

AMENDED IN SENATE AUGUST 30, 1995
AMENDED IN SENATE AUGUST 21, 1995
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AMENDED IN ASSEMBLY APRIL 24, 1995
AMENDED IN ASSEMBLY MARCH 27, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 192

**Introduced by Assembly Member ~~Cannella~~ Members
*Cannella and Sher***

January 25, 1995

An act to *add Section 17537.7 to the Business and Professions Code, and to amend Section 11713.1 of, and to add Section 11713.11 to, the Vehicle Code, relating to vehicles.*

LEGISLATIVE COUNSEL'S DIGEST

AB 192, as amended, Cannella. Vehicles: dealers: unlawful acts.

(1) Existing law prohibits the holder of any vehicle dealer's license from doing any one or more of various prescribed acts, *including, among other acts, advertising that the selling price of a vehicle is above, below, or at, among other things, the manufacturer's or distributor's invoice price to the dealer.* It is a misdemeanor to violate those provisions.

This bill would make it unlawful for any person to use the terms "invoice," "dealer invoice," or "wholesale price," or similar terms that refer to a dealer's cost for a motor vehicle

in an advertisement for the sale or lease of a vehicle, or advertise that the selling price of a vehicle is above, below, or at either selling prices or cost, with specified exceptions. The bill would make conforming changes in an existing provision (Sec. 11713.1, Veh. C.) governing dealer advertising, and would incorporate changes in that provision made by AB 1170 (Ch. 211, Stats 1995). Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

This bill would *also* prohibit a dealer, when advertising one or more specific auction events, from advertising that a vehicle will be auctioned to the public unless specified information pertaining to the vehicle and the auction is disclosed in the advertisement, would prohibit the advertisement of vehicles seized by public agencies or authorities unless specific additional information is disclosed in the advertisement, and would provide that it is unlawful for an auctioning dealer to fail to provide specified information on the day of the auction regarding a vehicle seized by a public agency or authority. Because a violation of these prohibitions would be misdemeanors, the bill would create new crimes and would thus 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. *Section 17537.7 is added to the Business*
 2 *and Professions Code, to read:*
 3 *17537.7. Except as to communications described in*
 4 *paragraph (2) of subdivision (n) of Section 11713.1 of the*
 5 *Vehicle Code, it is unlawful for any person to use the*
 6 *terms “invoice,” “dealer invoice,” “wholesale price,” or*
 7 *similar terms that refer to a dealer’s cost for a motor*



1 *vehicle in an advertisement for the sale or lease of a*
2 *vehicle, or advertise that the selling price of a vehicle is*
3 *above, below, or at either of the following:*

4 (a) *The manufacturer's or distributor's invoice or*
5 *selling price to a dealer.*

6 (b) *A dealer's cost.*

7 *SEC. 2. Section 11713.1 of the Vehicle Code is*
8 *amended to read:*

9 11713.1. It is a violation of this code for the holder of
10 any dealer's license issued under this article to do any of
11 the following:

12 (a) Advertise any specific vehicle for sale without
13 identifying the vehicle by either its vehicle identification
14 number or license number.

15 (b) Advertise the total price of a vehicle without
16 including all costs to the purchaser at time of sale, except
17 taxes, vehicle registration fees, certificate of compliance
18 or noncompliance fees not exceeding thirty-five dollars
19 (\$35) pursuant to any statute, finance charges, and any
20 dealer document preparation charge. The dealer
21 document preparation charge shall not exceed thirty-five
22 dollars (\$35).

23 (c) Exclude from the newspaper display
24 advertisement of a vehicle for sale that there will be
25 added to the advertised total price at the time of sale,
26 charges for sales tax, vehicle registration fees, the fee
27 charged by the state for the issuance of any certificate of
28 compliance or noncompliance pursuant to any statute,
29 finance charges, and any dealer document preparation
30 charge.

