

**ASSEMBLY BILL**

**No. 2397**

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**Introduced by Assembly Member Correa**

February 21, 2002

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An act to amend Sections 11713 and 11713.1 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, as introduced, Correa. Vehicles.

Existing law provides that no person shall act as a motor vehicle dealer without having first been issued a license or temporary permit by the Department of Motor Vehicles. Existing law provides that no holder of this license shall disseminate or make any statement which is untrue or misleading that he or she knows or reasonably should know is untrue, or make any statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated.

This bill would extend this provision to also prohibit the making of a false or misleading statement as part of a plan or scheme with the intent not to lease a vehicle at the stated price.

Existing law provides that a licensee shall not sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which the manufacturer's warranty commenced.

This bill would extend this provision to leased vehicles.

Existing law provides that a licensee shall not use the term "rebate" or "cash back" in advertising the sale of a vehicle unless the amount of the rebate is expressed in dollar amount and is offered directly to the retail purchaser.

This bill would provide the same with respect to lease of a vehicle. This bill would also allow certain more general terms regarding rebates to be used without restriction.

Existing law provides that a licensee shall not sell a park trailer without disclosing in writing that it is required to be moved by a transporter, as specified.

This bill would also require licensees to make this disclosure when leasing a park trailer.

Existing law provides that a licensee may not advertise free merchandise or services contingent on the purchase of a vehicle.

This bill would provide the same with respect to lease of a vehicle.

Existing law provides that a licensee shall not advertise underselling claims without having conducted a recent survey and maintains records to adequately substantiate its claims, as specified.

This bill would provide that a licensee shall not advertise underselling claims with respect to leases, as specified.

By expanding the scope of various existing 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 of the Vehicle Code is amended
- 2 to read:
- 3 11713. No holder of any license issued under this article shall
- 4 do any of the following:
- 5 (a) Make or disseminate, or cause to be made or disseminated,
- 6 before the public in this state, in any newspaper or other
- 7 publication, or any advertising device, or by public outcry or
- 8 proclamation, or in any other manner or means whatever, any
- 9 statement which is untrue or misleading and which is known, or
- 10 which by the exercise of reasonable care should be known, to be
- 11 untrue or misleading; or to so make or disseminate, or cause to be



1 so disseminated, any statement as part of a plan or scheme with the  
2 intent not to sell *or lease* any vehicle or service so advertised at the  
3 price *or terms* stated therein, or as so advertised.

4 (b) (1) (A) Advertise or offer for sale or exchange in any  
5 manner, any vehicle not actually for sale at the premises of the  
6 dealer or available to the dealer directly from the manufacturer or  
7 distributor of the vehicle at the time of the advertisement or offer.  
8 However, a dealer who has been issued an autobroker's  
9 endorsement to his or her dealer's license may advertise his or her  
10 service of arranging or negotiating the purchase of a new motor  
11 vehicle from a franchised new motor vehicle dealer and may  
12 specify the line-makes and models of those new vehicles.  
13 Autobrokering service advertisements may not advertise the price  
14 or payment terms of any vehicle and shall disclose that the  
15 advertiser is an autobroker or auto buying service, and shall clearly  
16 and conspicuously state the following: "All new cars arranged for  
17 sale are subject to price and availability from the selling franchised  
18 new car dealer."

19 (B) As to printed advertisements, the disclosure statement  
20 required by subparagraph (A) shall be printed in not less than  
21 10-point bold type size and shall be textually segregated from the  
22 other portions of the printed advertisement.

23 (2) Notwithstanding subparagraph (A), classified  
24 advertisements for autobrokering services that measure two  
25 column inches or less are exempt from the disclosure statement in  
26 subparagraph (A) pertaining to price and availability.

27 (3) Radio advertisements of a duration of less than 11 seconds  
28 that do not reference specific line-makes or models of motor  
29 vehicles are exempt from the disclosure statement required in  
30 subparagraph (A).

