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AB-2311 Motor vehicle conditional sale contracts: guaranteed asset protection waivers. (2021-2022)

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Assembly Bill No. 2311

CHAPTER 283

An act to amend Sections 2981, 2982, 2982.2, and 2983.1 of, and to add Section 2982.12 to, the Civil Code, relating to motor vehicle conditional sale contracts.

[Approved by Governor September 13, 2022. Filed with Secretary of State September 13, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2311, Maienschein. Motor vehicle conditional sale contracts: guaranteed asset protection waivers.

Existing law governs motor vehicle conditional sale contracts, as defined, and requires sellers of motor vehicles to make certain disclosures to buyers. A willful violation of these provisions is a crime.

This bill would establish provisions to govern the offer, sale, provision, or administration, in connection with a conditional sale contract, of a guaranteed asset protection waiver (GAP waiver), defined to mean an optional contractual obligation under which a seller agrees, for additional consideration, to cancel or waive all or part of amounts due on the buyer's conditional sale contract subject to existing law in the event of a total loss or unrecovered theft of the motor vehicle specified in the conditional sale contract. The bill, among other provisions, would prohibit conditioning the extension of credit, the term of credit, or the terms of a conditional sale contract upon the purchase of a GAP waiver and permit cancellation by the buyer at any time without penalty. The bill would prohibit the sale of a GAP waiver pursuant to these provisions where the loan-to-value ratio exceeds the maximum loan-to-value ratio of the GAP waiver, unless the terms of the GAP waiver disclose that limitation and the buyer is informed of that limitation. The bill would also require prescribed information on the GAP waiver to appear on a document separate from the conditional sale contract, to be separately signed by a buyer or potential buyer. The bill would govern termination of a GAP waiver, including the refund of GAP waiver costs on termination. The bill would require the contract including the GAP waiver to include a statement that the purchaser is generally entitled to a refund of the unearned portion of the GAP waiver charges on a pro rata basis, as specified. The bill would also authorize the buyer to recover from the holder 3 times the amount of any guaranteed asset protection charges paid, if a holder of a conditional sale contract that includes a GAP waiver, except as the result of an accidental or bona fide error of computation, violates termination provisions for a GAP waiver. The bill would include GAP waivers in the existing required disclosures.

Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

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. Section 2981 of the Civil Code is amended to read:

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

(a) "Conditional sale contract" means:

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

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

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

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

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

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

(d) "Person" includes an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.

(e) "Holder" means the person entitled to enforce the conditional sale contract against the buyer at the time.

(f) "Cash price" means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale, including, but not limited to, delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, a vehicle contract cancellation option agreement, and payment of a prior credit or lease balance remaining on property being traded in.

(g) "Downpayment" means a payment that the buyer pays or agrees to pay to the seller in cash or property value or money's worth at or prior to delivery by the seller to the buyer of the motor vehicle described in the conditional sale contract. The term shall also include the amount of any portion of the downpayment the payment of which is deferred until not later than the due date of the second otherwise scheduled payment, if the amount of the deferred downpayment is not subject to a finance charge. The term does not include any administrative finance charge charged, received, or collected by the seller as provided in this chapter.

(h) "Amount financed" means the amount required to be disclosed pursuant to paragraph (8) of subdivision (a) of Section 2982.

(i) "Unpaid balance" means the difference between subdivisions (f) and (g), plus all insurance premiums (except for credit life or disability insurance when the amount thereof is included in the finance charge), which are included in the contract balance, and the total amount paid or to be paid as follows:

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

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

(j) "Finance charge" has the meaning set forth for that term in Section 226.4 of Regulation Z. The term shall not include delinquency charges or collection costs and fees as provided by subdivision (k) of Section 2982, extension or deferral agreement charges as provided by Section 2982.3, or amounts for insurance, repairs to or preservation of the motor vehicle, or preservation of the security interest therein advanced by the holder under the terms of the contract.

(k) "Total of payments" means the amount required to be disclosed pursuant to subdivision (h) of Section 226.18 of Regulation Z. The term includes any portion of the downpayment that is deferred until not later than the second otherwise scheduled payment and that is not subject to a finance charge. The term shall not include amounts for which the buyer may later become obligated

under the terms of the contract in connection with insurance, repairs to or preservation of the motor vehicle, preservation of the security interest therein, or otherwise.

