

AMENDED IN SENATE APRIL 18, 2007

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 729

Introduced by Senator Padilla

February 23, 2007

An act to add Section ~~11711.5~~ to the Vehicle Code, relating to ~~vehicles~~; 4456.3 and Chapter 11 (commencing with Section 12200) to Division 5 of, and to amend Sections 11703 and 11705 of, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 729, as amended, Padilla. Vehicles: dealers: *consumer protection*.

(1) Existing law imposes licensing and regulatory requirements on vehicle dealers. A violation of those requirements is a crime.

This bill would create the Consumer Motor Vehicle Recovery Corporation ("recovery corporation"), with a board of directors with certain powers and duties, in order to provide payments to consumers on eligible claims, including, but not limited to, a vehicle dealer or lessor-retailer's failure to remit license or registration fees or failure to pay proceeds of a consignment sale, subject to certain requirements and limitations. The Department of Motor Vehicles would be required to charge dealers or lessor-retailers a fee, as prescribed, for each vehicle sold by the dealers or lessor-retailers. Those fees, upon appropriation, would be paid to the recovery corporation in order to fund its operations and pay eligible consumer claims.

A violation of these requirements would be a crime. In addition, a violation of a requirement to submit certain applications under penalty of perjury would be a crime. Also, person who, with intent to prejudice, damage, or defraud the recovery fund, which the bill would require the

corporation to establish, files a false application, statement, or other required document with the recovery corporation, would be guilty of a misdemeanor and, upon conviction, would be punished by imprisonment in the county jail for not more than one year. Because this bill would create new crimes, the bill would create 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.

~~This bill would require a dealer who purchases or obtains a vehicle in trade in a retail sale or lease transaction, as defined, and who, in a written agreement documenting the transaction, agreed to make a payment on the prior credit or lease balance owing on the vehicle, to tender all agreed upon payment as provided in the written agreement within 30 days of purchasing or obtaining the vehicle in trade.~~

~~The bill would require a dealer who purchases or obtains a vehicle in trade in a retail sale or lease transaction, and who did not set forth in writing an agreement regarding payment of a prior credit or lease balance owed on the vehicle, within 30 days of purchasing or obtaining the vehicle in trade, to tender to the lessor or legal owner, or to the designee of the lessor or legal owner of the vehicle, payment necessary to discharge the prior credit or lease balance owing on the vehicle.~~

~~The bill would provide that a dealer does not violate these requirements if the dealer gives notice of rescission of the contract, and the contract is rescinded.~~

~~Because a violation of these 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. (a) The Legislature finds and declares that*
2 *consumers have suffered economic loss as the result of the conduct*
3 *of some motor vehicle dealers or lessor-retailers who have failed*
4 *to remit amounts paid by consumers for license and registration*
5 *fees, failed to pay the proceeds of consignment sales to consumer*
6 *consignors, and failed to discharge the obligations secured by*
7 *liens on motor vehicles, or the obligations remaining on leases of*
8 *motor vehicles, that are traded-in in connection with the purchase*
9 *of motor vehicles from the dealers or lessor-retailers. The*
10 *consumers who have been harmed often do not have adequate*
11 *resources to pursue their claims against the dealers or*
12 *lessor-retailers, and some of the dealers or lessor-retailers are*
13 *insolvent and cannot satisfy legitimate claims. The resulting*
14 *erosion of public confidence in motor vehicle sellers has*
15 *deleterious economic consequences for reputable dealers and*
16 *lessor-retailers.*

17 *(b) It is the intent and purpose of this bill to establish a recovery*
18 *fund with adequate resources based on reasonable assessments*
19 *for each report-of-sale to compensate and safeguard members of*
20 *the public who have suffered monetary loss as the result of any of*
21 *the acts described in subdivision (a) and who are unable to have*
22 *those claims satisfied because of dealership closure or insolvency.*

