

AMENDED IN SENATE JUNE 12, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2794

Introduced by Assembly Member Levine
(Coauthor: Assembly Member Koretz)

February 24, 2006

An act to amend Sections 11713.1, 11736, and 11738 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2794, as amended, Levine. Vehicles: brokering.

(1) Existing law provides that it is a violation of the Vehicle Code for a licensed dealer, as defined, to fail to disclose on the face of a contract for the retail sale of a new motor vehicle that the transaction is, or is not, subject to a fee received by an autobroker from the selling new motor vehicle dealer. Existing law provides that it is unlawful for a licensed dealer, when brokering a retail sale, to fail to disclose to the consumer and selling dealer whether the autobroker receives or does not receive a fee or other compensation from the selling dealer and the dollar amount of any fee that the consumer is obligated to pay to the autobroker. Existing law requires a brokering agreement to contain specified terms, conditions, requirements, and disclosures, including a notice of whether a fee is received from the selling dealer. A violation of these regulatory provisions is a crime.

This bill additionally would provide that it is a violation of the Vehicle Code for the holder of a dealer's license to fail to disclose on the face of the retail contract the amount of a fee received by the autobroker and paid by the selling new motor vehicle dealer. The bill would provide that it is unlawful for a licensed dealer to fail to

disclose the dollar amount of a fee paid by the selling dealer, and would require a brokering agreement to disclose the amount of a fee received from the selling dealer. Because a violation of these disclosure requirements would be a crime, the bill would impose a state-mandated local program.

(2) 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
2 amended to read:

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

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

19 (b) Advertise the total price of a vehicle without including all
20 costs to the purchaser at time of sale, except taxes, vehicle
21 registration fees, the California tire fee, as defined in Section
22 42885 of the Public Resources Code, emission testing fees not
23 exceeding fifty dollars (\$50), actual fees charged for certificates
24 pursuant to Section 44060 of the Health and Safety Code, finance

1 charges, and any dealer document preparation charge. The dealer
2 document preparation charge shall not exceed forty-five dollars
3 (\$45).

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

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

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

25 (d) Represent the dealer document preparation charge or
26 certificate of compliance or noncompliance fee, as a
27 governmental fee.

28 (e) Fail to sell a vehicle to ~~a~~ *any* person at the advertised total
29 price, exclusive of taxes, vehicle registration fees, the California
30 tire fee, the fee charged by the state for the issuance of ~~a~~ *any*
31 certificate of compliance or noncompliance pursuant to ~~a~~ *any*
32 statute, finance charges, mobilehome escrow fees, the amount of
33 a *any* city, county, or city and county imposed fee or tax for a
34 mobilehome, and any dealer document preparation charge, which
35 charges shall not exceed forty-five dollars (\$45) for the document
36 preparation charge and not to exceed fifty dollars (\$50) for
37 emission testing plus the actual fees charged for certificates
38 pursuant to Section 44060 of the Health and Safety Code, while
39 the vehicle remains unsold, unless the advertisement states the
40 advertised total price is good only for a specified time and the

1 time has elapsed. ~~An advertised vehicle~~ *Advertised vehicles* shall
 2 be sold at or below the advertised total price, with statutorily
 3 permitted exclusions, regardless of whether the purchaser has
 4 knowledge of the advertised total price.

5 (f) (1) Advertise for sale, sell, or purchase for resale ~~a~~ *any*
 6 new vehicle of a line-make for which the dealer does not hold a
 7 franchise.

8 (2) This subdivision does not apply to ~~a~~ *any* transaction
 9 involving any of the following:

10 (A) A mobilehome.

11 (B) A recreational vehicle, as defined in Section 18010 of the
 12 Health and Safety Code.

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

15 (D) An off-highway motor vehicle subject to identification, as
 16 defined in Section 38012.

17 (E) A manufactured home.

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

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

22 (H) A vehicle purchased for export and exported outside the
 23 territorial limits of the United States without being registered
 24 with the department.

