

AMENDED IN ASSEMBLY JULY 3, 2000  
AMENDED IN ASSEMBLY JUNE 12, 2000  
AMENDED IN SENATE JANUARY 11, 2000  
AMENDED IN SENATE JANUARY 3, 2000

**SENATE BILL**

**No. 663**

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**Introduced by Senator Figueroa**

February 24, 1999

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An act to add Sections 4456.3, 11700.3, 11711.3, 11711.5, and 11740 to, and to add Chapter 11 (commencing with Section 12200) to Division 5 of, the Vehicle Code, relating to vehicles, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 663, as amended, Figueroa. Vehicles: dealers: prohibited activities: ~~Money~~ Motor Vehicle Recovery Fund.

(1) Under existing law, when selling a vehicle, a dealer and lessor-retailer licensed under the Vehicle Code is required to use a numbered report-of-sale form issued by the Department of Motor Vehicles.

This bill would require the department to charge a fee of \$1 for each vehicle sold *or leased at retail* by a dealer or lessor-retailer and reported on a report-of-sale form or when the report of the sale is transmitted electronically or otherwise. The bill would require the department to collect the fee only as necessary to maintain the Motor Vehicle Recovery Fund in an amount of \$5,000,000.

The bill would require all the fees to be deposited in the Motor Vehicle Recovery Fund, which would be established by the bill as a continuously appropriated fund.

The bill would allow a consumer, as defined, to file an eligible claim, as defined, with the department claiming an economic loss that accrued after July 1, 2001, as a result of the failure of a dealer or lessor-retailer to remit license or registration fees received from a consumer to the department, pay to the lessor or the legal owner of a motor vehicle transferred by a consumer to the dealer the amount necessary to discharge the prior credit or lease balance owed to the lessor or legal owner, or pay the amount specified in a consignment agreement to a consumer after the sale of a consigned motor vehicle.

The bill would prescribe a detailed application, notification, payment, and appeal procedure for processing eligible claims with claims being paid from the fund.

The bill would make it a misdemeanor, thereby imposing a state-mandated local program, for any person with the intent to prejudice, damage, or defraud the fund, to file with the department a false application, statement, or other document.

The bill would authorize the department to adopt regulations for purposes of the bill and would require the department to adopt regulations to establish the appeal procedure by July 1, 2001. The bill would state that any interim emergency regulations adopted to implement the bill would be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, and safety and of the general welfare.

(2) Existing law regulates various activities of motor vehicle dealers, and a violation of those provisions is a misdemeanor under other provisions of existing law.

This bill would prohibit any person from aiding or abetting a person in the performance of any act in violation of vehicle dealer, remanufacturer, manufacturer, transporter, distributor, or related branch licensing laws.

The bill would provide that any person acting as a dealer, who is not duly licensed as a dealer pursuant to law, may not enforce any security interest or bring or maintain any action in law or equity to recover any money or property or obtain



other relief from the purchaser or lessee of a vehicle in connection with a transaction in which the person is required to be licensed as a dealer.

Because a violation of these prohibitions would be a misdemeanor under other provisions of existing law, the bill would impose a state-mandated local program by creating new crimes.

*This bill would provide that remedies and penalties provided in the code for a violation of the vehicle occupational licensing laws are cumulative to the remedies and penalties provided by other laws.*

(3) 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: yes. 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  
2 that consumers have suffered economic losses as the  
3 result of the conduct of some vehicle dealers who have  
4 failed to remit moneys paid by consumers for license and  
5 registration fees, failed to pay the proceeds of  
6 consignment sales to consumer consignors, and failed to  
7 discharge the obligations secured by liens on motor  
8 vehicles that are purchased by dealers or that are  
9 traded-in vehicles in connection with the purchase of  
10 motor vehicles from the dealers. The consumers who  
11 have been harmed often do not have adequate resources  
12 to pursue their claims against those dealers, and some of  
13 those dealers are insolvent and cannot satisfy legitimate  
14 claims. The resulting erosion of public confidence in  
15 motor vehicle sellers has deleterious economic  
16 consequences for reputable vehicle dealers and  
17 lessor-retailers.



