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California Dreamin' of October 1: The CARS Act Comes to California

SPEAKERS

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In this episode of *Moving the Metal: The Auto Finance Podcast*, hosts Brooke Conkle and Chris Capurso break down California's CARS Act, set to take effect October 1. They trace the law's roots back to the FTC's now-overturned CARS Rule, walk through its four core compliance pillars (misrepresentations, total price disclosures, valueless add-ons, and recordkeeping), and dig into the new three-day right to cancel for used vehicles. The hosts also cover enforcement risk under California's UCL and CLRA, the exposure lenders face through the Holder Rule, and five practical steps dealers and their partners should be taking right now to get ahead of the law's arrival.

Transcript

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Episode: California Dreamin' of October 1: The CARS Act Comes to California
Hosts: Brooke Conkle and Chris Capurso
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Brooke Conkle (00:09):
Welcome to *Moving the Metal*, the premier legally focused podcast for the auto finance industry. I'm Brooke Conkle, a partner in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Chris Capurso (00:20):
And I'm Chris Capurso, of counsel in Troutman Pepper Locke's Consumer Financial Services Practice Group.

Brooke Conkle (00:24):
Today we'll be discussing the California CARS rule set to go into effect on October 1st. But before we jump in, let me remind you to please visit and subscribe to our blogs. We have two great ones that may be of interest to you, troutmanfinancialservices.com and consumerfinancialserviceslawmonitor.com. And also, we have a bevy of other podcasts that you might find interesting. We have the *Consumer Finance Podcast*, which, as you might guess, is all things consumer finance related; *The Crypto Exchange*, devoted to trends, challenges, and legal issues in Bitcoin, blockchain, fintech, and regtech; *FCRA Focus*, a podcast dedicated to all things credit reporting; and finally, *Payments Pros*, a great podcast focused exclusively on the payments industry. All of these insightful shows are available on your favorite podcast platform, so check them out. And speaking of those platforms, if you like

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Chris Capurso (02:22):
Let's take it back. No, I'm kidding. You're right. It's been about four years. And obviously, the FTC CARS rule, big industry response to the CARS rule, not only in what it imposed related to total price advertising, misrepresentations, but also the record retention requirements. Just big deal, right? Obviously, industry groups challenged the rule in the Fifth Circuit. Fast forward a couple of years from there, and the rule was overturned. Industry wins on procedural grounds, to be clear, but still overturned. Industry rejoices, we have no FTC CARS rule. And much like anything these days where some kind of federal provision gets struck down, there's the be careful what you wish for aspect to it, because you never know when the states could step in. And lo and behold, here comes California with the CARS Act. I mean, obviously there's some connection. I don't know how you would independently come up with the CARS acronym completely separately from one another. And it requires a lot of the same type of stuff. It looks like the FTC CARS rule. And here we are now in 2026, in a couple of weeks, this thing is gonna go into effect. It goes into effect October 1st.

From our perspective, last year we talked about how many different iterations this bill went through. And we kind of went through a play-by-play of what's in, what's out, what's getting cut, what is subject to industry comment, all these different types of things about where the bill has been. And then we kind of did a quick summary of it in one of our state law roundups. But we thought, breaking news time, it's about to be in effect, and we should really talk about what does it do, just to give everybody a reminder if you're not already working on it, which, if you are directly subject to the California CARS Act, I've got some bad news, you probably should have already been thinking about it. But just a reminder of what's coming in the California CARS Act, obviously from a California perspective, but also in case other states start to look at these things and are we gonna get a patchwork, which is always kind of the fear that we're gonna get a bunch of state laws that are 80 to 90% the same, but that 10 to 20% will really bite you. So we thought it was a good time to just give this quick update on what California CARS is.

Brooke Conkle (04:34):
And Chris, walk us through the main pillars of the California CARS Act from a compliance standpoint. What are sort of the big-ticket items?

