AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 4, 2009

AMENDED IN SENATE APRIL 14, 2009

AMENDED IN SENATE MARCH 16, 2009

SENATE BILL No. 95

Introduced by Senator Corbett

January 22, 2009

An act to amend Section 1770 of the Civil Code, and to amend Sections ~~11710~~ *4456.1, 11710,* and 11722 of, to amend and repeal Section 11711 of, and to add Section 4456.5 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 95, as amended, Corbett. California Car Buyers' Protection Act of 2009.

(1) Existing law makes it unlawful, punishable as a misdemeanor, for the holder of a dealer's license to do, or fail to do, specified actions with regard to the advertising, transfer, and sale of motor vehicles.

This bill would enact the California Car Buyers' Protection Act of 2009, which, among other things, would make it unlawful for a dealer who purchases a vehicle for purposes of resale with an outstanding lien or balance due to a secured party to fail to tender in good faith full payment on the outstanding lien or balance no later than the ~~2nd~~ *4th* business day, as specified. The bill would also increase the amount of a dealer's bond from $50,000 to $100,000 and would require dealers of trailers designed and used exclusively to transport vessels to procure and file a bond in the amount of $50,000.

(2) Existing law requires, among other things, that if any person suffers any loss or damage by reason of a specified violation of law by the dealer or his or her salesperson, then that person has a right of action against the dealer, the salesperson, and the surety upon the dealer's bond, in an amount not to exceed the value of the vehicle purchased from or sold to the dealer.

This bill would instead require, until January 1, 2015, that if a person who purchased or leased a motor vehicle or a motorcycle at retail suffers any loss or damage related to the purchase or lease of that vehicle by reason of any fraud or contract or statutory violation practiced on him or her by a licensed dealer or one of the dealer's salespersons acting for the dealer, on his or her behalf, or within the scope of the employment of his or her salesperson in connection with the purchase or lease of that vehicle, or by reason of the violation by the dealer or salesperson of any of the provisions in the Vehicle Code relating to registration of vehicles and certificates of title, then that person shall have a right of action against the dealer, his or her salesperson, and the surety upon the dealer's bond for actual damages plus any incidental and consequential damages.

(3) Existing law requires that claims against the surety upon a dealer's bond of a financing agency that has loaned money to a licensee or assignee be allowed only to the extent that the claims of any other person or entity with respect to the dealer's bond are satisfied first and are entitled to preference over the claims of the financing agency with respect to the dealer's bond, except as specified.

This bill would instead require that claims against the surety upon a dealer's bond be entitled to specified priorities and would require that claimants be paid in full if the proceeds of the bond are sufficient ~~and~~ or on a pro rata basis if the funds are insufficient.

(4) Existing law requires a dealer and a lessor-retailer, when selling a vehicle, to use numbered report-of-sale forms issued by the Department of Motor Vehicles and requires the forms to be used in accordance with specified conditions. Existing law imposes an administrative service fee of $5 or $25, depending on various criteria, if a dealer or lessor-retailer does not use the forms in accordance with the specified conditions.

This bill would increase these administrative service fees to $25 or $100, depending on various criteria.

~~(4)~~

(5) The bill would also make technical and conforming changes to these provisions.

By creating new crimes, the bill would impose a state-mandated local program.

~~(5)~~

(6) 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:

SECTION 1. This act shall be known and may be cited as the California Car Buyers' Protection Act of 2009.

SEC. 2. The Legislature finds and declares all of the following:

(a) Many car buyers have lost confidence in the automotive marketplace, resulting in a reduction of revenues for sellers, local and county governments, and the state, contributing to job losses and the state's overall economic downturn.

(b) During the past year at least 480 new and used licensed auto dealerships have gone out of business in California, far more than in any other state, and it is projected that the numbers will continue to accelerate for the foreseeable future.

(c) When consumers choose to purchase vehicles from auto dealerships that are licensed by the Department of Motor Vehicles, they have a reasonable expectation that the dealerships have sufficient resources to honor their contractual commitments.

(d) Car buyers have no reliable way to know in advance whether an auto dealer is on the brink of insolvency or is on a sound financial footing.

(e) When licensed auto dealerships go out of business they often fail to pay off liens, as agreed, and also fail to honor warranties, service contracts, and other services for which car buyers have paid in advance, costing thousands of car buyers millions of dollars in losses.

(f) The current federal assistance fails to provide any relief for car buyers, while providing taxpayer dollars to assist the auto manufacturers, dealers, and workers who are seeking assistance from the American public; yet it is ultimately car buyers who will determine the fate of our domestic auto industry by buying cars.