31 For purposes of this subdivision, "newspaper display
32 advertisement" means any advertisement in a
33 newspaper which is two or more newspaper columns in
34 width or one newspaper column in width and more than
35 seven inches in length.

36 (d) Represent the dealer document preparation
37 charge or certificate of compliance or noncompliance
38 fee, as a governmental fee.

39 (e) Fail to sell a vehicle to any person at the advertised
40 total price, exclusive of taxes, vehicle registration fees, the



1 fee charged by the state for the issuance of any certificate
 2 of compliance or noncompliance pursuant to any statute,
 3 finance charges, mobilehome escrow fees, the amount of
 4 any city, county, or city and county imposed fee or tax for
 5 a mobilehome, and any dealer document preparation
 6 charge, which charges shall not exceed thirty-five dollars
 7 (\$35) for the document preparation charge and
 8 thirty-five dollars (\$35) for the certificate of compliance
 9 or noncompliance pursuant to any statute, while the
 10 vehicle remains unsold, unless the advertisement states
 11 the advertised total price is good only for a specified time
 12 and the time has elapsed.

13 (f) (1) Advertise for sale ~~or sell~~, *sell, or purchase for*
 14 *resale* any new vehicle of a line-make for which the dealer
 15 does not hold a franchise.

16 ~~This~~

17 (2) *This* subdivision does not apply to any transaction
 18 involving ~~a~~ *any of the following*:

19 (A) ~~A mobilehome,~~
~~a~~

20 (B) ~~A recreational vehicle as defined in Section 18010~~
 21 ~~of the Health and Safety Code,~~
~~a~~

22 (C) ~~A commercial coach, as defined in Section 18001.8~~
 23 ~~of the Health and Safety Code,~~
~~an~~

24 (D) ~~An off-highway motor vehicle subject to~~
 25 ~~identification as defined in Section 38012,~~
~~or a commercial~~
 26 ~~vehicle.~~

27 (E) ~~A manufactured home.~~

28 (F) ~~A new vehicle that will be substantially altered or~~
 29 ~~modified by a converter prior to resale.~~

30 (G) ~~A commercial vehicle with a gross vehicle weight~~
 31 ~~rating or more than 10,000 pounds.~~

32 (H) ~~A vehicle purchased for export and exported~~
 33 ~~outside the territorial limits of the United States without~~
 34 ~~being registered with the department.~~

35 (g) Sell a park trailer, as specified in subdivision (b) of
 36 Section 18010 of the Health and Safety Code, without
 37 disclosing in writing to the purchaser that a park trailer
 38 is required to be moved by a transporter or a licensed
 39 manufacturer or dealer under a permit issued by the



1 Department of Transportation or a local authority with
2 respect to highways under their respective jurisdictions.

3 (h) Advertise free merchandise, gifts, or services
4 provided by a dealer contingent on the purchase of a
5 vehicle. The term “free” includes merchandise or
6 services offered for sale at a price less than the seller’s cost
7 of the merchandise or services.

8 (i) Advertise vehicles, and related goods or services, at
9 a specified dealer price, with the intent not to supply
10 reasonably expectable demand, unless the advertisement
11 discloses the number of vehicles in stock at the advertised
12 price. In addition, whether or not there are sufficient
13 vehicles in stock to supply a reasonably expectable
14 demand, when phrases such as “starting at,” “from,”
15 “beginning as low as,” or words of similar import are used
16 in reference to an advertised price, the advertisement
17 shall disclose the number of vehicles available at that
18 advertised price.

19 For purposes of this subdivision, in any newspaper
20 advertisement for a vehicle that is two model years old or
21 newer, the actual phrase that states the number of
22 vehicles in stock at the advertised price shall be (1)
23 printed in a type size that is at least equal to one-quarter
24 of the type size, and in the same style and color of type,
25 used for the advertised price, however, in no case shall the
26 phrase be printed in less than 8-point type size, and (2)
27 be disclosed immediately above, below, or beside the
28 advertised price without any intervening words, pictures,
29 marks, or symbols.

