SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 680 (Skinner)
Version: February 16, 2023
Hearing Date: April 18, 2023
Fiscal: No
Urgency: No
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SUBJECT

Consumer Legal Remedies Act

DIGEST

This bill makes it unlawful pursuant to the Consumer Legal Remedies Act to sell any motor vehicle that is propelled, partially or exclusively, by means of a battery-powered motor at a price greater than the manufacturer's suggested retail price.

EXECUTIVE SUMMARY

Given the existential climate crisis, California has set ambitious goals regarding lower emissions in the state. Relevant here, the state has set a goal of transitioning to zero-emission vehicles making up 100 percent of new cars and trucks sold in California by 2035.

Unfortunately, recent estimates put current progress at just under 20 percent. The author and sponsors argue that one reason for this dismal progress is the steep pricing of electric vehicles in the state, with dealers severely marking up sale prices and thereby decreasing sales.

To assist in reaching these ambitious goals, this bill makes it unlawful pursuant to the Consumer Legal Remedies Act (CLRA) to sell any motor vehicle that is propelled, partially or exclusively, by means of a battery-powered motor at a price greater than the manufacturer's suggested retail price (MSRP). This controls the ceiling on vehicle pricing to ensure more Californians are able to afford these vehicles.

The bill is sponsored by Consumers for Auto Reliability and Safety and the Consumer Federation of California. It is supported by a wide array of consumer groups. It is opposed by the California New Car Dealers Association and the California Chamber of Commerce.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Consumer Legal Remedies Act (CLRA), which prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. (Civ. Code § 1750 et seq.)

2) Provides that any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 of the Civil Code may bring an action against that person to recover or obtain any of the following:
   a) actual damages, but in no case shall the total award of damages in a class action be less than $1,000;
   b) an order enjoining the methods, acts, or practices;
   c) restitution of property;
   d) punitive damages;
   e) court costs and attorney's fees to a prevailing plaintiff. However, reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith; and
   f) any other relief that the court deems proper. (Civ. Code § 1780(a), (e).)

3) Prohibits selling a vehicle at a price other than that advertised. (Veh. Code § 11713(a).)

4) Requires the California Air Resources Board (CARB), in adopting rules and regulations to achieve the maximum technologically feasible and cost-effective greenhouse gas emissions reductions authorized, to ensure that statewide greenhouse gas emissions are reduced to at least 40 percent below the statewide greenhouse gas emissions limit no later than December 31, 2030. (Health & Saf. Code § 38566.)

5) Establishes the Clean Cars 4 All Program, which is administered by CARB to achieve air quality improvements and benefit low-income residents by replacing high-polluter vehicles with cleaner and more efficient vehicles or a specified mobility option. (Health & Saf. Code § 44125.)

6) Requires the California Energy Commission to conduct a statewide assessment every two years of electric vehicle (EV) charging infrastructure needed to support the levels of EV adoption required for the state to meet its goals of putting at least five million zero-emission vehicles (ZEVs) on California roads by

2030, and of reducing emissions of greenhouse gases to 40 percent below 1990 levels by 2030. (Pub. Res. Code § 25229.)

This bill makes it unlawful pursuant to the Consumer Legal Remedies Act to sell any motor vehicle that is propelled, partially or exclusively, by means of a battery-powered motor at a price greater than the manufacturer's suggested retail price.

COMMENTS

1. California's consumer protection laws

The Legislature has long considered consumer protection to be a matter of high importance. State law is replete with statutes aimed at protecting California consumers from unfair, dishonest, or harmful market practices. These consumer-protection laws authorize consumers to enforce their own rights and seek remedies to make them whole.

The CLRA was enacted "to protect the statute's beneficiaries from deceptive and unfair business practices," and to provide aggrieved consumers with "strong remedial provisions for violations of the statute." (*Am. Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 11.) The CLRA prohibits "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer," (Civ. Code § 1770(a)), and prohibits conduct "likely to mislead a reasonable consumer." (*Colgan v. Leatherman Tool Grp., Inc.* (2006) 135 Cal. App. 4th 663, 680; internal quotation marks omitted.)

Among other things, the CLRA prohibits merchants from "representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law," or representing that goods "are of a particular standard, quality, or grade" when they are of another. (Civ. Code § 1770.) Consumers who are harmed by unlawful practices specified in the Act have a right of action under the CLRA to recover damages and other remedies, including actual damages; an order to enjoin the unlawful act; restitution; punitive damages; or any other relief that the court deems proper. (Civ. Code § 1780.) Additionally, the statute authorizes courts to award attorney's fees to prevailing plaintiffs and contains mechanisms for securing remedies on a class wide basis. (Civ. Code §§ 1780, 1781.) Consumers who are over the age of 65 are eligible to additionally seek and be awarded, in addition to the above remedies, up to $5,000 where the trier of fact finds certain circumstances are met.

