

California Dealers Prepare for New Law

May 01, 2006



California's AB 68, the Car Buyer's Bill of Rights, is chock full of changes that will be mandatory beginning July 1. These changes primarily affect California licensed motor vehicle dealers and their buyers, and indirectly, those who purchase conditional sale contracts from such dealers.

Use of the Term 'Certified' Has Restrictions

The new provisions designate which used vehicles are not eligible for advertisement or sale as "certified" or other similar designation. For example:

- Odometer on the vehicle does not indicate actual mileage
- Vehicle was reacquired by the manufacturer or any dealer pursuant to state or federal warranty laws (buy-back)
- Certificate of title has been branded "Lemon Law Buyback," "manufacturer repurchase," "salvage," "junk," "nonrepairable," "flood" or a similar designation
- Vehicle has sustained frame damage — or damage in an impact, fire or flood — that after repair substantially impairs the use or safety of the vehicle.

To be a certified vehicle, prior to sale, the dealer must provide the buyer with a completed inspection report indicating all the components inspected. A certified vehicle cannot be sold "as is." Furthermore, a dealer engages in an unlawful activity if, in the advertising or use of the term "certified" or any similar descriptive term, the statement is found to be untrue or misleading.

These restrictions do not apply to motorcycles or off-road vehicles.

When Credit Score Must be Disclosed to Customer

The new law does not require dealers to tell consumers the lowest interest rate for which they qualify. Nor is there a requirement to disclose the buy rate or amount of finance reserve.

However, consumers must be informed of their credit score in certain situations. This affects dealers who obtain a consumer credit score from a credit reporting agency in connection with an application for credit. The application can be for the purchase or lease of a new or used vehicle, but not a motorcycle or an off-road vehicle. It requires dealers to provide on a separate notice printed in 10-point, boldface type: (1) the credit score obtained and used by the dealer and the name and address of the credit reporting agency providing the score; (2) the range of possible credit scores established by the credit reporting agency that provided the credit score; and (3) a printed "Notice to Credit Applicant" in the form specified.

The notice must be given "before the purchase or lease" of the vehicle. The dealer's obligation only extends to one disclosure per purchase or lease transaction, and applies to a credit application that is approved, counter-offered or declined. It appears that if the dealer obtains more than one credit score from credit reporting agencies, the dealer need only disclose the one "used" and not all of them.

F&I Products Must be Separately Disclosed

Disclosures on the retail installment contract and purchase order are affected by this law. These disclosures apply to the purchase of new and used motor vehicles, but not motorcycles or off-road vehicles. For purchases (but not leases), a

stand-alone disclosure is also required and appears to apply to new and used vehicles as well as motorcycles and off-road vehicles. (This seems to have been an oversight as the bill was making its way through the legislature and to the governor's desk for signature.)

Before a buyer signs a retail installment contract for the purchase of a new or used motor vehicle (there is no reference here to excluding motorcycles or off-road vehicles), the dealer must provide a separate disclosure form printed in at least 10-point type for the buyer to sign. This form must include a description and the price of each item sold if the contract includes a charge for any of the following:

- A service contract
- An insurance product
- A debt cancellation agreement or GAP waiver
- A surface protection product
- A theft deterrent device
- A vehicle contract cancellation option agreement.

The sum of the charges for the products the customer has elected to purchase must be labeled "total" on the form. In addition, the customer's base monthly payment without any products must be disclosed and labeled as "Installment Payment EXCLUDING Listed Items." After charges for the items disclosed are included in the payment, the amount should be labeled "Installment Payment INCLUDING Listed Items."

{+PAGEBREAK+} Two F&I products are now recognized and defined in the Automobile Sales Finance Act (Rees-Levering) and the Vehicle Code: surface protection product and theft deterrent device.

A "surface protection product" is any of the following products installed by the dealer after the vehicle is sold: (1) undercoating, (2) rustproofing, (3) chemical or film paint sealant or protectant, (4) chemical sealant or stain inhibitor for carpet and fabrics.

A "theft deterrent device" is any of the following devices installed by the dealer after the vehicle is sold: (1) vehicle alarm system, (2) window etch product, (3) body part marking product, (4) steering lock, (5) pedal or ignition lock, (6) a fuel or ignition kill switch.

If purchased by the buyer, the contract or purchase order must itemize these in the Itemization of Amount Financed. The new provisions concerning disclosures do not affect the Vehicle Leasing Act. However, remember that under California's Vehicle Leasing Act, the gross capitalized cost must be itemized. Any charge capitalized in the lease must be itemized; otherwise, the charge would have to be disclosed as an "amount due at lease signing or delivery" in the lease contract.

The new law also addresses payment packing and deceptive negotiations. It is unlawful and a violation for the dealer to: (1) negotiate the terms of a vehicle sale or lease contract for a motor vehicle (not a motorcycle or an off-road vehicle) and then add charges to the contract for any goods or services without previously disclosing to the consumer the goods and services to be added and obtaining the consumer's consent; (2) inflate the amount of an installment payment or down payment or extend the maturity of a sale or lease contract for the purpose of disguising the actual charges for goods or services to be added by the dealer to the contract.

Contract Cancellation Now Available for Used-Car Buyers

Dealers will be required to offer a two-day contract cancellation option in connection with the retail sale of a used motor vehicle with a purchase price of less than \$40,000. This option affects retail installment contracts and purchase orders, and also requires a stand-alone agreement. The option is available with the purchase of used vehicles for personal, family or household use and excludes motorcycles, off-road vehicles and recreational vehicles.

The law also allows dealers to charge a cancellation fee and a restocking fee. Both are based on a step-rate and the cancellation fee must be applied to the restocking fee.

The retail installment contract and purchase order forms must be revised to disclose any charge for a used-vehicle contract cancellation option in the Itemization of Amount Financed. The charge for the contract cancellation option will

not be taxable.

Cap Placed on Dealers' Interest Rate Compensation

Dealers have a limit on the amount of interest reserve they may receive for the assignment of a retail installment contract. The cap is 2.5 percent APR on contracts that have an original term of 60 months or less, and 2 percent APR on contracts having an original term of more than 60 months.

However, there are certain exceptions to the foregoing: Contracts assigned by the dealer with full recourse (where dealer is to bear risk of performance of the buyer), contracts assigned more than six months following the date of the contract, and isolated instances resulting from bona fide errors.

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