

AMENDED IN ASSEMBLY JULY 1, 2009

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**

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**Introduced by Senator Corbett**

January 22, 2009

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~~An act to amend Section 1770 of the Civil Code, and to amend Sections 4456.1, 11710, and 11722 of, to amend and repeal Section 11711 of, and to add Section 4456.5 to, the Vehicle Code, An act to amend Sections 9262 and 9262.5 of, and to add Section 11709.4 to, the Vehicle Code, relating to vehicles.~~

LEGISLATIVE COUNSEL'S DIGEST

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

*Existing law provides for the issuance of dealer's licenses, and sets the fees for an original license at \$150 and for an annual renewal at \$100. Existing law sets the fees for an original autobroker's endorsement at \$50 and for the annual renewal at \$25.*

*This bill would enact the California Car Buyers' Protection Act of 2009. The bill would impose certain requirements when a dealer purchases or obtains a vehicle in trade in a retail sale or lease transaction and the vehicle is subject to a prior credit or lease balance, relating to the discharge of the credit or balance. The bill would increase dealer's license and renewal fees to \$175 and \$125,*

respectively. The bill would increase autobroker's endorsement and renewal fees to \$100 and \$75, respectively.

~~(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 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 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.~~

~~(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.~~

~~(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-no*.

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 California Car Buyers’ Protection Act of 2009.
- 3 SEC. 2. The Legislature finds and declares all of the following:
- 4 (a) Many car buyers have lost confidence in the automotive
- 5 marketplace, resulting in a reduction of revenues for sellers, local
- 6 and county governments, and the state, contributing to job losses
- 7 and the state’s overall economic downturn.
- 8 (b) During the past year at least 480 new and used licensed auto
- 9 dealerships have gone out of business in California, far more than
- 10 in any other state, and it is projected that the numbers will continue
- 11 to accelerate for the foreseeable future.
- 12 (c) When consumers choose to purchase vehicles from auto
- 13 dealerships that are licensed by the Department of Motor Vehicles,

1 they have a reasonable expectation that the dealerships have  
2 sufficient resources to honor their contractual commitments.

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

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

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

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

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

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

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

- 1     ~~1770. (a) The following unfair methods of competition and~~  
2 ~~unfair or deceptive acts or practices undertaken by a person in a~~  
3 ~~transaction intended to result or that results in the sale or lease of~~  
4 ~~goods or services to a consumer are unlawful:~~
- 5     ~~(1) Passing off goods or services as those of another.~~
  - 6     ~~(2) Misrepresenting the source, sponsorship, approval, or~~  
7 ~~certification of goods or services.~~
  - 8     ~~(3) Misrepresenting the affiliation, connection, or association~~  
9 ~~with, or certification by, another.~~
  - 10    ~~(4) Using deceptive representations or designations of~~  
11 ~~geographic origin in connection with goods or services.~~
  - 12    ~~(5) Representing that goods or services have sponsorship,~~  
13 ~~approval, characteristics, ingredients, uses, benefits, or quantities~~  
14 ~~that they do not have or that a person has a sponsorship, approval,~~  
15 ~~status, affiliation, or connection that he or she does not have.~~
  - 16    ~~(6) Representing that goods are original or new if they have~~  
17 ~~deteriorated unreasonably or are altered, reconditioned, reclaimed,~~  
18 ~~used, or secondhand.~~
  - 19    ~~(7) Representing that goods or services are of a particular~~  
20 ~~standard, quality, or grade, or that goods are of a particular style~~  
21 ~~or model, if they are of another.~~
  - 22    ~~(8) Disparaging the goods, services, or business of another by~~  
23 ~~false or misleading representation of fact.~~
  - 24    ~~(9) Advertising goods or services with intent not to sell them~~  
25 ~~as advertised.~~
  - 26    ~~(10) Advertising goods or services with intent not to supply~~  
27 ~~reasonably expectable demand, unless the advertisement discloses~~  
28 ~~a limitation of quantity.~~
  - 29    ~~(11) Advertising furniture without clearly indicating that it is~~  
30 ~~unassembled if that is the case.~~
  - 31    ~~(12) Advertising the price of unassembled furniture without~~  
32 ~~clearly indicating the assembled price of that furniture if the same~~  
33 ~~furniture is available assembled from the seller.~~
  - 34    ~~(13) Making false or misleading statements of fact concerning~~  
35 ~~reasons for, existence of, or amounts of price reductions.~~
  - 36    ~~(14) Representing that a transaction confers or involves rights,~~  
37 ~~remedies, or obligations that it does not have or involve, or that~~  
38 ~~are prohibited by law.~~
  - 39    ~~(15) Representing that a part, replacement, or repair service is~~  
40 ~~needed when it is not.~~

