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AB-287 Vehicle safety: recalls. (2015-2016)

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Assembly Bill No. 287

CHAPTER 682

An act to amend Sections 3065 and 11705 of, and to add Article 1.1 (commencing with Section 11750) to Chapter 4 of Division 5 of, the Vehicle Code, relating to vehicle safety.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 287, Gordon. Vehicle safety: recalls.

Existing law generally regulates the transfer and registration of motor vehicles. Existing federal law requires a motor vehicle manufacturer to notify the owner or purchaser of a motor vehicle when the manufacturer determines that the vehicle contains a safety-related defect or when the manufacturer is ordered by the federal Secretary of Transportation to notify vehicle owners and purchasers that a vehicle has a safety-related defect. Existing federal law also prohibits a motor vehicle dealer from selling a vehicle if it has been notified of a safety-related defect by the manufacturer, except as specified. A violation of the Vehicle Code is a crime.

This bill would enact the Consumer Automotive Recall Safety Act, which would prohibit a dealer or rental car company, as defined, with a motor vehicle fleet of 34 or fewer loaner or rental vehicles from loaning, renting, or offering for loan or rent a vehicle subject to a manufacturer's recall after receiving a notice of the recall, as specified, until the vehicle has been repaired, except as specified. The act would also require the Department of Motor Vehicles (DMV) to include a specified recall disclosure statement with each vehicle registration renewal notice. By creating new prohibitions, the violation of which would be a crime under existing law, this bill would impose a state-mandated local program.

Existing law requires a vehicle franchisor to properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing.

This bill would specify that the warranty obligations include all costs directly associated with the disposal of hazardous materials that are associated with a recall repair. The bill would provide, for purposes of the above-described warranty obligations, that a warranty includes a recall conducted pursuant to federal motor vehicle safety laws. The bill would state that this provision is declaratory of existing law.

Existing law authorizes the DMV to suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued has, among other things, violated provisions relating to issuance of licenses and certificates to manufacturers, transporters, and dealers.

This bill would also authorize the DMV to suspend or revoke the license issued to the above-mentioned persons upon determining that the person has violated any provision of the Consumer Automotive Recall Safety Act.

The bill would state findings and declarations of the Legislature relative to vehicle recalls.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Over the past one-half decade, automakers and the National Highway Traffic Safety Administration have issued more recalls on new and used motor vehicles than ever before. The year 2014 set the record for the most recalls on vehicles in United States history with over 63.8 million vehicles recalled. The rate of vehicle recalls has exponentially grown over this past one-half decade as 51 million recalls were issued in 2015, 22 million recalls were issued in 2013, and 16.2 million were issued in 2012. The increase of recalls in 2014 is a 190 percent increase from 2013 and a 293.8 percent increase from 2012.

(2) While federal motor vehicle safety standards are more demanding now than at any other point in time and new vehicles sold today are the safest in history, the exponential growth of recalls issued on motor vehicles has caused confusion and apathy for far too many Californians. According to the National Highway Traffic Safety Administration and others, about one-third of all recalled vehicles are never repaired by the vehicle's owner.

(3) Federal regulations now require most vehicle manufacturers to provide motor vehicle safety recall information applicable to the vehicles they manufacture on the Internet and to the public.

(b) Accordingly, it is the intent of the Legislature in enacting this act to increase consumer awareness of unrepaired recalls on their cars and to ensure that consumers have access to loaner and rental vehicles free of any unrepaired recalls.

(c) The Legislature further finds and declares all of the following:

(1) The distribution, sale, and service of new motor vehicles in the State of California vitally affect the general economy of this state and the public welfare.

(2) The new motor vehicle franchise system, which operates within a strictly defined and highly regulated statutory scheme, assures the consuming public of a well-organized distribution system for the availability and sale of new motor vehicles throughout the state, provides a network of quality warranty, recall, and repair facilities to maintain those vehicles, and creates a cost-effective method for the state to police those systems through the licensing and regulation of private sector franchisors and franchisees.