23 *SEC. 2. Section 4456.3 is added to the Vehicle Code, to read:*

24 *4456.3. (a) The department shall charge a dealer or*
25 *lessor-retailer a fee, as established by the director pursuant to*
26 *subdivision (b), for each vehicle sold by a dealer or lessor-retailer*
27 *and reported on a report-of-sale form issued by the department to*
28 *a dealer or lessor-retailer, or for every vehicle sold by a dealer*
29 *or lessor-retailer if that licensee does not use a report-of-sale form*
30 *issued by the department because the report of the sale is given*
31 *electronically or otherwise. The department shall collect the fee,*
32 *and upon appropriation, the fees shall be paid to the Consumer*
33 *Motor Vehicle Recovery Corporation as described in Chapter 11*
34 *(commencing with Section 12200) of Division 5.*

35 *(b) The director shall establish the fee at one dollar (\$1) and*
36 *shall collect and, upon appropriation, transmit that fee to the*
37 *Consumer Motor Vehicle Recovery Corporation until the Consumer*
38 *Motor Vehicle Recovery Corporation notifies the department that*

1 *the balance in the recovery fund maintained by the Corporation*
2 *has reached five million dollars (\$5,000,000). Thereafter, if the*
3 *amount in the recovery fund maintained by the Corporation is less*
4 *than two million dollars (\$2,000,000), the Consumer Motor Vehicle*
5 *Recovery Corporation shall notify the department of the amount*
6 *necessary to return the recovery fund balance to five million dollars*
7 *(\$5,000,000), and the department shall collect the fee only as*
8 *necessary to maintain the recovery fund at that amount, and these*
9 *fees shall be transmitted to the corporation, upon appropriation.*

10 *(c) The Consumer Motor Vehicle Recovery Corporation shall*
11 *reimburse the department for all reasonable expenses incurred in*
12 *implementing this section.*

13 *SEC. 3. Section 11703 of the Vehicle Code is amended to read:*

14 11703. The department may refuse to issue a license to a
15 manufacturer, manufacturer branch, remanufacturer,
16 remanufacturer branch, distributor, distributor branch, transporter,
17 or dealer, if it determines any of the following:

18 (a) The applicant was previously the holder, or a managerial
19 employee of the holder, of a license issued under this chapter which
20 was revoked for cause and never reissued by the department, or
21 which was suspended for cause and the terms of suspension have
22 not been fulfilled.

23 (b) The applicant was previously a business representative of a
24 business whose license issued under this chapter was revoked for
25 cause and never reissued or was suspended for cause and the terms
26 of suspension have not been fulfilled.

27 (c) If the applicant is a business, a business representative of
28 the business was previously the holder of a license, or was a
29 business representative of a business whose license, issued under
30 this chapter was revoked for cause and never reissued or was
31 suspended for cause and the terms of suspension have not been
32 fulfilled; or, by reason of the facts and circumstances related to
33 the organization, control, and management of the business, the
34 operation of that business will be directed, controlled, or managed
35 by individuals who, by reason of their conviction of violations of
36 the provisions of this code, would be ineligible for a license and,
37 by licensing the business, the purposes of this chapter would be
38 defeated.

39 (d) The applicant, or a business representative if the applicant
40 is a business, has been convicted of a crime or committed ~~any~~ *an*

1 act or engaged in ~~any~~ conduct involving moral turpitude which is
2 substantially related to the qualifications, functions, or duties of
3 the licensed activity. A conviction after a plea of nolo contendere
4 is a conviction within the meaning of this section.

5 (e) The applicant was previously the holder of an occupational
6 license issued by another state, authorizing the same or similar
7 activities of a license issued under this division; and that license
8 was revoked or suspended for cause and was never reissued, or
9 was suspended for cause, and the terms of suspension have not
10 been fulfilled.

11 (f) The information contained in the application is incorrect.

12 (g) Upon investigation, the business history required by Section
13 11704 contains incomplete or incorrect information, or reflects
14 substantial business irregularities.

