

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN SENATE MARCH 16, 2010

SENATE BILL

No. 1004

Introduced by Senator Huff

(Coauthors: Senators Cox, Denham, Harman, and Wyland)

(Coauthors: Assembly Members DeVore, Fuller, Gilmore, Silva, and Smyth)

February 10, 2010

An act to amend Sections 11709, *11710.2*, 11806, 11812, and 11819 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1004, as amended, Huff. Vehicles: licensed dealers and salespersons.

(1) Existing law imposes licensing and regulatory requirements on vehicle dealers and vehicle salespersons. Existing law requires a dealer's place of business to have posted the license issued by the Department of Motor Vehicles to the dealer and to each salesperson employed by the dealer.

This bill would instead authorize the dealer to post a true and exact copy of the license issued by the Department of Motor Vehicles to the dealer and to each salesperson employed by the dealer and would make other conforming changes.

(2) *Existing law requires the applicant of a dealer's or remanufacturer's license, before the license is issued or renewed by the department, to procure and file with the department a bond, as provided. Existing law authorizes the director of the department, if a deposit is given instead of the bond, to order the deposit returned at the expiration of specified dates.*

This bill would also authorize the director to order the deposit to be returned at the expiration of 5 years from the date the licensee secured and maintained a dealer bond after posting a deposit if the director is satisfied that there are no outstanding claims against the deposit.

(2)

(3) Existing law authorizes the department to refuse to issue, to suspend, or to revoke a vehicle salesperson's license when it determines, among other things, that the applicant or licensee has acted as a vehicle salesperson or engaged in that activity for, or on behalf of, more than one licensed dealer whose business does not have identical ownership and structure. Existing law provides that the law does not preclude a vehicle salesperson from working at more than one location of one licensed dealer if the business of that dealer has identical ownership and structure.

This bill would authorize the department to refuse to issue, to suspend, or to revoke a vehicle salesperson's license when it determines, among other things, that the applicant or licensee has concurrently acted as a vehicle salesperson and engaged in that activity for, or on behalf of, more than one licensed dealer unless all of the licensed dealers, for whom that salesperson works, have ~~the same~~ *common* controlling ownership. The bill would also provide that the law does not preclude a vehicle salesperson from working for more than one dealer provided that all of the licensed dealers for whom that salesperson works have common controlling ownership, as defined.

(3)

(4) Existing law requires the salesperson's license to be displayed continuously during employment and requires that the license be returned to the salesperson once employment is terminated. A violation of these requirements is a crime.

This bill would require the dealer to display the license or a true and exact copy of the license continuously at each location where the salesperson is actually engaged in the selling of vehicles. Once the employment is terminated, this bill would require all copies used by the dealer for posting or display to be destroyed by the dealer. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

(4)

(5) 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 11709 of the Vehicle Code is amended
2 to read:

3 11709. (a) A dealer's established place of business, and other
4 sites or locations as may be operated and maintained by the dealer
5 in conjunction with his or her established place of business, shall
6 have posted, in a place conspicuous to the public in each and every
7 location, the license, or a true and exact copy of the license, issued
8 by the department to the dealer and to each salesperson employed
9 by the dealer and shall have erected or posted thereon signs or
10 devices providing information relating to the dealer's name and
11 the location and address of the dealer's established place of
12 business to enable any person doing business with the dealer to
13 identify him or her properly. A sign erected or posted pursuant to
14 this subdivision, on an established place of business, shall have
15 an area of not less than two square feet per side displayed and shall
16 contain lettering of sufficient size to enable the sign to be read
17 from a distance of at least 50 feet. This section shall not apply to
18 a dealer who is a wholesaler involved for profit only in the sale of
19 vehicles between licensed dealers.

20 (b) Notwithstanding Section 11704 and this section, a dealer
21 may display vehicles at a fair, exposition, or similar exhibit without
22 securing a branch license, if no actual sales are made at those
23 events and the display does not exceed 30 days.

24 (c) A vehicle displayed pursuant to subdivision (b) or (e) shall
25 be identified by a sign or device providing information relating to
26 the dealer's name and the location and address of the dealer's
27 established place of business.

28 (d) This section shall not be applicable to a dealer who deals
29 only in off-highway vehicles subject to identification, as defined
30 in Section 38012.

31 (e) Notwithstanding Section 11704 and this section, a vessel
32 dealer may display a trailer and may sell a trailer in conjunction
33 with the sale of a vessel at a fair, exposition, or similar exhibit

1 without securing a branch license if the display does not exceed
2 30 days.

3 *SEC. 2. Section 11710.2 of the Vehicle Code is amended to*
4 *read:*

5 11710.2. If a deposit is given instead of the bond required by
6 Section 11710 both of the following apply:

7 (a) (1) The director may order the deposit returned at the
8 expiration of ~~three~~ any of the following dates:

9 (A) Three years from the date an applicant for a dealer's license
10 who has operated a business of selling vehicles under a temporary
11 permit has ceased to do business, ~~or three.~~

12 (B) Three years from the date a licensee has ceased to be
13 licensed, if the director is satisfied that there are no outstanding
14 claims against the deposit. ~~A~~

15 (C) Five years from the date a licensee secured and maintained
16 a dealer bond, pursuant to Section 11710, after posting a deposit,
17 if the director is satisfied that there are no outstanding claims
18 against the deposit.