(3) California franchise laws require manufacturers to provide reasonable reimbursement to dealers for warranty and recall work, but fail to establish guidelines for compensating franchisee disposal costs associated with hazardous waste generated by repairs on recalled vehicles.

(d) Accordingly, it is the intent of the Legislature in enacting this act to ensure that new motor vehicle dealer franchisees are treated fairly by their franchisors and that new motor vehicle dealer franchisees are reasonably compensated for repairs on recalled vehicles.

SEC. 2. Section 3065 of the Vehicle Code is amended to read:

3065. (a) Every franchisor shall properly fulfill every warranty agreement made by it and adequately and fairly compensate each of its franchisees for labor and parts used to fulfill that warranty when the franchisee has fulfilled warranty obligations of diagnostics, repair, and servicing and shall file a copy of its warranty reimbursement schedule or formula with the board. The warranty reimbursement schedule or formula shall be reasonable with respect to the time and compensation allowed to the franchisee for the warranty diagnostics, repair, servicing, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair. The reasonableness of the warranty reimbursement schedule or formula shall be determined by the board if a franchisee files a protest with the board. A franchisor shall not replace, modify, or supplement the warranty reimbursement schedule to impose a fixed percentage or other reduction in the time and compensation allowed to the franchisee for warranty repairs not attributable to a specific repair. A franchisor may reduce the allowed time and compensation applicable to a specific warranty repair only upon 15 days' prior written notice to the

franchisee. Any protest challenging a reduction in time and compensation applicable to specific parts or labor operations shall be filed within six months following the franchisee's receipt of notice of the reduction, and the franchisor shall have the burden of establishing the reasonableness of the reduction and adequacy and fairness of the resulting compensation.

(b) In determining the adequacy and fairness of the compensation, the franchisee's effective labor rate charged to its various retail customers may be considered together with other relevant criteria. If in a protest permitted by this section filed by any franchisee the board determines that the warranty reimbursement schedule or formula fails to provide adequate and fair compensation or fails to conform with the other requirements of this section, within 30 days after receipt of the board's order, the franchisor shall correct the failure by amending or replacing the warranty reimbursement schedule or formula and implementing the correction as to all franchisees of the franchisor that are located in this state.

(c) If any franchisor disallows a franchisee's claim for a defective part, alleging that the part, in fact, is not defective, the franchisor shall return the part alleged not to be defective to the franchisee at the expense of the franchisor, or the franchisee shall be reimbursed for the franchisee's cost of the part, at the franchisor's option.

(d) (1) All claims made by franchisees pursuant to this section shall be either approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day. All claims made by franchisees under this section and Section 3064 for labor and parts shall be paid within 30 days after approval.

(2) A franchisor shall not disapprove a claim unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements.

(3) When any claim is disapproved, the franchisee who submits it shall be notified in writing of its disapproval within the required period, and each notice shall state the specific grounds upon which the disapproval is based. The franchisor shall provide for a reasonable appeal process allowing the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval. If disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the notice to cure any material noncompliance. If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, shall not constitute a violation of this article.

(6) Within six months after either receipt of the written notice described in paragraph (3) or (4), whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with the requirements of this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(e) (1) Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis for a period of nine months after a claim is paid or credit issued. A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner. A franchisor may conduct no more than one random audit of a franchisee in a nine-month period. The franchisor's notification to the franchisee of any additional audit within a nine-month period shall be accompanied by written disclosure of the basis for that additional audit.

(2) Previously approved claims shall not be disapproved or charged back to the franchisee unless the claim is false or fraudulent, repairs were not properly made, repairs were inappropriate to correct a nonconformity with the written warranty due to an improper act or omission of the franchisee, or for material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly and the extrapolation is performed in a reasonable and statistically valid manner.