15 (h) A decision of the department to cancel, suspend, or revoke
16 a license has been made and the applicant was a business
17 representative of the business regulated under that license.

18 (i) *The applicant has failed to repay the full amount of a claim*
19 *paid by the Consumer Motor Vehicle Recovery Corporation, plus*
20 *interest, as provided in subdivision (c) of Section 12210.*

21 *SEC. 4. Section 11705 of the Vehicle Code is amended to read:*

22 11705. (a) The department, after notice and hearing, may
23 suspend or revoke the license issued to a dealer, transporter,
24 manufacturer, manufacturer branch, remanufacturer,
25 remanufacturer branch, distributor, or distributor branch upon
26 determining that the person to whom the license was issued is not
27 lawfully entitled thereto, or has done any of the following:

28 (1) Filed an application for the license using a false or fictitious
29 name not registered with the proper authorities, or knowingly made
30 ~~any~~ a false statement or knowingly concealed ~~any~~ a material fact,
31 in the application for the license.

32 (2) Made, or knowingly or negligently permitted, ~~any~~ a illegal
33 use of the special plates issued to the licensee.

34 (3) Used a false or fictitious name, knowingly made ~~any~~ a false
35 statement, or knowingly concealed ~~any~~ a material fact, in ~~any~~ an
36 application for the registration of a vehicle, or otherwise committed
37 a fraud in the application.

38 (4) Failed to deliver to a transferee lawfully entitled thereto a
39 properly endorsed certificate of ownership.

1 (5) Knowingly purchased, sold, or otherwise acquired or
2 disposed of a stolen motor vehicle.

3 (6) Failed to provide and maintain a clear physical division
4 between the type of business licensed pursuant to this chapter and
5 any other type of business conducted at the established place of
6 business.

7 (7) Willfully violated Section 3064 or 3065 or any rule or
8 regulation adopted pursuant thereto.

9 (8) Violated any provision of Division 3 (commencing with
10 Section 4000) or any rule or regulation adopted pursuant thereto,
11 or subdivision (a) of Section 38200.

12 (9) Violated any provision of Division 4 (commencing with
13 Section 10500) or any rule or regulation adopted pursuant thereto.

14 (10) Violated any provision of Article 1 (commencing with
15 Section 11700) of Chapter 4 of Division 5 or any rule or regulation
16 adopted pursuant thereto.

17 (11) Violated any provision of Part 5 (commencing with Section
18 10701) of Division 2 of the Revenue and Taxation Code or any
19 rule or regulation adopted pursuant thereto.

20 (12) Violated any provision of Chapter 2b (commencing with
21 Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code
22 or any rule or regulation adopted pursuant thereto.

23 (13) Submitted a check, draft, or money order to the department
24 for any obligation or fee due the state which was dishonored or
25 refused payment upon presentation.

26 (14) Has caused any person to suffer any loss or damage by
27 reason of any fraud or deceit practiced on that person or fraudulent
28 representations made to that person in the course of the licensed
29 activity.

30 For purposes of this paragraph, “fraud” includes any act or
31 omission which is included within the definition of either “actual
32 fraud” or “constructive fraud” as defined in Sections 1572 and
33 1573 of the Civil Code, and “deceit” has the same meaning as
34 defined in Section 1710 of the Civil Code. In addition, “fraud”
35 and “deceit” include, but are not limited to, a misrepresentation in
36 any manner, whether intentionally false or due to gross negligence,
37 of a material fact; a promise or representation not made honestly
38 and in good faith; an intentional failure to disclose a material fact;
39 and any act within Section 484 of the Penal Code.

1 For purposes of this paragraph, “person” also includes a
2 governmental entity.

3 (15) Failed to meet the terms and conditions of an agreement
4 entered into pursuant to Section 11707.

