consumer has been subjected to high-pressure sales tactics, or been worn down by lengthy negotiations. It is often extremely hard to get a refund for a used car, even if it falls apart when the buyer drives it off the car lot, or if it has hidden defects the salesperson failed to disclose. As with many other products, consumers should have the right to return a used car within three days of purchase for a full refund, minus reasonable charges for usage, restocking fee, and mileage.

(b) Car dealers often impose a hidden charge when they arrange loans for car buyers. They impose this extra charge by arranging car loans at a higher interest rate than the rate the consumer actually deserves, based on his or her credit history. In exchange for raising the interest rate, the dealers receive a kickback from lenders. The higher the buyer's interest rate, the more profit the dealer makes on the financing. This hidden, excessive charge affects many car buyers, even those with good or excellent credit. Sometimes, the charge adds hundreds or thousands of dollars to the cost of financing a car. Car dealers should be required to disclose to each buyer who obtains dealer financing the buyer's credit score for free, and dealers should be prohibited from charging more than \$150 for arranging a loan or making a sale of a conditional sales contract.

(c) Consumer spending accounts for approximately two-thirds of economic activity in America, and particularly in times of economic hardship, consumers tend to be the sole pillar sustaining our national and state economies. It is vitally important for the health of California's economy that consumers have confidence in the fairness of the marketplace, especially when it comes to making important decisions, like buying a car.

(d) Many car dealers sell "certified" used cars that they claim have been thoroughly inspected and are a cut above other used cars. They charge a premium for these vehicles. Some of these so-called "certified" cars, however, are actually badly damaged total loss "salvage" cars, or lemons repurchased under the lemon law. Car dealers should be prohibited from advertising or selling these defective automobiles as "certified" used cars, and "certified" used cars should be sold with significant minimum warranty protection.

(e) Car dealers often attempt to sell after-market items such as service contracts, fabric protection, alarms and vehicle theft products to consumers without disclosing the true monthly cost of those items. Dealers commonly engage in "loan packing" to disguise the actual monthly cost of these products. "Loan packing" by auto dealers should be strictly prohibited, and dealers

should be required to disclose the actual monthly cost of after-market items, so that consumers can make an informed decision about purchasing these products.

SECTION 3. Purpose and Intent.

In order to ensure that used car buyers have the same rights as the buyers of many other products, to ensure that consumers are not overcharged by dealers for assisting in obtaining financing or making a sale of a conditional sales contract, or for the purchase of after-market items, and to ensure that the "certified" used cars they buy meet specified standards for quality, the people of the State of California do hereby enact the Car Buyers' Bill of Rights Act. This measure is intended to accomplish its purposes by amending the Civil Code and Vehicle Code to:

- (a) Permit buyers of used cars to return a car to a car dealer within three days of purchase, for a full refund, minus reasonable charges for usage, restocking fee, and mileage, and require car dealers to disclose this right in the sales contract;
- (b) Require car dealers who arrange loans for buyers of cars to disclose the buyer's credit score and prohibit car dealers from charging more than \$150 to arrange a loan for the buyer or to make a sale of a conditional sales contract;
- (c) Require that "certified" used cars be sold with significant warranty protection, prohibit car dealers from advertising or selling "lemon law buybacks," seriously damaged vehicles, or vehicles that have had their odometers rolled back, as "certified" used cars; and
- (d) Prohibit auto dealers from engaging in "loan packing," and require that car dealers disclose to car buyers the actual monthly cost to the buyer of certain commonly overpriced add-on items.

SECTION 4. Section 1793.27 is added to the Civil Code, to read:

1793.27. (a) A dealer, as defined in subdivision (h) of Section 1793.23, may not advertise or sell a used motor vehicle as "certified used" or "certified preowned" motor vehicle, or any similar descriptive term that implies that the vehicle has been inspected and determined to meet the terms of a used vehicle certification program unless:

- (1) The vehicle has not sustained damage in a collision, flood, fire or similar damaging incident that substantially impairs the use, value, or safety to the buyer.
- (2) The odometer on the vehicle indicates actual mileage and has not been rolled back or otherwise altered to show fewer miles or replaced with an odometer showing fewer miles than actually driven.
- (3) The vehicle has not been repurchased by a dealer or manufacturer pursuant to a state or federal warranty statute.
- (4) The title to the vehicle has not been inscribed with the notation "Lemon Law Buyback," "manufacturer repurchase," "salvage," "junk," "nonrepairable," "flood," or similar designation.
- (5) Prior to sale, the dealer provides the buyer with a completed inspection report indicating all the components inspected pursuant to the vehicle certification program and whether they meet the standards of the vehicle certification program.