(3) If the franchisor disapproves of a previously approved claim following an audit, the franchisor shall provide to the franchisee, within 30 days after the audit, a written disapproval notice stating the specific grounds upon which the claim is disapproved. The franchisor shall provide a reasonable appeal process allowing the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period to be commensurate with the volume of

claims under consideration. If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

(4) If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page.

(5) The franchisor shall not chargeback the franchisee until 45 days after receipt of the written notice described in paragraph (3) or paragraph (4), whichever is later. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of receipt of that written notice. If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the board issues a final order on the protest. If the board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

(6) Within six months after either receipt of the written disapproval notice or completion of the franchisor's appeal process, whichever is later, a franchisee may file a protest with the board for determination of whether the franchisor complied with this subdivision. In any protest pursuant to this subdivision, the franchisor shall have the burden of proof.

(f) If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the board.

(g) For purposes of this section, "warranty" includes a recall conducted pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the United States Code. This subdivision is declaratory and not amendatory of existing law.

SEC. 3. Section 11705 of the Vehicle Code is amended to read:

11705. (a) The department, after notice and hearing, may suspend or revoke the license issued to a dealer, transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, or distributor branch upon determining that the person to whom the license was issued is not lawfully entitled thereto, or has done any of the following:

(1) Filed an application for the license using a false or fictitious name not registered with the proper authorities, or knowingly made a false statement or knowingly concealed a material fact, in the application for the license.

(2) Made, or knowingly or negligently permitted, an illegal use of the special plates issued to the licensee.

(3) Used a false or fictitious name, knowingly made a false statement, or knowingly concealed a material fact, in an application for the registration of a vehicle, or otherwise committed a fraud in the application.

(4) Failed to deliver to a transferee lawfully entitled thereto a properly endorsed certificate of ownership.

(5) Knowingly purchased, sold, or otherwise acquired or disposed of a stolen motor vehicle.

(6) Failed to provide and maintain a clear physical division between the type of business licensed pursuant to this chapter and any other type of business conducted at the established place of business.

(7) Willfully violated Section 3064, 3065, 3074, or 3075 or any rule or regulation adopted pursuant thereto.

(8) Violated any provision of Division 3 (commencing with Section 4000) or any rule or regulation adopted pursuant thereto, or subdivision (a) of Section 38200.

(9) Violated any provision of Division 4 (commencing with Section 10500) or any rule or regulation adopted pursuant thereto.

(10) Violated any provision of Article 1 (commencing with Section 11700) of, or Article 1.1 (commencing with Section 11750) of, Chapter 4 of Division 5 or any rule or regulation adopted pursuant thereto.

(11) Violated any provision of Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code or any rule or regulation adopted pursuant thereto.

(12) Violated any provision of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code or any rule or regulation adopted pursuant thereto.

(13) Submitted a check, draft, or money order to the department for any obligation or fee due the state which was dishonored or refused payment upon presentation.

(14) (A) Has caused any person to suffer any loss or damage by reason of any fraud or deceit practiced on that person or fraudulent representations made to that person in the course of the licensed activity.

(B) For purposes of this paragraph, "fraud" includes any act or omission which is included within the definition of either "actual fraud" or "constructive fraud" as defined in Sections 1572 and 1573 of the Civil Code, and "deceit" has the same meaning as defined in Section 1710 of the Civil Code. In addition, "fraud" and "deceit" include, but are not limited to, a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made honestly and in good faith; an intentional failure to disclose a material fact; and any act within Section 484 of the Penal Code.

(C) For purposes of this paragraph, "person" also includes a governmental entity.

(15) Failed to meet the terms and conditions of an agreement entered into pursuant to Section 11707.

(16) Violated Section 43151, 43152, or 43153 of, or subdivision (b) of Section 44072.10 of, the Health and Safety Code.

(17) Failed to repay a claim paid by the Consumer Motor Vehicle Recovery Corporation as provided in subdivision (i) of Section 11703.

