New Laws and Regulations 2024

By Robert Ebin, Esq.

Marking of Catalytic Converter

Summary: Requires that dealers mark the catalytic converter with the VIN of all vehicles prior to sale unless the customer declines such marking.

Degree of Impact: High.

Effective: January 1, 2024

Description: In the past year or so, I am sure that we have all heard multiple news reports involving the theft of catalytic converters. SB 55 was reintroduced to combat this. The new law specifically prevents dealers from selling a new or used vehicle equipped with a catalytic converter unless the vehicle's catalytic converter has been permanently marked with the VIN. The law specifically defines "permanently marked" as "prominently engraved, etched, welded, metal stamped, acid marked, or otherwise permanently imprinted using a similarly reliable method of imparting a lasting mark on the exterior case of the catalytic converter."

The new law does list a few exemptions. However, the exemption that is by far the most pertinent to dealers in California is in the situation where the customer declines the marking. Another exemption is specifically for those dealers (likely pre-owned dealers) who are licensed in California and another state and do not

have a warranty servicing facility in California. In this specific situation, those dealers will have until 2025 to comply with the marking requirement.

Effectively, the new law sets up a decision tree of sorts for dealers. The first option for dealers would be to pre-load the marking on a vehicle. If a dealer chooses this route, they should incorporate the cost of the marking into the asking price of the vehicle. Also remember that the advertised price of the vehicle needs to reflect the state of the vehicle as it currently sits on the lot. In the specific situation where the vehicle is a new vehicle, a pre-loaded catalytic converter marking should be properly indicated on a supplemental sticker where the asking price would be above MSRP. The cash price of the vehicle on the contract should be inclusive of the marking, and the marking should not be separately itemized.

The second option would be for a dealer not to pre-load the marking, but instead offer it as an optional product. In this situation, if the dealer offers the marking and the customer declines, we strongly recommend that dealers get the customer to acknowledge in writing that they declined the marking. We recommend using either Reynolds form LAWCA-CAT-DCL or LAWCA-CAT-DCLF for this purpose. Should a customer accept the offer to mark the catalytic converter, then the dealer should indicate the marking on the Pre-Contract Disclosure and RISC as a “theft deterrent device.”

A point of consideration for dealers offering the marking as an optional product is how the marking product will be presented to the customer. We have heard of different vendors offering a combination marking and warranty-like product (i.e., where if the catalytic converter is stolen, then replacement costs will be covered up to a certain amount). While this may generally be a valid product (of course,

we recommend that all products come from reputable vendors and that they be vetted by competent counsel), we strongly recommend that the marking be offered as a standalone product as well. Since the law only allows for an exemption where the customer declines “the offer to permanently mark the catalytic converter,” if there is no standalone marking product, it could be hard to show that the customer declined the marking only as the law requires. In other words, if there is only a combination product and the customer declines, the customer may have declined due to, for example, the cost of the combination product rather than them not wanting the marking product in and of itself.

Also, technically, as written, the new law appears to apply only to vehicle sales and not leases (the law specifically uses the words “sell,” “buyer,” and “seller”). With that said, if you are pre-loading the marking on a vehicle, you likely will not know whether that vehicle will be sold or leased at the time you are marking its catalytic converter. Secondly, there are instances in California law where the law only specifically references sales or selling, but in practice, the law also apply to leases. All this is the long way of saying that while the new law does not expressly state that it applies to leases, the legislature may look into clarifying this point in the near future.

A couple of additional points to add. The Vehicle Code definition of a vehicle is “a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.” This means that any vehicle with a catalytic converter is potentially subject to this requirement, except for motorcycles, which are specifically exempted in the new law. Also, the law does not distinguish between a personal use or a commercial deal, meaning that all

sales are potentially subject to the new law, with the exception of a vehicle being sold through a wholesale vehicle auction.

Citations: SB 55 (Umberg); Vehicle Code § 24020; Business and Professions Code § 21610

Disclosure of In-Vehicle Camera(s)

Summary: Requires dealers notify consumers about in-vehicle cameras. The law also includes certain other requirements, including some disclosure requirements for factories.

Degree of Impact: High.

Effective: January 1, 2024

Description: Consumer privacy has been at the top of mind for law makers in recent years. This new law seemingly extends, at least in part, one's reasonable expectation of privacy to the interior of vehicles. Specifically, SB 296 requires a manufacturer of a new vehicle equipped standard with one or more in-vehicle camera to disclose this fact in the owner's manual for that vehicle. If a vehicle is equipped with at least one in-vehicle camera that does not come standard with that model, the factory must disclose this in a document sent to the dealer. The law also restricts how the manufacturer (or the entity operating the camera system) can use the images or recordings. Specifically, the law prohibits the images or recordings from being used for advertising, being sold to a third party, and from being shared with third parties except under specific circumstances.