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

(m) "Purchase order" means a sales order, car reservation, statement of transaction, or any other such instrument used in the conditional sale of a motor vehicle pending execution of a conditional sale contract. The purchase order shall conform to the disclosure requirements of subdivision (a) of Section 2982 and Section 2984.1, and subdivision (m) of Section 2982 shall apply.

(n) "Regulation Z" means a rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System ("Board") under the federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601, et seq.), and an interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the Truth in Lending Act, as amended, to issue the interpretations or approvals.

(o) "Simple-interest basis" means the determination of a finance charge, other than an administrative finance charge, by applying a constant rate to the unpaid balance as it changes from time to time either:

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

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

(p) "Precomputed basis" means the determination of a finance charge by multiplying the original unpaid balance of the contract by a rate and multiplying that product by the number of payment periods elapsing between the date of the contract and the date of the last scheduled payment.

(q) "Service contract" means "vehicle service contract" as defined in subdivision (c) of Section 12800 of the Insurance Code.

(r) "Surface protection product" means the following products installed by the seller after the motor vehicle is sold:

(1) Undercoating.

(2) Rustproofing.

(3) Chemical or film paint sealant or protectant.

(4) Chemical sealant or stain inhibitor for carpet and fabric.

(s) "Theft deterrent device" means the following devices installed by the seller after the motor vehicle is sold:

(1) A vehicle alarm system.

(2) A window etch product.

(3) A body part marking product.

(4) A steering lock.

(5) A pedal or ignition lock.

(6) A fuel or ignition kill switch.

(t) "Guaranteed asset protection waiver" means an optional contractual obligation under which a seller agrees, for additional consideration, to cancel or waive all or part of amounts due on the buyer's conditional sale contract subject to this chapter in the event of a total loss or unrecovered theft of the motor vehicle specified in the conditional sale contract.

SEC. 2. Section 2982 of the Civil Code is amended to read:

2982. A conditional sale contract subject to this chapter shall contain the disclosures required by Regulation Z, whether or not Regulation Z applies to the transaction. In addition, to the extent applicable, the contract shall contain the other disclosures and

notices required by, and shall satisfy the requirements and limitations of, this section. The disclosures required by subdivision (a) may be itemized or subtotaled to a greater extent than as required by that subdivision and shall be made together and in the sequence set forth in that subdivision. All other disclosures and notices may appear in the contract in any location or sequence and may be combined or interspersed with other provisions of the contract.

(a) The contract shall contain the following disclosures, as applicable, which shall be labeled "itemization of the amount financed":

(1) (A) The cash price, exclusive of document processing charges, charges to electronically register or transfer the vehicle, taxes imposed on the sale, pollution control certification fees, prior credit or lease balance on property being traded in, the amount charged for a service contract, the amount charged for a theft deterrent system, the amount charged for a surface protection product, the amount charged for an optional debt cancellation agreement or guaranteed asset protection waiver, and the amount charged for a contract cancellation option agreement.

(B) The charge to be retained by the seller for document processing authorized pursuant to Section 4456.5 of the Vehicle Code.

(C) The fee charged by the seller for certifying that the motor vehicle complies with applicable pollution control requirements.

(D) A charge for a theft deterrent device.

(E) A charge for a surface protection product.

(F) The total amount charged by the seller for an electric vehicle charging station, which may include only the charges for the electric vehicle charging station device, any materials and wiring, and any installation services. The total amount shall be labeled "EV Charging Station."

(G) Taxes imposed on the sale.

(H) The charge to electronically register or transfer the vehicle authorized pursuant to Section 4456.5 of the Vehicle Code.

(I) The amount charged for a service contract.

(J) The prior credit or lease balance remaining on property being traded in, as required by paragraph (6). The disclosure required by this subparagraph shall be labeled "prior credit or lease balance (see downpayment and trade-in calculation)."

(K) Any charge for an optional debt cancellation agreement or guaranteed asset protection waiver.

(L) Any charge for a used vehicle contract cancellation option agreement.

(M) The total cash price, which is the sum of subparagraphs (A) to (L), inclusive.