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

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

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

11     ~~(19) Inserting an unconscionable provision in the contract.~~

12     ~~(20) Advertising that a product is being offered at a specific~~  
13 ~~price plus a specific percentage of that price unless (A) the total~~  
14 ~~price is set forth in the advertisement, which may include, but is~~  
15 ~~not limited to, shelf tags, displays, and media advertising, in a size~~  
16 ~~larger than any other price in that advertisement, and (B) the~~  
17 ~~specific price plus a specific percentage of that price represents a~~  
18 ~~markup from the seller's costs or from the wholesale price of the~~  
19 ~~product. This subdivision shall not apply to in-store advertising~~  
20 ~~by businesses that are open only to members or cooperative~~  
21 ~~organizations organized pursuant to Division 3 (commencing with~~  
22 ~~Section 12000) of Title 1 of the Corporations Code if more than~~  
23 ~~50 percent of purchases are made at the specific price set forth in~~  
24 ~~the advertisement.~~

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

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

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

38     ~~(23) The home solicitation, as defined in subdivision (h) of~~  
39 ~~Section 1761, of a consumer who is a senior citizen if a loan is~~  
40 ~~made encumbering the primary residence of that consumer for the~~

1 purposes of paying for home improvements and the transaction is  
2 part of a pattern or practice in violation of either subsection (h) or  
3 (i) of Section 1639 of Title 15 of the United States Code or  
4 subsection (e) of Section 226.32 of Title 12 of the Code of Federal  
5 Regulations.

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

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

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

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

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

- 31 ~~(I) The time and effort required.~~
- 32 ~~(II) The novelty and difficulty of the services.~~
- 33 ~~(III) The skill required to perform the services.~~
- 34 ~~(IV) The nature and length of the professional relationship.~~
- 35 ~~(V) The experience, reputation, and ability of the person~~  
36 ~~providing the services.~~

37 ~~(C) Paragraph (24) shall not apply to attorneys licensed to~~  
38 ~~practice law in California, who are subject to the California Rules~~  
39 ~~of Professional Conduct and to the mandatory fee arbitration~~  
40 ~~provisions of Article 13 (commencing with Section 6200) of~~

1 Chapter 4 of Division 3 of the Business and Professions Code,  
2 when the fees charged or received are for providing representation  
3 in administrative agency appeal proceedings or court proceedings  
4 for purposes of procuring, maintaining, or securing public social  
5 services on behalf of a person or group of persons.

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

10 ~~(b) (1) It is an unfair or deceptive act or practice for a mortgage  
11 broker or lender, directly or indirectly, to use a home improvement  
12 contractor to negotiate the terms of any loan that is secured,  
13 whether in whole or in part, by the residence of the borrower and  
14 that is used to finance a home improvement contract or any portion  
15 thereof. For purposes of this subdivision, "mortgage broker or  
16 lender" includes a finance lender licensed pursuant to the California  
17 Finance Lenders Law (Division 9 (commencing with Section  
18 22000) of the Financial Code), a residential mortgage lender  
19 licensed pursuant to the California Residential Mortgage Lending  
20 Act (Division 20 (commencing with Section 50000) of the  
21 Financial Code), or a real estate broker licensed under the Real  
22 Estate Law (Division 4 (commencing with Section 10000) of the  
23 Business and Professions Code).~~

24 ~~(2) This section shall not be construed to either authorize or  
25 prohibit a home improvement contractor from referring a consumer  
26 to a mortgage broker or lender by this subdivision. However, a  
27 home improvement contractor may refer a consumer to a mortgage  
28 lender or broker if that referral does not violate Section 7157 of  
29 the Business and Professions Code or any other provision of law.  
30 A mortgage lender or broker may purchase an executed home  
31 improvement contract if that purchase does not violate Section  
32 7157 of the Business and Professions Code or any other provision  
33 of law. This paragraph shall not affect the application of Chapter  
34 1 (commencing with Section 1801) of Title 2 to a home  
35 improvement transaction or the financing thereof.~~

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

38 ~~4456.1. (a) A dealer or lessor-retailer who violates paragraph  
39 (1), (2), or (7) of subdivision (a) of Section 4456 shall pay to the~~

1 ~~department an administrative service fee of twenty-five dollars~~  
2 ~~(\$25) for each violation.~~

