

AMENDED IN SENATE MAY 23, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 305

Introduced by Assembly Member Ma

February 9, 2007

An act to amend Section 11713.21 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, Ma. Vehicles: sale: used vehicles.

Existing law requires a dealer, with certain exceptions, to offer a contract cancellation option agreement to an individual when selling a used vehicle at retail for personal, family, or household use.

This bill would except from that requirement a vehicle leased by the purchaser, ~~or the purchaser's employer~~, for ~~at~~ 4 months or more immediately preceding the dealer's sale of the vehicle to the purchaser.

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 11713.21 of the Vehicle Code is amended
2 to read:
3 11713.21. (a) (1) A dealer shall not sell a used vehicle, as
4 defined in Section 665 and subject to registration under this code,
5 at retail to an individual for personal, family, or household use
6 without offering the buyer a contract cancellation option agreement
7 that allows the buyer to return the vehicle without cause. This
8 section does not apply to a used vehicle having a purchase price

1 of forty thousand dollars (\$40,000) or more, a motorcycle, as
 2 defined in Section 400, or a recreational vehicle, as defined in
 3 Section 18010 of the Health and Safety Code, or a vehicle leased
 4 by the purchaser, ~~or the purchaser's employer~~, for a period four
 5 months; or more immediately preceding the dealer's sale of the
 6 vehicle to the purchaser.

7 (2) The purchase price for the contract cancellation option shall
 8 not exceed the following:

9 (A) Seventy-five dollars (\$75) for a vehicle with a cash price
 10 of five thousand dollars (\$5,000) or less.

11 (B) One hundred fifty dollars (\$150) for a vehicle with a cash
 12 price of more than five thousand dollars (\$5,000), but not more
 13 than ten thousand dollars (\$10,000).

14 (C) Two hundred fifty dollars (\$250) for a vehicle with a cash
 15 price of more than ten thousand dollars (\$10,000), but not more
 16 than thirty thousand dollars (\$30,000).

17 (D) One percent of the purchase price for a vehicle with a cash
 18 price of more than thirty thousand dollars (\$30,000), but less than
 19 forty thousand dollars (\$40,000).

20 The term "cash price" as used in this paragraph has the same
 21 meaning as described in subparagraph (A) of paragraph (1) of
 22 subdivision (a) of Section 2982 of the Civil Code. "Cash price"
 23 also excludes registration, transfer, titling, license, and California
 24 tire and optional business partnership automation fees.

25 (b) To comply with subdivision (a), and notwithstanding Section
 26 2981.9 of the Civil Code, a contract cancellation option agreement
 27 shall be contained in a document separate from the conditional
 28 sale contract or other vehicle purchase agreement and shall contain,
 29 at a minimum, the following:

- 30 (1) The name of the seller and the buyer.
- 31 (2) A description and the Vehicle Identification Number of the
 32 vehicle purchased.
- 33 (3) A statement specifying the time within which the buyer must
 34 exercise the right to cancel the purchase under the contract
 35 cancellation option and return the vehicle to the dealer. The dealer
 36 shall not specify a time that is earlier than the dealer's close of
 37 business on the second day following the day on which the vehicle
 38 was originally delivered to the buyer by the dealer.
- 39 (4) A statement that clearly and conspicuously specifies the
 40 dollar amount of any restocking fee the buyer must pay to the

1 dealer to exercise the right to cancel the purchase under the contract
2 cancellation option. The restocking fee shall not exceed one
3 hundred seventy-five dollars (\$175) if the vehicle's cash price is
4 five thousand dollars (\$5,000) or less, three hundred fifty dollars
5 (\$350) if the vehicle's cash price is less than ten thousand dollars
6 (\$10,000), and five hundred dollars (\$500) if the vehicle cash price
7 is ten thousand dollars (\$10,000) or more. The dealer shall apply
8 toward the restocking fee the price paid by the buyer for the
9 contract cancellation option. The price for *the* purchase of the
10 contract cancellation option is not otherwise subject to setoff or
11 refund.

12 (5) A statement specifying the maximum number of miles that
13 the vehicle may be driven after its original delivery by the dealer
14 to the buyer to remain eligible for cancellation under the contract
15 cancellation option. A dealer shall not specify fewer than 250 miles
16 in the contract cancellation option agreement.

