

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2116

Introduced by Assembly Member Portantino

February 20, 2008

An act to amend Section ~~2981~~ 2983.2 of the Civil Code, relating to *conditional automobile sales contracts*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2116, as amended, Portantino. Automobile sales ~~contracts~~.
contracts: conditional contracts.

Existing law governs motor vehicle conditional sale contracts, as defined. ~~Existing law requires sellers of motor vehicles to make certain disclosures to buyers and to disclose certain information under the label "itemization of the amount financed." A violation of these provisions is a misdemeanor. Existing law defines downpayment for these purposes. Existing law requires written notice of intent to dispose of a repossessed or surrendered motor vehicle to be given to all persons liable on a conditional sales contract, and provides that those persons are only liable for any deficiency remaining after disposition of the vehicle if that notice is given, except as specified. The notice is required to, among other things, state either that there is a conditional right to reinstate the contract until the expiration of 15 days from the date of giving or mailing the notice and all the conditions precedent thereto or that there is no right of reinstatement and provides a statement of reasons therefor.~~

~~This bill would make nonsubstantive changes to the definition of downpayment, as described above.~~

This bill would specify how the notice would meet the requirement to provide all the conditions precedent to the right to reinstate the contract.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 2983.2 of the Civil Code is amended to
2 read:

3 2983.2. (a) Except where the motor vehicle has been seized
4 as described in paragraph (6) of subdivision (b) of Section 2983.3,
5 any provision in any conditional sale contract for the sale of a
6 motor vehicle to the contrary notwithstanding, at least 15 days’
7 written notice of intent to dispose of a repossessed or surrendered
8 motor vehicle shall be given to all persons liable on the contract.
9 The notice shall be personally served or shall be sent by certified
10 mail, return receipt requested, or first-class mail, postage prepaid,
11 directed to the last known address of the persons liable on the
12 contract. If those persons are married to each other, and, according
13 to the most recent records of the seller or holder of the contract,
14 reside at the same address, one notice addressed to both persons
15 at that address is sufficient. Except as otherwise provided in Section
16 2983.8, those persons shall be liable for any deficiency after
17 disposition of the repossessed or surrendered motor vehicle only
18 if the notice prescribed by this section is given within 60 days of
19 repossession or surrender and does all of the following:

20 (1) Sets forth that those persons shall have a right to redeem the
21 motor vehicle by paying in full the indebtedness evidenced by the
22 contract until the expiration of 15 days from the date of giving or
23 mailing the notice and provides an itemization of the contract
24 balance and of any delinquency, collection or repossession costs
25 and fees and sets forth the computation or estimate of the amount
26 of any credit for unearned finance charges or canceled insurance
27 as of the date of the notice.

28 (2) States either that there is a conditional right to reinstate the
29 contract until the expiration of 15 days from the date of giving or
30 mailing the notice and all the conditions precedent thereto or that
31 there is no right of reinstatement and provides a statement of
32 reasons therefor. *The requirement to provide all the conditions*

1 *precedent to the right to reinstate the contract shall be met if the*
2 *notice includes the following:*

3 (A) *The total amount required to reinstate the contract as of the*
4 *date of the notice.*

5 (B) *The amount and due date of any scheduled payments and*
6 *delinquency fees that may become due to the holder during the*
7 *initial reinstatement period, if such amounts will increase the*
8 *amount required to reinstate the contract.*

9 (C) *The following statements:*

10 (i) *“Please note: Other amounts may be due to third parties,*
11 *including the repossession agent, in order to obtain possession of*
12 *the vehicle.”*

13 (ii) *“Before reinstatement, you may be required to demonstrate*
14 *you are not in default under the insurance or other provisions of*
15 *your contract. Please contact the holder for more information*
16 *about these requirements.”*

17 (D) *An address and phone number of the holder from which the*
18 *buyer may obtain more information regarding his or her*
19 *reinstatement rights.*

20 (3) *States that, upon written request, the seller or holder shall*
21 *extend for an additional 10 days the redemption period or, if*
22 *entitled to the conditional right of reinstatement, both the*
23 *redemption and reinstatement periods. The seller or holder shall*
24 *provide the proper form for applying for the extensions with the*
25 *substance of the form being limited to the extension request, spaces*
26 *for the requesting party to sign and date the form, and instructions*
27 *that it must be personally served or sent by certified or registered*
28 *mail, return receipt requested, to a person or office and address*
29 *designated by the seller or holder and received before the expiration*
30 *of the initial redemption and reinstatement periods.*

