

AMENDED IN SENATE AUGUST 29, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 238**

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**Introduced by Assembly Member Huber**  
*(Coauthor: Senator Fuller)*

February 3, 2011

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~~An act to amend Section 2031.240 of the Code of Civil Procedure, relating to discovery. An act to amend Sections 2983 and 2983.1 of the Civil Code, relating to motor vehicle sales, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as amended, Huber. ~~Civil procedure: discovery: objections.~~  
*Motor vehicle conditional sale contracts.*

*The Rees-Levering Motor Vehicle Sales and Finance Act regulates motor vehicle conditional sale contracts, and, among other things, requires a person selling or leasing a motor vehicle under a conditional sale contract to disclose certain information to a buyer. A violation of those disclosure requirements makes a conditional sale contract unenforceable, except as specified.*

*This bill would provide that a conditional sale contract shall not be made unenforceable for a violation of specified disclosure requirements, relating to the amount financed, regarding the amount of governmental fees, including vehicle license fees, registration fees, and California tire fees.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

The Civil Discovery Act permits a party to a civil action to obtain discovery, as specified, by inspecting documents, tangible things, and land or other property in the possession of any other party to the action. The act provides for procedures that must be followed when the responding party objects to part or all of an inspection demand.

This bill would require the responding party, when that party objects to a demand on the basis of privilege or work product, to provide sufficient factual information in its response for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

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

- 1     SECTION 1. *The Legislature finds and declares as follows:*
- 2     (a) *The Rees-Levering Motor Vehicle Sales and Finance Act*
- 3     *(Chapter 2b (commencing with Section 2981) of Title 14 of Part*
- 4     *4 of Division 3 of the Civil Code) sets forth a statutory scheme to*
- 5     *regulate the retail sale and financing of motor vehicles. The act*
- 6     *contains detailed disclosure requirements intended to protect the*
- 7     *consuming public and includes provisions that render a conditional*
- 8     *sale contract unenforceable if any of those disclosure requirements*
- 9     *are violated, regardless of the nature of the disclosure violation*
- 10    *or any consumer harm.*
- 11    (b) *It is the intent of the Legislature in enacting this act to limit*
- 12    *the contract unenforceability remedies of the Rees-Levering Motor*
- 13    *Vehicle Sales and Finance Act for certain disclosure violations*
- 14    *that involve fees paid by a vehicle purchaser to the state. It is not*
- 15    *the intent of the Legislature in enacting this act to relieve a seller*
- 16    *from making full and accurate contract disclosures, or to limit*
- 17    *other consumer remedies for any disclosure violation.*
- 18    SEC. 2. *Section 2983 of the Civil Code is amended to read:*
- 19    2983. ~~If~~(a) *Except as provided in subdivision (b), if the seller,*
- 20    *except as the result of an accidental or bona fide error in*
- 21    *computation, violates any provision of Section 2981.9, or of*
- 22    *subdivision (a), (j), or (k) of Section 2982, the conditional sale*
- 23    *contract shall not be enforceable, except by a bona fide purchaser,*
- 24    *assignee or pledgee for value or until after the violation is corrected*
- 25    *as provided in Section 2984, and, if the violation is not corrected,*
- 26    *the buyer may recover from the seller the total amount paid,*

1 pursuant to the terms of the contract, by the buyer to the seller or  
 2 his assignee. The amount recoverable for property traded in as all  
 3 or part of the downpayment shall be equal to the agreed cash value  
 4 of such property as the value appears on the conditional sale  
 5 contract or the fair market value of such property as of the time  
 6 the contract is made, whichever is greater.

7 *(b) A conditional sale contract executed or entered into on or*  
 8 *after January 1, 2012, shall not be made unenforceable solely*  
 9 *because of a violation by the seller of paragraph (2) or (5) of*  
 10 *subdivision (a) of Section 2982. In addition to any other remedies*  
 11 *that may be available, the buyer is entitled to any actual damages*  
 12 *sustained as a result of a violation of those provisions. Nothing in*  
 13 *this subdivision affects any legal rights, claims, or remedies*  
 14 *otherwise available under law.*

15 *SEC. 3. Section 2983.1 of the Civil Code is amended to read:*

16 2983.1. ~~If~~ *(a) Except as provided in subdivision (e), if the*  
 17 *seller or holder of a conditional sale contract, except as the result*  
 18 *of an accidental or bona fide error of computation, violates any*  
 19 *provision of ~~subdivision (l)~~ subdivision (l) of Section 2982, the*  
 20 *buyer may recover from ~~such~~ the person three times the amount*  
 21 *of any finance charge paid to that person.*