Importantly, dealers cannot sell or lease a new vehicle equipped with one or more in-vehicle camera without prominently informing the customer. Specifically, dealers must provide notice to customers prior to the execution of the sale or lease contract. The notice must "be contained on a single document or single internet website that is separate" from the contract or any other sales document. The notice must also contain the following language in at least 20-point bold type:

"This vehicle may be equipped with an in-vehicle camera capable of recording the driver and other individuals inside the vehicle. For more information about the in-vehicle camera please consult your automotive dealer, the vehicle manufacturer, or the vehicle owner's manual. The manufacturer is required to notify the dealer about an in-vehicle camera in the owner's manual, specification sheet, or other document. A buyer or lessee of a vehicle has a right to review the owner's manual or any other provided document prior to purchase to determine if an in-vehicle camera exists. For more information about the in-vehicle camera, please consult your automotive dealer, the vehicle manufacturer, or the vehicle owner's manual. If a manufacturer or other person or entity obtains or shares any video or photographs without your consent and in violation of law, they may be subject to legal action, including, but not limited to, via a county district attorney, the state attorney general, or otherwise as described in Sections 22948.51 and 22948.55 of the Business and Professions Code.

By law, signing this acknowledgment form does not waive any rights of the user or constitute consent to a manufacturer to share, sell, or retain any images or videos captured by the in-vehicle camera."

In synopsis, for dealers, if a new vehicle is known to have, or is believed to have, at least one in-vehicle camera, dealers must provide the customer with the required disclosure prior to execution of the sale or lease contract. Dealers also should be aware (and should inform customers) that they can inspect the vehicle's owner's manual to obtain more information about the in-vehicle camera(s). Finally, dealers should obtain the customer's signature acknowledging the disclosure. To accomplish all this, we recommend dealers use Reynolds form LAWCA-INVCAM. Of note, the new law does not create a private right of action, and actions can only be brought by the state Attorney General or a district attorney. The civil penalty amount cannot exceed $2,500 per vehicle sold or leased.

Citations: SB 296 (Dodd); Business and Professions Code §§ 22948.50-22948.59

Updates to Consumer Legal Remedies Act

Summary: Amends the CLRA to include section requiring that advertised prices include all mandatory fees and charges; exempts dealers from this so long as dealers abide by specific Vehicle Code requirements.

Degree of Impact: Low to Medium.

Effective: July 1, 2024

Description: For better, but mainly for worse, pretty much every dealer I know in California has heard of the Consumer Legal Remedies Act (CLRA). SB 478

amends the CLRA to, among other things, include a section prohibiting advertising, displaying, or offering a price for a good or service that does not include all mandatory fees and charges (other than taxes and government fees). Thankfully, SB 478 also includes a provision stating that dealers are not in violation of this new amendment so long as they follow the advertising guidelines found in Vehicle Code section 11713.1(b), which states that a dealer cannot:

"Advertise the total price of a vehicle without including all costs to the purchaser at time of sale, except taxes, vehicle registration fees, the California tire fee, as defined in Section 42885 of the Public Resources Code, emission testing charges not exceeding fifty dollars ($50), actual fees charged for certificates pursuant to Section 44060 of the Health and Safety Code, finance charges, and any dealer document processing charge or charge to electronically register or transfer the vehicle."

Dealers are well advised to review their current advertising practices and procedures and should also be aware that this dealer exemption only applies to vehicle advertisements. Any advertisements for the service drive or parts department, for example, would still need to comply with the CLRA amendment. Similarly, any vehicle advertisement that does not comply with Vehicle Code section 11713.1(b) could theoretically fall outside the exemption of this new CLRA amendment. Also, as a reminder, if dealers work with a third-party advertising agency, make sure to confirm that your advertisements are compliant.

Citations: SB 478 (Dodd); Civil Code §§ 1770, 1939.20, 2985.71; Government Code § 13995.78; Streets and Highways Code §§ 36538 and 36638; Vehicle Code §§ 11713.27 and 11713.28

Disgorgement Penalty for False Advertising

Summary: Allows the court to award the remedy of disgorgement in an action brought by the state Attorney General under specified false advertising and unfair competition laws.

Degree of Impact: Low.

Effective: January 1, 2024

Description: Current law allows for a civil penalty of up to $2,500, per violation, in an action brought by the Attorney General under certain false advertising and unfair competition laws. This new law will allow a court to also award disgorgement in addition to other remedies provided under those laws. Disgorgement means to give up any profits made as a result of the wrongful conduct.

Citations: AB 1366 (Maienschein); Government Code § 12527.6

Updated BAR Citation and Fine Program

Summary: The new BAR citation and fine program allows for BAR to issue citations for violation of the Automotive Repair Act; fines can reach up to $5,000 per violation.

Degree of Impact: Low to Medium.