31 (4) *Discloses the place at which the motor vehicle will be*
32 *returned to those persons upon redemption or reinstatement.*

33 (5) *Designates the name and address of the person or office to*
34 *whom payment shall be made.*

35 (6) *States the seller’s or holder’s intent to dispose of the motor*
36 *vehicle upon the expiration of 15 days from the date of giving or*
37 *mailing the notice, or if by mail and either the place of deposit in*
38 *the mail or the place of address is outside of this state, the period*
39 *shall be 20 days instead of 15 days, and further, that upon written*
40 *request to extend the redemption period and any applicable*

1 reinstatement period for 10 days, the seller or holder shall without
2 further notice extend the period accordingly.

3 (7) Informs those persons that upon written request, the seller
4 or holder will furnish a written accounting regarding the disposition
5 of the motor vehicle as provided for in subdivision (b). The seller
6 or holder shall advise them that this request must be personally
7 served or sent first-class mail, postage prepaid, or certified mail,
8 return receipt requested, to a person or office and address
9 designated by the seller or holder.

10 (8) Includes notice, in at least 10-point bold type if the notice
11 is printed, reading as follows: “NOTICE. YOU MAY BE
12 SUBJECT TO SUIT AND LIABILITY IF THE AMOUNT
13 OBTAINED UPON DISPOSITION OF THE VEHICLE IS
14 INSUFFICIENT TO PAY THE CONTRACT BALANCE AND
15 ANY OTHER AMOUNTS DUE.”

16 (9) Informs those persons that upon the disposition of the motor
17 vehicle, they will be liable for the deficiency balance plus interest
18 at the contract rate, or at the legal rate of interest pursuant to
19 Section 3289 if there is no contract rate of interest, from the date
20 of disposition of the motor vehicle to the date of entry of judgment.

21 The notice prescribed by this section shall not affect the
22 discretion of the court to strike out an unconscionable interest rate
23 in the contract for which the notice is required, nor affect the court
24 in its determination of whether the rate is unconscionable.

25 (b) Unless automatically provided to the buyer within 45 days
26 after the disposition of the motor vehicle, the seller or holder shall
27 provide to any person liable on the contract within 45 days after
28 their written request, if the request is made within one year after
29 the disposition, a written accounting regarding the disposition. The
30 accounting shall itemize:

- 31 (1) The gross proceeds of the disposition.
- 32 (2) The reasonable and necessary expenses incurred for retaking,
33 holding, preparing for and conducting the sale and to the extent
34 provided for in the agreement and not prohibited by law, reasonable
35 attorney fees and legal expenses incurred by the seller or holder
36 in retaking the motor vehicle from any person not a party to the
37 contract.
- 38 (3) The satisfaction of indebtedness secured by any subordinate
39 lien or encumbrance on the motor vehicle if written notification
40 of demand therefor is received before distribution of the proceeds

1 is completed. If requested by the seller or holder, the holder of a
2 subordinate lien or encumbrance must seasonably furnish
3 reasonable proof of its interest, and unless it does so, the seller or
4 holder need not comply with its demand.

5 (c) In all sales which result in a surplus, the seller or holder shall
6 furnish an accounting as provided in subdivision (b) whether or
7 not requested by the buyer. Any surplus shall be returned to the
8 buyer within 45 days after the sale is conducted.

9 (d) This section shall not apply to a loan made by a lender
10 licensed under Division 9 (commencing with Section 22000) or
11 Division 10 (commencing with Section 24000) of the Financial
12 Code.