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

7 ~~(c) Subject to subdivision (d), each violation of Section 4456~~  
8 ~~is, in addition to the obligation to pay an administrative service~~  
9 ~~fee, a separate cause for discipline pursuant to Section 11613 or~~  
10 ~~11705.~~

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

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

19 ~~4456.5. (a) If a dealer purchases a vehicle for purposes of~~  
20 ~~resale with an outstanding lien due to a secured party in connection~~  
21 ~~with the cash sale of another vehicle, the dealer shall in good faith~~  
22 ~~tender full payment on the outstanding lien or balance no later than~~  
23 ~~the fourth business day after the dealer takes possession of the~~  
24 ~~vehicle.~~

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

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

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

35 ~~11710. (a) Before any dealer's or remanufacturer's license is~~  
36 ~~issued or renewed by the department to any applicant therefor, the~~  
37 ~~applicant shall procure and file with the department a bond~~  
38 ~~executed by an admitted surety insurer, approved as to form by~~  
39 ~~the Attorney General, and conditioned that the applicant shall not~~  
40 ~~practice any fraud or make any fraudulent representation which~~

1 will cause a monetary loss to a purchaser, seller, financing agency,  
2 or governmental agency.

3 ~~(b) A dealer's bond shall be in the amount of one hundred~~  
4 ~~thousand dollars (\$100,000), except the bond of a dealer who deals~~  
5 ~~exclusively in motorcycles or all-terrain vehicles shall be in the~~  
6 ~~amount of ten thousand dollars (\$10,000). The bond amount for~~  
7 ~~dealers of trailers designed and used exclusively to transport vessels~~  
8 ~~as defined in subdivision (a) of Section 9840 shall be in the amount~~  
9 ~~of fifty thousand dollars (\$50,000). Before the license is renewed~~  
10 ~~by the department, the dealer, other than a dealer who deals~~  
11 ~~exclusively in motorcycles or all-terrain vehicles, shall procure~~  
12 ~~and file a bond in the amount of one hundred thousand dollars~~  
13 ~~(\$100,000). A remanufacturer bond shall be in the amount of fifty~~  
14 ~~thousand dollars (\$50,000).~~

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

24 ~~(d) A dealer's or remanufacturer's license, or renewal of the~~  
25 ~~license, shall not be issued to any applicant therefor, unless and~~  
26 ~~until the applicant files with the department a good and sufficient~~  
27 ~~instrument, in writing, in which the applicant appoints the director~~  
28 ~~as the true and lawful agent of the applicant upon whom all process~~  
29 ~~may be served in any action, or actions, which may thereafter be~~  
30 ~~commenced against the applicant, arising out of any claim for~~  
31 ~~damages suffered by any firm, person, association, or corporation,~~  
32 ~~by reason of the violation of the applicant of any of the terms and~~  
33 ~~provisions of this code or any condition of the dealer's or~~  
34 ~~remanufacturer's bond. The applicant shall stipulate and agree in~~  
35 ~~the appointment that any process directed to the applicant, when~~  
36 ~~personal service of process upon the applicant cannot be made in~~  
37 ~~this state after due diligence and, in that case, is served upon the~~  
38 ~~director or, in the event of the director's absence from the office,~~  
39 ~~upon any employee in charge of the office of the director, shall be~~  
40 ~~of the same legal force and effect as if served upon the applicant~~

1 personally. The applicant shall further stipulate and agree, in  
2 writing, that the agency created by the appointment shall continue  
3 for and during the period covered by any license that may be issued  
4 and so long thereafter as the applicant may be made to answer in  
5 damages for a violation of this code or any condition of the bond.  
6 The instrument appointing the director as the agent for the applicant  
7 for service of process shall be acknowledged by the applicant  
8 before a notary public. In any case where the licensee is served  
9 with process by service upon the director, one copy of the summons  
10 and complaint shall be left with the director or in the director's  
11 office in Sacramento or mailed to the office of the director in  
12 Sacramento. A fee of five dollars (\$5) shall also be paid to the  
13 director at the time of service of the copy of the summons and  
14 complaint. Service on the director shall be a sufficient service on  
15 the licensee if a notice of service and a copy of the summons and  
16 complaint are immediately sent by registered mail by the plaintiff  
17 or the plaintiff's attorney to the licensee. A copy of the summons  
18 and complaint shall also be mailed by the plaintiff or the plaintiff's  
19 attorney to the surety on the applicant's bond at the address of the  
20 surety given in the bond, postpaid and registered with request for  
21 return receipt. The director shall keep a record of all process so  
22 served upon the director, which record shall show the day and hour  
23 of service and shall retain the summons and complaint so served  
24 on file. Where the licensee is served with process by service upon  
25 the director, the licensee shall have and be allowed 30 days from  
26 and after the service within which to answer any complaint or other  
27 pleading which may be filed in the cause. However, for purposes  
28 of venue, where the licensee is served with process by service upon  
29 the director, the service is deemed to have been made upon the  
30 licensee in the county in which the licensee has or last had an  
31 established place of business.