(N) The disclosures described in subparagraphs (D), (E), and (L) are not required on contracts involving the sale of a motorcycle, as defined in Section 400 of the Vehicle Code, or on contracts involving the sale of an off-highway motor vehicle that is subject to identification under Section 38010 of the Vehicle Code, and the amounts of those charges, if any, are not required to be reflected in the total price under subparagraph (M).

(2) Amounts paid to public officials for the following:

(A) Vehicle license fees.

(B) Registration, transfer, and titling fees.

(C) California tire fees imposed pursuant to Section 42885 of the Public Resources Code.

(3) The aggregate amount of premiums agreed, upon execution of the contract, to be paid for policies of insurance included in the contract, excluding the amount of any insurance premium included in the finance charge.

(4) The amount of the state fee for issuance of a certificate of compliance, noncompliance, exemption, or waiver pursuant to any applicable pollution control statute.

(5) A subtotal representing the sum of the amounts described in paragraphs (1) to (4), inclusive.

(6) The amount of the buyer's downpayment itemized to show the following:

(A) The agreed value of the property being traded in.

(B) The prior credit or lease balance, if any, owing on the property being traded in.

(C) The net agreed value of the property being traded in, which is the difference between the amounts disclosed in subparagraphs (A) and (B). If the prior credit or lease balance of the property being traded in exceeds the agreed value of the property, a negative number shall be stated.

(D) The amount of any portion of the downpayment to be deferred until not later than the due date of the second regularly scheduled installment under the contract and that is not subject to a finance charge.

(E) The amount of any manufacturer's rebate applied or to be applied to the downpayment.

(F) The remaining amount paid or to be paid by the buyer as a downpayment.

(G) The total downpayment. If the sum of subparagraphs (C) to (F), inclusive, is zero or more, that sum shall be stated as the total downpayment, and no amount shall be stated as the prior credit or lease balance under subparagraph (I) of paragraph (1). If the sum of subparagraphs (C) to (F), inclusive, is less than zero, then that sum, expressed as a positive number, shall be stated as the prior credit or lease balance under subparagraph (I) of paragraph (1), and zero shall be stated as the total downpayment. The disclosure required by this subparagraph shall be labeled "total downpayment" and shall contain a descriptor indicating that if the total downpayment is a negative number, a zero shall be disclosed as the total downpayment and a reference made that the remainder shall be included in the disclosure required pursuant to subparagraph (I) of paragraph (1).

(7) The amount of any administrative finance charge, labeled "prepaid finance charge."

(8) The difference between the amount described in paragraph (5) and the sum of the amounts described in paragraphs (6) and (7), labeled "amount financed."

(b) No particular terminology is required to disclose the items set forth in subdivision (a) except as expressly provided in that subdivision.

(c) If payment of all or a portion of the downpayment is to be deferred, the deferred payment shall be reflected in the payment schedule disclosed pursuant to Regulation Z.

(d) If the downpayment includes property being traded in, the contract shall contain a brief description of that property.

(e) The contract shall contain the names and addresses of all persons to whom the notice required pursuant to Section 2983.2 and permitted pursuant to Sections 2983.5 and 2984 is to be sent.

(f) (1) If the contract includes a finance charge determined on the precomputed basis, the contract shall identify the method of computing the unearned portion of the finance charge in the event of prepayment in full of the buyer's obligation and contain a statement of the amount or method of computation of any charge that may be deducted from the amount of any unearned finance charge in computing the amount that will be credited to the obligation or refunded to the buyer. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the actuarial method if the computation will be under that method. The method of computing the unearned portion of the finance charge shall be sufficiently identified with a reference to the Rule of 78's, the sum of the digits, or the sum of the periodic time balances method in all other cases, and those references shall be deemed to be equivalent for disclosure purposes.

(2) If the contract includes a finance charge that is determined on the simple-interest basis but provides for a minimum finance charge in the event of prepayment in full, the contract shall contain a statement of that fact and the amount of the minimum finance charge or its method of calculation.