(18) As a buy-here-pay-here dealer, violated any provision of Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code or any rule or regulation adopted pursuant to those provisions.

(b) Any of the causes specified in this chapter as a cause for refusal to issue a license to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer applicant is cause to suspend or revoke a license issued to a transporter, manufacturer, manufacturer branch, remanufacturer, remanufacturer branch, distributor, distributor branch, or dealer.

(c) Except as provided in Section 11707, every hearing provided for in this section shall be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 4. Article 1.1 (commencing with Section 11750) is added to Chapter 4 of Division 5 of the Vehicle Code, to read:

Article 1.1. Consumer Automotive Recall Safety Act

11750. This article shall be known, and may be cited, as the Consumer Automotive Recall Safety Act (CARS Act).

11752. As used in this article, the following definitions apply:

(a) The term "dealer" has the same meaning as in Section 285.

(b) (1) A "manufacturer's recall" is a recall conducted pursuant to Sections 30118 to 30120, inclusive, of Title 49 of the United States Code.

(2) A manufacturer's recall does not include a service campaign or emission recall when the vehicle manufacturer or the National Highway Traffic Safety Administration has not issued a recall notice to owners of affected vehicles, pursuant to Section 30118 of Title 49 of the United States Code.

(c) A "recall database" is a database from which an individual may obtain vehicle identification number (VIN) specific manufacturer's recall information relevant to a specific vehicle.

(1) For a vehicle manufacturer that is not subject to the regulations adopted pursuant to Section 31301 of the federal Moving Ahead for Progress in the 21st Century Act (Public Law 112-141), a recall database is one of the following:

(A) The recall data on a vehicle manufacturer's Internet Web site for a specific vehicle's line-make.

(B) The recall data in a vehicle manufacturer's internal system that provides information to its franchisees on vehicles subject to recall.

(C) The recall data in subparagraph (A) or (B) that is contained in a commercially available vehicle history system.

(2) For a vehicle manufacturer that is subject to the regulations adopted pursuant to Section 31301 of the federal Moving Ahead for Progress in the 21st Century Act (Public Law 112-141), a recall database shall include, at a minimum, the recall information required pursuant to Section 573.15 of Title 49 of the Code of Federal Regulations.

(d) A "recall database report" is a report, specific to a vehicle that is identified by its VIN, containing information obtained from a recall database.

(e) A "rental car company" is a person or entity in the business of renting passenger vehicles to the public in California.

11754. (a) No later than 48 hours after receiving a notice of a manufacturer's recall, or sooner if practicable, a dealer or rental car company with a motor vehicle fleet of 34 or fewer loaner or rental vehicles shall not loan, rent, or offer for loan or rent a vehicle subject to that recall until the recall repair has been made.

(b) If a recall notification indicates that the remedy for the recall is not immediately available and specifies actions to temporarily repair the vehicle in a manner to eliminate the safety risk that prompted the recall, the dealer or rental car company, after having the repairs completed, may loan or rent the vehicle. Once the remedy for the vehicle becomes available to the dealer or rental car company, the dealer or rental car company shall not loan or rent the vehicle until the vehicle has been repaired.

11758. The department shall include the following recall disclosure statement on each vehicle registration renewal notice:

"NOTICE: Many vehicles have been recalled recently for needed repairs. Did you know you can check to see if your vehicle has an unrepaired manufacturer's safety recall? For most vehicles, manufacturer safety recalls are repaired for free. You can check for any recalls and how to get the recall repaired at www.safercar.gov."

11760. This article shall not create any legal duty upon the dealer, rental car company, or department related to the accuracy, errors, or omissions contained in a recall database report or any legal duty to provide information added to a recall database after the dealer, rental car company, or department obtained the recall database report pursuant to Sections 11754 and 11758.

11761. The rights and remedies provided by this article are cumulative and shall not be construed as restricting any right or remedy that is otherwise available.

11762. The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.