

**Assembly Bill No. 770**

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Passed the Assembly    May 18, 1995

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*Chief Clerk of the Assembly*

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Passed the Senate    July 21, 1995

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1995, at \_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*

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## CHAPTER \_\_\_\_

An act to amend Sections 1671, 9262, 11713, 11713.1, 11735, and 11736 of, and to add Sections 267 and 11700.2 to, the Vehicle Code, relating to vehicles.

## LEGISLATIVE COUNSEL'S DIGEST

AB 770, Aguiar. Vehicles: autobrokers.

(1) Existing law prohibits the holder of any motor vehicle dealer's license from advertising for sale or selling any new vehicle of a line-make for which the dealer does not hold a franchise. A violation of that provision is a misdemeanor. Existing law makes several exceptions to that general prohibition, including transactions involving a commercial vehicle.

This bill would limit the exception for transactions involving a commercial vehicle to commercial vehicles with a gross vehicle weight rating of more than 10,000 pounds. The bill would thus expand the definition of a crime and would thereby impose a state-mandated local program.

The bill would add to the list of exceptions specified above a transaction involving a manufactured home, a vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the Department of Motor Vehicles, or a new vehicle that will be substantially altered or modified by a converter, which the bill would define, prior to resale.

(3) Existing law requires the Department of Motor Vehicles to furnish an autobroker's registration certificate to a dealer who registers with the department as an autobroker.

This bill would, instead, require the department to furnish the dealer with an autobroker's endorsement to the dealer's license.

(4) 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.

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

SECTION 1. Section 267 is added to the Vehicle Code, to read:

267. A “converter” is a person, other than a vehicle manufacturer, who, prior to the retail sale of a new vehicle, does any of the following to the vehicle:

(a) Assembles, installs, or affixes a body, cab, or special equipment to the vehicle chassis.

(b) Substantially adds to, subtracts from, or modifies the vehicle, if it is a previously assembled or manufactured new vehicle.

SEC. 2. Section 1671 of the Vehicle Code is amended to read:

1671. (a) The established place of business of a dealer, remanufacturer, remanufacturer branch, manufacturer, manufacturer branch, distributor, distributor branch, automobile driving school, or traffic violator school shall have an office and a dealer, manufacturer, or remanufacturer shall also have a display or manufacturing area situated on the same property where the business peculiar to the type of license issued by the department is or may be transacted. When a room or rooms in a hotel, roominghouse, apartment house building, or a part of any single- or multiple-unit dwelling house is used as an office or offices of an established place of business, the room or rooms shall be devoted exclusively to and occupied for the office or offices of the dealer, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, automobile driving school, or traffic violator school, shall be located on the ground floor, and shall be so constructed as to provide a direct entrance into the room or rooms from the exterior of the building. A dealer who does not offer new or used vehicles for sale at



retail, a dealer who has been issued an autobroker's endorsement to his or her dealer's license and who does not also sell motor vehicles at retail, or a dealer who is a wholesaler involved for profit only in the sale of vehicles between licensed dealers, shall have an office, but a display area is not required.

(b) The established place of business of an automobile dismantler shall have an office and a dismantling area located in a zone property zoned for that purpose by the city or county.

SEC. 3. Section 9262 of the Vehicle Code is amended to read:

9262. (a) The fee for a license issued to dealers and lessor-retailers is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred fifty dollars (\$150).

(2) For the annual renewal of a license, a fee of one hundred dollars (\$100).

(3) If an alteration of an existing license is caused by a firm name change, address change, change in the corporate officer structure, or the addition of a branch location, a fee of seventy dollars (\$70).

(b) The fee for a license issued to dismantlers, manufacturers, manufacturer branches, remanufacturers, remanufacturer branches, transporters, distributors, and distributor branches is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of one hundred dollars (\$100).

(2) For the annual renewal of a license, a fee of eighty-five dollars (\$85).