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

31 (h) Advertise free merchandise, gifts, or services provided by
 32 a dealer contingent on the purchase of a vehicle. The term “free”
 33 includes merchandise or services offered for sale at a price less
 34 than the seller’s cost of the merchandise or services.

35 (i) Advertise ~~a vehicle~~ *vehicles*, and related goods or services,
 36 at a specified dealer price, with the intent not to supply
 37 reasonably expectable demand, unless the advertisement
 38 discloses the number of vehicles in stock at the advertised price.
 39 In addition, whether or not there are sufficient vehicles in stock
 40 to supply a reasonably expectable demand, when phrases such as

1 “starting at,” “from,” “beginning as low as,” or words of similar
2 import are used in reference to an advertised price, the
3 advertisement shall disclose the number of vehicles available at
4 that advertised price.

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

14 The disclosure required by this subdivision is in addition to any
15 other disclosure required by this code or—~~a~~ *any* regulation
16 regarding identifying vehicles advertised for sale.

17 (j) Use the term “rebate” or similar words such as “cash back”
18 in advertising the sale of a vehicle unless the rebate is expressed
19 in a specific dollar amount and is in fact a rebate offered by the
20 vehicle manufacturer or distributor directly to the retail purchaser
21 of the vehicle or to the assignee of the retail purchaser.

22 (k) Require a person to pay a higher price for a vehicle and
23 related goods or services for receiving advertised credit terms
24 than the cash price the same person would have to pay to
25 purchase the same vehicle and related goods or services. For the
26 purpose of this subdivision, “cash price” has the same meaning
27 as defined in subdivision (e) of Section 2981 of the Civil Code.

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

29 (m) Misrepresent the authority of a salesperson,
30 representative, or agent to negotiate the final terms of a
31 transaction.

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

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

39 (B) A dealer’s cost.

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

1 (A) ~~A~~Any communication occurring during face-to-face
2 negotiations for the purchase of a specific vehicle if the
3 prospective purchaser initiates a discussion of the vehicle's
4 invoice price or the dealer's cost for that vehicle.

5 (B) ~~A~~Any communication between a dealer and a prospective
6 commercial purchaser that is not disseminated to the general
7 public. For purposes of this subparagraph, a "commercial
8 purchaser" means a dealer, lessor, lessor-retailer, manufacturer,
9 remanufacturer, distributor, financial institution, governmental
10 entity, or person who purchases 10 or more vehicles during a
11 year.

12 (o) ~~Violate a~~ any law prohibiting bait and switch advertising,
13 including, but not limited to, the guides against bait advertising
14 set forth in Part 238 (commencing with Section 238.0) of Title 16
15 of the Code of Federal Regulations, as those regulations read on
16 January 1, 1988.

17 (p) ~~Make an~~ any untrue or misleading statement indicating that
18 a vehicle is equipped with all the factory installed optional
19 equipment the manufacturer offers, including, but not limited to,
20 a false statement that a vehicle is "fully factory equipped."

21 (q) ~~Affix on a~~ any new vehicle a supplemental price sticker
22 containing a price that represents the dealer's asking price which
23 exceeds the manufacturer's suggested retail price unless all of the
24 following occur:

25 (1) The supplemental sticker clearly and conspicuously
26 discloses in the largest print appearing on the sticker, other than
27 the print size used for the dealer's name, that the supplemental
28 sticker price is the dealer's asking price, or words of similar
29 import, and that it is not the manufacturer's suggested retail
30 price.

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

33 (3) The supplemental sticker lists each item which is not
34 included in the manufacturer's suggested retail price, and
35 discloses the additional price of each item. If the supplemental
36 sticker price is greater than the sum of the manufacturer's
37 suggested retail price and the price of the items added by the
38 dealer, then the supplemental sticker price shall set forth that
39 difference and describe it as "added mark-up."

