

AMENDED IN ASSEMBLY APRIL 26, 1995

AMENDED IN ASSEMBLY APRIL 5, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1381

Introduced by Assembly Member Speier

February 24, 1995

An act to amend Section 1793.25 of, and to repeal Section 1795.8 of, the Civil Code, and to amend Section 4453 of, and to add Sections 11713.10, 11713.11, and 11713.12 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1381, as amended, Speier. Vehicles: Automotive Consumer Notification Act.

Existing provisions of the Civil Code, the Automotive Consumer Notification Act, require the seller of a vehicle to include a specified disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer, as specified, for failure to conform to warranties, as specified.

This bill would revise and recast the Automotive Consumer Notification Act within the provisions of the Vehicle Code. The bill would require the manufacturer to retitle specified defective vehicles in its name, request the Department of Motor Vehicles to inscribe the ownership certificate with a specified notation, affix a specified decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of

the vehicle, and obtain the transferee's acknowledgment. The bill would provide ~~for the recovery of damages and costs, including reasonable attorney's fees,~~ by *that* any person damaged by the failure of a manufacturer or dealer to comply with these requirements, as specified, *shall have the same rights and remedies as those provided to a buyer of consumer goods by specified provisions relating to warranty.* The bill would provide that it shall apply only to vehicles reacquired by a manufacturer on or after the effective date of the act. The bill would make legislative findings and declarations. The bill would also make conforming changes.

By creating new infractions under the provisions of the Vehicle Code, 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 1793.25 of the Civil Code is
 2 amended to read:
 3 1793.25. (a) Notwithstanding Part 1 (commencing
 4 with Section 6001) of Division 2 of the Revenue and
 5 Taxation Code, the State Board of Equalization shall
 6 reimburse the manufacturer of a new motor vehicle for
 7 an amount equal to the sales tax which the manufacturer
 8 pays to or for the buyer when providing a replacement
 9 vehicle pursuant to subparagraph (A) of paragraph (2)
 10 of subdivision (d) of Section 1793.2 or includes in making
 11 restitution to the buyer pursuant to subparagraph (B) of
 12 paragraph (2) of subdivision (d) of Section 1793.2, when
 13 satisfactory proof is provided that the retailer of the
 14 motor vehicle for which the manufacturer is making
 15 restitution has reported and paid the sales tax on the gross



1 receipts from the sale of that motor vehicle and the
2 manufacturer provides satisfactory proof that it has
3 complied with the provisions of subdivision (b) of Section
4 11713.10 of the Vehicle Code. The State Board of
5 Equalization may adopt rules and regulations to carry
6 out, facilitate compliance with, or prevent circumvention
7 or evasion of, this section.

8 (b) Nothing in this section shall in any way change the
9 application of the sales and use tax to the gross receipts
10 and the sales price from the sale, and the storage, use, or
11 other consumption, in this state or tangible personal
12 property pursuant to Part 1 (commencing with Section
13 6001) of Division 2 of the Revenue and Taxation Code.

14 (c) The manufacturer's claim for reimbursement and
15 the board's approval or denial of the claim shall be subject
16 to the provisions of Article 1 (commencing with Section
17 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue
18 and Taxation Code, except Sections 6902.1, 6903, 6907, and
19 6908 thereof, insofar as those provisions are not
20 inconsistent with this section.

21 SEC. 2. Section 1795.8 of the Civil Code is repealed.

22 SEC. 3. Section 4453 of the Vehicle Code is amended
23 to read:

24 4453. (a) The registration card shall contain upon its
25 face, the date issued, the name and residence or business
26 address of the owner and of the legal owner, if any, the
27 registration number assigned to the vehicle, and a
28 description of the vehicle as complete as that required in
29 the application for registration of the vehicle.

30 (b) A motor vehicle of a type included in this
31 subdivision shall be identified as such on the face of the
32 registration card, whenever the department is able to
33 ascertain that fact, at the time application is made for
34 initial registration or transfer of ownership of the vehicle.

35 (1) A motor vehicle rebuilt and restored to operation
36 which was previously declared to be a total loss salvage
37 vehicle because the cost of repairs exceeds the retail value
38 of the vehicle.



1 (2) A motor vehicle rebuilt and restored to operation
2 which was previously reported to be dismantled pursuant
3 to Section 11520.

4 (3) A motor vehicle previously registered to a law
5 enforcement agency and operated in law enforcement
6 work.

7 (4) A motor vehicle formerly operated as a taxicab.

8 (5) A motor vehicle manufactured outside of the
9 United States and not intended by the manufacturer for
10 sale in the United States.

11 (6) A park trailer, as described in subdivision (b) of
12 Section 18010 of the Health and Safety Code, which when
13 moved upon the highway is required to be moved under
14 a permit pursuant to Section 35780.