1 (b) It is the intent and purpose of the act adding this  
2 section to establish a recovery fund with adequate  
3 resources based on reasonable assessments for each  
4 report-of-sale to compensate and safeguard members of  
5 the public who have suffered monetary loss as the result  
6 of any of the acts described in subdivision (a) and who are  
7 unable to have those claims satisfied because of  
8 dealership closure or insolvency.

9 (c) It is the further intent and purpose of the act  
10 adding this section to accomplish the following:

11 (1) Prohibit unfair competition and promote  
12 compliance with vehicle dealer licensing standards and  
13 requirements by barring any recovery by unlicensed  
14 dealers in connection with transactions requiring  
15 licensure.

16 (2) Clarify the responsibilities of vehicle dealers in  
17 connection with the satisfaction of liens on motor vehicles  
18 purchased or accepted as a trade-in vehicle.

19 SEC. 2. Section 4456.3 is added to the Vehicle Code,  
20 to read:

21 4456.3. (a) The department shall charge a fee for  
22 each vehicle sold *or leased at retail* by a dealer or  
23 lessor-retailer and reported on a report-of-sale form  
24 issued by the department to a dealer or lessor-retailer, or  
25 for every vehicle sold by a dealer or lessor-retailer where  
26 the report of the sale is transmitted electronically or  
27 otherwise. The fees shall be deposited in the Motor  
28 Vehicle Recovery Fund established pursuant to Chapter  
29 11 (commencing with Section 12200) of Division 5.

30 (b) The fee required under subdivision (a) shall be  
31 one dollar (\$1), and shall be collected until the amount  
32 in the fund is five million dollars (\$5,000,000). Thereafter,  
33 the department shall collect the fee only as necessary to  
34 maintain the fund at that amount.

35 (c) Payment of the fee required under subdivision (a)  
36 is the obligation of the dealer or lessor-retailer. A dealer  
37 or lessor-retailer may not separately charge a purchaser  
38 or lessee for the fee.

39 SEC. 3. Section 11700.3 is added to the Vehicle Code,  
40 to read:



1 11700.3. No person may aid and abet a person in the  
2 performance of any act in violation of this chapter.

3 SEC. 4. Section 11711.3 is added to the Vehicle Code,  
4 to read:

5 11711.3. A person acting as a dealer, who is not ~~duly~~  
6 licensed as a dealer ~~pursuant to~~ *as required by* this article,  
7 may not enforce any security interest or bring or maintain  
8 any action in law or equity to recover any money or  
9 property or obtain other relief from the purchaser or  
10 lessee of a vehicle in connection with a transaction in  
11 which the person is required to be licensed as a dealer.

12 SEC. 5. Section 11711.5 is added to the Vehicle Code,  
13 to read:

14 11711.5. (a) If a dealer purchases or takes a vehicle in  
15 trade, the dealer shall tender, within 30 days of  
16 purchasing or taking the vehicle in trade, to the lessor  
17 registered in accordance with Section 4453.5, or to the  
18 legal owner reflected on the ownership certificate, as the  
19 case may be, *or to the designee of that lessor or legal*  
20 *owner*, of the purchased or trade-in vehicle, funds  
21 necessary to discharge the prior credit or lease balance  
22 ~~owning~~ *owing* on the purchased or trade-in vehicle.

23 (b) A dealer is not in violation of this section if the  
24 dealer reasonably and in good faith gives notice of  
25 ~~recession~~ *rescission* of the contract promptly, but no later  
26 than 30 days of the date on which the vehicle was  
27 purchased or taken in trade, and the contract is thereafter  
28 rescinded on any of the grounds set forth in Section 1689  
29 of the Civil Code.

30 SEC. 6. Section 11740 is added to the Vehicle Code, to  
31 read:

32 11740. The remedies and penalties provided in this  
33 code for a violation of this article are cumulative to the  
34 remedies and penalties provided by other laws.