32 SEC. 7. Section 11711 of the Vehicle Code is amended to read:  
33 11711. (a) If a person who bought or leased a motor vehicle  
34 or a motorcycle at retail suffers any loss or damage related to the  
35 purchase or lease of that vehicle by reason of any fraud or contract  
36 or statutory violation practiced on him or her by a licensed dealer  
37 or one of the dealer's salespersons acting for the dealer, on his or  
38 her behalf, or within the scope of the employment of his or her  
39 salesperson in connection with the purchase or lease of that motor  
40 vehicle, or by reason of the violation by the dealer or salesperson

1 of Division 3 (commencing with Section 4000), then that person  
2 shall have a right of action against the dealer, his or her salesperson,  
3 and the surety upon the dealer's bond for actual damages plus any  
4 incidental and consequential damages.

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

19 (c) The failure of a dealer upon demand to pay the fees and  
20 penalties determined to be due as provided in Section 4456 shall  
21 be a violation of Division 3 (commencing with Section 4000) of  
22 this code, and Part 5 (commencing with Section 10701) of Division  
23 2 of the Revenue and Taxation Code and shall constitute loss or  
24 damage to the state in the amounts of those fees and penalties  
25 determined to be due and not paid.

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

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

30 11722. (a) Claims against the surety upon a dealer's bond shall  
31 be entitled to the following priorities:

32 (1) The claims of the state under subdivision (b) of Section  
33 11711 shall be satisfied first and entitled to preference over all  
34 other claims.

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

38 (3) The claims of finance companies, any entity in the business  
39 of loaning money or that accepts assignments of conditional sales  
40 contracts from licensees, other creditors of licensees, or other

1 commercial entities shall be next in priority, but, in any event,  
2 these claimants may not collectively be paid more than twenty  
3 thousand dollars (\$20,000) from the proceeds of the dealer's bond.

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

7 *SEC. 3. Section 9262 of the Vehicle Code is amended to read:*

8 9262. (a) The fee for a license issued to dealers and  
9 lessor-retailers is as follows:

10 (1) For the original license, or an ownership change which  
11 requires a new application, except as provided by Section 42231,  
12 a nonrefundable fee of one hundred ~~forty~~ *seventy five* dollars ~~(\$150)~~  
13 *(\$175)*.

14 (2) For the annual renewal of a license, a fee of one hundred  
15 *twenty five* dollars ~~(\$100)~~ *(\$125)*.

16 (3) If an alteration of an existing license is caused by a firm  
17 name change, address change, change in the corporate officer  
18 structure, or the addition of a branch location, a fee of seventy  
19 dollars (\$70).

20 (b) The fee for a license issued to dismantlers, manufacturers,  
21 manufacturer branches, remanufacturers, remanufacturer branches,  
22 transporters, distributors, and distributor branches is as follows:

23 (1) For the original license, or an ownership change which  
24 requires a new application, except as provided by Section 42231,  
25 a nonrefundable fee of one hundred dollars (\$100).

26 (2) For the annual renewal of a license, a fee of eighty-five  
27 dollars (\$85).

28 (3) If an alteration of an existing license is caused by a firm  
29 name change, address change, or the addition of a branch location,  
30 a fee of fifty dollars (\$50).

31 (4) If an alteration of an existing license is caused by a change  
32 in the corporate officer structure, a fee of seventy dollars (\$70).

33 (c) The fee for a license issued to representatives is as follows:

34 (1) For the original license, or an ownership change which  
35 requires a new application, except as provided by Section 42231,  
36 a nonrefundable fee of fifty dollars (\$50).

37 (2) For the annual renewal of a license, a fee of eighty-five  
38 dollars (\$85).

39 (d) The fee for an autobroker's endorsement to a dealer's license  
40 is as follows:

1 (1) For the original endorsement, a nonrefundable fee of  ~~fifty~~  
2 *one hundred* dollars ~~(\$50)~~ (\$100).

3 (2) For the annual renewal of the endorsement, a fee of  
4  ~~twenty-five~~ *seventy five* dollars ~~(\$25)~~ (\$75).

