

AMENDED IN ASSEMBLY JUNE 24, 2002

AMENDED IN ASSEMBLY JUNE 19, 2002

AMENDED IN SENATE MAY 14, 2002

**SENATE BILL**

**No. 1458**

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**Introduced by Senator Romero**

February 15, 2002

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An act to amend Sections 11710 and 11711 of, and to repeal and add Section 11722 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1458, as amended, Romero. Vehicle dealers: bonds.

(1) Existing law requires an applicant for a vehicle dealer's license to procure and file with the Department of Motor Vehicles a bond executed by an admitted surety in the amount of \$10,000. An applicant for a remanufacturer's license is required to file a bond in the amount of \$25,000.

This bill would increase the amount of the dealer's bond and the remanufacturer's bond to \$50,000, *except a motorcycle dealer's bond amount would remain at \$10,000.*

(2) Existing law provides that any person or governmental agency that suffers loss or damage by reason of any fraud by a licensed vehicle dealer shall have a right of action against the dealer and the surety upon the dealer's bond, as specified. Existing law also provides that a financing agency shall not be entitled to protection under the bond for any monetary interest of the financing agency that has loaned money to a vehicle dealer, but shall be entitled to protection under the bond if the financing agency is defrauded by a vehicle dealer as to any conditional sales contract acquired by way of purchase or pledge. Existing law

furthermore provides that the claims of nonlicensees for fraud shall be satisfied first and entitled to preference over all other claims for fraud.

This bill would revise these provisions to provide that any financing agency that suffers loss or damage by reason of any fraud by a licensed vehicle dealer shall have a right of action against the dealer and the surety upon the dealer’s bond, as specified; provided, however, that the claims of any other person or entity for fraud shall be satisfied first and entitled to preference over the claims of the financing agency. The bill would make conforming changes to related provisions.

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

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

1 SECTION 1. Section 11710 of the Vehicle Code is amended  
2 to read:

3 11710. (a) Before any dealer’s or remanufacturer’s license is  
4 issued or renewed by the department to any applicant therefor, the  
5 applicant shall procure and file with the department a bond  
6 executed by an admitted surety insurer, approved as to form by the  
7 Attorney General, and conditioned that the applicant shall not  
8 practice any fraud or make any fraudulent representation which  
9 will cause a monetary loss to a purchaser, seller, financing agency,  
10 or governmental agency.

11 (b) A dealer’s bond shall be in the amount of fifty thousand  
12 dollars (\$50,000), *except a motorcycle dealer’s bond shall be in*  
13 *the amount of ten thousand dollars (\$10,000)*. Before the license  
14 is renewed by the department, the dealer, *other than a motorcycle*  
15 *dealer*, shall procure and file a bond in the amount of fifty  
16 thousand dollars (\$50,000). A remanufacturer bond shall be in the  
17 amount of fifty thousand dollars (\$50,000).

18 (c) Liability under the bond is to remain at full value. If the  
19 amount of liability under the bond is decreased or there is  
20 outstanding a final court judgment for which the dealer or  
21 remanufacturer and sureties are liable, the dealer’s or  
22 remanufacturer’s license shall be automatically suspended. In  
23 order to reinstate the license and special plates, the licensee shall  
24 either file an additional bond or restore the bond on file to the  
25 original amount, or shall terminate the outstanding judgment for  
26 which the dealer or remanufacturer and sureties are liable.



1 (d) A dealer's or remanufacturer's license, or renewal of the  
2 license, shall not be issued to any applicant therefor, unless and  
3 until the applicant files with the department a good and sufficient  
4 instrument, in writing, in which the applicant appoints the director  
5 as the true and lawful agent of the applicant upon whom all process  
6 may be served in any action, or actions, which may thereafter be  
7 commenced against the applicant, arising out of any claim for  
8 damages suffered by any firm, person, association, or corporation,  
9 by reason of the violation of the applicant of any of the terms and  
10 provisions of this code or any condition of the dealer's or  
11 remanufacturer's bond. The applicant shall stipulate and agree in  
12 the appointment that any process directed to the applicant, when  
13 personal service of process upon the applicant cannot be made in  
14 this state after due diligence and, in that case, is served upon the  
15 director or, in the event of the director's absence from the office,  
16 upon any employee in charge of the office of the director, shall be  
17 of the same legal force and effect as if served upon the applicant  
18 personally. The applicant shall further stipulate and agree, in  
19 writing, that the agency created by the appointment shall continue  
20 for and during the period covered by any license that may be issued  
21 and so long thereafter as the applicant may be made to answer in  
22 damages for a violation of this code or any condition of the bond.  
23 The instrument appointing the director as the agent for the  
24 applicant for service of process shall be acknowledged by the  
25 applicant before a notary public. In any case where the licensee is  
26 served with process by service upon the director, one copy of the  
27 summons and complaint shall be left with the director or in the  
28 director's office in Sacramento or mailed to the office of the  
29 director in Sacramento. A fee of five dollars (\$5) shall also be paid  
30 to the director at the time of service of the copy of the summons  
31 and complaint. Service on the director shall be a sufficient service  
32 on the licensee if a notice of service and a copy of the summons  
33 and complaint are immediately sent by registered mail by the  
34 plaintiff or the plaintiff's attorney to the licensee. A copy of the  
35 summons and complaint shall also be mailed by the plaintiff or the  
36 plaintiff's attorney to the surety on the applicant's bond at the  
37 address of the surety given in the bond, postpaid and registered  
38 with request for return receipt. The director shall keep a record of  
39 all process so served upon the director, which record shall show the  
40 day and hour of service and shall retain the summons and