5 (16) Violated Section 43151, 43152, or 43153 of, or subdivision
6 (b) of Section 44072.10 of, the Health and Safety Code.

7 (17) Failed to repay a claim paid by the Consumer Motor
8 Vehicle Recovery Corporation as provided in subdivision (c) of
9 Section 12210.

10 (b) Any of the causes specified in this chapter as a cause for
11 refusal to issue a license to a transporter, manufacturer,
12 manufacturer branch, remanufacturer, remanufacturer branch,
13 distributor, distributor branch, or dealer applicant is cause to
14 suspend or revoke a license issued to a transporter, manufacturer,
15 manufacturer branch, remanufacturer, remanufacturer branch,
16 distributor, distributor branch, or dealer.

17 (c) Except as provided in Section 11707, every hearing provided
18 for in this section shall be conducted pursuant to Chapter 5
19 (commencing with Section 11500) of Part 1 of Division 3 of Title
20 2 of the Government Code.

21 *SEC. 5. Chapter 11 (commencing with Section 12200) is added*
22 *to Division 5 of the Vehicle Code, to read:*

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24
25

CHAPTER 11. CONSUMER RECOVERY FUND

26 *12200. The following definitions apply to this chapter:*

27 (a) “Application” means an application to the recovery
28 corporation for the payment of an eligible claim from the recovery
29 fund.

30 (b) “Consumer” means a person who either (1) purchased or
31 leased, or became obligated to purchase or lease, a motor vehicle
32 to be used primarily for personal, family, or household purposes
33 from a dealer or lessor-retailer licensed under this code, or (2)
34 consigned for sale a motor vehicle that was used primarily for
35 personal, family, or household purposes to a dealer licensed under
36 this code.

37 (c) “Eligible claim” means an unsatisfied claim for economic
38 loss, not barred by the statutes of limitation, that accrues after
39 July 1, 2008, as a result of the failure of a dealer licensed under

1 *this code, or if applicable, a lessor-retailer licensed under this*
2 *code, to do any of the following:*

3 *(1) Remit license or registration fees received or contractually*
4 *obligated to be paid from a consumer to the department.*

5 *(2) Pay to the lessor registered in accordance with Section*
6 *4453.5 or the legal owner of a vehicle transferred as a trade-in*
7 *by a consumer to the dealer the amount necessary to discharge*
8 *the prior credit or lease balance owed to the lessor or legal owner.*

9 *(3) Pay the amount specified in a consignment agreement to a*
10 *consumer after the sale of a consigned vehicle.*

11 *(d) “Participant” means a dealer licensed under this code or*
12 *a lessor-retailer licensed under this code.*

13 *(e) “Recovery corporation” means the Consumer Motor Vehicle*
14 *Recovery Corporation.*

15 *(f) “Recovery fund” means the consumer recovery fund*
16 *established by the recovery corporation pursuant to Section 12203*
17 *for the payment of eligible claims.*

18 *12201. (a) Participants shall maintain a corporation under*
19 *the Nonprofit Mutual Benefit Corporation Law (Part 3*
20 *(commencing with Section 7110) of Division 2 of Title 1 of the*
21 *Corporations Code) that shall operate under the name “Consumer*
22 *Motor Vehicle Recovery Corporation.”*

23 *(b) The purpose of the Consumer Motor Vehicle Recovery*
24 *Corporation is to provide payments to consumers on eligible claims*
25 *subject to the requirements and limitations set forth in this chapter.*

26 *(c) A participant may not charge or collect from a consumer a*
27 *separate fee or charge to recoup the fee paid by the participant*
28 *pursuant to Section 4456.3.*

29 *(d) The State of California and any of its officers, agents, or*
30 *employees shall not be liable in any manner for an act or omission*
31 *of the recovery corporation or any of its directors, officers, agents,*
32 *or employees.*

33 *12202. (a) The recovery corporation shall have a board of*
34 *directors composed of six directors, as follows:*