(6) The dealer does not disclaim any warranties of merchantability or fitness for a particular purpose on the vehicle.

(7) The vehicle is not sold "AS IS" or "with all faults."

(8) The dealer or manufacturer provides an express warranty, for at least 12 months duration from the date of purchase or lease or 12,000 miles, whichever comes first, that applies to at least the following components: engine, suspension, transmission, braking system, any stability control system, and any computer, electronic or electrical systems affecting the operation of the engine, emissions system, brakes, window operation, vehicle security, lighting, signals, and climate controls. An extended service contract or similar instrument, or other third-party contract, will not satisfy this requirement.

(9) The dealership guarantees in writing to the buyer that the vehicle meets all applicable emissions requirements in effect in California on the date of sale.

(b) In addition to any other remedies available under the law, the remedies set forth in Section 1794 apply to any violation of this section.

(c) Nothing in this section shall be construed to require that a dealer offer a "certified" vehicle program.

(d) For purposes of this section, "dealer" means a person licensed pursuant to this article.

(e) All requirements in this section are minimum requirements and do not preclude a dealer from offering a "certification" program that is more protective of the buyer.

SECTION 5. Section 2982 of the Civil Code is amended to read:

2982. Every conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtitled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document preparation fees, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, and the amount charged for a service contract.

(B) The fee to be retained by the seller for document preparation.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) Taxes imposed on the sale.

(E) The amount of any optional business partnership automation fee to register or transfer the vehicle, which shall be labeled "Optional DMV Electronic Filing Fee."

(F) The amount charged for a service contract.

(G) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled "prior credit or lease balance (see downpayment and trade-in calculation)."

(H) Any charge for an optional debt cancellation agreement.

- (1) The total cash price, which is the sum of subparagraphs (A) to (H), inclusive.
- (2) Amounts paid to public officials for all of the following:
 - (A) Vehicle license fees.
 - (B) Registration, transfer, and titling fees.
 - (C) California tire fees imposed pursuant to Section 42885 of the Public Resources Code.
- (3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.
- (4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.
- (5) A subtotal representing the sum of the foregoing items.
- (6) The amount of the buyer's downpayment itemized to show *all of* the following, *as applicable*:
 - (A) The agreed value of the property being traded in.
 - (B) The prior credit or lease balance, if any, owing on the property being traded in.
 - (C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.
 - (D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and which is not subject to a finance charge.
 - (E) The amount of any manufacturer's rebate applied or to be applied to the downpayment.
 - (F) The remaining amount paid or to be paid by the buyer as a downpayment.
 - (G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment and no amount shall be stated as the prior credit or lease balance under subparagraph (G) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (G) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled "total downpayment" and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (G) of paragraph (1).
- (7) The amount of any administrative finance charge, labeled "prepaid finance charge."
- (8) The difference between item (5) and the sum of items (6) and (7), labeled "amount financed."
- (b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.
- (c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.
- (d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.
- (e) The contract shall contain the names and addresses of all persons to whom the notice required under Section 2983.2 and permitted under Sections 2983.5 and 2984 is to be sent.

(f) (1) If the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) If the contract includes a finance charge which is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) If the contract includes a finance charge which is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is *one dollar* (\$1) or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) If the contract includes a finance charge which is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is *one dollar* (\$1) or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) If the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

“If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature”

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance, other than for credit life or disability, is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or portion thereof is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge may not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars (\$225), 1 1/6 percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (\$225) as does not exceed nine hundred dollars (\$900) and five-sixths of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (\$900) as does not exceed two thousand five hundred dollars (\$2,500); or

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment; or

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25); or

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000).

(ii) Fifty dollars (\$50) if the unpaid balance exceeds one thousand dollars (\$1,000) but does not exceed two thousand dollars (\$2,000).

(iii) Seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).

