

Assembly Bill No. 305

CHAPTER 219

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

[Approved by Governor September 21, 2007. Filed with
Secretary of State September 21, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 305, 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.

The bill would require that when a buyer, who leased a purchased vehicle immediately preceding the sale of that vehicle to the buyer, exercises the contract cancellation option, the limit on the amount of the restocking fee that can be charged by the dealer would be increased. The increased amount would be the amount the buyer would have been obligated to pay at the time of the termination of the lease for excess mileage, unrepaired damage, and excess wear and tear, as specified in the lease. The dealer would be required to provide notice of this requirement, including a statement regarding the increased restocking fee.

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

SECTION 1. Section 11713.21 of the Vehicle Code is amended to read:

11713.21. (a) (1) A dealer shall not sell a used vehicle, as defined in Section 665 and subject to registration under this code, at retail to an individual for personal, family, or household use without offering the buyer a contract cancellation option agreement that allows the buyer to return the vehicle without cause. This section does not apply to a used vehicle having a purchase price of forty thousand dollars (\$40,000) or more, a motorcycle, as defined in Section 400, or a recreational vehicle, as defined in Section 18010 of the Health and Safety Code.

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

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

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

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

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

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

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

(1) The name of the seller and the buyer.

(2) A description and the Vehicle Identification Number of the vehicle purchased.

(3) A statement specifying the time within which the buyer must exercise the right to cancel the purchase under the contract cancellation option and return the vehicle to the dealer. The dealer shall not specify a time that is earlier than the dealer’s close of business on the second day following the day on which the vehicle was originally delivered to the buyer by the dealer.

(4) A statement that clearly and conspicuously specifies the dollar amount of any restocking fee the buyer must pay to the dealer to exercise the right to cancel the purchase under the contract cancellation option. The restocking fee shall not exceed one hundred seventy-five dollars (\$175) if the vehicle’s cash price is five thousand dollars (\$5,000) or less, three hundred fifty dollars (\$350) if the vehicle’s cash price is less than ten thousand dollars (\$10,000), and five hundred dollars (\$500) if the vehicle cash price is ten thousand dollars (\$10,000) or more. The dealer shall apply toward the restocking fee the price paid by the buyer for the contract cancellation option. The price for the purchase of the contract cancellation option is not otherwise subject to setoff or refund.

(5) Notwithstanding paragraph (4), when a buyer, who leased the purchased vehicle immediately preceding the dealer’s sale of the vehicle to the buyer, exercises the contract cancellation option, the limit on the amount of a restocking fee required to be paid by the buyer shall be increased. That increased amount shall be the amount the buyer would have been obligated to pay the lessor, at the time of the termination of the lease, for the following charges, as specified in the lease, and as if the buyer had not purchased the contract cancellation option:

(A) Excess mileage.

(B) Unrepaired damage.

(C) Excess wear and tear.

(6) A statement specifying the maximum number of miles that the vehicle may be driven after its original delivery by the dealer to the buyer to remain

eligible for cancellation under the contract cancellation option. A dealer shall not specify fewer than 250 miles in the contract cancellation option agreement.

(7) A statement that the contract cancellation option gives the buyer the right to cancel the purchase and obtain a full refund, minus the purchase price for the contract cancellation option agreement; and that the right to cancel will apply only if, within the time specified in the contract cancellation option agreement, the following are personally delivered to the selling dealer by the buyer: a written notice exercising the right to cancel the purchase signed by the buyer; any restocking fee specified in the contract cancellation option agreement minus the purchase price for the contract cancellation option agreement; the original contract cancellation option agreement and vehicle purchase contract and related documents, if the seller gave those original documents to the buyer; all original vehicle titling and registration documents, if the seller gave those original documents to the buyer; and the vehicle, free of all liens and encumbrances, other than any lien or encumbrance created by or incidental to the conditional sales contract, any loan arranged by the dealer, or any purchase money loan obtained by the buyer from a third party, and in the same condition as when it was delivered by the dealer to the buyer, reasonable wear and tear and any defect or mechanical problem that manifests or becomes evident after delivery that was not caused by the buyer excepted, and which must not have been driven beyond the mileage limit specified in the contract cancellation option agreement. The agreement may also provide that the buyer will execute documents reasonably necessary to effectuate the cancellation and refund and as reasonably required to comply with applicable law.

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

(9) If, pursuant to paragraph (5), the limit on the restocking fee is increased by the amount the buyer, who exercises a contract cancellation option would have been obligated to pay the lessor, upon termination of the lease, for charges for excess mileage, unrepaired damage, or excess wear and tear, as specified in the lease, the dealer shall provide the buyer with a notice of the contents of paragraph (5), including a statement regarding the increased restocking fee.

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

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

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

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

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

(f) This section does not affect or alter the legal rights, duties, obligations, or liabilities of the buyer, the dealer, or the dealer's agents or assigns, that would exist in the absence of a contract cancellation option agreement. The buyer is the owner of a vehicle when he or she takes delivery of a vehicle until the vehicle is returned to the dealer pursuant to a contract cancellation option agreement, and the existence of a contract cancellation option

agreement shall not impose permissive user liability on the dealer, or the dealer's agents or assigns, under Section 460 or 17150 or otherwise.

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