35 *(1) One public consumer representative member appointed by*
36 *the Director of the Department of Consumer Affairs who shall*
37 *serve until the appointment is revoked, another appointment is*
38 *made, or until the director resigns.*

1 (2) *One employee of the Department of Justice, assigned by the*
2 *office of the Attorney General, who shall serve as an ex officio,*
3 *nonvoting member.*

4 (3) *Four directors who are participants. Participant directors*
5 *shall be elected by a balloting of all participants in the recovery*
6 *corporation in an election to be conducted by the recovery*
7 *corporation in February of each year. Participant directors shall*
8 *be elected to serve two-year terms, with two of the four participant*
9 *directors being elected each year to staggered two-year terms.*

10 (b) *A person is eligible to be nominated and to serve as a*
11 *participant director if the person satisfies all of the following*
12 *conditions:*

13 (1) *The person's primary occupation, at the time of nomination*
14 *and continuously during the previous three years, has been as an*
15 *owner or general manager of a licensed dealer or lessor-retailer.*

16 (2) *The person has not been convicted of a crime, including a*
17 *plea or verdict of guilty or a conviction following a plea of nolo*
18 *contendere.*

19 (3) *The person is not subject to a judgment or administrative*
20 *order, whether entered after adjudication or stipulation, predicated*
21 *on that person's commission of an act of dishonesty, fraud, deceit,*
22 *or violation of this chapter or Chapter 5 (commencing with Section*
23 *17200) of Part 2 of Division 7 of the Business and Professions*
24 *Code.*

25 (4) *The person is not a defendant in a pending criminal or civil*
26 *law enforcement action brought by a public prosecutor.*

27 (5) *The person has not served as a participant director of the*
28 *recovery corporation at any time during the previous 18 months.*

29 (6) *Within five days after the end of the nomination period, the*
30 *person nominated to be a director submits an application to the*
31 *recovery corporation, signed under penalty of perjury, that attests*
32 *to the person's satisfaction of all of the conditions specified in*
33 *paragraphs (1) to (5), inclusive.*

34 (c) *The recovery corporation may not impose requirements for*
35 *nomination to be a participant director in addition to the*
36 *requirements described in subdivision (b).*

37 (d) *The nomination period shall be open for the period beginning*
38 *90 days and ending 30 days before the election. A participant may*
39 *nominate for election a participant who is eligible to serve as*
40 *provided in subdivision (b).*

1 (e) *The recovery corporation shall enable nominees to submit,*
2 *within 21 days before the election, written statements of up to 500*
3 *words in a reasonable format concerning their candidacy and*
4 *shall mail those statements to participants in the recovery*
5 *corporation and make those statements publicly available no later*
6 *than 14 days before the election by means that may include*
7 *disseminating the information on an Internet Web site or providing*
8 *the information by electronic mail to a person who has requested*
9 *the information and provided a valid electronic mail address.*

10 (f) *A director who does not qualify to be a participant or who*
11 *otherwise becomes unable to serve shall not continue to serve as*
12 *director. The board of the recovery corporation shall adopt rules*
13 *setting forth the procedures to determine that a director is no*
14 *longer able to serve as a director and for the board to elect a*
15 *successor to serve as director until the next election.*

16 12203. (a) *The recovery corporation shall establish a*
17 *consumer recovery fund for the payment of claims as provided in*
18 *this chapter. The recovery corporation shall receive funds from*
19 *the department as provided in Section 4456.3 and shall promptly*
20 *notify the department when the recovery fund balance reaches the*
21 *amounts specified in subdivision (b) of Section 4456.3.*

22 (b) *The recovery corporation shall establish and maintain an*
23 *operations account within the recovery fund for the payment of*
24 *costs of operations and administration. The recovery corporation*
25 *shall prepare, prior to its fiscal year end, an estimated annual*
26 *operational budget projecting the costs of operations and*
27 *administration for the succeeding fiscal year, excluding the amount*
28 *paid for claims. The recovery corporation shall not expend more*
29 *than two hundred fifty thousand dollars (\$250,000) each fiscal*
30 *year from the operations account for the administration of this*
31 *chapter.*