(g) When licensed auto dealerships go out of business without honoring their obligations, car buyers often face ruinous consequences, through no fault of their own, resulting in harm to their credit, repossessions that remain on their credit reports for seven to 10 years, job losses due to a lack of transportation, home foreclosures, and bankruptcy.

(h) The Department of Motor Vehicles projects that the current funding available for the Consumer Recovery Fund (CRF) established by enactment of Senate Bill 729 of the 2007–08 Regular Session will not be sufficient to meet all the demands made upon the CRF by car buyers with legitimate complaints. Even if sufficient funds were available, there is no authority to provide restitution from the CRF for losses incurred involving prepaid products, warranties, or services or to restore the credit of consumers whose credit is harmed by dealer insolvencies, lost jobs, lost income, or other damages consumers suffer due to a lack of transportation when vehicles are repossessed because auto dealers failed to pay off liens as promised.

(i) Honest dealers are also adversely impacted when unscrupulous auto dealers siphon off business and then harm the credit of their customers by going out of business without paying liens, as promised, shrinking the automotive market at precisely the time when it is sound public policy to expand the market and accelerate sales of newer, safer, cleaner motor vehicles.

SEC. 3. Section 1770 of the Civil Code is amended to read:

1770. (a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by a person in a transaction intended to result or that results in the sale or lease of goods or services to a consumer are unlawful:

(1) Passing off goods or services as those of another.

(2) Misrepresenting the source, sponsorship, approval, or certification of goods or services.

(3) Misrepresenting the affiliation, connection, or association with, or certification by, another.

(4) Using deceptive representations or designations of geographic origin in connection with goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have.

(6) Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.

(8) Disparaging the goods, services, or business of another by false or misleading representation of fact.

(9) Advertising goods or services with intent not to sell them as advertised.

(10) Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.

(11) Advertising furniture without clearly indicating that it is unassembled if that is the case.

(12) Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller.

(13) Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

(14) Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law.

(15) Representing that a part, replacement, or repair service is needed when it is not.

(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

(17) Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(18) Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer.

(19) Inserting an unconscionable provision in the contract.

(20) Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (A) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (B) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product. This subdivision shall not apply to in-store advertising by businesses that are open only to members or cooperative organizations organized pursuant to Division 3 (commencing with Section 12000) of Title 1 of the Corporations Code if more than 50 percent of purchases are made at the specific price set forth in the advertisement.

(21) Selling or leasing goods in violation of Chapter 4 (commencing with Section 1797.8) of Title 1.7.

(22) (A) Disseminating an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or the telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

(B) This subdivision does not apply to a message disseminated to a business associate, customer, or other person having an established relationship with the person or organization making the call, to a call for the purpose of collecting an existing obligation, or to any call generated at the request of the recipient.

(23) The home solicitation, as defined in subdivision (h) of Section 1761, of a consumer who is a senior citizen if a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and the transaction is part of a pattern or practice in violation of either subsection (h) or (i) of Section 1639 of Title 15 of the United States Code or subsection (e) of Section 226.32 of Title 12 of the Code of Federal Regulations.

A third party shall not be liable under this subdivision unless (A) there was an agency relationship between the party who engaged in home solicitation and the third party or (B) the third party had actual knowledge of, or participated in, the unfair or deceptive transaction. A third party who is a holder in due course under a home solicitation transaction shall not be liable under this subdivision.

(24) (A) Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of public social services.

(B) For purposes of this paragraph, the following definitions shall apply:

(i) "Public social services" means those activities and functions of state and local government administered or supervised by the State Department of Health Care Services, the State Department of Public Health, or the State Department of Social Services, and involved in providing aid or services, or both, including health care services and medical assistance, to those persons who, because of their economic circumstances or social condition, are in need of that aid or those services and may benefit from them.

(ii) "Unreasonable fee" means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(I) The time and effort required.

(II) The novelty and difficulty of the services.

(III) The skill required to perform the services.

(IV) The nature and length of the professional relationship.

(V) The experience, reputation, and ability of the person providing the services.

(C) Paragraph (24) shall not apply to attorneys licensed to practice law in California, who are subject to the California Rules of Professional Conduct and to the mandatory fee arbitration provisions of Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, when the fees charged or received are for providing representation in administrative agency appeal proceedings or court proceedings for purposes of procuring, maintaining, or securing public social services on behalf of a person or group of persons.

(25) Failure of a dealer as defined in Section 285 of the Vehicle Code to comply with Section 4456.5, which requires dealers who purchase a used vehicle with a balance due to a secured party to pay off the entire balance pursuant to Section 4456.5.