19 (2) A judge of a superior court may order the return of the
20 deposit prior to the expiration of ~~three years~~ the dates provided in
21 paragraph (1) upon evidence satisfactory to the judge that there
22 are no outstanding claims against the deposit.

23 (b) If either the director, department, or state is a defendant in
24 any action instituted to recover all or any part of the deposit, or
25 any action is instituted by the director, department, or state to
26 determine those entitled to any part of the deposit, the director,
27 department, or state shall be paid reasonable attorney fees and
28 costs from the deposit. Costs shall include those administrative
29 costs incurred in processing claims against the deposit.

30 ~~SEC. 2.~~

31 *SEC. 3. Section 11806 of the Vehicle Code is amended to read:*

32 11806. The department, after notice and hearing, may refuse
33 to issue, or may suspend or revoke, a vehicle salesperson's license
34 when it makes any of the following findings and determinations:

35 (a) The applicant or licensee has outstanding an unsatisfied final
36 court judgment rendered in connection with an activity licensed
37 under this division.

38 (b) The applicant or licensee has failed to pay funds or property
39 received in the course of employment to a dealer entitled thereto.

1 (c) The applicant or licensee has failed to surrender possession
2 of, or failed to return, a vehicle to a dealer lawfully entitled thereto
3 upon termination of employment.

4 (d) A cause for refusal, suspension, or revocation exists under
5 any provision of Sections 11302 to 11909, inclusive.

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

12 (f) The applicant or licensee has acted as a dealer by purchasing
13 or selling vehicles while employed by a licensed dealer without
14 reporting that fact to the dealer or without utilizing the report of
15 sale documents issued to the dealer.

16 (g) The applicant or licensee has concurrently acted as a vehicle
17 salesperson and engaged in that activity for, or on behalf of, more
18 than one licensed dealer unless all of the licensed dealers for whom
19 that salesperson works have common controlling ownership.
20 Nothing in this section restricts the number of dealerships of which
21 a person may be an owner, officer, or director, or precludes a
22 vehicle salesperson from working for more than one dealer,
23 provided that all of the licensed dealers for whom that salesperson
24 works have common controlling ownership. For purposes of this
25 subdivision, dealers have common controlling ownership when
26 more than 50 percent of the ownership interests in each dealer are
27 held by the same person or persons, either directly or through one
28 or more wholly owned subsidiary entities.

29 (h) The applicant or licensee has acted as a vehicle salesperson
30 without having first complied with Section 11812.

31 (i) The applicant or licensee was a managerial employee of a
32 dealer during the time a person under the direction or control of
33 the managerial employee committed wrongful acts which resulted
34 in the suspension or revocation of the dealer's license.

35 (j) The applicant or licensee has acted as a dealer by purchasing
36 or selling any vehicle and using the license, report of sale books,
37 purchase drafts, financial institution accounts, or other supplies of
38 a dealer to facilitate that purchase or sale, when the applicant or
39 licensee is not acting on behalf of that dealer.

1 ~~SEC. 3.~~

2 *SEC. 4.* Section 11812 of the Vehicle Code is amended to read:

3 11812. (a) A vehicle salesperson licensed under this article
4 shall, at the time of employment, deliver his or her salesperson's
5 license to his or her employing dealer for the posting of the
6 salesperson's license or a true and exact copy of the salesperson's
7 license in a place conspicuous to the public at each location where
8 he or she is actually engaged in the selling of vehicles for the
9 employing dealer.

10 (b) The license, or a true and exact copy of the license, shall be
11 displayed continuously at each location where he or she is actually
12 engaged in the selling of vehicles during the employment. If a
13 vehicle salesperson's employment is terminated, the license shall
14 be returned to the salesperson and all copies of the license used
15 by the dealer for posting or display shall be destroyed by the dealer.

16 (c) A vehicle salesperson licensed pursuant to this article shall
17 report in writing to the department every change of residence
18 address within five days of the change.

19 (d) A person currently or previously licensed under this article
20 who no longer resides at the address last filed with the department
21 may be served with process issued pursuant to Chapter 5
22 (commencing with Section 11500) of Part 1 of Division 3 of Title
23 2 of the Government Code by registered mail at that residence,
24 unless the person has notified the department in writing of another
25 address where service may be made.

26 ~~SEC. 4.~~

27 *SEC. 5.* Section 11819 of the Vehicle Code is amended to
28 read:

29 11819. It is unlawful for a person:

30 (a) To lend a salesperson's license to any other person or
31 knowingly permit its use by another.

32 (b) To display or represent a salesperson's license not issued to
33 the person as being his or her license.

34 (c) To fail or refuse to surrender to the department, upon its
35 lawful demand, a salesperson's license that has been suspended,
36 revoked, or canceled.

37 (d) To permit any unlawful use of a salesperson's license issued
38 to him or her.

39 (e) To photograph, photostat, duplicate, or in any way reproduce
40 a salesperson's license or facsimile thereof in a manner that it

1 could be mistaken for a valid license, or to display or have in
2 possession a photograph, photostat, duplicate, reproduction, or
3 facsimile unless for display by a dealer, or as authorized by this
4 code.

5 ~~SEC. 5.~~

6 *SEC. 6.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

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