2. Zero-emission vehicle goals

The Legislature and Governor's office have taken bold strides over the years to address the impending climate catastrophe. A core focus of this work has been a reduction of gas-powered vehicles and a move to zero-emission vehicles (ZEVs). For instance, previous legislation codified a state goal of putting at least five million ZEVs on California roads by 2030.

This bold goal has been drastically expanded by recent administrative decisions that have expanded the scope and timeline of the state's ZEV transition. On September 23, 2020, Governor Gavin Newsom issued Executive Order N-79-20 which established the following goal:

> It shall be a goal of the State that 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035. It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. It shall be further a goal of the State to transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible.

In response to this Executive Order, CARB has adopted regulations aimed at phasing out the sale of petroleum-fueled vehicles. The ZEV Strategy prioritizes accelerating large scale, affordable, and equitable ZEV market development to improve air quality, reduce greenhouse gas emissions, provide access to ZEV, and improve the workforce needed to maintain ZEV infrastructure.

Cumulative ZEV sales reached 760,000 in September 2020 and currently account for about 8% of new vehicle sales in California. ZEV sales include battery-electric vehicles (59%), plug-in hybrids (40%), and hydrogen fuel cell electric (1%). Exponential growth will be needed to achieve the goal of 100% ZEV sales by 2035.

For its part, the federal government has also pushed an ambitious ZEV transition plan. President Joe Biden issued his own executive order calling for 50 percent of new passenger car sales to be of electric vehicles powered by batteries and fuel cells or plug-in electric hybrids by the end of the decade.[1] However, there is still a long way to go, given that in 2020, electric vehicles made up only 3.8 percent of sales.

3. Bringing the purchase of ZEVs within reach

This bill seeks to support these ambitious goals by increasing access to battery-powered vehicles sold in this state. The author argues that dealers of these vehicles have exploited market conditions and are drastically marking up the sale prices of these vehicles. The author points to evidence that dealers have marked up ZEVs by as much

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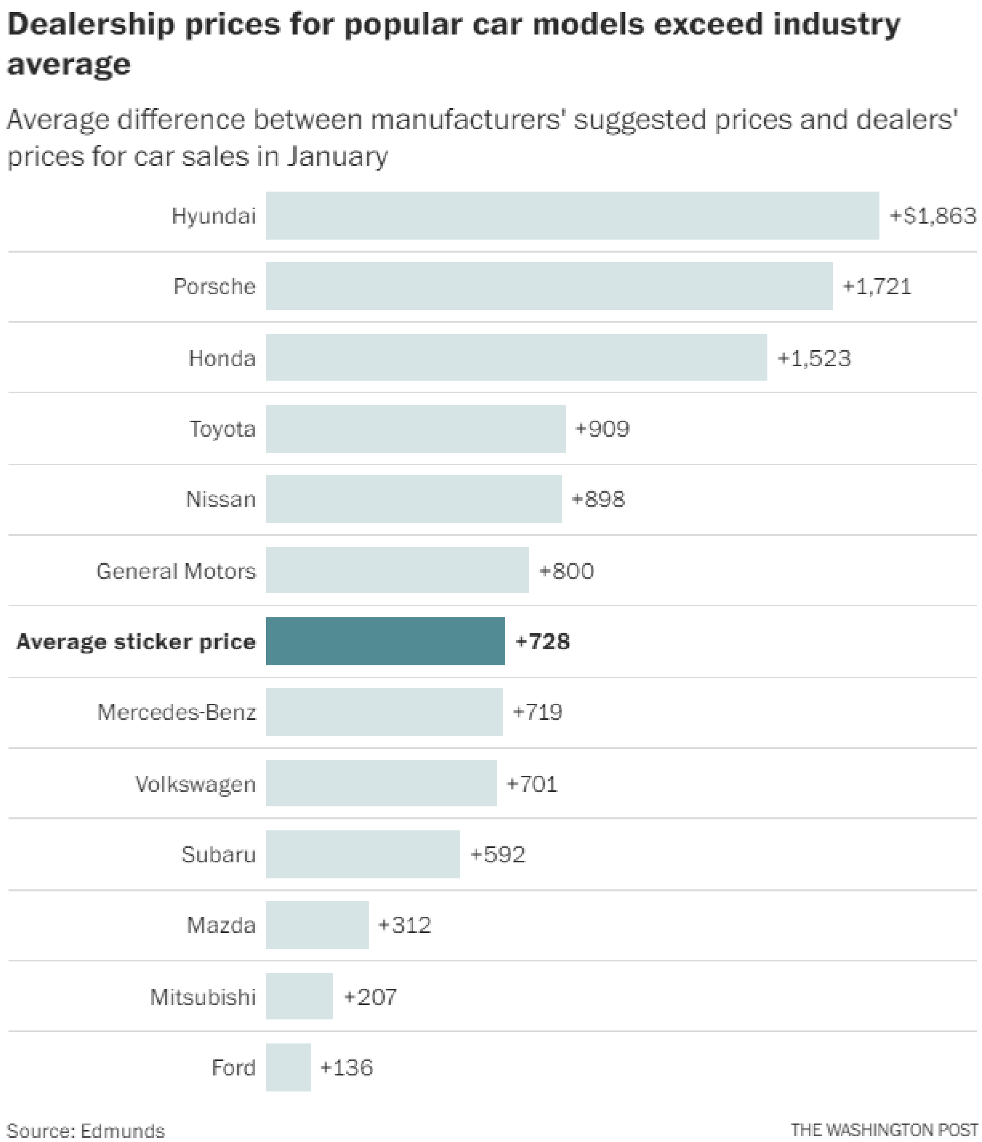
[1] Dino Grandoni & Brady Dennis, *Biden calls for half of new cars to be electric or plug-in hybrids by 2030* (August 5, 2021) The Washington Post, https://www.washingtonpost.com/climate-environment/2021/08/05/biden-aims-big-boost-electric-cars-by-2030/?itid=lk_inline_manual_5. All internet citations are current as of April 4, 2023.