(b) (1) It is an unfair or deceptive act or practice for a mortgage broker or lender, directly or indirectly, to use a home improvement contractor to negotiate the terms of any loan that is secured, whether in whole or in part, by the residence of the borrower and that is used to finance a home improvement contract or any portion thereof. For purposes of this subdivision, “mortgage broker or lender” includes a finance lender licensed pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), a residential mortgage lender licensed pursuant to the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code), or a real estate broker licensed under the Real Estate Law (Division 4 (commencing with Section 10000) of the Business and Professions Code).

(2) This section shall not be construed to either authorize or prohibit a home improvement contractor from referring a consumer to a mortgage broker or lender by this subdivision. However, a home improvement contractor may refer a consumer to a mortgage lender or broker if that referral does not violate Section 7157 of the Business and Professions Code or any other provision of law. A mortgage lender or broker may purchase an executed home improvement contract if that purchase does not violate Section 7157 of the Business and Professions Code or any other provision of law. This paragraph shall not affect the application of Chapter 1 (commencing with Section 1801) of Title 2 to a home improvement transaction or the financing thereof.

SEC. 4. Section 4456.1 of the Vehicle Code is amended to read:

4456.1. (a) A dealer or lessor-retailer who violates paragraph (1), (2), or (7) of subdivision (a) of Section 4456 shall pay to the department an administrative service fee of ~~five dollars ($5)~~ *twenty-five dollars ($25)* for each violation.

(b) A dealer or lessor-retailer who violates paragraph (4), (5), or (6) of subdivision (a) of Section 4456 shall pay to the department an administrative service fee of ~~twenty-five dollars ($25)~~ *one hundred dollars ($100)* for each violation.

(c) Subject to subdivision (d), each violation of Section 4456 is, in addition to the obligation to pay an administrative service fee, a separate cause for discipline pursuant to Section 11613 or 11705.

(d) A violation of subdivision (a) of Section 4456 because of a dealer or lessor-retailer's failure to submit to the department an application for registration or transfer of registration is a cause for disciplinary action pursuant to Section 11613 or 11705 only if the initial application is submitted 50 days or more following the date of sale of the vehicle if the vehicle is a used vehicle, and 40 days if the vehicle is a new vehicle.

~~SEC. 4.~~

SEC. 5. Section 4456.5 is added to the Vehicle Code, to read:

4456.5. (a) If a dealer purchases a vehicle for purposes of resale with an outstanding lien due to a secured party in connection with the cash sale of another vehicle, the dealer shall in good faith tender full payment on the outstanding lien or balance no later than the ~~second~~ *fourth* business day after the dealer takes possession of the vehicle.

(b) If a dealer purchases a vehicle for purposes of resale with an outstanding lien due to a secured party in connection with the conditional sale of another vehicle, the dealer shall in good faith tender full payment on the outstanding lien or balance no later than the ~~second~~ *fourth* business day after the financing for the other vehicle is approved.

(c) The time periods specified in subdivision (a) or (b) may be shortened if the retail purchaser and the dealer agree to a shorter time period.

~~SEC. 5.~~

SEC. 6. Section 11710 of the Vehicle Code is amended to read:

11710. (a) Before any dealer's or remanufacturer's license is issued or renewed by the department to any applicant therefor, the applicant shall procure and file with the department a bond executed by an admitted surety insurer, approved as to form by the Attorney General, and conditioned that the applicant shall not practice any fraud or make any fraudulent representation which will cause a monetary loss to a purchaser, seller, financing agency, or governmental agency.

(b) A dealer's bond shall be in the amount of one hundred thousand dollars ($100,000), except the bond of a dealer who deals exclusively in motorcycles or all-terrain vehicles shall be in the amount of ten thousand dollars ($10,000). The bond amount for dealers of trailers designed and used exclusively to transport vessels as defined in subdivision (a) of Section 9840 shall be in the amount of *fifty thousand dollars* ($50,000). Before the license is renewed by the department, the dealer, other than a dealer who deals exclusively in motorcycles or all-terrain vehicles, shall procure and file a bond in the amount of one hundred thousand dollars ($100,000). A remanufacturer bond shall be in the amount of fifty thousand dollars ($50,000).

(c) Liability under the bond is to remain at full value. If the amount of liability under the bond is decreased or there is outstanding a final court judgment for which the dealer or remanufacturer and sureties are liable, the dealer's or remanufacturer's license shall be automatically suspended. In order to reinstate the license and special plates, the licensee shall either file an additional bond or restore the bond on file to the original amount, or shall terminate the outstanding judgment for which the dealer or remanufacturer and sureties are liable.