Effective: July 1, 2023

Description: Although this update occurred in the middle of 2023, it is worth mentioning again for the 2024 new laws as a reminder to start off the New Year on the right foot. The Bureau of Automotive Repair (BAR), pursuant to its new fine and citation program, now has the authority to issue citations against dealers and impose fines up to $5,000 per violation of the Automotive Repair Act. A dealer who receives a citation has the option to appeal the citation to a three-member panel. Dealers cited for what the BAR considers minor violations have the option to complete remedial training through a BAR-certified training provider. Doing so will result in the dealer preventing public disclosure of the citation.

The BAR uses nine factors to determine whether to issue a citation and the amount of a fine (if issued). These factors, listed in 16 CCR section 3394.51(b), are:

(1) The nature and gravity of the violation.
(2) The registrant's history of violations and/or the number of violations found in the investigation.
(3) The good or bad faith of the registrant, including any training regarding the subject matter of the violation prior to the issuance of a citation.
(4) The failure to perform work for which money was received.
(5) The extent to which the registrant has made restitution to affected consumers or mitigated or attempted to mitigate any damage or injury caused by the violation.
(6) Whether the violation was willful or an inadvertent error.
(7) The degree of negligence in the maintenance, care, custody, and/or repair of any affected motor vehicle.
(8) The extent to which the registrant owners, directors, officers, partners, members, trustees, or responsible managing employee(s) performed any of the act(s) resulting in the violation(s).

(9) The extent to which the registrant has cooperated with the Bureau's investigation.

Dealers are advised to review their service drive processes and procedures, especially those involving estimates, repair orders, and invoices.

Citations: BAR Citation

New Federal CARS Rule

Summary: The purpose of the Rule is to “add truth and transparency to the car buying and leasing process by making it clear that certain deceptive or unfair practices are illegal.” The Rule came as a result of the proposed Motor Vehicle Dealers Trade Regulation Rule.

Degree of Impact: High.

Effective: July 30, 2024

Description: The federal Combating Auto Retail Scams (CARS) Rule was introduced in December 2023 by the FTC, going into effect on July 30, 2024. The CARS Rule originated from the proposed Motor Vehicle Dealers Trade Regulation Rule. Now, we can have an entire series of articles on the CARS Rule (and we will be doing so as the effective date gets closer), and so its appearance here is meant simply as a reminder and as a high-level overview to get dealers to start thinking about it.

There are four main principles laid out in the CARS Rule. The first is a prohibition on misrepresentations about material information, such as the costs or terms of buying or financing a vehicle, whether the vehicle is available at an advertised price, etc. (there are actually 16 separate categories listed in the CARS Rule).

Second, the CARS Rule requires dealers to clearly disclose the offering price of a vehicle. The offering price is the actual price a customer can pay to obtain the vehicle less only government fees and taxes. The Rule also requires that dealers expressly state that add-on products are not required to buy or lease a vehicle (if that is in fact the case), the total of payments for a financed or lease transaction (when making a representation about a monthly payment), and certain disclosures when comparing monthly payments.

Third, the CARS Rule prohibits dealers from charging for add-on products that do not provide any benefit to the customer. Examples include charges for “nitrogen-filled tires” that contain no more nitrogen that naturally exists in the air or a service contract that does not provide coverage for the vehicle.

Fourth, the CARS Rule requires dealers to obtain express, informed consent before charging customers for anything. Express, informed consent means the dealer must communicate 1) what a charge is for, and 2) the amount of the charge, and the consumer must affirmatively communicate unambiguous consent to that charge.

KPA has published the following already on the CARS Rule:

- Price Transparency: Here's What You Need to Know for CARS Rule Compliance
- What You Need to Know About the New FTC CARS Rule
- KPA will publish weekly CARS Rule-related blogs through January, so keep checking the Better Workforce Blog for more info.

Stayed tuned for much more on the CARS Rule coming up in the very near future.

E-Filing IRS Form 8300

Summary: Requires dealers to electronically file Form 8300 if dealers are required to e-file other information returns.

Degree of Impact: Low.

Effective: January 1, 2024

Description: We all already know (or should know) what the IRS Form 8300 is and what it is used for. Dealers must file a Form 8300 when they receive more than $10,000 in cash or cash equivalent in a single transaction or in related transactions. The Form 8300 must be filed within 15 days after the date the transaction occurred (or the date in which over $10,000 was received if a series of related transactions). Dealers are now required to electronically file Forms 8300 if they are also required to e-file other information returns, such as Forms 1099 series and Forms W-2. Dealers can also still choose to e-file Forms 8300 even if

not required to do so. Per the IRS, failure to e-file Forms 8300 when required to do so will result in a penalty.

Citations: **Form 8300 and Reporting Cash Payments of Over $10,000**

Questions?

If you have any questions regarding this, or any other situation that may arise in your sales or service departments contact your KPA Advisor or your Regional Manager, Aaron Hartshorn at Ahartshorn@kpaonline.com