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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 287

**Introduced by Assembly Members Gordon, Eggman, and
Mark Stone
(Principal coauthor: Assembly Member Wilk)
(Coauthors: Assembly Members Dababneh, Jones, and Lackey)**

February 11, 2015

An act to amend Sections 3065 and 11713.18 of, and to add Article 1.1 (commencing with Section 11750) to Chapter 4 of Division 5 of, the Vehicle Code, relating to vehicle safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 287, as amended, Gordon. Vehicle safety: recalls.

Existing law generally regulates the transfer and registration of motor vehicles. Existing federal law requires a motor vehicle manufacturer to notify the owner or purchaser of a motor vehicle when the manufacturer determines that the vehicle contains a safety-related defect or when the manufacturer is ordered by the federal Secretary of Transportation to notify vehicle owners and purchasers that a vehicle has a safety-related defect. Existing federal law also prohibits a motor vehicle dealer from selling a vehicle if it has been notified of a safety-related defect by the

manufacturer, except as specified. A violation of the Vehicle Code is a crime.

This bill would enact the Consumer Automotive Recall Safety Act, which would become operative on July 1, 2017. The act would prohibit a dealer or rental car company, as defined, from loaning, renting, or offering for loan or rent a vehicle subject to a manufacturer's recall after receiving a notice of the recall, as specified, until the vehicle has been repaired, except as specified. The act would require a dealer to obtain a recall database report, as defined, ~~within 30 days of displaying or offering for sale~~ *before displaying or offering for sale, and every 30 days thereafter*, a used vehicle advertised as "certified," or any similar descriptive term, that implies the vehicle has been certified to meet the terms of a used vehicle certification program. If a recall database report indicates that the used vehicle is subject to a manufacturer's recall, the act would prohibit a dealer from advertising or selling the vehicle as "certified" or any similar descriptive term until the recall repair has been made. The act would also require the Department of Motor Vehicles to obtain a recall database report before mailing a notice of registration renewal to the registered owner of a vehicle and, if the recall database report indicates the vehicle is subject to a manufacturer's recall, to include a specified recall disclosure statement with the notice of registration renewal. This requirement would not take effect until the Director of Motor Vehicles executes a declaration, as specified, certifying that the department has appropriate access to the necessary data within a recall database and available funding to include the recall disclosure statement. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.

Existing law requires a vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing.

This bill would specify that the warranty obligations include all costs associated with the disposal of hazardous materials that are associated with a recall. The bill would provide, for purposes of the above-described warranty obligations, that a warranty includes a recall conducted pursuant to federal motor vehicle safety laws. The bill would state that this provision is declaratory of existing law.

Existing law makes it a violation of the Vehicle Code for the holder of a dealer’s license to advertise for sale or sell a used vehicle as “certified” if, among other things, the dealer knows the odometer on the vehicle does not indicate actual mileage, the dealer knows the vehicle has sustained frame damage, or the dealer fails to provide the buyer with a completed inspection report indicating all the components inspected prior to sale.

This bill would additionally make it a violation of the Vehicle Code for the holder of a dealer’s license to advertise for sale or sell a used vehicle as “certified” if the vehicle is subject to an unremedied manufacturer’s recall described in a recall database report.

The bill would state findings and declarations of the Legislature relative to vehicle recalls.

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 all of the
- 2 following:
- 3 (1) Over the past one-half decade, automakers and the National
- 4 Highway Traffic Safety Administration have issued more recalls
- 5 on new and used motor vehicles than ever before. The year 2014
- 6 set the record for the most recalls on vehicles in United States
- 7 history with over 63.8 million vehicles recalled. The rate of vehicle
- 8 recalls has exponentially grown over this past one-half decade as
- 9 51 million recalls were issued in 2015, 22 million recalls were
- 10 issued in 2013, and 16.2 million were issued in 2012. The increase
- 11 of recalls in 2014 is a 190 percent increase from 2013 and a 293.8
- 12 percent increase from 2012.
- 13 (2) While federal motor vehicle safety standards are more
- 14 demanding now than at any other point in time and new vehicles
- 15 sold today are the safest in history, the exponential growth of
- 16 recalls issued on motor vehicles has caused confusion and apathy
- 17 for far too many Californians. According to the National Highway

1 Traffic Safety Administration and others, about one-third of all
2 recalled vehicles are never repaired by the vehicle's owner.