35 SEC. 7. Chapter 11 (commencing with Section 12200)  
36 is added to Division 5 of the Vehicle Code, to read:

37

38 CHAPTER 11. MOTOR VEHICLE RECOVERY FUND

39

40 12200. The following definitions apply to this chapter:



1 (a) “Application” is an application to the department  
2 for the payment of an eligible claim from the fund.

3 (b) “Consumer” is a person who engaged in either of  
4 the following:

5 (1) Purchased or leased, or ~~become~~ *became* obligated  
6 to purchase or lease, a motor vehicle that is used, or is to  
7 be used, primarily for personal, family, or household  
8 purposes from a dealer or ~~lessor-retail~~ *lessor-retailer*  
9 licensed under this code.

10 (2) Consigned for sale a motor vehicle that is used  
11 primarily for personal, family, or household purposes to  
12 a dealer licensed under this division.

13 (c) “Eligible claim” is an unsatisfied claim for  
14 economic loss that accrues after July 1, 2001, as a result of  
15 the failure of a dealer licensed under this division, or if  
16 applicable, a lessor-retailer licensed under this division, to  
17 do any of the following:

18 (1) Remit license or registration fees received from a  
19 consumer to the department.

20 (2) Pay to the lessor registered in accordance with  
21 Section 4453.5 or the legal owner reflected on the  
22 ownership certificate of a motor vehicle transferred by a  
23 consumer to the dealer the amount necessary to  
24 discharge the prior credit or lease balance owed to the  
25 lessor or legal owner.

26 (3) Pay the amount specified in a consignment  
27 agreement to a consumer after the sale of a consigned  
28 motor vehicle, or, in the absence of a written  
29 consignment agreement, pay the sale amount as  
30 established by other evidence.

31 (d) “Fund” is the Motor Vehicle Recovery Fund.

32 12201. (a) The Motor Vehicle Recovery Fund is  
33 hereby established in the State Treasury.

34 (b) The fees collected pursuant to Section 4456.3, and  
35 the interest earned on those fees, shall be deposited in the  
36 fund. The fees and any accrued interest or earnings shall  
37 be invested in the Special Deposit Fund pursuant to  
38 Section 16370 of the Government Code or any other  
39 appropriate interest bearing or revenue earning trust  
40 account approved by the director.



1 (c) Notwithstanding Section 13340 of the Government  
2 Code, the money in the fund is hereby continuously  
3 appropriated, without regard to fiscal years, to the  
4 department to compensate or reimburse consumers as  
5 ~~prescribed in this chapter. Funds for the administration~~  
6 ~~of this chapter by the department shall be available to the~~  
7 ~~department, upon appropriation, by the Legislature.~~  
8 *prescribed in this chapter and for the costs of*  
9 *administering this chapter.*

10 12202. (a) A consumer may file an application with  
11 the department for the payment of a consumer's eligible  
12 claim if a dealer or lessor-retailer against whom the claim  
13 is asserted has ceased selling and leasing motor vehicles  
14 to the general public or has become subject to a petition  
15 in bankruptcy.

16 (b) The application shall be verified and shall set forth  
17 the consumer's name, address, and telephone number  
18 and the amount and description of the eligible claim, and  
19 what action, if any, the applicant has taken to recover the  
20 amount of the eligible claim.

21 (c) The application shall be accompanied by a copy of  
22 the agreement, if any, between the consumer and the  
23 dealer or lessor-retailer, unless the agreement is  
24 unnecessary to the department's determination of the  
25 validity of the claim.

26 (d) If the eligible claim is based on the failure to remit  
27 license or registration fees, the application shall be  
28 accompanied by evidence demonstrating that the  
29 consumer paid money or other consideration for the fees  
30 or became obligated to pay those fees. The eligible claim  
31 shall be limited to the dollar amount of the license or  
32 registration fees not remitted and any late charge or  
33 penalty.

34 (e) (1) If the eligible claim is based on the failure to  
35 pay the proceeds of a consignment sale, the application  
36 shall be accompanied by all of the following:

37 (A) The consignment agreement or, in the absence of  
38 a written agreement, other evidence establishing a  
39 consignment.