1 (r) Advertise ~~an~~ *any* underselling claim, such as “we have the
2 lowest prices” or “we will beat any dealer’s price,” unless the
3 dealer has conducted a recent survey showing that the dealer sells
4 its vehicles at lower prices than any other licensee in its trade
5 area and maintains records to adequately substantiate the claims.
6 The substantiating records shall be made available to the
7 department upon request.

8 (s) Advertise ~~an~~ *any* incentive offered by the manufacturer or
9 distributor if the dealer is required to contribute to the cost of the
10 incentive as a condition of participating in the incentive program,
11 unless the dealer discloses in a clear and conspicuous manner
12 that dealer participation may affect consumer cost.

13 For purposes of this subdivision, “incentive” means anything
14 of value offered to induce people to purchase a vehicle,
15 including, but not limited to, discounts, savings claims, rebates,
16 below-market finance rates, and free merchandise or services.

17 (t) Display or offer for sale ~~a~~ *any* used vehicle unless there is
18 affixed to the vehicle the Federal Trade Commission’s Buyer’s
19 Guide as required by Part 455 (commencing with Section 455.1)
20 of Title 16 of the Code of Federal Regulations.

21 (u) Fail to disclose in writing to the franchisor of a new motor
22 vehicle dealer the name of the purchaser, date of sale, and the
23 vehicle identification number of each new motor vehicle sold of
24 the line-make of that franchisor, or intentionally submit to that
25 franchisor a false name for the purchaser or false date for the date
26 of sale.

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

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

34 (x) Fail to disclose, in a clear and conspicuous manner in at
35 least 10-point bold type on the face of ~~a~~ *any* contract for the retail
36 sale of a new motor vehicle that this transaction is, or is not,
37 subject to a fee received by an autobroker from the selling new
38 motor vehicle dealer, the amount of the fee paid by the selling
39 new motor vehicle dealer to the autobroker, and the name of the
40 autobroker, if applicable.

1 (y) As used in this section, the terms “make” and “model”
2 have the same meaning as is provided in Section 565.3 of Title
3 49 of the Code of Federal Regulations.

4 SEC. 2. Section 11736 of the Vehicle Code is amended to
5 read:

6 11736. It is unlawful for a dealer licensed pursuant to this
7 article to do any of the following when brokering a retail sale:

8 (a) Fail to execute a written brokering agreement, as described
9 in Section 11738, and provide a completed copy to both of the
10 following:

11 (1) ~~Any~~ consumer entering into the brokering agreement.
12 The completed copy shall be provided prior to the consumer’s
13 signing of an agreement for the purchase of the vehicle described
14 in the brokering agreement or prior to accepting one hundred
15 dollars (\$100) or more from that consumer, whichever occurs
16 first.

17 (2) The selling dealer. The completed copy shall be provided
18 prior to the selling dealer’s entering into a purchase agreement
19 with the consumer.

20 (b) Accept a purchase deposit from ~~a~~ any consumer that
21 exceeds 2.5 percent of the selling price of the vehicle described
22 in the brokering agreement.

23 (c) Fail to refund any purchase money, including purchase
24 deposits, upon demand by a consumer at any time prior to the
25 consumer’s signing of a vehicle purchase agreement with a
26 selling dealer and taking delivery of the vehicle described in the
27 brokering agreement.

28 (d) Fail to cancel a brokering agreement and refund, upon
29 demand, any money paid by a consumer, including any
30 brokerage fee, under any of the following circumstances:

31 (1) When the final price of the brokered vehicle exceeds the
32 purchase price listed in the brokering agreement.

33 (2) When the vehicle delivered is not as described in the
34 brokering agreement.

35 (3) When the brokering agreement expires prior to the
36 customer being presented with a purchase agreement from a
37 selling dealer arranged through the brokering dealer that contains
38 a purchase price at or below the price listed in the brokering
39 agreement.

1 (e) Act as a seller and provide brokering services, both in the
2 same transaction.