3 (3) Federal regulations now require most vehicle manufacturers
4 to provide motor vehicle safety recall information applicable to
5 the vehicles they manufacture on the Internet and to the public.

6 (b) Accordingly, it is the intent of the Legislature in enacting
7 this act to increase consumer awareness of unrepaired recalls on
8 their cars, to ensure that consumers have access to loaner and rental
9 vehicles free of any unrepaired recalls, and to safeguard the
10 advertising of "certified" used cars.

11 (c) The Legislature further finds and declares all of the
12 following:

13 (1) The distribution, sale, and service of new motor vehicles in
14 the State of California vitally affect the general economy of this
15 state and the public welfare.

16 (2) The new motor vehicle franchise system, which operates
17 within a strictly defined and highly regulated statutory scheme,
18 assures the consuming public of a well-organized distribution
19 system for the availability and sale of new motor vehicles
20 throughout the state, provides a network of quality warranty, recall,
21 and repair facilities to maintain those vehicles, and creates a
22 cost-effective method for the state to police those systems through
23 the licensing and regulation of private sector franchisors and
24 franchisees.

25 (3) California franchise laws require manufacturers to provide
26 reasonable reimbursement to dealers for warranty and recall work,
27 but fail to establish guidelines for compensating franchisee disposal
28 costs associated with hazardous waste generated by repairs on
29 recalled vehicles.

30 (d) Accordingly, it is the intent of the Legislature in enacting
31 this act to ensure that new motor vehicle dealer franchisees are
32 treated fairly by their franchisors and that new motor vehicle dealer
33 franchisees are reasonably compensated for repairs on recalled
34 vehicles.

35 SEC. 2. Section 3065 of the Vehicle Code is amended to read:

36 3065. (a) Every franchisor shall properly fulfill every warranty
37 agreement made by it and adequately and fairly compensate each
38 of its franchisees for labor and parts used to fulfill that warranty
39 when the franchisee has fulfilled warranty obligations of
40 diagnostics, repair, and servicing and shall file a copy of its

1 warranty reimbursement schedule or formula with the board. The
2 warranty reimbursement schedule or formula shall be reasonable
3 with respect to the time and compensation allowed to the franchisee
4 for the warranty diagnostics, repair, servicing, and all other
5 conditions of the obligation, including all costs associated with
6 the disposal of hazardous materials that are associated with a recall.
7 The reasonableness of the warranty reimbursement schedule or
8 formula shall be determined by the board if a franchisee files a
9 protest with the board. A franchisor shall not replace, modify, or
10 supplement the warranty reimbursement schedule to impose a
11 fixed percentage or other reduction in the time and compensation
12 allowed to the franchisee for warranty repairs not attributable to
13 a specific repair. A franchisor may reduce the allowed time and
14 compensation applicable to a specific warranty repair only upon
15 15 days' prior written notice to the franchisee. Any protest
16 challenging a reduction in time and compensation applicable to
17 specific parts or labor operations shall be filed within six months
18 following the franchisee's receipt of notice of the reduction, and
19 the franchisor shall have the burden of establishing the
20 reasonableness of the reduction and adequacy and fairness of the
21 resulting compensation.

22 (b) In determining the adequacy and fairness of the
23 compensation, the franchisee's effective labor rate charged to its
24 various retail customers may be considered together with other
25 relevant criteria. If in a protest permitted by this section filed by
26 any franchisee the board determines that the warranty
27 reimbursement schedule or formula fails to provide adequate and
28 fair compensation or fails to conform with the other requirements
29 of this section, within 30 days after receipt of the board's order,
30 the franchisor shall correct the failure by amending or replacing
31 the warranty reimbursement schedule or formula and implementing
32 the correction as to all franchisees of the franchisor that are located
33 in this state.