1 (B) Evidence that the consigned motor vehicle was  
2 sold.

3 (C) The consumer's verified statement that the  
4 consumer did not receive the portion of the proceeds of  
5 the sale to which the consumer was entitled.

6 (2) The eligible claim is limited to the dollar amount  
7 specified in a written consignment agreement to be paid  
8 to the consignor or, in the absence of a written  
9 consignment agreement, other evidence establishing the  
10 sale amount.

11 (f) If the eligible claim is based on the failure to pay the  
12 lessor or legal owner of the motor vehicle taken in trade  
13 or purchased from the consumer, the application shall be  
14 accompanied by a statement from the lessor or legal  
15 owner of the amount, if any, that he or she received from  
16 the dealer. The eligible claim is limited to the dollar  
17 amount necessary to discharge the credit or lease balance  
18 owing on the trade-in or purchased vehicle.

19 (g) The department may require reasonable  
20 additional information designed to facilitate payment of  
21 eligible claims.

22 (h) The application shall be filed within one year of  
23 the date upon which the dealer or lessor-retailer ceased  
24 selling or leasing motor vehicles to the general public or  
25 became subject to a petition in bankruptcy.

26 12203. The department shall develop a notice fully  
27 explaining a consumer's right to make a claim from the  
28 fund, an application form, and an explanation of how to  
29 complete the application. The notice, application, and  
30 explanation shall be printed in both English and Spanish  
31 and shall be provided to any person upon request.

32 12204. (a) Within 30 days of receiving an application,  
33 the department shall notify the applicant, in writing, that  
34 the application is complete or, if the application is  
35 incomplete, what additional information is required.

36 (b) (1) Within 60 days of the department's receipt of  
37 a complete application, the department shall either pay  
38 the eligible claim from the fund as prescribed in this  
39 chapter or deny the claim.



1 (2) The department, for good cause, may extend the  
2 60-day period to not more than an additional 90 days to  
3 investigate the accuracy of the application or evidence  
4 submitted by a dealer or lessor-retailer.

5 12205. If the department pays the claim, the amount  
6 of the payment shall be the total of the amount of the  
7 eligible claim, but in no event shall the payment exceed  
8 thirty-five thousand dollars (\$35,000) for any transaction.

9 12206. If the department denies the claim, the  
10 department shall notify the applicant of the denial, the  
11 factual and legal bases for the denial, and the applicant's  
12 right to appeal the denial, in writing, to the director  
13 within 60 days of receipt of the notice or any longer period  
14 permitted by the department. If an appeal is not  
15 requested within that 60 days or any additional period  
16 reasonably requested by the consumer and granted by  
17 the department, the department's decision shall be final.  
18 If an appeal is requested, the appeal shall be conducted  
19 pursuant to the procedure established by regulation  
20 adopted by the department.

21 12207. If the department pays an eligible claim, all of  
22 the following apply:

23 (a) Immediately upon payment, the department shall  
24 be subrogated to all of the consumer's rights against the  
25 dealer or lessor-retailer to the extent of the amount of the  
26 payment. The department shall seek to recover the claim  
27 amount from the dealer's bond required by Section 11710.

28 (b) The department may bring an action to recover  
29 the amount of the payment and shall be entitled to  
30 recover costs and reasonable attorney's fees.

31 12208. Any person who, with the intent to prejudice,  
32 damage, or defraud the fund, files with the department  
33 a false application, statement, or other document under  
34 this chapter, is guilty of a misdemeanor punishable by  
35 confinement in the county jail for not more than one year.

36 12209. The department may adopt regulations to  
37 implement this chapter in accordance with Chapter 3.5  
38 (commencing with Section 11340) of Part 1 of Division 3  
39 of Title 2 of the Government Code and shall adopt  
40 regulations to establish the appeal procedure described



1 in Section 12206 by July 1, 2001. Any interim emergency  
2 regulations adopted to implement this chapter shall be  
3 considered by the Office of Administrative Law as  
4 necessary for the immediate preservation of the public  
5 peace, health, and safety and of the general welfare.

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