32 (c) *The recovery corporation shall invest all funds received*
33 *from the department pursuant to Section 4456.3, and interest*
34 *earned on those funds, deposited in the recovery fund, in a federally*
35 *insured account or in federally insured certificates of deposit at*
36 *a California state or federally chartered bank or savings bank.*

37 (d) *The recovery corporation holds all money in the recovery*
38 *fund in trust for the purposes provided in this chapter and shall*
39 *disburse funds only as provided in this chapter.*

1 (e) *The recovery corporation shall separately account for*
2 *disbursements and collections. The accounting shall include a*
3 *record of each claim paid that indicates the name, address, and*
4 *phone number of each claimant receiving payment, the amount of*
5 *the payment, and the name of the participant for which a claim*
6 *was paid. Quarterly reports shall be provided to the office of the*
7 *Attorney General, Consumer Law Section.*

8 (f) *The recovery corporation may adopt reasonable written*
9 *bylaws, rules, and procedures to carry out the purposes of this*
10 *chapter.*

11 12204. (a) *A consumer may file an application with the*
12 *recovery corporation for the payment of the consumer's eligible*
13 *claim if a dealer or lessor-retailer against whom the claim is*
14 *asserted has ceased selling and leasing motor vehicles to the*
15 *general public or has become subject to a petition in bankruptcy.*

16 (b) *The application shall be verified and shall set forth the*
17 *consumer's name, address, and telephone number and the amount*
18 *and description of the eligible claim, and what action, if any, the*
19 *applicant has taken to recover the amount of the eligible claim.*
20 *Nothing in this chapter shall be construed to require a consumer*
21 *to bring a civil action to obtain recovery, file a bankruptcy claim,*
22 *or file a crime report with a law enforcement agency in order to*
23 *obtain payment of an eligible claim submitted to the recovery*
24 *corporation.*

25 (c) *The application shall be accompanied by a copy of the*
26 *agreement between the consumer and the dealer or lessor-retailer,*
27 *unless the agreement is unnecessary to the recovery corporation's*
28 *determination of the validity of the claim.*

29 (d) *If the eligible claim is based on the failure to remit license*
30 *or registration fees, the application shall be accompanied by*
31 *evidence demonstrating that the consumer paid money or other*
32 *consideration for the fees, or became obligated to pay the fees,*
33 *and that the fees had not been remitted. The eligible claim shall*
34 *be limited to the dollar amount of the license or registration fees*
35 *not remitted and a late charge or penalty.*

36 (e) *If the eligible claim is based on the failure to pay the*
37 *proceeds of a consignment sale, the application shall be*
38 *accompanied by the consignment agreement, evidence that the*
39 *consigned vehicle was sold, and by the consumer's verified*
40 *statement that the consumer did not receive the portion of the*

1 *proceeds of the sale to which the consumer was entitled. The*
2 *eligible claim is limited to the dollar amount specified in a written*
3 *consignment agreement to be paid to the consignor.*

4 *(f) If the eligible claim is based on the failure to pay the legal*
5 *owner of the consumer's trade-in vehicle, the application shall be*
6 *accompanied by a statement from the legal owner of the amount,*
7 *if any, that he or she received from the dealer or lessor-retailer.*
8 *The eligible claim is limited to the dollar amount necessary to*
9 *discharge the credit or lease balance owing on the trade-in vehicle.*

10 *(g) The recovery corporation may require reasonable additional*
11 *information designed to facilitate payment of eligible claims.*

12 *(h) The application shall be filed within one year of the date*
13 *upon which the dealer or lessor-retailer ceased selling or leasing*
14 *motor vehicles to the general public or became subject to a petition*
15 *in bankruptcy.*