(2) The holder of the contract may not charge, collect, or receive a finance charge which exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract which provides for determination of the finance charge or

a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars (\$5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars (\$75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge which is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) If a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement may not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(l) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. If the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the ~~360-day~~ 365-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision may not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, whenever the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2). Notwithstanding, the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that as permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, provided that all of the requirements and limitations set forth in subdivision (a) of this section are satisfied. This chapter does not prohibit the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a fee for document preparation, the contract shall contain a disclosure that the fee is not a governmental fee.

(o) A seller may not impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract, if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

***THERE IS A 3-DAY COOLING OFF PERIOD FOR SALES OF USED VEHICLES, EXCEPT
RECREATIONAL VEHICLES AND CONSIGNMENT SALES***

California law provides for a "cooling off" or cancellation period for sales of used vehicles, except recreational vehicles and consignment sales, if the vehicle is returned in substantially the same condition within 3 days and has been driven no more than 250 miles.

THERE IS NO COOLING OFF PERIOD
FOR SALES OF NEW VEHICLES

California law does not provide for a ~~“cooling-off”~~ “cooling off” or other cancellation period for ~~vehicle~~ sales of *new vehicles*. Therefore, you cannot later cancel ~~this such a~~ contract simply because you ~~change your mind, decide the vehicle costs too much, or wish you had~~ *changed your mind, decided the vehicle cost too much, or wished you had* acquired a different vehicle. After you sign ~~below a motor vehicle purchase or lease contract, you may only~~ *cancel this contract it may only be cancelled* with the agreement of the seller or lessor or for legal cause, such as fraud.

SECTION 6. Section 2982.2 is added to the Civil Code to read:

2982.2. (a) (1) Notwithstanding Section 2982 or any other provision of law, the buyer of any used motor vehicle has the right to cancel a motor vehicle sale contract, including a conditional sale contract as defined in Section 2982, until the later of, (A) the close of the seller’s place of business on the third day after delivery of the vehicle, provided that the vehicle is not a consignment sale, the vehicle is not a recreational vehicle as defined in Section 18215.5 of the Health and Safety Code, the mileage on the vehicle at the time of the return does not exceed the mileage at delivery by more than 250 miles, and the vehicle is in substantially the same condition as at delivery or, (B) a longer period as specified in the sale contract, so long as the contract does not impose any conditions that are more restrictive than those set forth in paragraph (A).

(2) In order to cancel a contract under this section, the buyer shall give written notice of cancellation to the seller at the address specified in the contract within the applicable timeframe set forth in subdivision (a) and return the used vehicle to the seller’s place of business prior to close of business on the third day after taking delivery of the vehicle. The vehicle shall be returned in substantially the same condition as at delivery, excluding normal wear and tear. A used motor vehicle that is returned with damage sustained as a result of a defect existing at the time of sale shall be deemed to be “in substantially the same condition as at delivery” for the purposes of this section.

(3) Notice of cancellation, if given by mail, is effective when postmarked by the United States Postal Service properly addressed with postage prepaid.

(4) Notice of cancellation given by the buyer need not take any particular form, as long as it is written, and, however expressed, is effective if it indicates the intention of the buyer to return the vehicle and not to be bound by the motor vehicle conditional sale contract.

(5) (A) Upon the return of the vehicle, the seller shall cancel the contract and provide the buyer with a full refund, including that portion of the sales tax attributable to amounts excluded pursuant to Section 6012.3 of the Revenue and Taxation Code, minus the following allowable deductions as deemed necessary by the seller:

(i) A reasonable offset for mileage added to the odometer after delivery, calculated by dividing the purchase price of the motor vehicle by 120,000 miles, and multiplying by the number of miles added to the odometer after delivery.

(ii) If the vehicle was free of mechanical or structural defects at the time of sale, the seller may charge a restocking fee of either 2.5 percent of the purchase price or five hundred dollars (\$500), whichever is less, for vehicles with a purchase price up to and including sixty thousand dollars

(\$60,000), or 2.5 percent of the purchase price for vehicles with a purchase price exceeding sixty thousand dollars (\$60,000), whichever is applicable.