31 (c) Fail, within 48 hours, in writing to withdraw any  
32 advertisement of a vehicle that has been sold or withdrawn from  
33 sale.

34 (d) Advertise or represent a vehicle as a new vehicle if the  
35 vehicle is a used vehicle.

36 (e) Engage in the business for which the licensee is licensed  
37 without having in force and effect a bond as required by this article.

38 (f) Engage in the business for which the dealer is licensed  
39 without at all times maintaining an established place of business  
40 as required by this code.



1 (g) Include, as an added cost to the selling price of a vehicle, an  
2 amount for licensing or transfer of title of the vehicle, which is not  
3 due to the state unless, prior to the sale, that amount has been paid  
4 by a dealer to the state in order to avoid penalties that would have  
5 accrued because of late payment of the fees. However, a dealer  
6 may collect from the second purchaser of a vehicle a prorated fee  
7 based upon the number of months remaining in the registration  
8 year for that vehicle, if the vehicle had been previously sold by the  
9 dealer and the sale was subsequently rescinded and all the fees that  
10 were paid, as required by this code and Chapter 2 (commencing  
11 with Section 10751) of Division 2 of the Revenue and Taxation  
12 Code, were returned to the first purchaser of the vehicle.

13 (h) Employ any person as a salesperson who has not been  
14 licensed pursuant to Article 2 (commencing with Section 11800),  
15 and whose license is not displayed on the premises of the dealer as  
16 required by Section 11812, or willfully fail to notify the  
17 department by mail within 10 days of the employment or  
18 termination of employment of a salesperson.

19 (i) Deliver, following the sale, a vehicle for operation on  
20 California highways, if the vehicle does not meet all of the  
21 equipment requirements of Division 12 (commencing with  
22 Section 24000). This subdivision does not apply to the sale of a  
23 leased vehicle to the lessee if the lessee is in possession of the  
24 vehicle immediately prior to the time of the sale and the vehicle is  
25 registered in this state.

26 (j) Use, or permit the use of, the special plates assigned to him  
27 or her for any purpose other than as permitted by Section 11715.

28 (k) Advertise or otherwise represent, or knowingly allow to be  
29 advertised or represented on behalf of, or at the place of business  
30 of, the licenseholder that no downpayment is required in  
31 connection with the sale of a vehicle when a downpayment is in  
32 fact required and the buyer is advised or induced to finance the  
33 downpayment by a loan in addition to any other loan financing the  
34 remainder of the purchase price of the vehicle.

35 (l) Participate in the sale of a vehicle required to be reported to  
36 the Department of Motor Vehicles under Section 5900 or 5901  
37 without making the return and payment of the full sales tax due and  
38 required by Section 6451 of the Revenue and Taxation Code.

39 (m) Permit the use of the dealer's license, supplies, or books by  
40 any other person for the purpose of permitting that person to



1 engage in the purchase or sale of vehicles required to be registered  
2 under this code, or permit the use of the dealer's license, supplies,  
3 or books to operate a branch location to be used by any other  
4 person, whether or not the licensee has any financial or equitable  
5 interest or investment in the vehicles purchased or sold by, or the  
6 business of, or branch location used by, the other person.

7 (n) Violate any provision of Article 10 (commencing with  
8 Section 28050) of Chapter 5 of Division 12.

9 (o) Sell *or lease* a previously unregistered vehicle without  
10 disclosing in writing to the purchaser *or lessee* the date on which  
11 any manufacturer's or distributor's warranty commenced.

12 (p) Accept a purchase *or lease* deposit relative to the sale *or*  
13 *lease* of a vehicle, unless the vehicle is present at the premises of  
14 the dealer or available to the dealer directly from the manufacturer  
15 or distributor of the vehicle at the time the dealer accepts the  
16 deposit. Purchase deposits accepted by an autobroker when  
17 brokering a retail sale shall be governed by Sections 11736 and  
18 11737.