(3) If an alteration of an existing license is caused by a firm name change, address change, or the addition of a branch location, a fee of fifty dollars (\$50).



(4) If an alteration of an existing license is caused by a change in the corporate officer structure, a fee of seventy dollars (\$70).

(c) The fee for a license issued to representatives is as follows:

(1) For the original license, or an ownership change which requires a new application, except as provided by Section 42231, a nonrefundable fee of fifty dollars (\$50).

(2) For the annual renewal of a license, a fee of eighty-five dollars (\$85).

(d) The fee for an autobroker's endorsement to a dealer's license is as follows:

(1) For the original endorsement, a nonrefundable fee of fifty dollars (\$50).

(2) For the annual renewal of the endorsement, a fee of twenty-five dollars (\$25).

(e) When the holder of a license for which a fee is provided in this section applies for special plates as provided in subdivision (b) of Section 11505 or subdivision (b) of Section 11714, the fee for the plates and the annual renewal of the plates is the prevailing vehicle registration fee as set forth in Section 9250 for the period for which the special plates are issued or renewed.

SEC. 4. Section 11700.2 is added to the Vehicle Code, to read:

11700.2. A dealer who obtains an autobroker's endorsement to his or her dealer's license is subject to all of the licensing, advertising, and other statutory and regulatory requirements and prohibitions applicable to a dealer, regardless of whether that dealer acts as the buyer of a vehicle, the seller of a vehicle, or provides brokering services on behalf of another or others for the purpose of arranging, negotiating, assisting, or effectuating the sale of a vehicle not owned by that dealer.

SEC. 5. Section 11713 of the Vehicle Code is amended to read:

11713. No holder of any license issued under this article shall do any of the following:

(a) Make or disseminate, or cause to be made or disseminated, before the public in this state, in any



newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading; or to so make or disseminate, or cause to be so disseminated, any such statement as part of a plan or scheme with the intent not to sell any vehicle or service so advertised at the price stated therein, or as so advertised.

(b) (1) (A) Advertise or offer for sale or exchange in any manner, any vehicle not actually for sale at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time of the advertisement or offer. However, a dealer who has been issued an autobroker's endorsement to his or her dealer's license may advertise his or her service of arranging or negotiating the purchase of a new motor vehicle from a franchised new motor vehicle dealer and may specify the line-makes and models of those new vehicles. Autobrokering service advertisements may not advertise the price or payment terms of any vehicle and shall disclose that the advertiser is an autobroker or auto buying service, and shall clearly and conspicuously state the following: "All new cars arranged for sale are subject to price and availability from the selling franchised new car dealer."

(B) As to printed advertisements, the disclosure statement required by subparagraph (A) shall be printed in not less than 10-point bold type size and shall be textually segregated from the other portions of the printed advertisement.

(2) Notwithstanding subparagraph (A), classified advertisements for autobrokering services that measure two column inches or less are exempt from the disclosure statement in subparagraph (A) pertaining to price and availability.

(3) Radio advertisements of a duration of less than 11 seconds that do not reference specific line-makes or



models of motor vehicles are exempt from the disclosure statement required in subparagraph (A).

(c) Fail, within 48 hours, in writing to withdraw any advertisement of a vehicle that has been sold or withdrawn from sale.

(d) Advertise or represent a vehicle as a new vehicle if the vehicle is a used vehicle.

(e) Engage in the business for which the licensee is licensed without having in force and effect a bond as required by this article.

(f) Engage in the business for which the dealer is licensed without at all times maintaining an established place of business as required by this code.

(g) Include, as an added cost to the selling price of a vehicle, an amount for licensing or transfer of title of the vehicle, which is not due to the state unless, prior to the sale, that amount has been paid by a dealer to the state in order to avoid penalties that would have accrued because of late payment of the fees. However, a dealer may collect from the second purchaser of a vehicle a prorated fee based upon the number of months remaining in the registration year for that vehicle, if the vehicle had been previously sold by the dealer and the sale was subsequently rescinded and all the fees that were paid, as required by this code and Chapter 2 (commencing with Section 10751) of Division 2 of the Revenue and Taxation Code, were returned to the first purchaser of the vehicle.