(iii) Reasonable reimbursement for any nonsubstantial damage occurring during the buyer's possession of the vehicle, such as minor stains, scratches, or missing parts or accessories that do not substantially lower the value of the vehicle.

(B) For purposes of subparagraph (A), a "full refund" shall include the motor vehicle the buyer left with the seller as a downpayment or trade-in. If the seller has sold or otherwise transferred title to the motor vehicle that was left as a downpayment or trade-in, the "full refund" shall include the fair market value of the motor vehicle left as a downpayment or trade-in, or its value as stated in the contract or purchase order, whichever is greater.

(b) A motor vehicle sale contract, including a conditional sale contract, for the sale of a used motor vehicle, except a consignment sale or recreational vehicle as defined in Section 18215.5 of the Health and Safety Code, shall contain in immediate proximity to the space reserved for the buyer's signature, a conspicuous statement, written in the same language as that principally used in the oral sales presentation, in a size equal to at least 10-point boldface type, reading as follows:

"You, the buyer, may return this used vehicle and cancel this transaction at any time prior to the close of the seller's place of business on the third day after taking delivery, if you do not drive it more than 250 miles, you return the vehicle in substantially the same condition as at delivery, and you provide written notice of cancellation to the seller at ____ (seller's address). Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid and postmarked by the United States Postal Service. The notice of cancellation need not take any particular form, as long as it is written and it indicates your intention to cancel this transaction. You may also be required to reimburse the seller a restocking fee, mileage fee, and for any nonsubstantial damage, such as stains, scratches, or missing accessories."

(c) If the seller of a motor vehicle arranges a loan, arranges financing, makes a credit sale, sells or otherwise transfers a conditional sale contract, or makes a similar transaction for the buyer, the seller shall clearly and conspicuously disclose to the buyer each buyer's three-digit credit score, as defined in Section 1785.15.1, obtained from a credit reporting agency, on a separate sheet of paper, at least 8 1/2 inches wide and 11 inches long, with the name and address of the seller and the date of the contract at the top, written in the same language as that used in the contract, in at least 10-point boldface type, reading as follows:

"Notice to buyer of vehicle with vehicle identification number ____: Your credit score obtained by the dealer to evaluate your credit history for this purchase, as calculated by ____, is ____."

Notwithstanding any other provision of law, the disclosures required in this subdivision and in subdivision (d), on separate sheets of paper, shall not be deemed a violation of Civil Code Section 2981.9, Civil Code Section 2985.8 (a), or any other statute or rule requiring the terms of a sale or lease to be contained in a single document.

(d) If the seller of a motor vehicle arranges a loan, arranges financing, makes a credit sale, sells or otherwise transfers a conditional sale contract, or makes a similar transaction and the purchase or lease includes the sale of service contracts or maintenance plans, insurance products, theft deterrent or protection products, "GAP" protection products, and exterior or interior surface protection, the seller shall provide the buyer a clear and conspicuous written disclosure regarding each item, in the same language as that used in the contract, in at least 12-point boldface type, on

a page at least 8 1/2 inches wide by 11 inches long, that includes the name and address of the seller at the top, and the date of the contract and reading as follows:

"Notice to the buyer of vehicle with vehicle identification number ____: (1) You have agreed to purchase the following additional item: _____. (2) The price of this item if you pay cash is: \$ _____. (3) If included in the financing of the vehicle, your actual monthly cost to finance this item is: \$ ____/month, and your total cost for this item over the life of the credit agreement is: \$ _____."

(e) This section does not apply to state or federally chartered banks and savings and loan associations and may not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.

SECTION 7. Section 2982.10 is added to the Civil Code, to read:

2982.10. (a) In consideration of an assignment of a conditional sale contract, the seller may not receive or accept from the assignee any payment or credit based upon any amount collected or received, or to be collected or received, under the contract as a finance charge in excess of \$150 per conditional sales contract or similar loan transaction. Nothing in this section shall be construed to require a seller to charge the buyer any amount for arranging a loan, making a sale of a conditional sales contract, or entering into a similar financial transaction.

(b) This section does not apply to an assignment with full recourse or under other terms requiring the seller to bear the entire risk of financial performance of the buyer.

(c) This section does not apply to state or federally chartered banks and savings and loan associations and may not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.