(g) (1) If the contract includes a finance charge that is determined on the precomputed basis and provides that the unearned portion of the finance charge to be refunded upon full prepayment of the contract is to be determined by a method other than actuarial, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. Because of the way the amount of this refund will be figured, the time when you prepay could increase the ultimate cost of credit under this agreement. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(2) If the contract includes a finance charge that is determined on the precomputed basis and provides for the actuarial method for computing the unearned portion of the finance charge upon prepayment in full, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before

you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(3) If the contract includes a finance charge that is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: "Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement."

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

"If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer's Signature"

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance included as part of the finance charge. The itemization shall identify the type of insurance coverage and the premium charged therefor, and, if the insurance expires before the date of the last scheduled installment included in the repayment schedule, the term of the insurance shall be stated.

(2) If any charge for insurance, other than for credit life or disability, is included in the contract balance and disbursement of any part thereof is to be made more than one year after the date of the conditional sale contract, any finance charge on the amount to be disbursed after one year shall be computed from the month the disbursement is to be made to the due date of the last installment under the conditional sale contract.

(j) (1) Except for contracts in which the finance charge or a portion of the finance charge is determined by the simple-interest basis and the amount financed disclosed pursuant to paragraph (8) of subdivision (a) is more than two thousand five hundred dollars (\$2,500), the dollar amount of the disclosed finance charge may not exceed the greater of:

(A) (i) One and one-half percent on so much of the unpaid balance as does not exceed two hundred twenty-five dollars (\$225), $1\frac{1}{6}$ percent on so much of the unpaid balance in excess of two hundred twenty-five dollars (\$225) as does not exceed nine hundred dollars (\$900) and five-sixths of 1 percent on so much of the unpaid balance in excess of nine hundred dollars (\$900) as does not exceed two thousand five hundred dollars (\$2,500).

(ii) One percent of the entire unpaid balance; multiplied in either case by the number of months (computed on the basis of a full month for any fractional month period in excess of 15 days) elapsing between the date of the contract and the due date of the last installment.

(B) If the finance charge is determined by the precomputed basis, twenty-five dollars (\$25).

(C) If the finance charge or a portion thereof is determined by the simple-interest basis:

(i) Twenty-five dollars (\$25) if the unpaid balance does not exceed one thousand dollars (\$1,000).

(ii) Fifty dollars (\$50) if the unpaid balance exceeds one thousand dollars (\$1,000) but does not exceed two thousand dollars (\$2,000).

(iii) Seventy-five dollars (\$75) if the unpaid balance exceeds two thousand dollars (\$2,000).

(2) The holder of the contract shall not charge, collect, or receive a finance charge that exceeds the disclosed finance charge, except to the extent (A) caused by the holder's receipt of one or more payments under a contract that provides for determination of the finance charge or a portion thereof on the 365-day basis at a time or times other than as originally scheduled whether or not the parties enter into an agreement pursuant to Section 2982.3, (B) permitted by paragraph (2), (3), or (4) of subdivision (c) of Section 226.17 of Regulation Z, or (C) permitted by subdivisions (a) and (c) of Section 2982.8.

(3) If the finance charge or a portion thereof is determined by the simple-interest basis and the amount of the unpaid balance exceeds five thousand dollars (\$5,000), the holder of the contract may, in lieu of its right to a minimum finance charge under subparagraph (C) of paragraph (1), charge, receive, or collect on the date of the contract an administrative finance charge not to exceed seventy-five dollars (\$75), provided that the sum of the administrative finance charge and the portion of the finance charge determined by the simple-interest basis shall not exceed the maximum total finance charge permitted by subparagraph (A) of paragraph (1). Any administrative finance charge that is charged, received, or collected by a holder shall be deemed a finance charge earned on the date of the contract.

(4) If a contract provides for unequal or irregular payments, or payments on other than a monthly basis, the maximum finance charge shall be at the effective rate provided for in paragraph (1), having due regard for the schedule of installments.

(k) The contract may provide that for each installment in default for a period of not less than 10 days the buyer shall pay a delinquency charge in an amount not to exceed in the aggregate 5 percent of the delinquent installment, which amount may be collected only once on any installment regardless of the period during which it remains in default. Payments timely received by the seller under an extension or deferral agreement may not be subject to a delinquency charge unless the charge is permitted by Section 2982.3. The contract may provide for reasonable collection costs and fees in the event of delinquency.