34 (c) If any franchisor disallows a franchisee's claim for a
35 defective part, alleging that the part, in fact, is not defective, the
36 franchisor shall return the part alleged not to be defective to the
37 franchisee at the expense of the franchisor, or the franchisee shall
38 be reimbursed for the franchisee's cost of the part, at the
39 franchisor's option.

1 (d) (1) All claims made by franchisees pursuant to this section
2 shall be either approved or disapproved within 30 days after their
3 receipt by the franchisor. Any claim not specifically disapproved
4 in writing within 30 days from receipt by the franchisor shall be
5 deemed approved on the 30th day. All claims made by franchisees
6 under this section and Section 3064 for labor and parts shall be
7 paid within 30 days after approval.

8 (2) A franchisor shall not disapprove a claim unless the claim
9 is false or fraudulent, repairs were not properly made, repairs were
10 inappropriate to correct a nonconformity with the written warranty
11 due to an improper act or omission of the franchisee, or for material
12 noncompliance with reasonable and nondiscriminatory
13 documentation and administrative claims submission requirements.

14 (3) When any claim is disapproved, the franchisee who submits
15 it shall be notified in writing of its disapproval within the required
16 period, and each notice shall state the specific grounds upon which
17 the disapproval is based. The franchisor shall provide for a
18 reasonable appeal process allowing the franchisee at least 30 days
19 after receipt of the written disapproval notice to provide additional
20 supporting documentation or information rebutting the disapproval.
21 If disapproval is based upon noncompliance with documentation
22 or administrative claims submission requirements, the franchisor
23 shall allow the franchisee at least 30 days from the date of receipt
24 of the notice to cure any material noncompliance. If the disapproval
25 is rebutted, and material noncompliance is cured before the
26 applicable deadline, the franchisor shall approve the claim.

27 (4) If the franchisee provides additional supporting
28 documentation or information purporting to rebut the disapproval,
29 attempts to cure noncompliance relating to the claim, or otherwise
30 appeals denial of the claim and the franchisor continues to deny
31 the claim, the franchisor shall provide the franchisee with a written
32 notification of the final denial within 30 days of completion of the
33 appeal process, which shall conspicuously state “Final Denial” on
34 the first page.

35 (5) Failure to approve or pay within the above specified time
36 limits, in individual instances for reasons beyond the reasonable
37 control of the franchisor, shall not constitute a violation of this
38 article.

39 (6) Within six months after either receipt of the written notice
40 described in paragraph (3) or (4), whichever is later, a franchisee

1 may file a protest with the board for determination of whether the
2 franchisor complied with the requirements of this subdivision. In
3 any protest pursuant to this subdivision, the franchisor shall have
4 the burden of proof.

5 (e) (1) Audits of franchisee warranty records may be conducted
6 by the franchisor on a reasonable basis for a period of nine months
7 after a claim is paid or credit issued. A franchisor shall not select
8 a franchisee for an audit, or perform an audit, in a punitive,
9 retaliatory, or unfairly discriminatory manner. A franchisor may
10 conduct no more than one random audit of a franchisee in a
11 nine-month period. The franchisor's notification to the franchisee
12 of any additional audit within a nine-month period shall be
13 accompanied by written disclosure of the basis for that additional
14 audit.

15 (2) Previously approved claims shall not be disapproved or
16 charged back to the franchisee unless the claim is false or
17 fraudulent, repairs were not properly made, repairs were
18 inappropriate to correct a nonconformity with the written warranty
19 due to an improper act or omission of the franchisee, or for material
20 noncompliance with reasonable and nondiscriminatory
21 documentation and administrative claims submission requirements.
22 A franchisor shall not disapprove or chargeback a claim based
23 upon an extrapolation from a sample of claims, unless the sample
24 of claims is selected randomly and the extrapolation is performed
25 in a reasonable and statistically valid manner.

