

TRANSMISSION

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Inside this issue:

Cash for Clunkers (CARS) Tips for Success

What a wild ride this has been! The Consumer Assistance to Recycle and Save Act (CARS Act) has generated questions the likes of which we haven't seen since the Car Buyer's Bill of Rights back in 2006. But unlike the Car Buyer's Bill of Rights, the CARS Act came on fast and furious, giving us little opportunity to reflect and analyze. And, to make things even more interesting, the National Highway Traffic Safety Administration (NHTSA) decided to change some of the rules in mid-stream.

The smoke has cleared somewhat but confusion surrounding what is and what is not acceptable paperwork remains. Further adding to dealer frustration is the glacial pace at which reimbursements are coming. Most dealers report either very few or no payments to date.

So where does this leave us? Well, we've learned a lot since July 24 when NHTSA released its 136-page document explaining the CARS program. And although we still don't have all the answers, we do know there are some things dealers can do to improve their chances of successful participation in the CARS program.

This article will discuss some of the tips and tricks we've learned over last few weeks.

Note: For a more complete review of the CARS program, be sure to purchase a copy of our publication *A Dealer's Guide to Cash for Clunkers*. It is available for purchase at www.autoadvisory.com/cars.html. This guide is free to Auto Advisory Services Hotline and Audit clients. If you are a Hotline/Audit client, please be sure to use the link that we

(Continued on page 2)

Cash for Clunkers (CARS) Tips for Success	1
Senate Bill 424, a Ray of Hope	1
Gift Offers and Other Incentives to Visit a Dealership	6
Website Must Disclose Privacy Policy	10
Red Flags Rule Enforcement Date Delayed Again	11
Auto Advisory Services' CARS Industry News Alerts	13

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Senate Bill 424, a Ray of Hope By Aaron Jacoby, Esq.

In these perilous times, good political news is always welcome and good news is here. On July 2, the Governor signed California State Senate Bill 424 as an urgency measure to encourage dealer investment—and preserve the sales tax base—by adding statutory protection to ensure that dealers are properly indemnified for actions of manufacturers or distributors beyond a dealer's control. The Senate Bill adds section 11713.13 to the Vehicle Code to establish detailed procedures and responsibilities of

manufacturers and distributors with regard to facilities, repurchasing and reimbursing dealers for their vehicle inventories and other items that are returned when a dealer is terminated.

The California New Car Dealers' Association (CNCDA) sponsored this bill to update the regulations governing the relationship between vehicle manufacturers and franchised dealers. The California Senate Bill is in line with the

(Continued on page 12)



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Senate Bill 424, a Ray of Hope (Cont.)

(Continued from page 1)

statutory requirements of other states and is long overdue. As CNCDA notes, California had not updated its rules regulating the relationship between vehicle manufacturers and franchised dealers for nearly a decade.

As the summary below indicates, the new bill does not set forth absolute prohibitions, but does inhibit a manufacturer's ability to act capriciously with regard to dealer facilities and termination. Any action contrary to the "inhibitions" set forth in the statute must be proven by the manufacturer to be reasonable in light of all circumstances, including economic conditions. The summary highlights are:

- **Dualing:** A manufacturer cannot prevent a dealer from acquiring, adding, or maintaining a sales or service operation for another line make at the same or expanded facility at which the dealer currently operates a dealership if the dealer complies with reasonable facilities and capital requirements.
- **Exclusive Facilities:** A manufacturer cannot require a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including economic conditions.
- **Facility Upgrades:** A manufacturer cannot require a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions.
- **Termination Assistance:** The bill confirms and adds to the contractual requirements set forth in dealer sales and service agreements, requiring repurchase of: dealer inventory and dealer installed, original equipment accessories for new vehicles with less than 500 miles, acquired within 18 months of termination; dealer parts and accessories in the manufacturer's current parts catalog in returnable condition and in the original packaging; undamaged signs with the manufacturer's trademark at the fair market value; and the dealer's special tools, computer systems and equipment required to be maintained by the manufacturer. Plus, the manufacturer is also responsible for paying the dealer cost of packing and

transport for the items repurchased.

- **Indemnification:** A manufacturer must indemnify a dealer for product liability claims, including warranty and service claims resulting from manufacturing the vehicle or component; and, for privacy claims, e.g. the unauthorized mailing/calling of consumers using non-public information obtained from a dealer.
- **"New" Exception:** The bill also amends the existing law (Vehicle Code section 11713.1) to add an exception allowing dealers to sell as "new" any new vehicle acquired by a franchised dealer, regardless of the current status of the dealer; e.g. a terminated Chrysler dealer could still advertise a vehicle as "new" notwithstanding the dealer's rejection in the bankruptcy proceeding. The sale must be within six months of filing of a bankruptcy petition. This exception would not apply if the termination is not due to a bankruptcy filing by the manufacturer; e.g. a termination by DMV. The exception also does not apply to warranty repair or dealer or consumer incentives.
- **Note that federal bankruptcy law generally preempts state law in the case of GM and Chrysler, for example, with regard to any conflict between the new California law and any ruling issued by a bankruptcy court. In the event of such a conflict, a dealer must file its claim in the bankruptcy proceeding of the relevant manufacturer.**

Let's hope the passage of this bill helps to encourage and preserve the business investment of dealers in California—and the economic health of our state by preserving the sales tax revenue generated by dealers' sales.

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