(l) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. If the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion of the finance charge was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges that are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments received under the contract shall be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) If the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) This subdivision shall not impair the right of the seller or the seller's assignee to receive delinquency charges on delinquent installments and reasonable costs and fees as provided in subdivision (k) or extension or deferral agreement charges as provided in Section 2982.3.

(5) Notwithstanding any provision of a contract to the contrary, if the indebtedness created by any contract is satisfied prior to its maturity through surrender of the motor vehicle, repossession of the motor vehicle, redemption of the motor vehicle after repossession, or any judgment, the outstanding obligation of the buyer shall be determined as provided in paragraph (1) or (2). Notwithstanding, the buyer's outstanding obligation shall be computed by the holder as of the date the holder recovers the value of the motor vehicle through disposition thereof or judgment is entered or, if the holder elects to keep the motor vehicle in satisfaction of the buyer's indebtedness, as of the date the holder takes possession of the motor vehicle.

(m) Notwithstanding any other provision of this chapter to the contrary, any information required to be disclosed in a conditional sale contract under this chapter may be disclosed in any manner, method, or terminology required or permitted under Regulation Z, as in effect at the time that disclosure is made, except that permitted by paragraph (2) of subdivision (c) of Section 226.18 of Regulation Z, if all of the requirements and limitations set forth in subdivision (a) are satisfied. This chapter does not prohibit the disclosure in that contract of additional information required or permitted under Regulation Z, as in effect at the time that disclosure is made.

(n) If the seller imposes a charge for document processing or to electronically register or transfer the vehicle, the contract shall contain a disclosure that the charge is not a governmental fee.

(o) A seller shall not impose an application fee for a transaction governed by this chapter.

(p) The seller or holder may charge and collect a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiated order of withdrawal, or share draft issued in connection with the contract if the contract so provides or if the contract contains a generalized statement that the buyer may be liable for collection costs incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word "new" or "used" within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or as a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING-OFF PERIOD UNLESS YOU
OBTAIN A CONTRACT CANCELLATION OPTION

California law does not provide for a "cooling-off" or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

However, California law does require a seller to offer a two-day contract cancellation option on used vehicles with a purchase price of less than forty thousand dollars (\$40,000), subject to certain statutory conditions. This contract cancellation option requirement does not apply to the sale of a recreational vehicle, a motorcycle, or an off-highway motor vehicle subject to identification under California law. See the vehicle contract cancellation option agreement for details.

(s) This section shall become operative on July 1, 2013.

SEC. 3. Section 2982.2 of the Civil Code is amended to read:

2982.2. (a) Prior to the execution of a conditional sale contract, the seller shall provide to a buyer, and obtain the buyer's signature on, a written disclosure that sets forth the following information:

(1) (A) A description and the price of each item sold if the contract includes a charge for the item.

(B) Subparagraph (A) applies to each item in the following categories:

(i) A service contract.

(ii) An insurance product.

(iii) A debt cancellation agreement or guaranteed asset protection waiver agreement.

(iv) A theft deterrent device.

(v) A surface protection product.

(vi) A vehicle contract cancellation option agreement.

(2) The sum of all of the charges disclosed under subdivision (a), labeled "total."

(3) The amount that would be calculated under the contract as the regular installment payment if charges for the items disclosed pursuant to subdivision (a) are not included in the contract. The amount disclosed pursuant to this subdivision shall be labeled "Installment Payment EXCLUDING Listed Items."

(4) The amount that would be calculated under the contract as the regular installment payment if charges for the items disclosed under subdivision (a) are included in the contract. The amount disclosed pursuant to this subdivision shall be labeled "Installment Payment INCLUDING Listed Items."

(b) The disclosures required under this section shall be in at least 10-point type and shall be contained in a document that is separate from the conditional sale contract and a purchase order.

(c) This section does not apply to the sale of a motorcycle, as defined in Section 400 of the Vehicle Code, or an off-highway vehicle subject to identification under Section 38010 of the Vehicle Code.

