

October 24, 2013

VIA MESSENGER

Office of the Attorney General
1300 "I" Street, 17th Floor
Sacramento, CA 95814

Attention: Ashley Johansson, Initiative Coordinator

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: *Car Buyers Protection Act – Version 3*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary of the chief purpose and points of Version 3 of the initiative measure entitled the "Car Buyers Protection Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001 and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

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Sincerely,


Rosemary Shahan

Enclosures

CAR BUYERS PROTECTION ACT

SEC. 1. Title.

This act shall be known and may be cited as the “Car Buyers Protection Act.”

SEC. 2. Findings and Declarations.

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

1. Federal law makes it illegal for new car dealers to sell unsafe, defective vehicles to *new* car buyers, after an auto manufacturer has issued a safety recall, until the safety recall repairs have been performed. However, there is no similar federal law to protect *used* car buyers from auto dealers who sell unsafe, recalled *used* vehicles.
2. Consumers who get used vehicles from auto dealers deserve the same protection from unsafe, recalled vehicles as consumers who get new cars. The public has a strong interest in ensuring that vehicles sold by auto dealers for operation on California highways comply with federal safety standards and do not pose an unreasonable risk to public safety.
3. In 2013, trade associations that represent new and used car dealers in California opposed legislation in Sacramento, SB 686, that would have made it illegal for them to sell, lease, rent, or loan unsafe, recalled used vehicles to consumers, unless the safety defects have been repaired.
4. Federal law requires auto manufacturers to provide the safety recall repairs for free to any owner, including auto dealers.
5. For years, it has been easy for auto dealers to find out if a specific used vehicle has an open, unrepaired safety recall that needs to be fixed prior to sale. That information is readily accessible online, or by calling the manufacturer’s toll-free number, or by contacting a local dealer who sells that brand, and providing the vehicle’s identification number (VIN).
6. Current law does not provide enough protection for victims of identity theft at car dealerships. There is no prohibition against auto dealers’ hiring employees who been convicted of identity theft, fraud, or forgery, for positions where they will have access to car buyers’ personal financial information.
7. Many auto dealerships that sell vehicles in California are owned by dealership chains, some based in other states, that have annual revenue in the billions of dollars and are publicly traded on Wall Street.

SEC. 3. Purpose and Intent.

The people of the State of California do hereby enact the Car Buyers Protection Act. This measure is intended to accomplish its purposes by protecting Californians who get new or used vehicles from licensed dealers, in the following ways:

1. Make it illegal for auto dealers to sell, rent, lease, loan, or otherwise transfer ownership of unsafe, recalled used cars to consumers, unless the safety recall repairs have been performed;
2. Improve protections for victims of identity theft perpetrated at car dealerships; and
3. Reduce the risk of identity theft occurring at car dealerships.

SEC. 4. Section 11713.27 is added to the Vehicle Code, to read:

11713.27. (a) Except for a rental company, as defined in Section 1936 of the Civil Code, a dealer issued a license under this article shall not rent, lease for an initial term of less than four months, loan, or otherwise transfer ownership at retail of a used vehicle, as defined in Section 665 and subject to registration under this code, including any used vehicle advertised as "certified" or any similar descriptive term, if the dealer knows or should have known that the vehicle is subject to a manufacturer's safety recall, unless the repairs required to correct the defect or failure to comply with an applicable motor vehicle safety standard have been performed on the vehicle. The requirements of this section shall not apply to transfers or sales by a dealer to another dealer or to a manufacturer.

(b) For purposes of this section, a dealer is deemed to have knowledge of a manufacturer's safety recall if any of the following applies:

(1) The dealer receives notification of the manufacturer's safety recall pursuant to subdivision (b) or (c) of Section 30118 or Section 30119 of Title 49 of the United States Code.

(2) The dealer is a franchisee of the original manufacturer, or was a franchisee of the manufacturer at the time the manufacturer issued the notice about the safety recall.

(3) The manufacturer has made information about the manufacturer's safety recall regarding that specific vehicle available on the manufacturer's Internet website, searchable by Vehicle Identification Number, stating that the manufacturer's safety recall repairs have not been performed, prior to the sale, lease, loan, rental, or other transfer of ownership at retail of the vehicle.

(c) A "manufacturer's safety recall" means a recall issued pursuant to Section 30118 of the National Highway Traffic and Motor Vehicle Safety Act, 49 U.S.C. Sections 30101, et. seq. It does not include service campaigns or emissions recalls where the manufacturer has not issued

a safety recall notice to owners of the affected vehicles, pursuant to Section 30118 of the National Highway Traffic and Motor Vehicle Safety Act, 49 U.S.C. Section 30101, et. seq.

(d) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.