16 *12205. The recovery corporation shall develop a notice fully*
17 *explaining a consumer's right to make a claim from the fund, an*
18 *application form, and an explanation of how to complete the*
19 *application. The notice, application, and explanation shall be in*
20 *English and Spanish and shall be provided to a person upon*
21 *request.*

22 *12206. (a) Within 30 days of receiving an application, the*
23 *recovery corporation shall notify the applicant, in writing, that*
24 *the application is complete or, if the application is incomplete,*
25 *what additional information is required.*

26 *(b) (1) Within 60 days of the recovery corporation's receipt of*
27 *a complete application, the recovery corporation shall either pay*
28 *the eligible claim from the fund as prescribed in this chapter or*
29 *deny the claim. A claim shall be deemed granted unless three*
30 *directors affirmatively vote to deny the claim.*

31 *(2) The recovery corporation, for good cause, may extend the*
32 *60-day period not more than an additional 90 days to investigate*
33 *the accuracy of the application or evidence submitted by a dealer*
34 *or lessor-retailer.*

35 *(c) A director shall not be involved in the decision of a claim if*
36 *the director has a financial interest in the outcome of the decision;*
37 *has a financial interest in or is employed by the participant that*
38 *is the subject of the claim; or has a familial or close personal*
39 *relationship with the claimant or an owner, officer, director, or*
40 *manager of the participant.*

1 12207. (a) Within 15 days of receiving a complete application,
2 the recovery corporation shall serve a copy of the complete
3 application and the following notice on the dealer or lessor-retailer
4 that is the subject of the claim:

5 “NOTICE”

6 “The attached application has been made to the Consumer Motor
7 Vehicle Recovery Corporation for payment of a claim allegedly
8 arising out of your conduct or omission. If you wish to contest
9 payment, you must file a written response to the application that
10 describes any evidence that you have showing that the application
11 is inaccurate or that payment from the fund is not authorized under
12 Section 12200 and following of the Vehicle Code, a copy of which
13 is provided.

14 “The allegations stated in the attached application may
15 constitute grounds on which disciplinary action may be taken to
16 suspend or revoke your license. In addition, the Department of
17 Motor Vehicles may suspend your license until you have repaid
18 in full the amount paid by the Consumer Motor Vehicle Recovery
19 Corporation on the attached application, plus interest at the rate
20 of 10 percent per annum.”

21 (b) The notice prescribed by subdivision (a), a copy of the
22 application for payment, and a copy of this chapter shall be served
23 on the dealer or lessor-retailer by personal service or certified
24 mail, return receipt requested, at the department’s mailing address
25 of record for that licensee.

26 12208. If the recovery corporation pays the claim, the amount
27 of the payment shall be the total of the amount of the eligible claim,
28 but in no event may the payment exceed thirty-five thousand dollars
29 (\$35,000) for a transaction.

30 12209. If the recovery corporation denies the claim, the
31 recovery corporation shall notify the applicant in writing of the
32 denial, the legal and factual bases for the denial, and the
33 applicant’s right to contest the denial in writing within 60 days or
34 any longer period permitted by the recovery corporation. If the
35 applicant does not contest the denial within 60 days or an
36 additional period reasonably requested by the consumer, the
37 decision shall be final. The recovery corporation shall act on the
38 applicant’s objection within 30 days. If the claim is denied in whole
39 or in part, the applicant may seek review in the superior court.
40 Review shall be limited to the written record before the recovery

1 corporation and any relevant evidence that could not have been
2 previously presented to the recovery corporation despite the
3 applicant's reasonable diligence. The superior court shall affirm
4 the decision of the recovery corporation if it is supported by
5 substantial evidence.

6 12210. If the recovery corporation pays an eligible claim, all
7 of the following apply:

8 (a) Immediately upon payment, the recovery corporation shall
9 be subrogated to all of the consumer's rights against the dealer
10 or lessor-retailer to the extent of the amount of the payment. The
11 recovery corporation shall seek to recover the claim amount from
12 the dealer's bond required by Section 11710.