26 (3) If the franchisor disapproves of a previously approved claim
27 following an audit, the franchisor shall provide to the franchisee,
28 within 30 days after the audit, a written disapproval notice stating
29 the specific grounds upon which the claim is disapproved. The
30 franchisor shall provide a reasonable appeal process allowing the
31 franchisee a reasonable period of not less than 30 days after receipt
32 of the written disapproval notice to respond to any disapproval
33 with additional supporting documentation or information rebutting
34 the disapproval and to cure noncompliance, with the period to be
35 commensurate with the volume of claims under consideration. If
36 the franchisee rebuts any disapproval and cures any material
37 noncompliance relating to a claim before the applicable deadline,
38 the franchisor shall not chargeback the franchisee for that claim.

39 (4) If the franchisee provides additional supporting
40 documentation or information purporting to rebut the disapproval,

1 attempts to cure noncompliance relating to the claim, or otherwise
2 appeals denial of the claim and the franchisor continues to deny
3 the claim, the franchisor shall provide the franchisee with a written
4 notification of the final denial within 30 days of completion of the
5 appeal process, which shall conspicuously state “Final Denial” on
6 the first page.

7 (5) The franchisor shall not chargeback the franchisee until 45
8 days after receipt of the written notice described in paragraph (3)
9 or paragraph (4), whichever is later. Any chargeback to a franchisee
10 for warranty parts or service compensation shall be made within
11 90 days of receipt of that written notice. If the franchisee files a
12 protest pursuant to this subdivision prior to the franchisor’s
13 chargeback for denied claims, the franchisor shall not offset or
14 otherwise undertake to collect the chargeback until the board issues
15 a final order on the protest. If the board sustains the chargeback
16 or the protest is dismissed, the franchisor shall have 90 days
17 following issuance of the final order or the dismissal to make the
18 chargeback, unless otherwise provided in a settlement agreement.

19 (6) Within six months after either receipt of the written
20 disapproval notice or completion of the franchisor’s appeal process,
21 whichever is later, a franchisee may file a protest with the board
22 for determination of whether the franchisor complied with this
23 subdivision. In any protest pursuant to this subdivision, the
24 franchisor shall have the burden of proof.

25 (f) If a false claim was submitted by a franchisee with the intent
26 to defraud the franchisor, a longer period for audit and any resulting
27 chargeback may be permitted if the franchisor obtains an order
28 from the board.

29 (g) For purposes of this section, “warranty” includes a recall
30 conducted pursuant to Sections 30118 to 30120, inclusive, of Title
31 49 of the United States Code. This subdivision is declaratory and
32 not amendatory of existing law.

33 SEC. 3. Section 11713.18 of the Vehicle Code is amended to
34 read:

35 11713.18. (a) It is a violation of this code for the holder of
36 any dealer’s license issued under this article to advertise for sale
37 or sell a used vehicle as “certified” or use any similar descriptive
38 term in the advertisement or the sale of a used vehicle that implies
39 the vehicle has been certified to meet the terms of a used vehicle
40 certification program if any of the following apply:

1 (1) The dealer knows or should have known that the odometer
2 on the vehicle does not indicate actual mileage, has been rolled
3 back or otherwise altered to show fewer miles, or replaced with
4 an odometer showing fewer miles than actually driven.

5 (2) The dealer knows or should have known that the vehicle
6 was reacquired by the vehicle’s manufacturer or a dealer pursuant
7 to state or federal warranty laws.

8 (3) The title to the vehicle has been inscribed with the notation
9 “Lemon Law Buyback,” “manufacturer repurchase,” “salvage,”
10 “junk,” “nonrepairable,” “flood,” or similar title designation
11 required by this state or another state.

12 (4) The vehicle has sustained damage in an impact, fire, or flood,
13 that after repair prior to sale substantially impairs the use or safety
14 of the vehicle.