30 The disclosure required by this subdivision is in
31 addition to any other disclosure required by this code or
32 any regulation regarding identifying vehicles advertised
33 for sale.

34 (j) Use the term “rebate” or similar words such as
35 “cash back” in advertising the sale of a vehicle unless the
36 rebate is expressed in a specific dollar amount and is in
37 fact a rebate offered by the vehicle manufacturer or
38 distributor directly to the retail purchaser of the vehicle
39 or to the assignee of the retail purchaser.



1 (k) Require a person to pay a higher price for a vehicle
2 and related goods or services for receiving advertised
3 credit terms than the cash price the same person would
4 have to pay to purchase the same vehicle and related
5 goods or services. For the purpose of this subdivision,
6 "cash price" has the meaning as defined in subdivision
7 (e) of Section 2981 of the Civil Code.

8 (l) Advertise a guaranteed trade-in allowance unless
9 the guarantee is provided by the manufacturer or
10 distributor.

11 (m) Misrepresent the authority of a salesperson,
12 representative, or agent to negotiate the final terms of a
13 transaction.

14 (n) (1) ~~Advertise~~ Use the terms "invoice," "dealer's
15 invoice," "wholesale price," or similar terms that refer to
16 a dealer's cost for a vehicle in an advertisement for the
17 sale of a vehicle or advertise that the selling price of a
18 vehicle is above, below, or at either of the following:

19 (A) The manufacturer's or distributor's invoice price
20 to a dealer.

21 (B) A dealer's cost.

22 (2) This subdivision does not apply to either of the
23 following:

24 (A) Any communication occurring during face-to-face
25 negotiations for the purchase of a specific vehicle *if the*
26 *prospective purchaser initiates a discussion of the*
27 *vehicle's invoice price or the dealer's cost for that vehicle.*

28 (B) Any communication between a dealer and a
29 prospective commercial purchaser that is not
30 disseminated to the general public. For purposes of this
31 subparagraph, a "commercial purchaser" means a dealer,
32 lessor, lessor-retailer, manufacturer, remanufacturer,
33 distributor, financial institution, governmental entity, or
34 person who purchases 10 or more vehicles during a year.

35 (o) Violate any law prohibiting bait and switch
36 advertising, including, but not limited to, the guides
37 against bait advertising set forth in Part 238
38 (commencing with Section 238) of Title 16 of the Code of
39 Federal Regulations, as those regulations read on January
40 1, 1988.



1 (p) Make any untrue or misleading statement
2 indicating that a vehicle is equipped with all the factory
3 installed optional equipment the manufacturer offers,
4 including, but not limited to, a false statement that a
5 vehicle is “fully factory equipped.”

6 (q) Affix on any new vehicle a supplemental price
7 sticker containing a price that represents the dealer’s
8 asking price which exceeds the manufacturer’s suggested
9 retail price unless all of the following occur:

10 (1) The supplemental sticker clearly and
11 conspicuously discloses in the largest print appearing on
12 the sticker, other than the print size used for the dealer’s
13 name, that the supplemental sticker price is the dealer’s
14 asking price, or words of similar import, and that it is not
15 the manufacturer’s suggested retail price.

16 (2) The supplemental sticker clearly and
17 conspicuously discloses the manufacturer’s suggested
18 retail price.

19 (3) The supplemental sticker lists each item which is
20 not included in the manufacturer’s suggested retail price,
21 and discloses the additional price of each item. If the
22 supplemental sticker price is greater than the sum of the
23 manufacturer’s suggested retail price and the price of the
24 items added by the dealer, then the supplemental sticker
25 price shall set forth that difference and describe it as
26 “added mark-up.”

27 (r) Advertise any underselling claim, such as “we have
28 the lowest prices” or “we will beat any dealer’s price,”
29 unless the dealer has conducted a recent survey showing
30 that the dealer sells its vehicles at lower prices than any
31 other licensee in its trade area and maintains records to
32 adequately substantiate the claims. The substantiating
33 records shall be made available to the department upon
34 request.

