



## California New Car Dealers Association

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September 12, 2011

The Honorable Edmund G. Brown, Jr.  
Governor, State of California  
State Capitol, First Floor  
Sacramento, California 95814

**FOR ENROLLED BILL FILE**

***Re: AB 238 (Huber) - Remedy Refinement for Technical Disclosure Violations***  
***Position: SIGNATURE REQUESTED***

Dear Governor Brown:

The California New Car Dealers Association (CNCDA) is a statewide trade association that represents the interests of over 1100 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale and leasing of new and used motor vehicles, but also engage in automotive service, repair and part sales. We are writing to urge your signature on AB 238 which more-appropriately balances remedies for technical violations of the government fee disclosure requirements of the Automobile Sales Finance Act (ASFA). The bill was unanimously approved by both houses of the legislature and has no known opposition.

### **Background**

The ASFA establishes a statutory scheme to regulate the retail sale and financing of motor vehicles. Among other things, the ASFA requires dealers to disclose and itemize all consumer charges and fees on the face of a conditional sale contract. These mandatory disclosures require a separate itemization of amounts paid for vehicle license fees, registration, transfer and titling fees, and the California tire fee—all of which are collected by dealers on behalf of the appropriate state agencies. A broad remedy provision contained in the ASFA provides that a violation of *any* of these disclosure requirements renders the contract unenforceable, and requires the dealer to return to the customer all amounts paid by the buyer—even if the customer has suffered no harm.

Over the past several years, a handful of plaintiff's attorneys have taken advantage of this broad remedy provision (which equates to an automatic right of rescission) by filing dozens of class action lawsuits against dealers for technical violations of ASFA's government fee disclosure provisions. Many of the several dozen complaints filed against our dealer members involved situations where the consumer suffered

no damages, or the dealer had *under*-collected the government fee. The automatic right of rescission for such technical violations, combined with the potential for class action, could result in tens of millions of dollars in liability for violations that cause little or no economic harm to affected consumers. In fact, these lawsuits could amount to a “death penalty” against an honest, productive dealer who committed technical errors, potentially forcing closure and the loss of jobs and tax revenue.

### **Assembly Bill 238**

Over the course of this year, CNCDA has worked closely with representatives of the Consumer Attorneys of California (CAOC) to craft a solution to this problem. These discussions have culminated in a consensus approach that has become AB 238. The bill narrowly refines the ASFA’s disproportionate remedy provisions by providing that a contract shall not be rendered unenforceable solely because of a discrepancy in the disclosure of specified government fees.

To address concerns raised by CAOC and consumer advocates, the bill ensures that consumers retain the right to sue dealers that violate government fee disclosure requirements in Superior Court—in class or individual action—and to obtain monetary damages and attorney’s fees when successful. The bill also provides that this reform does not affect any legal right, claim, or remedy otherwise available under any law. For example, if a dealer commits fraud when violating a government fee disclosure requirement, a consumer would still retain his or her right to sue under the Consumer Legal Remedies Act, the Unfair Competition Law, or any other applicable statutes. To prevent any retroactive application to litigation involving existing contracts, the remedy reform would only apply to contracts executed on or after January 1, 2012.

### **Conclusion**

AB 238 is the result of a careful collaboration between interested parties to ensure that consumers are adequately protected from unscrupulous dealers, and that dealers who make technical disclosure violations are held accountable without the prospect of a business-threatening catastrophic lawsuit.

Based upon the foregoing, we respectfully urge your signature on AB 238.

Very truly yours,



Brian Maas  
Director of Government Affairs

BWM:ef

cc: The Honorable Alyson Huber  
Gareth Elliott, Legislative Affairs Secretary  
Ralph Simoni, California Advocates, Inc.  
Mike Belote, California Advocates, Inc.