13 ~~SECTION 1. Section 2981 of the Civil Code is amended to~~
14 ~~read:~~

15 ~~2981. As used in this chapter, unless the context otherwise~~
16 ~~requires:~~

17 ~~(a) "Conditional sale contract" means:~~

18 ~~(1) A contract for the sale of a motor vehicle between a buyer~~
19 ~~and a seller, with or without accessories, under which possession~~
20 ~~is delivered to the buyer and either of the following:~~

21 ~~(A) The title vests in the buyer thereafter only upon the payment~~
22 ~~of all or a part of the price, or the performance of any other~~
23 ~~condition.~~

24 ~~(B) A lien on the property is to vest in the seller as security for~~
25 ~~the payment of part or all of the price, or for the performance of~~
26 ~~any other condition.~~

27 ~~(2) A contract for the bailment of a motor vehicle between a~~
28 ~~buyer and a seller, with or without accessories, by which the bailee~~
29 ~~or lessee agrees to pay as compensation for use a sum substantially~~
30 ~~equivalent to or in excess of the aggregate value of the vehicle and~~
31 ~~its accessories, if any, at the time the contract is executed, and by~~
32 ~~which it is agreed that the bailee or lessee will become, or for no~~
33 ~~other or for a nominal consideration has the option of becoming,~~
34 ~~the owner of the vehicle upon full compliance with the terms of~~
35 ~~the contract.~~

36 ~~(b) "Seller" means a person engaged in the business of selling~~
37 ~~or leasing motor vehicles under conditional sale contracts.~~

38 ~~(c) "Buyer" means the person who buys or hires a motor vehicle~~
39 ~~under a conditional sale contract.~~

1 (d) ~~“Person” includes an individual, company, firm, association,~~
2 ~~partnership, trust, corporation, limited liability company, or other~~
3 ~~legal entity.~~

4 (e) ~~“Cash price” means the amount for which the seller would~~
5 ~~sell and transfer to the buyer unqualified title to the motor vehicle~~
6 ~~described in the conditional sale contract, if the property were sold~~
7 ~~for cash at the seller’s place of business on the date the contract~~
8 ~~is executed, and shall include taxes to the extent imposed on the~~
9 ~~cash sale and the cash price of accessories or services related to~~
10 ~~the sale, including, but not limited to, delivery, installation,~~
11 ~~alterations, modifications, improvements, document preparation~~
12 ~~fees, a service contract, a vehicle contract cancellation option~~
13 ~~agreement, and payment of a prior credit or lease balance remaining~~
14 ~~on property being traded in.~~

15 (f) ~~“Downpayment” means a payment that the buyer pays or~~
16 ~~agrees to pay to the seller in cash or property value or money’s~~
17 ~~worth at, or prior to, delivery by the seller to the buyer of the motor~~
18 ~~vehicle described in the conditional sale contract. The term shall~~
19 ~~also include the amount of any portion of the downpayment the~~
20 ~~payment of which is deferred until not later than the due date of~~
21 ~~the second otherwise scheduled payment, if the amount of the~~
22 ~~deferred downpayment is not subject to a finance charge. The term~~
23 ~~does not include any administrative finance charge charged,~~
24 ~~received or collected by the seller as provided in this chapter.~~

25 (g) ~~“Amount financed” means the amount required to be~~
26 ~~disclosed pursuant to paragraph (8) of subdivision (a) of Section~~
27 ~~2982.~~

28 (h) ~~“Unpaid balance” means the difference between subdivision~~
29 ~~(e) and subdivision (f), plus all insurance premiums (except for~~
30 ~~credit life or disability insurance when the amount thereof is~~
31 ~~included in the finance charge), which are included in the contract~~
32 ~~balance, and the total amount paid or to be paid as follows:~~

33 (1) ~~To a public officer in connection with the transaction.~~

34 (2) ~~For license, certificate of title, and registration fees imposed~~
35 ~~by law, and the amount of the state fee for issuance of a certificate~~
36 ~~of compliance or certificate of waiver pursuant to Section 9889.56~~
37 ~~of the Business and Professions Code.~~

38 (i) ~~“Finance charge” has the meaning set forth for that term in~~
39 ~~Section 226.4 of Regulation Z. The term shall not include~~
40 ~~delinquency charges or collection costs and fees as provided by~~

1 subdivision (k) of Section 2982, extension or deferral agreement
2 charges as provided by Section 2982.3, or amounts for insurance,
3 repairs to or preservation of the motor vehicle, or preservation of
4 the security interest therein advanced by the holder under the terms
5 of the contract.