17 (6) A statement that the contract cancellation option gives the
18 buyer the right to cancel the purchase and obtain a full refund,
19 minus the purchase price for the contract cancellation option
20 agreement; and that the right to cancel will apply only if, within
21 the time specified in the contract cancellation option agreement,
22 the following are personally delivered to the selling dealer by the
23 buyer: a written notice exercising the right to cancel the purchase
24 signed by the buyer; any restocking fee specified in the contract
25 cancellation option agreement minus the purchase price for the
26 contract cancellation option agreement; the original contract
27 cancellation option agreement and vehicle purchase contract and
28 related documents, if the seller gave those original documents to
29 the buyer; all original vehicle titling and registration documents,
30 if the seller gave those original documents to the buyer; and the
31 vehicle, free of all liens and encumbrances, other than any lien or
32 encumbrance created by or ~~incident~~ *incidental* to the conditional
33 sales contract, any loan arranged by the dealer, or any purchase
34 money loan obtained by the buyer from a third party, and in the
35 same condition as when it was delivered by the dealer to the buyer,
36 reasonable wear and tear and any defect or mechanical problem
37 that manifests or becomes evident after delivery that was not caused
38 by the buyer excepted, and which must not have been driven
39 beyond the mileage limit specified in the contract cancellation
40 option agreement. The agreement may also provide that the buyer

1 will execute documents reasonably necessary to effectuate the
2 cancellation and refund and as reasonably required to comply with
3 applicable law.

4 (7) At the bottom of the contract cancellation option agreement,
5 a statement that may be signed by the buyer to indicate the buyer's
6 election to exercise the right to cancel the purchase under the terms
7 of the contract cancellation option agreement, and the last date
8 and time by which the option to cancel may be exercised, followed
9 by a line for the buyer's signature. A particular form of statement
10 is not required, but the following statement is sufficient: "By
11 signing below, I elect to exercise my right to cancel the purchase
12 of the vehicle described in this agreement." The buyer's delivery
13 of the purchase cancellation agreement to the dealer with the
14 buyer's signature following this statement shall constitute sufficient
15 written notice exercising the right to cancel the purchase under
16 paragraph (6). The dealer shall provide the buyer with the statement
17 required by this paragraph in duplicate to enable the buyer to return
18 the signed cancellation notice and retain a copy of the cancellation
19 agreement.

20 (c) (1) No later than the second day following the day on which
21 the buyer exercises the right to cancel the purchase in compliance
22 with the contract cancellation option agreement, the dealer shall
23 cancel the contract and provide the buyer with a full refund,
24 including that portion of the sales tax attributable to amounts
25 excluded pursuant to Section 6012.3 of the Revenue and Taxation
26 Code.

27 (2) If the buyer was not charged for the contract cancellation
28 option agreement, the dealer shall return to the buyer, no later than
29 the day following the day on which the buyer exercises the right
30 to cancel the purchase, any motor vehicle the buyer left with the
31 seller as a downpayment or trade-in. If the dealer has sold or
32 otherwise transferred title to the motor vehicle that was left as a
33 downpayment or trade-in, the full refund described in paragraph
34 (1) shall include the fair market value of the motor vehicle left as
35 a downpayment or trade-in, or its value as stated in the contract
36 or purchase order, whichever is greater.

37 (3) If the buyer was charged for the contract cancellation option
38 agreement, the dealer shall retain any motor vehicle the buyer left
39 with the dealer as a downpayment or trade-in until the buyer
40 exercises the right to cancel or the right to cancel expires. If the

1 buyer exercises the right to cancel the purchase, the dealer shall
2 return to the buyer, no later than the day following the day on
3 which the buyer exercises the right to cancel the purchase, any
4 motor vehicle the buyer left with the seller as a downpayment or
5 trade-in. If the dealer has inadvertently sold or otherwise transferred
6 title to the motor vehicle as the result of a bona fide error,
7 notwithstanding reasonable procedures designed to avoid that
8 error, the inadvertent sale or transfer of title shall not be deemed
9 a violation of this paragraph, and the full refund described in
10 paragraph (1) shall include the retail market value of the motor
11 vehicle left as a downpayment or trade-in, or its value as stated in
12 the contract or purchase order, whichever is greater.

13 (d) If the dealer received a portion of the purchase price by
14 credit card, or other third-party payer on the buyer's account, the
15 dealer may refund that portion of the purchase price to the credit
16 card issuer or third-party payer for credit to the buyer's account.

17 (e) Notwithstanding subdivision (a), a dealer is not required to
18 offer a contract cancellation option agreement to an individual
19 who exercised his or her right to cancel the purchase of a vehicle
20 from the dealer pursuant to a contract cancellation option agreement
21 during the immediately preceding 30 days. A dealer is not required
22 to give notice to a subsequent buyer of the return of a vehicle
23 pursuant to this section. This subdivision does not abrogate or limit
24 any disclosure obligation imposed by any other law.

25 (f) This section does not affect or alter the legal rights, duties,
26 obligations, or liabilities of the buyer, the dealer, or the dealer's
27 agents or assigns, that would exist in the absence of a contract
28 cancellation option agreement. The buyer is the owner of a vehicle
29 when he or she takes delivery of a vehicle until the vehicle is
30 returned to the dealer pursuant to a contract cancellation option
31 agreement, and the existence of a contract cancellation option
32 agreement shall not impose permissive user liability on the dealer,
33 or the dealer's agents or assigns, under Section 460 or 17150 or
34 otherwise.

35 (g) Nothing in this section is intended to affect the ability of a
36 buyer to rescind the contract or revoke acceptance under any other
37 law.

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