3 (f) Fail to disclose to the consumer and selling dealer, as soon
4 as practicable, whether the autobroker receives or does not
5 receive a fee or other compensation, regardless of the form or
6 time of payment, from the selling dealer, the dollar amount of a
7 fee paid by the selling dealer, and the dollar amount of any fee
8 that the consumer is obligated to pay to the autobroker. This
9 arrangement shall be confirmed in a brokering agreement.

10 (g) Fail to record in the dealer's autobroker log, for each
11 brokered sale, all of the information specified in subdivision (c)
12 of Section 11735.

13 (h) Fail to maintain for a minimum of three years a copy of the
14 executed brokering agreement and other notices and documents
15 related to each brokered transaction.

16 (i) Fail to advise the consumer, prior to accepting any money,
17 that a full refund will be given if the motor vehicle ordered
18 through the autobroker is not obtained for the consumer or if the
19 service orally contracted for is not provided.

20 SEC. 3. Section 11738 of the Vehicle Code is amended to
21 read:

22 11738. The brokering agreement required by Section 11736
23 shall be printed in no smaller than 10-point type and shall contain
24 not less than the following terms, conditions, requirements, and
25 disclosures:

26 (a) The name, address, license number, and telephone number
27 of the autobroker.

28 (b) A complete description, including line-make, model, year
29 model, and color, of the vehicle and the desired options.

30 (c) The following statement:

31 "The following information shall be completed prior to the
32 signing of this brokering agreement:

33 Dollar Purchase Price of Vehicle: _____.

34 Date this agreement will expire if a purchase agreement from a
35 selling dealer is not presented for your
36 signature: _____.

37 Fee that you will be obligated to pay us, if any: _____."

38 (d) One of the following notices, as appropriate, printed in at
39 least 10-point bold type and placed immediately below the
40 statement required by subdivision (c):

- 1 (1) “We do not receive a fee from the selling dealer.”
- 2 (2) “We receive a fee in the amount of \$_____ from the
- 3 selling dealer.”

4 (e) The following notice on the face of the brokering
 5 agreement with a heading in at least 14-point bold type and the
 6 text in at least 10-point bold type, circumscribed by a line, that
 7 reads as follows:

<p>8</p> <p>9</p> <p>10 NOTICE</p> <p>11 This is an agreement to provide services; it is not an agreement for the</p> <p>12 purchase of a vehicle. California law gives you</p> <p>13 the following rights and protection.</p> <p>14 Once you have signed this agreement, you have the right to</p> <p>15 cancel it and receive a full refund of any money paid, including any</p> <p>16 brokerage fee you may have paid, under any of the</p> <p>17 following circumstances:</p> <p>18 (1) The final price of the vehicle exceeds the purchase</p> <p>19 price listed above.</p> <p>20 (2) The vehicle is not as described above upon delivery.</p> <p>21 (3) This agreement expires prior to your being presented</p> <p>22 with a selling dealer’s purchase agreement.</p> <p>23 If you have paid a purchase deposit, you have the right to</p> <p>24 receive a refund of that deposit at any time prior to your signing a vehicle</p> <p>25 purchase agreement with a selling dealer. Purchase deposits are limited by</p> <p>26 law to no more than 2.5 percent</p> <p>27 of the purchase price of a vehicle and must be deposited by an</p> <p>28 autobroker or auto buying service in a federally insured trust</p> <p>29 account. If you are unable to resolve a dispute with your autobroker or</p> <p>30 auto buying service, please contact an investigator</p> <p>31 of the Department of Motor Vehicles.</p>
--

- 32
- 33 (f) The date the agreement is executed.
- 34 (g) The signature of the autobroker and consumer.
- 35 SEC. 4. No reimbursement is required by this act pursuant to
- 36 Section 6 of Article XIII B of the California Constitution because
- 37 the only costs that may be incurred by a local agency or school
- 38 district will be incurred because this act creates a new crime or
- 39 infraction, eliminates a crime or infraction, or changes the

1 penalty for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition of a
3 crime within the meaning of Section 6 of Article XIII B of the
4 California Constitution.

O