SEC. 4. Section 2982.12 is added to the Civil Code, to read:

2982.12. (a) (1) A guaranteed asset protection waiver may be offered, sold, or provided to a buyer, or administered, in connection with a conditional sale contract subject to this chapter only in compliance with this chapter and paragraph (2) of subdivision (h) of

(2) A guaranteed asset protection waiver, which may be titled as an addendum, forms part of the conditional sale contract and remains a part of the conditional sale contract upon the assignment, sale, or transfer of that conditional sale contract.

(3) Neither the extension of credit, the term of credit, nor the terms of a conditional sale contract may be conditioned upon the purchase of a guaranteed asset protection waiver.

(4) (A) The terms and conditions of the guaranteed asset protection waiver, including those terms required by subdivision (b), shall appear on a document separate from the conditional sale contract and a buyer or potential buyer shall separately sign the document setting forth the guaranteed asset protection waiver's terms and conditions in addition to the conditional sale contract.

(B) The separate document displaying the guaranteed asset protection waiver's terms and conditions shall do the following:

(i) Conspicuously state that the guaranteed asset protection waiver is an optional addition to the conditional sale contract, and that the holder of the conditional sale contract is the contracting party to the guaranteed asset protection waiver, and state the name and mailing address of the seller. If the conditional sale contract is assigned, written notice of the assignment of both the conditional sale contract and guaranteed asset protection waiver, and the assignee's name and mailing address, shall be provided to the buyer in person or by mail, or by a means of notice that the buyer previously agreed to with the seller or holder in connection with the conditional sale contract within 30 days of the assignment.

(ii) Conspicuously disclose the name and mailing address of any administrator known as of the date of the sale. In this section, "administrator" means any person, other than an insurer, that performs administrative or operational functions in connection with the guaranteed asset protection waiver. An administrator is deemed to be an agent of the contemporaneous holder with respect to performance of the holder's obligations under the guaranteed asset protection waiver and this section.

(iii) Contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

STOP AND READ:

YOU CANNOT BE REQUIRED TO BUY A GAP WAIVER OR ANY OTHER OPTIONAL ADD-ON PRODUCTS OR SERVICES. IT IS OPTIONAL.

NO ONE CAN MAKE YOU BUY A GAP WAIVER OR ANY OTHER OPTIONAL ADD-ON PRODUCTS OR SERVICES TO GET FINANCING, TO GET CERTAIN FINANCING TERMS, OR TO GET CERTAIN TERMS FOR THE SALE OF A VEHICLE.

IT IS UNLAWFUL TO REQUIRE OR ATTEMPT TO REQUIRE THE PURCHASE OF THIS GAP WAIVER OR ANY OTHER OPTIONAL ADD-ON PRODUCTS OR SERVICES.

(5) A person that sells a guaranteed asset protection waiver subject to this chapter shall not do either of the following:

(A) Charge more for the guaranteed asset protection waiver than 4 percent of the amount the buyer finances under a conditional sale contract.

(B) Sell a guaranteed asset protection waiver if one of the following applies:

(i) The amount financed through the conditional sale contract exceeds a maximum dollar amount covered by the guaranteed asset protection waiver.

(ii) The conditional sale contract's loan-to-value ratio at the contracting date exceeds the maximum loan-to-value ratio covered by the guaranteed asset protection waiver, unless the terms of the guaranteed asset protection waiver conspicuously disclose the maximum loan-to-value ratio limitation, including the method by which the limitation is applied, and the buyer is informed in a writing, acknowledged by the buyer, that the amount financed in the buyer's conditional sale contract exceeds the waiver's maximum loan-to-value limitation and therefore the waiver will not cover the total amount owed on the conditional sale contract. As used in this subclause, "loan-to-value ratio" means the total amount financed through a conditional sale contract as a percentage of the manufacturer suggested retail price for a new motor vehicle or the average retail value for a used motor vehicle, as determined by a nationally recognized pricing guide, as defined in paragraph (2) of subdivision (c) of Section 11950 of the Vehicle Code.

(iii) The amount financed through a conditional sale contract is less than 70 percent of the manufacturer suggested retail price for a new motor vehicle or the average retail value for a used motor vehicle, as determined by a nationally recognized pricing guide, as defined in paragraph (2) of subdivision (c) of Section 11950 of the Vehicle Code.