SEC. 5. Section 11713.28 is added to the Vehicle Code, to read:

11713.28. (a) A rental company, as defined in Section 1936 of the Civil Code, that is also a dealer licensed under this article shall not sell or otherwise transfer ownership at retail of a used vehicle, as defined in Section 665 and subject to registration under this code, including any used vehicle advertised as "certified" or any similar descriptive term, if the rental company knows or should have known that the vehicle is subject to a manufacturer's safety recall, as defined in subdivision (c) of Section 11713.27, unless the repairs required to correct the defect or failure to comply with an applicable motor vehicle safety standard have been performed on the vehicle. The requirements of this section shall not apply to transfers or sales by a dealer to another dealer or to a manufacturer.

(b) For purposes of this section, a rental company is deemed to have knowledge of a manufacturer's safety recall if either of the following applies:

(1) The rental company receives notification of the manufacturer's safety recall pursuant to subdivision (b) or (c) of Section 30118 or Section 30119 of Title 49 of the United States Code.

(2) The manufacturer has made information about the manufacturer's safety recall regarding that specific vehicle available on the manufacturer's Internet website, searchable by Vehicle Identification Number, stating that the manufacturer's safety recall repairs have not been performed, prior to sale or other transfer of ownership at retail of the vehicle.

(c) A violation of this section is actionable under the Consumers Legal Remedies Act (Title 1.5 (commencing with Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), Section 17500 of the Business and Professions Code, or any other applicable state or federal law. The rights and remedies provided by this section are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.

SEC. 6. Section 1798.98 is added to the Civil Code, to read:

1798.98. (a) If a transaction procured through identity theft relates to the sale or lease of a vehicle by a dealer, as defined in Vehicle Code Section 285, and the dealer has been paid in full, remains the creditor, or has assigned or sold the retail installment contract to a third party, a person may bring an action against the dealer, or may join the dealer in any action against the claimant.

(b) A person who proves that he or she is a victim of identity theft arising from the sale or lease of a vehicle by a dealer under this section, shall, in addition to all appropriate remedies against the claimant, be entitled to a judgment against the dealer providing all of the following, as appropriate:

(1) Actual damages, attorney's fees, and costs, and any equitable relief that the court deems appropriate. In order to recover actual damages or attorney's fees from the dealer, the victim shall show that he or she provided written notice to the dealer that a situation of identity theft might exist, including, upon written request of the dealer, a valid copy of the police report or the Department of Motor Vehicles investigative report promptly filed pursuant to Section 530.5 of the Penal Code at least 30 days prior to his or her filing of the action or cross-complaint pursuant to this section or Section 1798.93.

(2) A civil penalty, in addition to any other damages, of up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence all of the following:

(A) That at least 30 days prior to filing an action or the cross-complaint pursuant to this section or Section 1798.93, the victim provided written notice to the dealer that a situation of identity theft might exist and explaining the basis for that belief.

(B) That the dealer failed to diligently investigate the victim's notification of a possible identity theft.

(C) That after the dealer was presented with facts that were later held to entitle the victim to a judgment pursuant to this section or Section 1798.93, the dealer failed to notify the claimant that the victim's claim of identity theft was justified.

(3) A civil penalty, in addition to any other damages or penalty, of not less than five thousand dollars (\$5,000) and up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence that the dealer knowingly executed a sale or lease contract that resulted from identity theft. Such a dealer shall also be liable to the claimant for any damages resulting from the sale or lease, including all attorney's fees, costs, and expenses incurred by the claimant in relation to the identity theft.

SEC. 7. Section 11713.05 is added to the Vehicle Code, to read:

11713.05. (a) Notwithstanding any other provision of law, it is a violation of this code for the holder of a dealer's license issued under this article to do either of the following:

(1) Fail to check available criminal records for convictions, except convictions that have been judicially dismissed or ordered sealed pursuant to law, for identity theft, false impersonation, other fraud, or forgery prior to employing any person in a position where that person would have access to the personal identifying information of credit applicants, vehicle purchasers, or lessees.

(2) Employ a person in any position where that person would have access to the personal identifying information of credit applicants, vehicle purchasers, or lessees if the dealer knows or should have known that the person has been convicted of identity theft, false impersonation, other fraud, or forgery, unless such conviction has been judicially dismissed or ordered sealed pursuant to law.

(b) For purposes of this section, "personal identifying information" means a person's name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number.

SEC. 8. Waiver.

Any waiver of the provisions of this initiative is contrary to public policy, and is void and unenforceable.

SEC. 9. Amendment.

The provisions of this measure may be amended only 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 roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

SEC. 10. Severability.

If any provision of this measure or its application to any person or circumstances shall be found to be unconstitutional or otherwise invalid, that finding shall not affect the other provisions or applications that can be given effect without the invalid provision or application, and to that extent the provisions of this measure are deemed to be severable.

SEC. 11. Conflicting Initiatives.

(a) In the event that this measure and another initiative measure or measures relating to motor vehicle consumers 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 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.