15 (5) The dealer knows or should have known that the vehicle has
16 sustained frame damage.

17 (6) Prior to sale, the dealer fails to provide the buyer with a
18 completed inspection report indicating all the components
19 inspected.

20 (7) The dealer disclaims any warranties of merchantability on
21 the vehicle.

22 (8) The vehicle is sold “AS IS.”

23 (9) The term “certified” or any similar descriptive term is used
24 in any manner that is untrue or misleading or that would cause any
25 advertisement to be in violation of subdivision (a) of Section 11713
26 of this code or Section 17200 or 17500 of the Business and
27 Professions Code.

28 (10) The vehicle is subject to an unremedied manufacturer’s
29 recall described in a recall database report required by Section
30 11756.

31 (b) A violation of this section is actionable under the Consumers
32 Legal Remedies Act (Title 1.5 (commencing with Section 1750)
33 of Part 4 of Division 3 of the Civil Code), the Unfair Competition
34 Law (Chapter 5 (commencing with Section 17200) of Part 2 of
35 Division 7 of the Business and Professions Code), Section 17500
36 of the Business and Professions Code, or any other applicable state
37 or federal law. The rights and remedies provided by this section
38 are cumulative and shall not be construed as restricting any right
39 or remedy that is otherwise available.

1 (c) This section does not abrogate or limit any disclosure
2 obligation imposed by any other law.

3 (d) This section does not apply to the advertisement or sale of
4 a used motorcycle or a used off-highway motor vehicle subject to
5 identification under Section 38010.

6 SEC. 4. Article 1.1 (commencing with Section 11750) is added
7 to Chapter 4 of Division 5 of the Vehicle Code, to read:

8

9 Article 1.1. Consumer Automotive Recall Safety Act

10

11 11750. This article shall be known, and may be cited, as the
12 Consumer Automotive Recall Safety Act (CARS Act).

13 11752. As used in this article, the following definitions apply:

14 (a) The term “dealer” has the same meaning as in Section 285.

15 (b) (1) A “manufacturer’s recall” is a recall conducted pursuant
16 to Sections 30118 to 30120, inclusive, of Title 49 of the United
17 States Code.

18 (2) A manufacturer’s recall does not include a service campaign
19 or emission recall when the vehicle manufacturer or the National
20 Highway Traffic Safety Administration has not issued a recall
21 notice to owners of affected vehicles, pursuant to Section 30118
22 of Title 49 of the United States Code.

23 (c) A “recall database” is a database from which an individual
24 may obtain vehicle identification number (VIN) specific
25 manufacturer’s recall information relevant to a specific vehicle.

26 (1) For a vehicle manufacturer that is not subject to the
27 regulations adopted pursuant to Section 31301 of the federal
28 Moving Ahead for Progress in the 21st Century Act (Public Law
29 112-141), a recall database is one of the following:

30 (A) The recall data on a vehicle manufacturer’s Internet Web
31 site for a specific vehicle’s line-make.

32 (B) The recall data in a vehicle manufacturer’s internal system
33 that provides information to its franchisees on vehicles subject to
34 recall.

35 (C) The recall data in subparagraph (A) or (B) that is contained
36 in a commercially available vehicle history system.

37 (2) For a vehicle manufacturer that is subject to the regulations
38 adopted pursuant to Section 31301 of the federal Moving Ahead
39 for Progress in the 21st Century Act (Public Law 112-141), a recall
40 database shall include, at a minimum, the recall information

1 required pursuant to Section 573.15 of Title 49 of the Code of
2 Federal Regulations.

3 (d) A “recall database report” is a report, specific to a vehicle
4 that is identified by its VIN, containing information obtained from
5 a recall database.

6 (e) A “rental car company” is a person or entity in the business
7 of renting passenger vehicles to the public in California.

8 (f) The term “used vehicle” has the same meaning as set forth
9 in Section 665.

10 11754. (a) No later than 48 hours after receiving a notice of a
11 manufacturer’s recall, or sooner if practicable, a dealer or rental
12 car company shall not loan, rent, or offer for loan or rent a vehicle
13 subject to that recall until the recall repair has been made.