(d) A dealer's or remanufacturer's license, or renewal of the license, shall not be issued to any applicant therefor, unless and until the applicant files with the department a good and sufficient instrument, in writing, in which the applicant appoints the director as the true and lawful agent of the applicant upon whom all process may be served in any action, or actions, which may thereafter be commenced against the applicant, arising out of any claim for damages suffered by any firm, person, association, or corporation, by reason of the violation of the applicant of any of the terms and provisions of this code or any condition of the dealer's or remanufacturer's bond. The applicant shall stipulate and agree in the appointment that any process directed to the applicant, when personal service of process upon the applicant cannot be made in this state after due diligence and, in that case, is served upon the director or, in the event of the director's absence from the office, upon any employee in charge of the office of the director, shall be of the same legal force and effect as if served upon the applicant personally. The applicant shall further stipulate and agree, in writing, that the agency created by the appointment shall continue for and during the period covered by any license that may be issued and so long thereafter as the applicant may be made to answer in damages for a violation of this code or any condition of the bond. The instrument appointing the director as the agent for the applicant for service of process shall be acknowledged by the applicant before a notary public. In any case where the licensee is served with process by service upon the director, one copy of the summons and complaint shall be left with the director or in the director's office in Sacramento or mailed to the office of the director in Sacramento. A fee of five dollars ($5) shall also be paid to the director at the time of service of the copy of the summons and complaint. Service on the director shall be a sufficient service on the licensee if a notice of service and a copy of the summons and complaint are immediately sent by registered mail by the plaintiff or the plaintiff's attorney to the licensee. A copy of the summons and complaint shall also be mailed by the plaintiff or the plaintiff's attorney to the surety on the applicant's bond at the address of the surety given in the bond, postpaid and registered with request for return receipt. The director shall keep a record of all process so served upon the director, which record shall show the day and hour of service and shall retain the summons and complaint so served on file. Where the licensee is served with process by service upon the director, the licensee shall have and be allowed 30 days from and after the service within which to answer any complaint or other pleading which may be filed in the cause. However, for purposes of venue, where the licensee is served with process by service upon the director, the service is deemed to have been made upon the licensee in the county in which the licensee has or last had an established place of business.

~~SEC. 6.~~

SEC. 7. Section 11711 of the Vehicle Code is amended to read:

11711. (a) If a person who bought or leased a motor vehicle or a motorcycle at retail suffers any loss or damage related to the purchase or lease of that vehicle by reason of any fraud or contract or statutory violation practiced on him or her by a licensed dealer or one of the dealer's salespersons acting for the dealer, on his or her behalf, or within the scope of the employment of his or her salesperson in connection with the purchase or lease of that motor vehicle, or by reason of the violation by the dealer or salesperson of Division 3 (commencing with Section 4000), then that person shall have a right of action against the dealer, his or her salesperson, and the surety upon the dealer's bond for actual damages plus any incidental and consequential damages.

(b) If the state or a political subdivision of the state suffers any loss or damage by reason of any fraud practiced on the state or fraudulent representation made to the state by a licensed dealer, or one of the dealer's representatives acting for the dealer, on his or her behalf, or within the scope of employment of the dealer's representatives, or suffers any loss or damage by reason of the violation of the dealer or his or her representative of any of the provisions of Division 3 (commencing with Section 4000) of this code, or Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code, the state or a political subdivision of the state, through the department, shall have a right of action against the dealer, his or her representative, and the surety upon the dealer's bond in an amount not to exceed the value of the vehicles involved.

(c) The failure of a dealer upon demand to pay the fees and penalties determined to be due as provided in Section 4456 shall be a violation of Division 3 (commencing with Section 4000) of this code, and Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code and shall constitute loss or damage to the state in the amounts of those fees and penalties determined to be due and not paid.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

~~SEC. 7.~~

SEC. 8. Section 11722 of the Vehicle Code is amended to read:

11722. (a) Claims against the surety upon a dealer's bond shall be entitled to the following priorities:

(1) The claims of the state under subdivision (b) of Section 11711 shall be satisfied first and entitled to preference over all other claims.

(2) The claims of persons who bought or leased a motor vehicle or a motorcycle at retail shall be satisfied next and entitled to preference over all other claims other than those of the state.

(3) The claims of finance companies, any entity in the business of loaning money or that accepts assignments of conditional sales contracts from licensees, other creditors of licensees, or other commercial entities shall be next in priority, but, in any event, these claimants may not collectively be paid more than ~~$20,000~~ *twenty thousand dollars ($20,000)* from the proceeds of the dealer's bond.

(b) Subject to these priorities, claimants shall be paid in full if the proceeds of the bond are sufficient and or on a pro rata basis if the funds are insufficient.

~~SEC. 8.~~

SEC. 9. Nothing in this act shall be construed to limit, in any way, the existing rights, remedies, or recourses available to any person who purchases or leases vehicles at retail.

~~SEC. 9.~~

SEC. 10. 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.

O