

AMENDED IN ASSEMBLY MAY 20, 2013

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 964

Introduced by Assembly Member Bonta

February 22, 2013

An act to amend ~~Section~~ *Sections 11713.1 and 11713.18* of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 964, as amended, Bonta. Vehicles: dealers.

Existing law makes it unlawful and provides that it constitutes an infraction for any person to violate, or fail to comply with, any provision of the Vehicle Code, or any local ordinance adopted pursuant to this code. Existing law also makes it a violation of the Vehicle Code for the holder of any specified dealer's license to advertise for sale or sell a used vehicle as "certified" or use any similar descriptive term in the advertisement or the sale of a used vehicle that implies that the vehicle has been certified to meet the terms of a used vehicle certification program if any of several specified conditions apply. Under existing law, those specified conditions include, but are not limited to, when the vehicle has sustained damage in an impact, fire, or flood, that after repair prior to sale substantially impairs the use or safety of the vehicle, when the dealer knows or should have known that the vehicle has

sustained frame damage, or when the dealer, prior to sale, fails to provide a completed inspection report, as specified.

This bill, 180 days after the enactment of regulations pursuant to portions of the federal Moving Ahead for Progress in the 21st Century Act (MAP-21), *would prohibit the holder of any dealer's license from advertising for sale or selling a used vehicle that the dealer knows or should have known is subject to a manufacturer's safety recall. The bill would prohibit the holder of any dealer's license from selling a used vehicle as part of a used vehicle certification program if the dealer knows or should have known that the vehicle is the subject of a manufacturer's safety recall. The bill would also generally prohibit the holder of any dealer's license from selling any used vehicle at retail without providing a written disclosure, in certain languages, indicating which, if any, of several specified conditions are present.*

By creating new crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 *SECTION 1. Section 11713.1 of the Vehicle Code is amended*
2 *to read:*

3 11713.1. It is a violation of this code for the holder of a dealer's
4 license issued under this article to do any of the following:

5 (a) Advertise a specific vehicle for sale without identifying the
6 vehicle by its model, model-year, and either its license number or
7 that portion of the vehicle identification number that distinguishes
8 the vehicle from all other vehicles of the same make, model, and
9 model-year. Model-year is not required to be advertised for current
10 model-year vehicles. Year models are no longer current when
11 ensuing year models are available for purchase at retail in
12 California. An advertisement that offers for sale a class of new
13 vehicles in a dealer's inventory, consisting of five or more vehicles,
14 that are all of the same make, model, and model-year is not required

1 to include in the advertisement the vehicle identification numbers
2 or license numbers of those vehicles.

3 (b) Advertise the total price of a vehicle without including all
4 costs to the purchaser at time of sale, except taxes, vehicle
5 registration fees, the California tire fee, as defined in Section 42885
6 of the Public Resources Code, emission testing charges not
7 exceeding fifty dollars (\$50), actual fees charged for certificates
8 pursuant to Section 44060 of the Health and Safety Code, finance
9 charges, and any dealer document processing charge or charge to
10 electronically register or transfer the vehicle.

11 (c) (1) Exclude from an advertisement of a vehicle for sale that
12 there will be added to the advertised total price at the time of sale,
13 charges for sales tax, vehicle registration fees, the California tire
14 fee, the fee charged by the state for the issuance of a certificate of
15 compliance or noncompliance pursuant to a statute, finance
16 charges, a charge to electronically register or transfer the vehicle,
17 and a dealer document processing charge.

18 (2) The obligations imposed by paragraph (1) are satisfied by
19 adding to the advertisement a statement containing no abbreviations
20 and that is worded in substantially the following form: “Plus
21 government fees and taxes, any finance charges, any dealer
22 document processing charge, any electronic filing charge, and any
23 emission testing charge.”

24 (3) For purposes of paragraph (1), “advertisement” means an
25 advertisement in a newspaper, magazine, or direct mail publication
26 that is two or more columns in width or one column in width and
27 more than seven inches in length, or on a Web page of a dealer’s
28 Internet Web site that displays the price of a vehicle offered for
29 sale on the Internet, as that term is defined in paragraph (6) of
30 subdivision (f) of Section 17538 of the Business and Professions
31 Code.

32 (d) Represent the dealer document processing charge, electronic
33 registration or transfer charge, or emission testing charge, as a
34 governmental fee.

35 (e) Fail to sell a vehicle to a person at the advertised total price,
36 exclusive of taxes, vehicle registration fees, the California tire fee,
37 the fee charged by the state for the issuance of a certificate of
38 compliance or noncompliance pursuant to a statute, finance
39 charges, mobilehome escrow fees, the amount of a city, county,
40 or city and county imposed fee or tax for a mobilehome, a dealer

1 document processing charge, an electronic registration or transfer
2 charge, and a charge for emission testing not to exceed fifty dollars
3 (\$50) plus the actual fees charged for certificates pursuant to
4 Section 44060 of the Health and Safety Code, while the vehicle
5 remains unsold, unless the advertisement states the advertised total
6 price is good only for a specified time and the time has elapsed.
7 Advertised vehicles shall be sold at or below the advertised total
8 price, with statutorily permitted exclusions, regardless of whether
9 the purchaser has knowledge of the advertised total price.

