

Assembly Bill No. 238

Passed the Assembly September 9, 2011

Chief Clerk of the Assembly

Passed the Senate September 9, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 2983 and 2983.1 of the Civil Code, relating to motor vehicle sales, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, Huber. Motor vehicle conditional sale contracts.

The Rees-Levering Motor Vehicle Sales and Finance Act regulates motor vehicle conditional sale contracts, and, among other things, requires a person selling or leasing a motor vehicle under a conditional sale contract to disclose certain information to a buyer. A violation of those disclosure requirements makes a conditional sale contract unenforceable, except as specified.

This bill would provide that a conditional sale contract shall not be made unenforceable solely for a violation of provisions requiring the disclosure of certain fees paid to public officials, including vehicle license fees, registration fees, and California tire fees.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. The Legislature finds and declares as follows:

(a) The Rees-Levering Motor Vehicle Sales and Finance Act (Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code) sets forth a statutory scheme to regulate the retail sale and financing of motor vehicles. The act contains detailed disclosure requirements intended to protect the consuming public and includes provisions that render a conditional sale contract unenforceable if any of those disclosure requirements are violated, regardless of the nature of the disclosure violation or any consumer harm.

(b) It is the intent of the Legislature in enacting this act to limit the contract unenforceability remedies of the Rees-Levering Motor Vehicle Sales and Finance Act for certain disclosure violations that involve fees paid by a vehicle purchaser to the state. It is not the intent of the Legislature in enacting this act to relieve a seller

from making full and accurate contract disclosures, or to limit other consumer remedies for any disclosure violation.

SEC. 2. Section 2983 of the Civil Code is amended to read:

2983. (a) Except as provided in subdivision (b), if the seller, except as the result of an accidental or bona fide error in computation, violates any provision of Section 2981.9, or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable, except by a bona fide purchaser, assignee or pledgee for value or until after the violation is corrected as provided in Section 2984, and, if the violation is not corrected, the buyer may recover from the seller the total amount paid, pursuant to the terms of the contract, by the buyer to the seller or his assignee. The amount recoverable for property traded in as all or part of the downpayment shall be equal to the agreed cash value of such property as the value appears on the conditional sale contract or the fair market value of such property as of the time the contract is made, whichever is greater.

(b) A conditional sale contract executed or entered into on or after January 1, 2012, shall not be made unenforceable solely because of a violation by the seller of paragraph (2) or (5) of subdivision (a) of Section 2982. In addition to any other remedies that may be available, the buyer is entitled to any actual damages sustained as a result of a violation of those provisions. Nothing in this subdivision affects any legal rights, claims, or remedies otherwise available under law.

SEC. 3. Section 2983.1 of the Civil Code is amended to read:

2983.1. (a) If the seller or holder of a conditional sale contract, except as the result of an accidental or bona fide error of computation, violates any provision of subdivision (l) of Section 2982, the buyer may recover from the person three times the amount of any finance charge paid to that person.

(b) Except as provided in subdivision (e), if a holder acquires a conditional sale contract without actual knowledge of the violation by the seller of Section 2981.9, or of subdivision (a), (j), or (k) of Section 2982, the contract shall be valid and enforceable by the holder except the buyer is excused from payment of the unpaid finance charge, unless the violation is corrected as provided in Section 2984.

(c) Except as provided in subdivision (e), if a holder acquires a conditional sale contract with knowledge of a violation of Section

2981.9, or of subdivision (a), (j), or (k) of Section 2982, the conditional sale contract shall not be enforceable except by a bona fide purchaser, assignee, or pledgee for value, or unless the violation is corrected as provided in Section 2984, and, if the violation is not corrected, the buyer may recover the amounts specified in Section 2983 from the person to whom payment was made.

(d) When a conditional sale contract is not enforceable under Section 2983 or this section, the buyer may elect to retain the motor vehicle and continue the contract in force, or may, with reasonable diligence, elect to rescind the contract and return the motor vehicle. The value of the motor vehicle returned shall be credited as restitution by the buyer without any decrease that results from the passage of time in the cash price of the motor vehicle as the price appears on the conditional sale contract.

(e) A conditional sale contract executed or entered into on or after January 1, 2012, shall not be made unenforceable, and the buyer shall not be excused from payment of any finance charge, solely because of a violation by the seller of paragraph (2) or (5) of subdivision (a) of Section 2982. In addition to any other remedies that may be available, the buyer is entitled to any actual damages sustained as a result of a violation of those provisions. Nothing in this subdivision affects any legal rights, claims, or remedies otherwise available under law.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide, as soon as possible, that the contract unenforceability remedies in the Rees-Levering Motor Vehicle Sales and Finance Act should not apply to fees paid by a vehicle purchaser to the state, while preserving all other available remedies, it is necessary that this act take effect immediately.

Approved _____, 2011

Governor