19 (q) Consign for sale to another dealer a new vehicle.

20 (r) Display a vehicle for sale at a location other than an  
21 established place of business authorized by the department for that  
22 dealer or display a new motor vehicle at the business premises of  
23 another dealer registered as an autobroker. This subdivision does  
24 not apply to the display of a vehicle pursuant to subdivision (b) of  
25 Section 11709 or the demonstration of the qualities of a motor  
26 vehicle by way of a test drive.

27 SEC. 2. Section 11713.1 of the Vehicle Code is amended to  
28 read:

29 11713.1. It is a violation of this code for the holder of any  
30 dealer's license issued under this article to do any of the following:

31 (a) Advertise any specific vehicle for sale without identifying  
32 the vehicle by either its license number or that portion of the  
33 vehicle identification number that distinguishes the vehicle from  
34 all other vehicles of the same make, model, model-year, and type.  
35 Any advertisement that offers for sale a class of new vehicles in a  
36 dealer's inventory, consisting of five or more vehicles, that are all  
37 of the same make, model, model-year, and type is not required to  
38 include in the advertisement the vehicle identification numbers or  
39 license numbers of those vehicles.



1 (b) Advertise the total price of a vehicle without including all  
2 costs to the purchaser at time of sale, except taxes, vehicle  
3 registration fees, the California tire fee, as defined in Section  
4 42885 of the Public Resources Code, emission testing fees not  
5 exceeding fifty dollars (\$50), actual fees charged for certificates  
6 pursuant to Section 44060 of the Health and Safety Code, finance  
7 charges, and any dealer document preparation charge. The dealer  
8 document preparation charge shall not exceed forty-five dollars  
9 (\$45).

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

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

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

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

33 (e) Fail to sell a vehicle to any person at the advertised total  
34 price, exclusive of taxes, vehicle registration fees, the California  
35 tire fee, the fee charged by the state for the issuance of any  
36 certificate of compliance or noncompliance pursuant to any  
37 statute, finance charges, mobilehome escrow fees, the amount of  
38 any city, county, or city and county imposed fee or tax for a  
39 mobilehome, and any dealer document preparation charge, which  
40 charges shall not exceed forty-five dollars (\$45) for the document



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

10 (f) (1) Advertise for sale, sell, or purchase for resale any 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 any transaction  
14 involving any of 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 (g) Sell *or lease* a park trailer, as specified in Section 18009.3  
31 of the Health and Safety Code, without disclosing in writing to the  
32 purchaser that a park trailer is required to be moved by a  
33 transporter or a licensed manufacturer or dealer under a permit  
34 issued by the Department of Transportation or a local authority  
35 with respect to highways under their respective jurisdictions.

36 (h) Advertise free merchandise, gifts, or services provided by  
37 a dealer contingent on the purchase *or lease* of a vehicle. The term  
38 “free” includes merchandise or services offered for sale at a price  
39 less than the seller’s cost of the merchandise or services.



1 (i) Advertise vehicles, and related goods or services, at a  
2 specified dealer price, with the intent not to supply reasonably  
3 expectable demand, unless the advertisement discloses the number  
4 of vehicles in stock at the advertised price. In addition, whether or  
5 not there are sufficient vehicles in stock to supply a reasonably  
6 expectable demand, when phrases such as “starting at,” “from,”  
7 “beginning as low as,” or words of similar import are used in  
8 reference to an advertised price, the advertisement shall disclose  
9 the number of vehicles available at that advertised price.

10 For purposes of this subdivision, in any newspaper  
11 advertisement for a vehicle that is two model-years old or newer,  
12 the actual phrase that states the number of vehicles in stock at the  
13 advertised price shall be (1) printed in a type size that is at least  
14 equal to one-quarter of the type size, and in the same style and color  
15 of type, used for the advertised price, however, in no case shall the  
16 phrase be printed in less than 8-point type size, and (2) be disclosed  
17 immediately above, below, or beside the advertised price without  
18 any intervening words, pictures, marks, or symbols.