as 95 percent. The data shows that dealer markups are pervasive across the industry and country, with more than 80 percent of U.S. car buyers paying above MSRP:



[2]

Motortrend explains the market:

> At the root of it are simple laws of supply and demand, exacerbated by plain old greed. These vehicles are highly anticipated and have either limited reservation slots available or long waiting lists. Dealers charge markups because, simply put, people are excited enough about the

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[2] Jacob Bogage & Aaron Gregg, *Car dealers are raising prices. Automakers are pushing back. Consumers are stuck in between* (February 12, 2022) The Washington Post, https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/.

> vehicles to pay whatever it takes. In some cases, this can mean tens of thousands of dollars or more above the Manufacturer's Suggested Retail Price (MSRP).
>
> Dealers can get away with this because they're effectively allowed to charge what the market will bear. The S in MSRP is critical: Thanks to strong state franchise laws pushed by dealers and their political allies, automakers cannot dictate the final sale price of a vehicle. That's why nearly all vehicle sales at dealerships are negotiations.[3]

In fact, the practice has prompted major car manufacturers to chastise dealers and threaten withholding deliveries if price gouging is not contained.

This bill directly targets the practice by making it unlawful to sell any vehicle propelled by a battery-powered motor at a price greater than MSRP. This allows consumers to directly enforce this unprecedented price protection.

Writing in opposition, the California New Car Dealers Association argues:

> The California New Car Dealers Association (CNCDA) strongly opposes SB 680 (Skinner), which would impose a first-in-nation statutory price cap on vehicles sold in the State of California by giving out-of-state, global automakers the discretion to set California vehicle prices as they see fit. To be clear, SB 680 would statutorily require dealers to sell electric vehicles (EVs) at or below the Manufacturer's Suggested Retail Price (MSRP), which represents the price that a car manufacturer recommends a vehicle be sold for without any independent oversight. SB 680, however, would turn this suggested retail price into a mandated retail price. SB 680 comes at an especially curious time, as the CEOs of the nation's largest automakers have publicly admitted to constraining vehicle supply despite surging demand, resulting in significantly higher vehicle prices as they reign in record profits.

It should be noted that the market for vehicles has been erratic:

> Carmakers cut production in 2020 during the initial waves of coronavirus infections. Prices fell, and perfectly good autos sat on dealer lots for months.
>
> Then in 2021, buyers' appetite roared back just as supply chain snags, especially in microchips, hampered manufacturers. Some 15 million

[3] Scott Evans, *GM to Dealers: Don't Gouge Customers on Hummer EV, Z06, Silverado EV, Lyriq* (January 20, 2022) Motortrend News, https://www.motortrend.com/news/gm-letter-dealer-markup-msrp/.