35 (s) Advertise any incentive offered by the
36 manufacturer or distributor if the dealer is required to
37 contribute to the cost of the incentive as a condition of
38 participating in the incentive program, unless the dealer
39 discloses in a clear and conspicuous manner that dealer
40 participation may affect consumer cost.



1 For purposes of this subdivision, “incentive” means
2 anything of value offered to induce people to purchase a
3 vehicle, including, but not limited to, discounts, savings
4 claims, rebates, below-market finance rates, and free
5 merchandise or services.

6 (t) Display or offer for sale any used vehicle unless
7 there is affixed to the vehicle the Federal Trade
8 Commission’s Buyer’s Guide as required by Part 455 of
9 Title 16 of the Code of Federal Regulations.

10 (u) Fail to disclose in writing to the franchisor of a new
11 motor vehicle dealer the name of the purchaser, date of
12 sale, and the vehicle identification number of each new
13 motor vehicle sold of the line-make of that franchisor, or
14 intentionally submit to that franchisor a false name for the
15 purchaser or false date for the date of sale.

16 (v) Enter into a contract for the retail sale of a motor
17 vehicle unless the contract clearly and conspicuously
18 discloses whether the vehicle is being sold as a new
19 vehicle or a used vehicle, as defined in this code.

20 (w) Use a simulated check, as defined in subdivision
21 (a) of Section 22433 of the Business and Professions Code,
22 in an advertisement for the sale or lease of a vehicle.

23 (x) Fail to disclose, in a clear and conspicuous manner
24 in at least 10-point bold type on the face of any contract
25 for the retail sale of a new motor vehicle that this
26 transaction is, or is not, subject to a fee received by an
27 autobroker from the selling new motor vehicle dealer,
28 and the name of the autobroker, if applicable.

29 *SEC. 3.* Section 11713.11 is added to the Vehicle Code,
30 to read:

31 11713.11. (a) When advertising one or more specific
32 auction events to the public, it is unlawful for a dealer
33 licensed under this article to advertise that a vehicle will
34 be auctioned to the public unless all of the following
35 information is clearly and conspicuously disclosed in the
36 advertisement:

37 (1) The date or the day of the week of the public
38 auction, or if subdivision (b) applies to the auction, the
39 date of the public auction.

40 (2) The location of the public auction.



1 (3) Whether a fee will be charged to attend the
2 auction.

3 (4) The name and dealer number of the auctioning
4 dealer.

5 (b) If vehicles seized by a federal, state, or local public
6 agency or authority are being advertised, it is unlawful for
7 a dealer licensed under this article to advertise that a
8 vehicle will be auctioned to the public unless, in addition
9 to the information required by subdivision (a), the
10 following information is clearly and conspicuously
11 disclosed in the advertisement:

12 (1) A good faith estimate of the number of vehicles to
13 be auctioned at that date.

14 (2) A good faith estimate of the number of vehicles
15 seized by a federal, state, or local public agency or
16 authority to be auctioned at that date.

17 (c) It is unlawful for the auctioning dealer to fail, on
18 the day of auction, to identify each vehicle seized by a
19 federal, state, or local public agency or authority, either
20 in a printed catalog or orally, before bidding begins on the
21 vehicle.

22 ~~SEC. 2.—~~

23 *SEC. 4.* No reimbursement is required by this act
24 pursuant to Section 6 of Article XIII B of the California
25 Constitution because the only costs that may be incurred
26 by a local agency or school district will be incurred
27 because this act creates a new crime or infraction,
28 eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition
31 of a crime within the meaning of Section 6 of Article
32 XIII B of the California Constitution.

33 Notwithstanding Section 17580 of the Government
34 Code, unless otherwise specified, the provisions of this act
35 shall become operative on the same date that the act
36 takes effect pursuant to the California Constitution.

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