(6) Notwithstanding any provision in any conditional sale contract for the sale of a motor vehicle to the contrary, when communicating in writing an itemized contract balance to the buyer, including a payoff letter, payoff quote, or any written notice required under subdivision (a) of Section 2983.2 of this code or subdivision (b) of Section 22328 of the Financial Code, the holder of a conditional sale contract that includes a guaranteed asset protection waiver shall do either of the following:

(A) Individually identify as a credit or refund available to the buyer the unearned portion of all guaranteed asset protection waiver charges paid by the buyer as of the date of the communication on a pro rata basis.

(B) Conspicuously state that a buyer who purchased a guaranteed asset protection waiver is generally entitled to a refund of the unearned portion of the guaranteed asset protection waiver charges on a pro rata basis upon early termination of their conditional sale contract or cancellation of the guaranteed asset protection waiver, and that the buyer should contact the administrator identified in the buyer's guaranteed asset protection waiver, or any other appropriate person designated by the holder, for identification of the amount of such a refund available to the buyer at that time.

(b) (1) A guaranteed asset protection waiver terminates no later than the earliest of the following events:

(A) Cancellation of the guaranteed asset protection waiver by the buyer, as provided by paragraph (4).

(B) Payment in full by the buyer of the conditional sale contract.

(C) Expiration of any redemption and reinstatement periods after a repossession or surrender of the motor vehicle specified in the conditional sale contract pursuant to subdivision (a) of Section 2983.2.

(D) Upon total loss or unrecovered theft of the motor vehicle specified in the conditional sale contract, after the holder has applied all applicable benefits required under the guaranteed asset protection waiver.

(E) Upon any other event that occurs earlier than the events listed in subparagraphs (A) to (D), inclusive, as specified in the guaranteed asset protection waiver.

(2) Subject to paragraph (3), upon termination of a guaranteed asset protection waiver, the buyer is entitled to a refund as follows:

(A) If the termination occurs within 30 days after the date the buyer purchased the guaranteed asset protection waiver, the buyer is entitled to a full refund of the guaranteed asset protection waiver charges plus all finance charges attributable to the guaranteed asset protection waiver.

(B) If the termination occurs later than 30 days after the date the buyer purchased the guaranteed asset protection waiver, the buyer is entitled to a refund of the unearned guaranteed asset protection waiver charges, which shall be calculated on a pro rata basis. For the purposes of this section, "calculating a refund on a pro rata basis" shall require multiplying the total dollar amount of guaranteed asset protection waiver charges by the quotient of the number of calendar days from the termination date to the conditional sale contract's original full term date, including the termination date as a full calendar day, divided by the total number of calendar days in the conditional sale contract's original term.

(C) No refund is required upon termination if there has been a total loss or unrecovered theft of the motor vehicle specified in the conditional sale contract and the buyer has or will receive the benefit of the guaranteed asset protection waiver.

(3) Within 60 business days from the termination of a guaranteed asset protection waiver, the holder shall tender the refund required under paragraph (2) or shall cause to be made the refund under paragraph (2) by instructing in writing the administrator or any other appropriate party to make the refund.

(A) A refund owed under this section may be applied by the holder as a reduction of the amount owed under the conditional sale contract unless the conditional sale contract has been paid in full.

(B) Refunds owed under this section are not exclusive and shall be in addition to any other refunds provided for in this chapter.

(4) A guaranteed asset protection waiver may be canceled by the buyer at any time without penalty.

(5) A cancellation fee, termination fee, or similar fee shall not be assessed in connection with the termination of a guaranteed asset protection waiver.

(6) In addition to the requirements of Section 2984.5, the holder shall maintain records identifying any refund made and tendered under paragraphs (2) and (3) of this subdivision, including those refunds the holder instructed the administrator or other appropriate party to make, and provide electronic access to those records, in response to any subpoena or other administratively or judicially enforceable request, until four years after the date the refund was tendered.

SEC. 5. 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) If a holder of a conditional sale contract that includes a guaranteed asset protection waiver, except as the result of an accidental or bona fide error of computation, violates any provision of subdivision (b) of Section 2982.12, the buyer may recover from the holder three times the amount of any guaranteed asset protection charges paid.

(c) Except as provided in subdivision (f), 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.

(d) Except as provided in subdivision (f), 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.

(e) 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.

(f) 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. 6. 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.