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

13 (2) This subdivision does not apply to a transaction involving
14 the following:

15 (A) A mobilehome.

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

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

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

22 (E) A manufactured home.

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

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

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

30 (I) A vehicle acquired in the ordinary course of business as a
31 new vehicle by a dealer franchised to sell that vehicle, if all of the
32 following apply:

33 (i) The manufacturer or distributor of the vehicle files a
34 bankruptcy petition.

35 (ii) The franchise agreement of the dealer is terminated,
36 canceled, or rejected by the manufacturer or distributor as part of
37 the bankruptcy proceedings and the termination, cancellation, or
38 rejection is not a result of the revocation by the department of the
39 dealer's license or the dealer's conviction of a crime.

1 (iii) The vehicle is held in the inventory of the dealer on the
2 date the bankruptcy petition is filed.

3 (iv) The vehicle is sold by the dealer within six months of the
4 date the bankruptcy petition is filed.

5 (3) Subparagraph (I) of paragraph (2) does not entitle a dealer
6 whose franchise agreement has been terminated, canceled, or
7 rejected to continue to perform warranty service repairs or continue
8 to be eligible to offer or receive consumer or dealer incentives
9 offered by the manufacturer or distributor.

10 (g) Sell a park trailer, as specified in Section 18009.3 of the
11 Health and Safety Code, without disclosing in writing to the
12 purchaser that a park trailer is required to be moved by a transporter
13 or a licensed manufacturer or dealer under a permit issued by the
14 Department of Transportation or a local authority with respect to
15 highways under their respective jurisdictions.

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

20 (i) (1) Advertise vehicles, and related goods or services, at a
21 specified dealer price, with the intent not to supply reasonably
22 expectable demand, unless the advertisement discloses the number
23 of vehicles in stock at the advertised price. In addition, whether
24 or not there are sufficient vehicles in stock to supply a reasonably
25 expectable demand, when phrases such as "starting at," "from,"
26 "beginning as low as," or words of similar import are used in
27 reference to an advertised price, the advertisement shall disclose
28 the number of vehicles available at that advertised price.

29 (2) For purposes of this subdivision, in a newspaper
30 advertisement for a vehicle that is two model-years old or newer,
31 the actual phrase that states the number of vehicles in stock at the
32 advertised price shall be printed in a type size that is at least equal
33 to one-quarter of the type size, and in the same style and color of
34 type, used for the advertised price. However, in no case shall the
35 phrase be printed in less than 8-point type size, and the phrase
36 shall be disclosed immediately above, below, or beside the
37 advertised price without intervening words, pictures, marks, or
38 symbols.

1 (3) The disclosure required by this subdivision is in addition to
2 any other disclosure required by this code or any regulation
3 regarding identifying vehicles advertised for sale.

4 (j) Use “rebate” or similar words, including, but not limited to,
5 “cash back,” in advertising the sale of a vehicle unless the rebate
6 is expressed in a specific dollar amount and is in fact a rebate
7 offered by the vehicle manufacturer or distributor directly to the
8 retail purchaser of the vehicle or to the assignee of the retail
9 purchaser.

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

16 (l) Advertise a guaranteed trade-in allowance.

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

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

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

24 (B) A dealer’s cost.

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

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

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

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

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

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

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

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

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

23 (r) Advertise an underselling claim, including, but not limited
24 to, “we have the lowest prices” or “we will beat any dealer’s price,”
25 unless the dealer has conducted a recent survey showing that the
26 dealer sells its vehicles at lower prices than another licensee in its
27 trade area and maintains records to adequately substantiate the
28 claims. The substantiating records shall be made available to the
29 department upon request.

30 (s) (1) Advertise an incentive offered by the manufacturer or
31 distributor if the dealer is required to contribute to the cost of the
32 incentive as a condition of participating in the incentive program,
33 unless the dealer discloses in a clear and conspicuous manner that
34 dealer participation may affect consumer cost.

35 (2) For purposes of this subdivision, “incentive” means anything
36 of value offered to induce people to purchase a vehicle, including,
37 but not limited to, discounts, savings claims, rebates, below-market
38 finance rates, and free merchandise or services.

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

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

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

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

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

22 (y) Sell or lease a new motor vehicle after October 1, 2012,
23 unless the dealer has a contractual agreement with the department
24 to be a private industry partner pursuant to Section 1685. This
25 subdivision does not apply to the sale or lease of a motorcycle or
26 off-highway motor vehicle subject to identification under Section
27 38010 or a recreational vehicle as defined in Section 18010 of the
28 Health and Safety Code.