5 (e) When the holder of a license for which a fee is provided in  
6 this section applies for special plates as provided in subdivision  
7 (b) of Section 11505 or subdivision (b) of Section 11714, the fee  
8 for the plates and the annual renewal of the plates is the prevailing  
9 vehicle registration fee as set forth in Section 9250 for the period  
10 for which the special plates are issued or renewed.

11 *SEC. 4. Section 9262.5 of the Vehicle Code is amended to read:*

12 9262.5. It is the intent of the Legislature, in amending Section  
13 9262 in ~~1990~~ 2009 to increase the fee for the annual renewal of  
14 the license of a dealer and of a lessor-retailer to *one hundred twenty*  
15 *five* dollars ~~(\$100)~~ (\$125), that  ~~fifteen~~ *forty* dollars ~~(\$15)~~ (\$40) of  
16 that  ~~increase~~  *fee* shall, when appropriated, be utilized by the  
17 department for the investigation of those dealers and lessor-retailers  
18 who demonstrate the greatest potential for causing losses to  
19 consumers as shown by repeated consumer complaints, habitual  
20 violations of the requirements of their licenses, the issuance of a  
21 probationary license by the department, or a violation of other  
22 standards and criteria established by the department for these  
23 purposes.

24 *SEC. 5. Section 11709.4 is added to the Vehicle Code, to read:*

25 11709.4. (a) *When a dealer purchases or obtains a vehicle in*  
26 *trade in a retail sale or lease transaction and the vehicle is subject*  
27 *to a prior credit or lease balance, all of the following apply:*

28 (1) *If the dealer agreed to pay a specified amount on the prior*  
29 *credit or lease balance owing on the vehicle purchased or obtained*  
30 *in trade, and the agreement to pay the specified amount is*  
31 *contained in a written agreement documenting the transaction,*  
32 *the dealer shall tender the agreed upon amount as provided in the*  
33 *written agreement to the lessor registered in accordance with*  
34 *Section 4453.5, or to the legal owner reflected on the ownership*  
35 *certificate, or to the designee of that lessor or legal owner of the*  
36 *vehicle purchased or obtained in trade within 21 calendar days*  
37 *of purchasing or obtaining the vehicle in trade.*

38 (2) *If the dealer did not set forth an agreement regarding*  
39 *payment of a prior credit or lease balance owed on the vehicle*  
40 *purchased or obtained in trade, in a written agreement*

1 *documenting the transaction, the dealer shall tender to the lessor*  
 2 *registered in accordance with Section 4453.5, or to the legal owner*  
 3 *reflected on the ownership certificate, or to the designee of that*  
 4 *lessor or legal owner of the vehicle purchased or obtained in trade,*  
 5 *an amount necessary to discharge the prior credit or lease balance*  
 6 *owing on the vehicle purchased or obtained in trade within 21*  
 7 *calendar days of purchasing or obtaining the vehicle in trade.*

8 *(3) The time period specified in paragraphs (1) or (2) may be*  
 9 *shortened if the dealer and consumer agree, in writing, to a shorter*  
 10 *time period.*

11 *(4) A dealer shall not sell, consign for sale, or transfer any*  
 12 *ownership interest in the vehicle purchased or obtained in trade*  
 13 *until an amount necessary to discharge the prior credit or lease*  
 14 *balance owing on the vehicle has been tendered to the lessor*  
 15 *registered in accordance with Section 4453.5, or to the legal owner*  
 16 *reflected on the ownership certificate, or to the designee of that*  
 17 *lessor or legal owner of the vehicle purchased or obtained in trade.*

18 *(b) A dealer does not violate this section if the dealer reasonably*  
 19 *and in good faith gives notice of rescission of the contract*  
 20 *promptly, but no later than 21 days after the date on which the*  
 21 *vehicle was purchased or obtained in trade, and the contract is*  
 22 *thereafter rescinded on any of the grounds in Section 1689 of the*  
 23 *Civil Code.*

24 ~~SEC. 9.~~

25 *SEC. 6.* Nothing in this act shall be construed to limit, in any  
 26 way, the existing rights, remedies, or recourses available to any  
 27 person who purchases or leases vehicles at retail.

28 ~~SEC. 10~~

29 *SEC. 7..* No reimbursement is required by this act pursuant to  
 30 Section 6 of Article XIII B of the California Constitution because  
 31 the only costs that may be incurred by a local agency or school  
 32 district will be incurred because this act creates a new crime or  
 33 infraction, eliminates a crime or infraction, or changes the penalty  
 34 for a crime or infraction, within the meaning of Section 17556 of  
 35 the Government Code, or changes the definition of a crime within  
 36 the meaning of Section 6 of Article XIII B of the California  
 37 Constitution.