(h) Employ any person as a salesperson who has not been licensed pursuant to Article 2 (commencing with Section 11800), and whose license is not displayed on the premises of the dealer as required by Section 11812, or willfully fail to notify the department by mail within 10 days of the employment or termination of employment of a salesperson.

(i) Deliver, following the sale, a vehicle for operation on California highways, if the vehicle does not meet all of the equipment requirements of Division 12 (commencing with Section 24000).



(j) Use, or permit the use of, the special plates assigned to him or her for any purpose other than as permitted by Section 11715.

(k) Advertise or otherwise represent, or knowingly allow to be advertised or represented on behalf of, or at the place of business of, the licenseholder that no downpayment is required in connection with the sale of a vehicle when a downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the vehicle.

(l) Participate in the sale of a vehicle reported to the Department of Motor Vehicles under Section 5900 or 5901 without making the return and payment of any sales tax due and required by Section 6451 of the Revenue and Taxation Code.

(m) Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the purchase or sale of vehicles required to be registered under this code, or permit the use of the dealer's license, supplies, or books to operate a branch location to be used by any other person, whether or not the licensee has any financial or equitable interest or investment in the vehicles purchased or sold by, or the business of, or branch location used by, the other person.

(n) Violate any provision of Article 10 (commencing with Section 28050) of Chapter 5 of Division 12.

(o) Sell a previously unregistered vehicle without disclosing in writing to the purchaser the date on which any manufacturer's or distributor's warranty commenced.

(p) Accept a purchase deposit relative to the sale of a vehicle, unless the vehicle is present at the premises of the dealer or available to the dealer directly from the manufacturer or distributor of the vehicle at the time the dealer accepts the deposit. Purchase deposits accepted by an autobroker when brokering a retail sale shall be governed by Sections 11736 and 11737.

(q) Consign for sale to another dealer a new vehicle.



(r) Display a vehicle for sale at a location other than an established place of business authorized by the department for that dealer or display a new motor vehicle at the business premises of another dealer registered as an autobroker. This subdivision does not apply to the display of a vehicle pursuant to subdivision (b) of Section 11709 or the demonstration of the qualities of a motor vehicle by way of a test drive.

SEC. 6. Section 11713.1 of the Vehicle Code is amended to read:

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

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

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

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

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

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



(e) Fail to sell a vehicle to any person at the advertised total price, exclusive of taxes, vehicle registration fees, the fee charged by the state for the issuance of any certificate of compliance or noncompliance pursuant to any statute, finance charges, mobilehome escrow fees, the amount of any city, county, or city and county imposed fee or tax for a mobilehome, and any dealer document preparation charge, which charges shall not exceed thirty-five dollars (\$35) for the document preparation charge and thirty-five dollars (\$35) for the certificate of compliance or noncompliance pursuant to any statute, while the vehicle remains unsold, unless the advertisement states the advertised total price is good only for a specified time and the time has elapsed.

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

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

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

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

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

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



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

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

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

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

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

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



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

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

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

(n) (1) Advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer’s or distributor’s invoice price to a dealer.

(B) A dealer’s cost.

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

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle.

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

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

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



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

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

(2) The supplemental sticker clearly and conspicuously discloses the manufacturer's suggested retail price.

(3) The supplemental sticker lists each item which is not included in the manufacturer's suggested retail price, and discloses the additional price of each item. If the supplemental sticker price is greater than the sum of the manufacturer's suggested retail price and the price of the items added by the dealer, then the supplemental sticker price shall set forth that difference and describe it as "added mark-up."