29 (z) *Advertise for sale or sell a used vehicle that the dealer knows*
30 *or should have known is subject to a manufacturer’s safety recall.*
31 *This subdivision shall become operative 180 days after the*
32 *adoption of regulations pursuant to Section 31301 of the federal*
33 *Moving Ahead for Progress in the 21st Century Act (MAP-21;*
34 *Public Law 112-141).*

35 (~~z~~)

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

39 (~~aa~~) ~~This section shall become operative on July 1, 2012.~~

1 SECTION 1.

2 SEC. 2. Section 11713.18 of the Vehicle Code is amended to
3 read:

4 11713.18. (a) It is a violation of this code for the holder of
5 any dealer's license issued under this article to advertise for sale
6 or sell a used vehicle as "certified" or use any similar descriptive
7 term in the advertisement or the sale of a used vehicle that implies
8 the vehicle has been certified to meet the terms of a used vehicle
9 certification program if any of the following apply:

10 (1) The dealer knows or should have known that the odometer
11 on the vehicle does not indicate actual mileage, has been rolled
12 back or otherwise altered to show fewer miles, or replaced with
13 an odometer showing fewer miles than actually driven.

14 (2) The dealer knows or should have known that the vehicle
15 was reacquired by the vehicle's manufacturer or a dealer pursuant
16 to state or federal warranty laws.

17 (3) The title to the vehicle has been inscribed with the notation
18 "Lemon Law Buyback," "manufacturer repurchase," "salvage,"
19 "junk," "nonrepairable," "flood," or similar title designation
20 required by this state or another state.

21 (4) The vehicle has sustained damage in an impact, fire, or flood,
22 that after repair and prior to sale substantially impairs the use or
23 safety of the vehicle.

24 (5) The dealer knows or should have known that the vehicle has
25 sustained frame damage.

26 (6) Prior to sale, the dealer fails to provide the buyer with a
27 completed inspection report indicating all the components
28 inspected.

29 (7) The dealer disclaims any warranties of merchantability on
30 the vehicle.

31 (8) The vehicle is sold "AS IS."

32 (9) The term "certified" or any similar descriptive term is used
33 in any manner that is untrue or misleading or that would cause any
34 advertisement to be in violation of subdivision (a) of Section 11713
35 of this code or Section 17200 or 17500 of the Business and
36 Professions Code.

37 (10) The dealer knows or should have known that the vehicle
38 is subject to a manufacturer's safety recall.

39 (b) It is a violation of this code for the holder of any dealer's
40 license issued under this article to sell a used vehicle *at retail*

1 without providing the buyer written disclosure, in English or in
2 the languages specified in subdivision (b) of Section 1632 of the
3 Civil Code, identifying which, if any, of the following conditions
4 are present, if the dealer knows or should know of its presence:

5 (1) The odometer on the vehicle does not indicate actual
6 mileage, has been rolled back or otherwise altered to show fewer
7 miles, or replaced with an odometer showing fewer miles than
8 actually driven.

9 (2) The vehicle was reacquired by the vehicle's manufacturer
10 or a dealer pursuant to state or federal warranty laws.

11 (3) The title to the vehicle has been inscribed with the notation
12 "Lemon Law Buyback," "manufacturer repurchase," "salvage,"
13 "junk," "nonrepairable," "flood," or similar title designation
14 required by this state or another state.

15 (4) The vehicle has sustained damage in an impact, fire, or flood,
16 that after repair and prior to sale substantially impairs the use or
17 safety of the vehicle.

18 (5) The vehicle has sustained frame damage.

19 (6) The dealer disclaims any warranties of merchantability on
20 the vehicle.

21 (7) The vehicle is sold "AS IS."

22 (8) The vehicle is subject to a manufacturer's safety recall.

23 (c) (1) A violation of this section is actionable under the
24 Consumers Legal Remedies Act (Title 1.5 (commencing with
25 Section 1750) of Part 4 of Division 3 of the Civil Code), the Unfair
26 Competition Law (Chapter 5 (commencing with Section 17200)
27 of Part 2 of Division 7 of the Business and Professions Code),
28 Section 17500 of the Business and Professions Code, or any other
29 applicable state or federal law. The rights and remedies provided
30 by this section are cumulative and shall not be construed as
31 restricting any right or remedy that is otherwise available.

32 (2) The rights, remedies, and procedures provided for in this
33 section are in addition to, and independent of, any other rights,
34 remedies, or procedures available under any other law. Nothing
35 in this section shall be construed to alter, limit, or negate any other
36 rights, remedies, or procedures provided for by law.

37 (d) This section does not abrogate or limit any disclosure
38 obligation imposed by any other law.

1 (e) This section does not apply to the advertisement or sale of
2 a used motorcycle or a used off-highway motor vehicle subject to
3 identification under Section 38010.

4 (f) *This section does not apply to the sale of a used vehicle for*
5 *which the evidence of ownership is a salvage certificate, a*
6 *nonrepairable vehicle certificate issued by this state, an acquisition*
7 *bill of sale as described in Section 11519, or an ownership*
8 *document similar to those listed in this subdivision that is issued*
9 *by another state, or to any vehicles sold by or through a salvage*
10 *pool.*

11 ~~SEC. 2.~~

12 ~~SEC. 3.~~ No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 ~~SEC. 3.~~ ~~This bill shall become operative 180 days after the~~
22 ~~adoption of regulations pursuant to Section 31301 of the federal~~
23 ~~Moving Ahead for Progress in the 21st Century Act (MAP-21;~~
24 ~~Public Law 112-141).~~