1 complaint so served on file. Where the licensee is served with  
2 process by service upon the director, the licensee shall have and be  
3 allowed 30 days from and after the service within which to answer  
4 any complaint or other pleading which may be filed in the cause.  
5 However, for purposes of venue, where the licensee is served with  
6 process by service upon the director, the service is deemed to have  
7 been made upon the licensee in the county in which the licensee  
8 has or last had an established place of business.

9 SEC. 2. Section 11711 of the Vehicle Code is amended to  
10 read:

11 11711. (a) If any person (1) shall suffer any loss or damage  
12 by reason of any fraud practiced on him or her or fraudulent  
13 representation made to him or her by a licensed dealer or one of  
14 the dealer's salespersons acting for the dealer, in his or her behalf,  
15 or within the scope of the employment of the salesperson and the  
16 person has possession of a written instrument furnished by the  
17 licensee, containing stipulated provisions and guarantees which  
18 the person believes have been violated by the licensee, or (2) shall  
19 suffer any loss or damage by reason of the violation by the dealer  
20 or salesperson of any of the provisions of Division 3 (commencing  
21 with Section 4000) of this code, or (3) is not paid for a vehicle sold  
22 to and purchased by a licensee, then the person shall have a right  
23 of action against the dealer, the dealer's salesperson, and the surety  
24 upon the dealer's bond, in an amount not to exceed the value of the  
25 vehicle purchased from or sold to the dealer.

26 (b) If the state or any political subdivision thereof shall suffer  
27 any loss or damage by reason of any fraud practiced on the state  
28 or fraudulent representation made to the state by a licensed dealer,  
29 or one of the dealer's representatives acting for the dealer, in the  
30 dealer's behalf, or within the scope of employment of those  
31 representatives, or shall suffer any loss or damage by reason of the  
32 violation of the dealer or representative of any of the provisions of  
33 Division 3 (commencing with Section 4000) of this code, or Part  
34 5 (commencing with Section 10701), Division 2 of the Revenue  
35 and Taxation Code, the state or any political subdivision thereof,  
36 through the department, shall have a right of action against the  
37 dealer, the dealer's representative, and the surety upon the dealer's  
38 bond in an amount not to exceed the value of the vehicles involved.

39 (c) The failure of a dealer upon demand to pay the fees and  
40 penalties determined to be due as provided in Section 4456 hereof



1 is declared to be a violation of Division 3 (commencing with  
2 Section 4000) of this code, and Part 5 (commencing with Section  
3 10701), Division 2 of the Revenue and Taxation Code and to  
4 constitute loss or damage to the state in the amounts of any fees and  
5 penalties determined to be due and not paid.

6 (d) The claims of the state under subdivision (b) shall be  
7 satisfied first and entitled to preference over all claims under  
8 subdivision (a).

9 (e) Except as provided in Section 11722, the claims of any  
10 person under subdivision (a) who is not a licensee shall be satisfied  
11 first and entitled to preference over all other claims under  
12 subdivision (a).

13 SEC. 3. Section 11722 of the Vehicle Code is repealed.

14 SEC. 4. Section 11722 is added to the Vehicle Code, to read:

15 11722. If a financing agency shall suffer any loss or damage  
16 by reason of any fraud practiced on the financing agency, or any  
17 fraudulent representation made to the financing agency, by a  
18 licensed dealer or by one of the dealer's representatives acting for  
19 the dealer on the dealer's behalf or within the scope of employment  
20 of the representative, or if a financing agency shall suffer any loss  
21 or damage by reason of the violation by the dealer or representative  
22 of any of the provisions of Division 3 (commencing with Section  
23 4000) of this code, *or if a financing agency is not paid for a vehicle*  
24 *sold to and purchased by a licensee*, the financing agency shall  
25 have a right of action against the dealer, the dealer's representative,  
26 and the surety upon the dealer's bond in an amount not to exceed  
27 the value of the vehicles involved; provided, however, that the  
28 claims of any other person or entity under Section 11711 shall be  
29 satisfied first and entitled to preference over the claims of the  
30 financing agency.