13 (b) The recovery corporation may bring an action to recover
14 the amount of the payment plus interest at the rate of 10 percent
15 per annum and shall be entitled to recover costs and reasonable
16 attorney's fees.

17 (c) The department may suspend the license of the dealer or
18 lessor-retailer who is the subject of the claim. A dealer or
19 lessor-retailer's license shall not be reinstated until the dealer or
20 lessor-retailer has repaid the full amount paid on the claim, plus
21 interest at the rate of 10 percent per annum. The dealer or
22 lessor-retailer's discharge in bankruptcy shall not relieve the
23 dealer or lessor-retailer from licensure discipline imposed pursuant
24 to this subdivision except to the extent, if any, mandated by
25 bankruptcy law.

26 12211. A person who, with intent to prejudice, damage, or
27 defraud the recovery fund, files with the recovery corporation a
28 false application, statement, or other document required under
29 this chapter, is guilty of a misdemeanor and, upon conviction, shall
30 be punished by imprisonment in the county jail for not more than
31 one year.

32 SEC. 6. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within
39 the meaning of Section 6 of Article XIII B of the California
40 Constitution.

1 SECTION 1. ~~Section 11711.5 is added to the Vehicle Code,~~
2 ~~to read:~~

3 ~~11711.5. (a) If a dealer purchases or obtains a vehicle in trade~~
4 ~~in a retail sale or lease transaction, all of the following apply:~~

5 ~~(1) If the dealer agreed to make a payment on the prior credit~~
6 ~~or lease balance owing on the vehicle purchased or obtained in~~
7 ~~trade, and the agreement to make the payment is set forth in a~~
8 ~~written agreement documenting the transaction, the dealer shall~~
9 ~~tender all agreed upon payment as provided in the written~~
10 ~~agreement within 30 days of purchasing or obtaining the vehicle~~
11 ~~in trade.~~

12 ~~(2) If the dealer did not set forth an agreement regarding~~
13 ~~payment of a prior credit or lease balance owed on the vehicle~~
14 ~~purchased or obtained in trade, in a written agreement documenting~~
15 ~~the transaction, the dealer within 30 days of purchasing or obtaining~~
16 ~~the vehicle in trade shall tender to the lessor registered in~~
17 ~~accordance with Section 4453.5, or to the legal owner reflected~~
18 ~~on the ownership certificate, or to the designee of that lessor or~~
19 ~~legal owner of the vehicle purchased or obtained in trade, payment~~
20 ~~necessary to discharge the prior credit or lease balance owing on~~
21 ~~the vehicle purchased or obtained in trade.~~

22 ~~(b) A dealer does not violate this section if the dealer reasonably~~
23 ~~and in good faith gives notice of rescission of the contract~~
24 ~~promptly, but no later than 30 days after the date on which the~~
25 ~~vehicle was purchased or obtained in trade, and the contract is~~
26 ~~thereafter rescinded on any of the grounds in Section 1689 of the~~
27 ~~Civil Code.~~

28 ~~(c) For purposes of this section, a “retail sale” or “lease~~
29 ~~transaction” means a transaction between a dealer and a person~~
30 ~~who had previously bought or leased, for use and not for resale to~~
31 ~~others, the vehicle that is purchased or obtained by the dealer in~~
32 ~~trade.~~

33 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
34 ~~Section 6 of Article XIII B of the California Constitution because~~
35 ~~the only costs that may be incurred by a local agency or school~~
36 ~~district will be incurred because this act creates a new crime or~~
37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
38 ~~for a crime or infraction, within the meaning of Section 17556 of~~
39 ~~the Government Code, or changes the definition of a crime within~~

- 1 ~~the meaning of Section 6 of Article XIII B of the California~~
- 2 ~~Constitution.~~

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