14 (b) If a recall notification indicates that the remedy for the recall
15 is not immediately available and specifies actions to temporarily
16 repair the vehicle in a manner to eliminate the safety risk that
17 prompted the recall, the dealer or rental car company, after having
18 the repairs completed, may loan or rent the vehicle. Once the
19 remedy for the vehicle becomes available to the dealer or rental
20 car company, the dealer or rental car company shall not loan or
21 rent the vehicle until the vehicle has been repaired.

22 11756. (a) For every used vehicle advertised for sale as
23 “certified” or any similar descriptive term in the advertisement or
24 the sale of a used vehicle that implies the vehicle has been certified
25 to meet the terms of a used vehicle certification program, a dealer
26 shall obtain a recall database report ~~within 30 days of the display~~
27 ~~or offer.~~ *before the display or offer and every 30 days thereafter*
28 *until the vehicle is no longer displayed or offered for sale.*

29 (b) If a recall database report obtained by a dealer indicates that
30 a used vehicle is subject to a manufacturer’s recall, the dealer shall
31 not advertise for sale or sell that vehicle as “certified” or use any
32 similar descriptive term in the advertisement or the sale of the used
33 vehicle that implies the vehicle has been certified to meet the terms
34 of a used vehicle certification program until the recall repair has
35 been made.

36 11758. (a) Before mailing a notice of registration renewal to
37 the registered owner of a vehicle, pursuant to Section 1661, the
38 department shall obtain a recall database report for that vehicle.
39 If the recall database report indicates that the vehicle is subject to
40 a manufacturer’s recall, the department shall notify the registered

1 owner by checking the box next to the recall disclosure statement
2 specified in subdivision (b).

3 (b) The department shall include the following recall disclosure
4 statement on the notice of registration renewal for a vehicle subject
5 to a manufacturer’s recall:

6
7 ~~“This~~
8 “WARNING. This vehicle has an unrepaired manufacturer’s
9 recall. You can get this recall repaired for free. You can check for
10 any recalls and how to get the recall repaired at the National
11 Highway Traffic Safety Administration’s Internet Web site.”
12

13 (c) This section shall become operative on the date that the
14 Director of Motor Vehicles executes a declaration, to be retained
15 by the director, in which the director certifies that the department
16 has appropriate access to the necessary data within a recall database
17 and available funding to include a recall disclosure statement on
18 the notice of registration renewal for a vehicle subject to a
19 manufacturer’s recall. The director shall post the declaration on
20 the department’s Internet Web site and shall send the declaration
21 to the appropriate committees of the Legislature and to the
22 Legislative Counsel.

23 11760. This article shall not create any legal duty upon the
24 dealer, rental car company, or department related to the accuracy,
25 errors, or omissions contained in a recall database report or any
26 legal duty to provide information added to a recall database after
27 the dealer, rental car company, or department obtained the recall
28 database report pursuant to Sections 11754, 11756, and 11758.

29 11760.5. *The rights and remedies provided by this article are*
30 *cumulative and shall not be construed as restricting any right or*
31 *remedy that is otherwise available.*

32 11761. This article does not apply to the sale of a recreational
33 vehicle, a motorcycle, an off-highway motor vehicle subject to
34 identification under Section 38010, a vehicle sold by a dismantler
35 after being reported for dismantling pursuant to Section 11520, or
36 a vehicle sold by a salvage pool after obtaining a salvage pool
37 certificate pursuant to Section 11515 or a nonrepairable vehicle
38 certificate issued pursuant to Section 11515.2.

39 11762. The provisions of this article are severable. If any
40 provision of this article or its application is held invalid, that

1 invalidity shall not affect other provisions or applications that can
2 be given effect without the invalid provision or application.

3 11763. Except as otherwise provided in Section 11758, this
4 article shall become operative on July 1, 2017.

5 SEC. 5. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

O