15 (7) A motor vehicle that has been reacquired under
16 circumstances described in subdivision (b) of Section
17 11713.10, a vehicle with out-of-state titling documents
18 reflecting a warranty return, or a vehicle that has been
19 identified by an agency of another state as requiring a
20 warranty return title notation, pursuant to the laws of that
21 state. The notation made on the face of the registration
22 and pursuant to this subdivision shall state "lemon buy
23 back."

24 (c) The director may modify the form, arrangement,
25 and information appearing on the face of the registration
26 card and may provide for standardization and
27 abbreviation of fictitious or firm names on the
28 registration card whenever the director finds that the
29 efficiency of the department will be promoted by so
30 doing, except that general delivery or post office box
31 numbers shall not be permitted as the address of the
32 registered owner unless there is no other address.

33 SEC. 4. Section 11713.10 is added to the Vehicle Code,
34 to read:

35 11713.10. (a) The Legislature finds and declares that
36 the expansion of state warranty laws covering new and
37 used cars has given important and valuable protection to
38 consumers; that in states without this valuable warranty
39 protection used and irreparable motor vehicles are
40 inundating the marketplace; that other states have



1 addressed this problem by requiring notices on the title
2 of these vehicles or other notice procedures to warn
3 consumers that the motor vehicles were repurchased by
4 a dealer or manufacturer because either the vehicle could
5 not be repaired in a reasonable length of time, a
6 reasonable number of repair attempts, or the dealer or
7 manufacturer was not willing to repair the vehicle; that
8 these notices serve the interests of consumers who have
9 a right to information relevant to their buying decisions;
10 and that the disappearance of these notices upon the
11 transfer of title from another state to this state encourages
12 the transport of “lemons” to this state for sale to the
13 drivers of this state. Therefore, the Legislature hereby
14 enacts the Automotive Consumer Notification Act.

15 (b) Any manufacturer who reacquires or assists a
16 dealer to reacquire a vehicle registered in this state, any
17 other state, or a federally administered district shall, prior
18 to any resale, lease, or transfer of the vehicle in this state,
19 cause the vehicle to be retitled in the name of the
20 manufacturer; request the department to inscribe the
21 ownership certificate with the notation “lemon buy
22 back”; and affix a decal to the left doorframe of the
23 vehicle in accordance with the provisions of Section
24 11713.12, in ~~either~~ any of the following circumstances:

25 (1) The vehicle was ~~required~~ *reacquired*, pursuant to
26 a court order or a decision rendered through a third-party
27 ~~dispute resolution process, to be replaced or accepted for~~
28 ~~restitution by the manufacturer due to the inability of the~~
29 ~~manufacturer to conform the vehicle to an express~~
30 ~~warranty of the manufacturer.~~

31 (2) ~~Within one year from delivery of a new vehicle to~~
32 ~~the buyer or lessee or 12,000 miles on the odometer of the~~
33 ~~vehicle, whichever occurs first, either (A) the vehicle was~~
34 ~~the subject of four or more attempts by the manufacturer~~
35 ~~or its agents to repair the same nonconformity or (B) the~~
36 ~~vehicle was out of service by reason of repair of~~
37 ~~nonconformities by the manufacturer or its agents for a~~
38 ~~cumulative total of more than 30 calendar days since~~
39 ~~delivery of the vehicle to the buyer. *dispute resolution*~~
40 ~~*process.*~~



1 (2) *The vehicle was reacquired within six months after*
2 *the buyer had made a written request to the*
3 *manufacturer for replacement or refund under the*
4 *provisions of Section 1793.2 of the Civil Code.*

5 (3) *The vehicle was reacquired during the pendency*
6 *of state-certified arbitration concerning the vehicle*
7 *requested by the buyer or within six months of the*
8 *conclusion of that arbitration proceeding.*

9 (4) *The vehicle was reacquired during the pendency*
10 *of litigation between the manufacturer and the buyer*
11 *alleging a cause of action under Section 1793.2 of the Civil*
12 *Code or within six months of the conclusion of that*
13 *litigation.*

14 (c) Any manufacturer who reacquires or assists a
15 dealer to reacquire a vehicle to resolve an express
16 warranty dispute between the buyer or lessee and the
17 manufacturer shall, prior to sale, lease, or other transfer,
18 execute and deliver to the subsequent transferee a notice
19 and obtain the transferee's written acknowledgment of a
20 notice, as prescribed by Section 11713.11.

