

AMENDED IN ASSEMBLY MAY 7, 2008

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 2983.2 of the Civil Code, relating to conditional automobile sales contracts.

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law governs motor vehicle conditional-sale *sales* contracts, as defined. 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, to 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~~ *provide* a statement of reasons therefor.

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 ~~sales~~ contract for the sale of
6 a 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
33 precedent to the right to reinstate the contract shall be met if the
34 notice includes the following:

35 (A) The total amount required to reinstate the contract as of the
36 date of the notice.

37 (B) The amount and due date of any scheduled payments and
38 delinquency fees that may become due to the holder during the

1 initial reinstatement period, if such amounts will increase the
2 amount required to reinstate the contract.

3 (C) *The amount of any law enforcement lien that must be paid*
4 *before the buyer can regain possession of the vehicle and to whom*
5 *the fee must be paid.*

6 (D) *To the extent that they are known by the holder:*

7 (i) *Any storage fees that must be paid and to whom they must*
8 *be paid.*

9 (ii) *Any amount that may be owed to a repossession agent.*

10 (iii) *Contact information of any third party to whom a fee is*
11 *owed.*

12 ~~(E)~~

13 (E) The following statements:

14 (i) "Please note: Other amounts may be due to third-parties,
15 ~~including the repossession agent,~~ parties in order to obtain
16 possession of the vehicle."

17 (ii) "Before reinstatement, you may be required to demonstrate
18 you are not in default under the insurance or other provisions of
19 your contract. Please contact the holder for more information about
20 these requirements."

21 ~~(F)~~

22 (F) An address and phone number of the holder from which the
23 buyer may obtain more information regarding his or her
24 reinstatement rights.

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

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

38 (5) Designates the name and address of the person or office to
39 whom payment shall be made.

1 (6) States the seller’s or holder’s intent to dispose of the motor
2 vehicle upon the expiration of 15 days from the date of giving or
3 mailing the notice, or if by mail and either the place of deposit in
4 the mail or the place of address is outside of this state, the period
5 shall be 20 days instead of 15 days, and further, that upon written
6 request to extend the redemption period and any applicable
7 reinstatement period for 10 days, the seller or holder shall without
8 further notice extend the period accordingly.

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

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

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

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

31 (b) Unless automatically provided to the buyer within 45 days
32 after the disposition of the motor vehicle, the seller or holder shall
33 provide to any person liable on the contract within 45 days after
34 their written request, if the request is made within one year after
35 the disposition, a written accounting regarding the disposition. The
36 accounting shall itemize:

- 37 (1) The gross proceeds of the disposition.
- 38 (2) The reasonable and necessary expenses incurred for retaking,
39 holding, preparing for and conducting the sale, and to the extent
40 provided for in the agreement and not prohibited by law, reasonable

1 attorney fees and legal expenses incurred by the seller or holder
2 in retaking the motor vehicle from any person not a party to the
3 contract.

4 (3) The satisfaction of indebtedness secured by any subordinate
5 lien or encumbrance on the motor vehicle if written notification
6 of demand therefor is received before distribution of the proceeds
7 is completed. If requested by the seller or holder, the holder of a
8 subordinate lien or encumbrance must seasonably furnish
9 reasonable proof of its interest, and unless it does so, the seller or
10 holder need not comply with its demand.

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

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

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