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

22 (j) Use the term “rebate” or similar words such as “cash back”  
23 in advertising the sale of a vehicle unless the rebate is expressed  
24 in a specific dollar amount and is in fact a rebate offered by the  
25 vehicle manufacturer or distributor directly to the retail purchaser  
26 of the vehicle or to the assignee of the retail purchaser *or lessee*.  
27 *General terms like “rebates up to \$\_\_\_\_\_” or “rebates available on*  
28 *select models” may be advertised.*

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

35 (l) Advertise a guaranteed trade-in allowance unless the  
36 guarantee is provided by the manufacturer or distributor.

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

39 (n) (1) Use the terms “invoice,” “dealer’s invoice,”  
40 “wholesale price,” or similar terms that refer to a dealer’s cost for



1 a vehicle in an advertisement for the sale of a vehicle or advertise  
2 that the selling price of a vehicle is above, below, or at either of the  
3 following:

4 (A) The manufacturer's or distributor's invoice price to a  
5 dealer.

6 (B) A dealer's cost.

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

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

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

18 (o) Violate any law prohibiting bait and switch advertising,  
19 including, but not limited to, the guides against bait advertising set  
20 forth in Part 238 (commencing with Section 238) of Title 16 of the  
21 Code of Federal Regulations, as those regulations read on January  
22 1, 1988.

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

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

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

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

38 (3) The supplemental sticker lists each item which is not  
39 included in the manufacturer's suggested retail price, and  
40 discloses the additional price of each item. If the supplemental



1 sticker price is greater than the sum of the manufacturer's  
2 suggested retail price and the price of the items added by the dealer,  
3 then the supplemental sticker price shall set forth that difference  
4 and describe it as "added mark-up."

5 (r) Advertise any underselling claim, such as "we have the  
6 lowest prices" or "we will beat any dealer's price," unless the  
7 dealer has conducted a recent survey showing that the dealer sells  
8 *or leases* its vehicles at lower prices *or lease terms* than any other  
9 licensee in its trade area and maintains records to adequately  
10 substantiate the claims. The substantiating records shall be made  
11 available to the department upon request.

12 (s) Advertise any incentive offered by the manufacturer or  
13 distributor if the dealer is required to contribute to the cost of the  
14 incentive as a condition of participating in the incentive program,  
15 unless the dealer discloses in a clear and conspicuous manner that  
16 dealer participation may affect consumer cost.

17 For purposes of this subdivision, "incentive" means anything  
18 of value offered to induce people to purchase a vehicle, including,  
19 but not limited to, discounts, savings claims, rebates,  
20 below-market finance rates, and free merchandise or services.

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

25 (u) Fail to disclose in writing to the franchisor of a new motor  
26 vehicle dealer the name of the purchaser *or lessee*, date of sale *or*  
27 *lease*, and the vehicle identification number of each new motor  
28 vehicle sold *or leased* of the line-make of that franchisor, or  
29 intentionally submit to that franchisor a false name for the  
30 purchaser *or lessee* or false date for the date of sale *or lease*.

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

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

38 (x) Fail to disclose, in a clear and conspicuous manner in at  
39 least 10-point bold type on the face of any contract for the retail  
40 sale of a new motor vehicle that this transaction is, or is not, subject



1 to a fee received by an autobroker from the selling new motor  
2 vehicle dealer, and the name of the autobroker, if applicable.

3 SEC. 3. No reimbursement is required by this act pursuant to  
4 Section 6 of Article XIII B of the California Constitution because  
5 the only costs that may be incurred by a local agency or school  
6 district will be incurred because this act creates a new crime or  
7 infraction, eliminates a crime or infraction, or changes the penalty  
8 for a crime or infraction, within the meaning of Section 17556 of  
9 the Government Code, or changes the definition of a crime within  
10 the meaning of Section 6 of Article XIII B of the California  
11 Constitution.

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