

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE AUGUST 29, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 238

Introduced by Assembly Member Huber
(Coauthor: Senator Fuller)

February 3, 2011

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. 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 *solely* 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.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~yes~~-no.
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 or
10 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. (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,
27 pursuant to the terms of the contract, by the buyer to the seller or
28 his assignee. The amount recoverable for property traded in as all
29 or part of the downpayment shall be equal to the agreed cash value
30 of such property as the value appears on the conditional sale
31 contract or the fair market value of such property as of the time
32 the contract is made, whichever is greater.
33 (b) A conditional sale contract executed or entered into on or
34 after January 1, 2012, shall not be made unenforceable solely
35 because of a violation by the seller of paragraph (2) or (5) of

1 subdivision (a) of Section 2982. In addition to any other remedies
2 that may be available, the buyer is entitled to any actual damages
3 sustained as a result of a violation of those provisions. Nothing in
4 this subdivision affects any legal rights, claims, or remedies
5 otherwise available under law.

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

7 2983.1. (a) ~~Except as provided in subdivision (e), if~~ *If* the
8 seller or holder of a conditional sale contract, except as the result
9 of an accidental or bona fide error of computation, violates any
10 provision of subdivision (l) of Section 2982, the buyer may recover
11 from the person three times the amount of any finance charge paid
12 to that person.

13 (b) ~~If~~ *Except as provided in subdivision (e), if* a holder acquires
14 a conditional sale contract without actual knowledge of the
15 violation by the seller of Section 2981.9, or of subdivision (a), (j),
16 or (k) of Section 2982, the contract shall be valid and enforceable
17 by the holder except the buyer is excused from payment of the
18 unpaid finance charge, unless the violation is corrected as provided
19 in Section 2984.

20 (c) ~~If~~ *Except as provided in subdivision (e), if* a holder acquires
21 a conditional sale contract with knowledge of a violation of Section
22 2981.9, or of subdivision (a), (j), or (k) of Section 2982, the
23 conditional sale contract shall not be enforceable except by a bona
24 fide purchaser, assignee, or pledgee for value, or unless the
25 violation is corrected as provided in Section 2984, and, if the
26 violation is not corrected, the buyer may recover the amounts
27 specified in Section 2983 from the person to whom payment was
28 made.

29 (d) When a conditional sale contract is not enforceable under
30 Section 2983 or ~~2983.1~~ *this section*, the buyer may elect to retain
31 the motor vehicle and continue the contract in force, or may, with
32 reasonable diligence, elect to rescind the contract and return the
33 motor vehicle. The value of the motor vehicle returned shall be
34 credited as restitution by the buyer without any decrease that results
35 from the passage of time in the cash price of the motor vehicle as
36 the price appears on the conditional sale contract.

37 (e) A conditional sale contract executed or entered into on or
38 after January 1, 2012, shall not be made unenforceable, and the
39 buyer shall not be excused from payment of any finance charge,
40 solely because of a violation by the seller of paragraph (2) or (5)

1 of subdivision (a) of Section 2982. In addition to any other
2 remedies that may be available, the buyer is entitled to any actual
3 damages sustained as a result of a violation of those provisions.
4 Nothing in this subdivision affects any legal rights, claims, or
5 remedies otherwise available under law.

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

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