6 (j) ~~“Total of payments” means the amount required to be~~
7 ~~disclosed pursuant to subdivision (h) of Section 226.18 of~~
8 ~~Regulation Z. The term includes any portion of the downpayment~~
9 ~~that is deferred until not later than the second otherwise scheduled~~
10 ~~payment and that is not subject to a finance charge. The term shall~~
11 ~~not include amounts for which the buyer may later become~~
12 ~~obligated under the terms of the contract in connection with~~
13 ~~insurance, repairs to or preservation of the motor vehicle,~~
14 ~~preservation of the security interest therein, or otherwise.~~

15 (k) ~~“Motor vehicle” means a vehicle required to be registered~~
16 ~~under the Vehicle Code that is bought for use primarily for personal~~
17 ~~or family purposes, and does not mean any vehicle that is bought~~
18 ~~for use primarily for business or commercial purposes or a~~
19 ~~mobilehome, as defined in Section 18008 of the Health and Safety~~
20 ~~Code that is sold on or after July 1, 1981. “Motor vehicle” does~~
21 ~~not include any trailer that is sold in conjunction with a vessel and~~
22 ~~that comes within the definition of “goods” under Section 1802.1.~~

23 (l) ~~“Purchase order” means a sales order, car reservation,~~
24 ~~statement of transaction or any other such instrument used in the~~
25 ~~conditional sale of a motor vehicle pending execution of a~~
26 ~~conditional sale contract. The purchase order shall conform to the~~
27 ~~disclosure requirements of subdivision (a) of Section 2982 and~~
28 ~~Section 2984.1, and subdivision (m) of Section 2982 shall apply.~~

29 (m) ~~“Regulation Z” means a rule, regulation or interpretation~~
30 ~~promulgated by the Board of Governors of the Federal Reserve~~
31 ~~System (“Board”) under the federal Truth in Lending Act, as~~
32 ~~amended (15 U.S.C. 1601, et seq.), and an interpretation or~~
33 ~~approval issued by an official or employee of the Federal Reserve~~
34 ~~System duly authorized by the board under the Truth in Lending~~
35 ~~Act, as amended, to issue the interpretations or approvals.~~

36 (n) ~~“Simple interest basis” means the determination of a finance~~
37 ~~charge, other than an administrative finance charge, by applying~~
38 ~~a constant rate to the unpaid balance as it changes from time to~~
39 ~~time either:~~

1 ~~(1) Calculated on the basis of a 365-day year and actual days~~
2 ~~elapsed (although the seller may, but need not, adjust its~~
3 ~~calculations to account for leap years); reference in this chapter to~~
4 ~~the “365-day basis” shall mean this method of determining the~~
5 ~~finance charge, or~~

6 ~~(2) For contracts entered into prior to January 1, 1988, calculated~~
7 ~~on the basis of a 360-day year consisting of 12 months of 30 days~~
8 ~~each and on the assumption that all payments will be received by~~
9 ~~the seller on their respective due dates; reference in this chapter~~
10 ~~to the “360-day basis” shall mean this method of determining the~~
11 ~~finance charge.~~

12 ~~(o) “Precomputed basis” means the determination of a finance~~
13 ~~charge by multiplying the original unpaid balance of the contract~~
14 ~~by a rate and multiplying that product by the number of payment~~
15 ~~periods elapsing between the date of the contract and the date of~~
16 ~~the last scheduled payment.~~

17 ~~(p) “Service contract” means “vehicle service contract” as~~
18 ~~defined in subdivision (c) of Section 12800 of the Insurance Code.~~

19 ~~(q) “Surface protection product” means the following products~~
20 ~~installed by the seller after the motor vehicle is sold:~~

- 21 ~~(1) Undercoating.~~
- 22 ~~(2) Rustproofing.~~
- 23 ~~(3) Chemical or film paint sealant or protectant.~~
- 24 ~~(4) Chemical sealant or stain inhibitor for carpet and fabric.~~

25 ~~(r) “Theft deterrent device” means the following devices~~
26 ~~installed by the seller after the motor vehicle is sold:~~

- 27 ~~(1) A vehicle alarm system.~~
- 28 ~~(2) A window etch product.~~
- 29 ~~(3) A body part marking product.~~
- 30 ~~(4) A steering lock.~~
- 31 ~~(5) A pedal or ignition lock.~~
- 32 ~~(6) A fuel or ignition kill switch.~~