22 ~~If~~

23 *(b) If a holder acquires a conditional sale contract without actual*  
 24 *knowledge of the violation by the seller of Section 2981.9, or of*  
 25 *subdivision (a), (j), or (k) of Section 2982, the contract shall be*  
 26 *valid and enforceable by ~~such~~ the holder except ~~(unless the~~*  
 27 *violation is corrected as provided in Section 2984) the buyer is*  
 28 *excused from payment of the unpaid finance charge, unless the*  
 29 *violation is corrected as provided in Section 2984.*

30 ~~If~~

31 *(c) If a holder acquires a conditional sale contract with*  
 32 *knowledge of ~~such~~ a violation of Section 2981.9, or of subdivision*  
 33 *(a), (j), or (k) of Section 2982, the conditional sale contract shall*  
 34 *not be enforceable except by a bona fide purchaser, assignee, or*  
 35 *pledgee for value, or unless the violation is corrected as provided*  
 36 *in Section 2984, and, if the violation is not corrected, the buyer*  
 37 *may recover the amounts specified in Section 2983 from the person*  
 38 *to whom payment was made ~~the amounts specified in Section~~*  
 39 *2983.*

40 ~~When~~

1 (d) When a conditional sale contract is not enforceable under  
 2 Section 2983 or 2983. 1, the buyer may elect to retain the motor  
 3 vehicle and continue the contract in force, or may, with reasonable  
 4 diligence, elect to rescind the contract and return the motor vehicle.  
 5 The value of the motor vehicle—so returned shall be credited as  
 6 restitution by the buyer without any decrease—~~which~~ *that* results  
 7 from the passage of time in the cash price of the motor vehicle as  
 8 ~~such~~ *the* price appears on the conditional sale contract.

9 (e) A conditional sale contract executed or entered into on or  
 10 after January 1, 2012, shall not be made unenforceable, and the  
 11 buyer shall not be excused from payment of any finance charge,  
 12 solely because of a violation by the seller of paragraph (2) or (5)  
 13 of subdivision (a) of Section 2982. In addition to any other  
 14 remedies that may be available, the buyer is entitled to any actual  
 15 damages sustained as a result of a violation of those provisions.  
 16 Nothing in this subdivision affects any legal rights, claims, or  
 17 remedies otherwise available under law.

18 SEC. 4. This act is an urgency statute necessary for the  
 19 immediate preservation of the public peace, health, or safety within  
 20 the meaning of Article IV of the Constitution and shall go into  
 21 immediate effect. The facts constituting the necessity are:

22 In order to provide, as soon as possible, that the contract  
 23 unenforceability remedies in the Rees-Levering Motor Vehicle  
 24 Sales and Finance Act should not apply to fees paid by a vehicle  
 25 purchaser to the state, while preserving all other available  
 26 remedies, it is necessary that this act take effect immediately.

27 SECTION 1. Section 2031.240 of the Code of Civil Procedure  
 28 is amended to read:

29 2031.240. (a) If only part of an item or category of item in a  
 30 demand for inspection, copying, testing, or sampling is  
 31 objectionable, the response shall contain a statement of compliance,  
 32 or a representation of inability to comply with respect to the  
 33 remainder of that item or category.

34 (b) If the responding party objects to the demand for inspection,  
 35 copying, testing, or sampling of an item or category of item, the  
 36 response shall do both of the following:

37 (1) Identify with particularity any document, tangible thing,  
 38 land, or electronically stored information falling within any  
 39 category of item in the demand to which an objection is being  
 40 made.

1     ~~(2) Set forth clearly the extent of, and the specific ground for,~~  
2 ~~the objection. If an objection is based on a claim of privilege, the~~  
3 ~~particular privilege invoked shall be stated. If an objection is based~~  
4 ~~on a claim that the information sought is protected work product~~  
5 ~~under Chapter 4 (commencing with Section 2018.010), that claim~~  
6 ~~shall be expressly asserted.~~

7     ~~(e) If an objection is based on a claim of privilege or a claim~~  
8 ~~that the information sought is protected work product, the response~~  
9 ~~shall provide sufficient factual information for other parties to~~  
10 ~~evaluate the merits of that claim, including, if necessary, a privilege~~  
11 ~~log.~~

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