SECTION 8. Section 6012.3 is added to the Revenue and Taxation Code, to read:

6012.3. For purposes of this part, "gross receipts" and "sales price" do not include that portion of the sales price returned to the purchaser of a used motor vehicle pursuant to Section 2982.2 of the Civil Code.

SECTION 9. Section 11709.2 of the Vehicle Code is amended to read:

11709.2. Every dealer shall conspicuously display a notice, not less than eight inches high and 10 inches wide, in each sales office and sales cubicle of a dealer's established place of business where written terms of specific sale or lease transactions are discussed with prospective purchasers or lessees, and in each room of a dealer's established place of business where sale and lease contracts are regularly executed, which states the following:

"THERE IS A 3-DAY COOLING OFF PERIOD FOR SALES OF USED VEHICLES, EXCEPT RECREATIONAL VEHICLES AND CONSIGNMENT SALES

California law provides for a "cooling off" or cancellation period for sales of used vehicles, except recreational vehicles and consignment sales, if the vehicle is returned in

substantially the same condition within 3 days and has been driven no more than 250 miles.

THERE IS NO COOLING OFF PERIOD FOR SALES OF NEW VEHICLES

~~“NO COOLING OFF PERIOD~~

California law does not provide for a ~~“cooling-off”~~ “cooling off” or other cancellation period for ~~vehicle lease or purchase contracts~~ *sales of new vehicles*. Therefore, you cannot later cancel such a contract simply because you ~~change your mind, decide the vehicle costs too much, or wish you had changed your mind, decided the vehicle cost too much, or wished you had~~ acquired a different vehicle. After you sign a motor vehicle purchase or lease contract, it may only be canceled with the agreement of the seller or lessor or for legal cause, such as fraud.”

SECTION 10. Section 11713.1 of the Vehicle Code is amended to read:

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

(a) Advertise any specific vehicle for sale without identifying the vehicle by its model, model-year, and either its license number or that portion of the vehicle identification number that distinguishes the vehicle from all other vehicles of the same make, model, and model-year. Model-year is not required to be advertised for current model-year vehicles. Year models are no longer current when ensuing year models are available for purchase at retail in California. Any advertisement that offers for sale a class of new vehicles in a dealer’s inventory, consisting of five or more vehicles, that are all of the same make, model, and model-year is not required to include in the advertisement the vehicle identification numbers or license numbers of those vehicles.

(b) Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing fees not exceeding fifty dollars (\$50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document preparation charge. The dealer document preparation charge shall not exceed forty-five dollars (\$45).

(c) (1) Exclude from an 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 California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, and any dealer document preparation charge.

(2) The obligations imposed by paragraph (1) shall be satisfied by adding to the advertisement a statement containing no abbreviations and that is worded in substantially the following form: “Plus government fees and taxes, any finance charges, any dealer document preparation charge, and any emission testing charge.”

(3) For purposes of paragraph (1), “advertisement” means any advertisement in a newspaper, magazine, or direct mail publication that is two or more columns in width or one column in width and more than seven inches in length, or on any Web page of a dealer’s Web site that

displays the price of a vehicle offered for sale on the Internet, as that term is defined in paragraph (6) of subdivision (e) of Section 17538 of the Business and Professions Code.

(d) Represent the dealer document preparation charge or certificate of compliance or noncompliance fee, as a governmental fee.

(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the California tire fee, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, 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 document preparation charge, which charges shall not exceed forty-five dollars (\$45) for the document preparation charge and not to exceed fifty dollars (\$50) for emission testing plus the actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, 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. Advertised vehicles shall be sold at or below the advertised total price, with statutorily permitted exclusions, regardless of whether the purchaser has knowledge of the advertised total price.

(f) (1) Advertise for sale, sell, or purchase for resale any new vehicle of a line-make for which the dealer does not hold a franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety 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.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term "free" includes merchandise or services offered for sale at a price less than the seller's cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as "starting at," "from," "beginning as low as," or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price. For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols. The

disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term “rebate” or similar words such as “cash back” in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms “invoice,” “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer’s or distributor’s invoice price to a dealer.

(B) A dealer’s cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle’s invoice price or the dealer’s cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a “commercial purchaser” means a dealer, lessor, lessor-retailer, manufacturer, remanufacturer, distributor, financial institution, governmental entity, or person who purchases 10 or more vehicles during a year.