21 (d) Any dealer who knowingly purchases for resale a
22 vehicle that has been reacquired in order to resolve an
23 express warranty dispute between the last retail owner of
24 the reacquired vehicle and the vehicle's manufacturer
25 shall, prior to sale, lease, or other transfer, execute and
26 deliver to the subsequent transferee a notice and obtain
27 the transferee's written acknowledgment of a notice, as
28 prescribed by Section 11713.11.

29 (e) The disclosure requirements in subdivisions (c)
30 and (d) are in addition to all other consumer notice
31 requirements and do not relieve any person, including
32 any dealer or manufacturer, from complying with any
33 other applicable law, including any requirement of
34 subdivision (f) of Section 1793.22 of the Civil Code.

35 ~~(f) (1) Any person damaged by the failure of a~~
36 ~~manufacturer or dealer to comply with the provisions of~~
37 ~~this section may bring an action for the recovery of~~
38 ~~damages and other legal and equitable relief.~~

39 ~~(2) If a buyer, lessee, or other transferee prevails in an~~
40 ~~action under this section, that person shall recover as part~~



1 of the judgment a sum equal to the aggregate amount of
2 costs and expenses, including attorney's fees based on the
3 actual time expended, determined by the court to have
4 been reasonably incurred in litigating the matter.

5 ~~(3) The remedies provided by this subdivision are~~
6 ~~cumulative and shall not be construed as restricting any~~
7 ~~remedy otherwise available.~~

8 *(f) Any buyer damaged by the failure of a*
9 *manufacturer or dealer to comply with this section shall*
10 *have the same rights and remedies provided by Section*
11 *1794 of the Civil Code.*

12 SEC. 5. Section 11713.11 is added to the Vehicle Code,
13 to read:

14 11713.11. (a) The notice required in subdivisions (c)
15 and (d) of Section 11713.10 shall be prepared by the
16 manufacturer of the reacquired vehicle and shall disclose
17 the following:

18 (1) Year, make, model, and vehicle identification
19 number of the vehicle.

20 (2) Whether the title to the vehicle has been inscribed
21 with the notation "lemon buy back."

22 (3) The nature of each nonconformity reported by the
23 original buyer or lessee of the vehicle.

24 (4) Repairs, if any, made to the vehicle in an attempt
25 to correct each nonconformity reported by the original
26 buyer or lessee.

27 (b) The notice shall be on a form 8¹/₂ x 11 inches in
28 size; printed in no smaller than 10-point black type on a
29 white background. The form shall only contain the
30 following information prior to it being filled out by the
31 manufacturer:

32
33 WARRANTY BUY BACK NOTICE

34
35
36 (Check one or both, as applicable)

37
38 This vehicle was reacquired by the vehicle's
39 manufacturer in resolution of a warranty dispute



1 between the original owner/lessee and the
2 manufacturer.

3 The title to this vehicle has been permanently
4 branded with the notation "lemon buy back." The
5 nonconformity experienced by the original owner or
6 lessee has been corrected and the manufacturer warrants
7 for a one-year period that this vehicle is free of that
8 nonconformity.

9

| | | | |
|-----|------|------|-------|
| VIN | Year | Make | Model |
|-----|------|------|-------|

12

| | |
|--|---|
| 13 Problem(s) Reported by 14 Original Owner 15 16 17 18 19 20 21 22 23 24 | Repairs Made, if any, to Correct Reported Problem(s) |
|--|---|

25

| | |
|---------------------------|-------|
| Signature of Manufacturer | Date |
| _____ | _____ |

27

| | |
|---------------------|-------|
| Signature of Dealer | Date |
| _____ | _____ |

29

| | |
|-------|-------|
| _____ | _____ |
|-------|-------|

31

| | |
|--|-------|
| Signature of Buyer, Lessee, or other Transferee | Date |
| _____ | _____ |

34

35

36
37 (c) A copy of the notice shall be provided to the buyer,
38 lessee, or other transferee.

39 SEC. 6. Section 11713.12 is added to the Vehicle Code,
40 to read:



1 11713.12. (a) The decal required by subdivision (b)
2 of Section 11713.10 to be affixed by a manufacturer to the
3 left doorframe of a vehicle shall specify that title to the
4 vehicle has been inscribed with the notation ‘lemon buy
5 back.’ The decal shall be issued to manufacturers by the
6 department and affixed to the vehicle in a manner
7 prescribed by the department.

8 (b) No person shall knowingly remove or alter any
9 decal affixed to a vehicle pursuant to subdivision (a),
10 whether or not licensed under this code.

11 SEC. 7. This act shall apply only to vehicles
12 reacquired by a manufacturer on or after the effective
13 date of this act.

14 SEC. 8. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

24 Notwithstanding Section 17580 of the Government
25 Code, unless otherwise specified, the provisions of this act
26 shall become operative on the same date that the act
27 takes effect pursuant to the California Constitution.