> vehicles were sold last year, up from 14.6 million in 2020, according to Cox Automotive. Labor shortages and soaring inflation also weighed on the industry's output. And there was a trickle-down effect on the used car market, where prices climbed 40 percent in January compared with the same period last year, according to the Bureau of Labor Statistics.[4]

One of the central targets is the new Ford F-150 Lightning, a zero-emission pickup truck. As stated on Ford's website, due to high demand, the current model year is no longer available for retail orders.[5]

While it is unclear what the bill's effect on the supply of such vehicles will be, it seeks to level the playing field for car buyers to purchase certain ZEVs at a time when such cars are in high demand. A coalition of consumer groups writes in support:

> As consumers switch over to electric-powered vehicles to meet the California mandate by 2035, some dealers are charging $30,000-$40,000 or more above the Manufacturer's Suggested Retail Price (MSRP) for EVs, which are already significantly more expensive than combustion-engine same vehicles. Forcing consumers to pay outrageous prices for literally the exact same vehicle without features being added is pernicious and perhaps the ultimate junk fee. The number one barrier to more widespread adoption of EVs is affordability and auto dealers' imposing excessive markups is thwarting consumers' ability to meet the states' mandate. In January 2022 more than 80% of US car buyers paid above MSRP, compared to 0.3% for the same month in 2020.
>
> The California Consumers Legal Remedies Act ("CLRA"), passed in 1970, was designed to protect Californians from unfair business practices, such as false advertising. As gas prices soar, and zero-emission vehicle demand rises, California can help ensure that ZEVS are affordable by categorizing dealer mark-ups above the MSRP as an unfair business practice under the Consumer Legal Remedies Act. SB 680 will give consumers all remedies available under CA's existing Consumer Legal Remedies Act and is the first-in-the-nation legislation that will help address the crisis we all face in mitigating climate change by accelerating the replacement of California's aging fossil-fuel fleet with newer, safer, more fuel-efficient EVs.

SUPPORT

Consumer Federation of California (co-sponsor)

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[4] Jacob Bogage & Aaron Gregg, *Car dealers are raising prices. Automakers are pushing back. Consumers are stuck in between* (February 12, 2022) The Washington Post, https://www.washingtonpost.com/business/2022/02/12/ford-gm-dealer-markups/.

[5] *2023 Ford F-150 Lightning*, Ford, https://www.ford.com/trucks/f150/f150-lightning/.

Consumers for Auto Reliability & Safety (co-sponsor)
California Rural Legal Assistance Foundation
Coalition for Clean Air
Consumer Attorneys of California
Consumer Federation of America
Consumer Watchdog
East Bay Community Law Center
National Consumers League

OPPOSITION

California Chamber of Commerce
California New Car Dealers Association

RELATED LEGISLATION

Pending Legislation:

SB 493 (Min, 2023) requires the California Energy Commission (CEC) to assess the energy resources needed to meet state goals to transition medium and heavy-duty vehicles to zero-emission vehicles (ZEVs), and it requires the California Air Resources Board (CARB) to use the CEC's assessment to create a strategic plan to achieve this transition. SB 493 is in the Senate Environmental Quality Committee.

SB 507 (Gonzalez, 2023) expands the scope of information the California Energy Commission (CEC) must consider when assessing the state's need for electric vehicle (EV) charging infrastructure. SB 507 is currently in the Senate Transportation Committee.

AB 579 (Ting, 2023) requires that, commencing January 1, 2035, all newly purchased or contracted school buses of a local educational agency (LEA) be zero-emission vehicles. AB 579 is currently in the Assembly Appropriations Committee.

Prior Legislation:

AB 2700 (McCarty, Ch. 354, Stats. 2022) required the CEC to gather and report fleet data needed to support utilities' plans for grid reliability and enhanced vehicle electrification. The bill also requires utilities to report how distribution investments made, pursuant to the bill, support climate goals as part of specified filings with the CEC and CPUC.

SB 676 (Bradford, Ch. 484, Stats. 2019) required the CPUC to establish EV-grid integration strategies for certain LSEs. The bill also required POUs to consider EV-grid integration strategies in their IRPs and required CCAs to report specified information to the CPUC regarding EV-grid integration activities.

AB 2127 (Ting, Ch. 365, Stats. 2018) required the CEC to conduct a statewide assessment every two years of EV charging infrastructure needed to support the levels of EV adoption required for the state to meet its goals of putting at least five million ZEVs on California roads by 2030, and of reducing GHG emissions to 40 percent below 1990 levels by 2030.

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