(o) Violate any law prohibiting bait and switch advertising, including, but not limited to, the guides against bait advertising set forth in Part 238 (commencing with Section 238) of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1988.

(p) Make any untrue or misleading statement indicating that a vehicle is equipped with all the factory installed optional equipment the manufacturer offers, including, but not limited to, a false statement that a vehicle is “fully factory equipped.”

(q) Affix on any new vehicle a supplemental price sticker containing a price that represents the dealer’s asking price which exceeds the manufacturer’s suggested retail price unless all of the following occur:

(1) The supplemental sticker clearly and conspicuously discloses in the largest print appearing on the sticker, other than the print size used for the dealer’s name, that the supplemental sticker price is the dealer’s asking price, or words of similar import, and that it is not the manufacturer’s suggested retail price.

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer’s suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer’s suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer’s suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as “added mark-up.”

(r) Advertise any underselling claim, such as “we have the lowest prices” or “we will beat any dealer’s price,” unless the dealer has conducted a recent survey showing that the dealer sells its vehicles at lower prices than any other licensee in its trade area and maintains records to adequately substantiate the claims. The substantiating records shall be made available to the department upon request.

(s) Advertise any incentive offered by the manufacturer or distributor if the dealer is required to contribute to the cost of the incentive as a condition of participating in the incentive program, unless the dealer discloses in a clear and conspicuous manner that dealer participation may affect consumer cost. For purposes of this subdivision, “incentive” means anything of value offered to induce people to purchase a vehicle, including, but not limited to, discounts, savings claims, rebates, below-market finance rates, and free merchandise or services.

(t) Display or offer for sale any used vehicle unless there is affixed to the vehicle the Federal Trade Commission's Buyer's Guide as required by Part 455 of Title 16 of the Code of Federal Regulations.

(u) Fail to disclose in writing to the franchisor of a new motor vehicle dealer the name of the purchaser, date of sale, and the vehicle identification number of each new motor vehicle sold of the line-make of that franchisor, or intentionally submit to that franchisor a false name for the purchaser or false date for the date of sale.

(v) Enter into a contract for the retail sale of a motor vehicle unless the contract clearly and conspicuously discloses whether the vehicle is being sold as a new vehicle or a used vehicle, as defined in this code.

(w) Use a simulated check, as defined in subdivision (a) of Section 22433 of the Business and Professions Code, in an advertisement for the sale or lease of a vehicle.

(x) Fail to disclose, in a clear and conspicuous manner in at least 10-point bold type on the face of any contract for the retail sale of a new motor vehicle that this transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer, and the name of the autobroker, if applicable.

(y) As used in this section, the terms “make” and “model” have the same meaning as is provided in Section 565.3 of Title 49 of the Code of Federal Regulations.

(z) *It shall be a violation of this section for a dealer to sell a new or used vehicle that fails to meet all applicable smog abatement standards in effect in California on the date of the purchase, lease, or other transfer to a retail buyer.*

SECTION 11. Section 11713.17 is added to the Vehicle Code, to read:

11713.17. (a) It is unlawful and a violation of this code for a dealer to do any of the following:

(1) Negotiate the terms of a vehicle sale or lease contract and then add charges to the contract for any goods or services without previously disclosing the costs to the buyer of the goods and services to be added and obtaining the buyer's consent.

(2) Inflate the amount of any installment payment or down payment or extend the maturity of a sale or lease contract for the purpose of disguising the actual charges for goods or services to be added by the dealer to the contract.

(b) For purposes of this section, “goods or services” means any type of good or service, including, but not limited to, insurance and service contracts.

(c) This section does not apply to state or federally chartered banks and savings and loan associations and may not be construed to affect existing law regarding a seller's assisting a buyer to obtain a loan from a bank or savings and loan association or any loan obtained by the buyer from those lenders.

SECTION 12.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SECTION 13. Amendment.

The provisions of this measure may be amended to further the purposes of the initiative by a statute other than the annual budget act. Any such amendment must be passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

SECTION 14. Severability.

The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 15. Conflicting Initiatives.

(a) In the event that this measure and another initiative measure or measures relating to motor vehicle purchases appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by the voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force of law.