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

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

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



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

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

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

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

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

SEC. 7. Section 11735 of the Vehicle Code is amended to read:

11735. (a) No dealer shall engage in brokering a retail sales transaction without first paying the fee required by subdivision (d) of Section 9262 and obtaining from the department an autobroker's endorsement to the dealer's license. An autobroker's endorsement shall be automatically cancelled upon the cancellation, suspension, revocation, surrender, or expiration of a dealer's license.

(b) Upon the issuance of an autobroker's endorsement to a dealer's license, the department shall furnish the dealer with an autobroker's log. The autobroker's log shall remain the property of the department and may be taken up at any time for inspection.



(c) The autobroker's log shall contain spaces sufficient for the dealer to record the following information with respect to each retail sale brokered by that dealer:

(1) Vehicle identification number of brokered vehicle.

(2) Date of brokering agreement.

(3) Selling dealer's name, address, and dealer number.

(4) Name of consumer.

(5) Brokering dealer's name and dealer number.

(d) Nothing in this code prohibits a dealer who has been issued an autobroker's endorsement to his or her dealer's license from delivering, with the selling dealer's written approval, motor vehicles that have been sold pursuant to a duly executed motor vehicle purchase agreement or obtaining a consumer's signature on a selling dealer's motor vehicle purchase agreement that has already been executed by the selling dealer.

(e) When brokering a retail sale as an agent of the consumer, selling dealer, or both, the brokering dealer owes a fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with its principal or principals.

(f) For purposes of this section and Sections 11736, 11737, and 11738, "consumer" means any person who retains a dealer to perform brokering services in connection with a retail sale.

SEC. 8. Section 11736 of the Vehicle Code is amended to read:

11736. It is unlawful for any dealer licensed under this article to do any of the following when brokering a retail sale:

(a) Fail to execute a written brokering agreement, as described in Section 11738, and provide a completed copy to both of the following:

(1) Any consumer entering into the brokering agreement. The completed copy shall be provided prior to the consumer's signing of an agreement for the purchase of the vehicle described in the brokering agreement or, prior to accepting one hundred dollars (\$100) or more from that consumer, whichever occurs first.



(2) The selling dealer. The completed copy shall be provided prior to the selling dealer's entering into a purchase agreement with the consumer.

(b) Accept a purchase deposit from any consumer that exceeds 2.5 percent of the selling price of the vehicle described in the brokering agreement.

(c) Fail to refund any purchase money, including purchase deposits, upon demand by a consumer at any time prior to the consumer's signing of a vehicle purchase agreement with a selling dealer and taking delivery of the vehicle described in the brokering agreement.

(d) Fail to cancel a brokering agreement and refund, upon demand, any money paid by a consumer, including any brokerage fee, under any of the following circumstances:

(1) When the final price of the brokered vehicle exceeds the purchase price listed in the brokering agreement.

(2) When the vehicle delivered is not as described in the brokering agreement.

(3) When the brokering agreement expires prior to the customer being presented with a purchase agreement from a selling dealer arranged through the brokering dealer that contains a purchase price at or below the price listed in the brokering agreement.

(e) Act as a seller and provide brokering services, both in the same transaction.

(f) Fail to disclose to the consumer and selling dealer, as soon as practicable, whether the autobroker receives or does not receive a fee or other compensation, regardless of the form or time of payment, from the selling dealer and the dollar amount of any fee that the consumer is obligated to pay to the autobroker. This arrangement shall be confirmed in a brokering agreement.

(g) Fail to record in the dealer's autobroker log, for each brokered sale, all of the information specified in subdivision (c) of Section 11735.

(h) Fail to maintain for a minimum of three years a copy of the executed brokering agreement and other



notices and documents related to each brokered transaction.

(i) Fail to advise the consumer, prior to accepting any money, that a full refund will be given if the motor vehicle ordered through the autobroker is not obtained for the consumer or if the service orally contracted for is not provided.

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

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



Approved \_\_\_\_\_, 1995

\_\_\_\_\_  
*Governor*