Chris Capurso (04:44):
There's really four big things. First, and this is not in order of importance, I should be clear. Just kind of going

through the law, this is kind of where we end up. First is the prohibition on material misrepresentations. Very UDAP-sounding type statute for all those listening at home. Basically, this is very similar to the FTC CARS rule, prohibiting misrepresentations of material information related to vehicle sales. And there are specifically enumerated things like the cost or terms of financing, purchasing, or leasing a vehicle; cost limits, benefits, or other aspects of add-on products; whether a vehicle is available at a dealer-communicated total price. All these types of things that we thought of with the FTC CARS rule are now statute in California and the law. And unlike the FTC CARS rule, this isn't getting overturned. Right? We've said this countless times when we talk about this. This is the law in California, and you've got to be paying attention. Of course, from a UDAP standpoint, you're always looking for potential UDAPs in any type of representations. But here we've got specifically enumerated misrepresentations that if they are said this way, they are a misrepresentation under California law. So that's the first bucket.

The second bucket is clear and conspicuous disclosures about total price. And obviously, I don't wanna say this is less of a big deal because it's an enormous big deal. The reason I would say it's less of a big deal is because even though the CARS rule has gone away at the FTC level, they are still obviously looking at this. So it's not one of those things where, oh my gosh, California's doing something entirely different. This is the way the world works now in auto sales. So in a weird way, this isn't sort of a big news item because this is just the way it is now. Total price advertising, including everything except those government fees. What you see in the advertisement, as the FTC has said many times, should be what you can write a check for absent those government fees. So it's kind of a weird new world we're in where that total price advertising, I wouldn't say nobody is shocked by that, right? It's not something that's blowing us away because it is already the state of the world, and the FTC has already said it is the state of the world. The third bucket is banning valueless add-ons, another holdover from the FTC CARS rule. And we've got the mention of one of our favorites, the nitrogen-filled tires, but we also have some other specifically enumerated… They don't call them valueless add-ons. It's the idea that the purchaser or lessee would not benefit from them.

Six of one, half a dozen of the other. But there are specifically enumerated products, practices, what have you. Of course, products that do not actually cover the vehicle, the consumer, or the transaction, that would be valueless. A GAP agreement that does not comply with applicable California law. That's an interesting one. So if the agreement does not comply with California law, then it's valueless. Interesting. A service contract rendered void by preexisting conditions such as crash, flood, mechanical conditions, things like that. Oil changes for an electric vehicle, that one seems pretty straightforward, but it is enumerated. Catalytic converter markings for a vehicle without a catalytic converter. Again, this kind of idea of buying a product for something that you don't have or don't need. And then a surface protection product that voids the manufacturer's paint warranty, which would be brutal. But all these types of things where something you don't have or need but there's coverage for it, those are all the enumerated add-ons. So that's kind of the third bucket. And then the fourth bucket, everyone's favorite, recordkeeping. We're not looking at anything as crazy as the FTC CARS rule, and in fact we have the legislative process to thank for that because it was originally much longer than this. But over the course of the many, many bills, and we discussed this last year, it made it down to two years for retention of advertisements, written communications, contracts, cancellation requests, which is another very important thing that we'll talk about in a bit. We've got these kind of four big buckets. We've got misrepresentations, clear and conspicuous disclosures, valueless add-ons, and recordkeeping. But it's not necessarily everything. Those are just kind of the four big buckets.

Brooke Conkle (09:03):
That's right. And Chris, when I look at these four big buckets, when we looked at the CARS rule, we're seeing a ton of crossover here. But also I'm reminded of our buddy Chris Willis, who, when he first looked at the CARS rule and we're all throwing our hands up over the total price disclosures and the requirements for communications with consumers to be in writing, all of that jazz, and the thing that Chris immediately pointed to was the recordkeeping requirements. And he said, "This is a ton. This is a ton of stuff." And to your point, California wanted to make that requirement seven years in the initial bill. We're down to two years. It's still going to be an onerous portion of complying with this bill. Dealers must retain advertisements, written communications, contracts, cancellation requests for two years. And those records have to be produced to consumers upon written request in certain circumstances. But Chris, we'd be remiss if we didn't talk about one of the elements from the California CARS Act that's new, and that's the three-day right to cancel. So tell us a little bit about this because I know this is gonna generate a lot of questions from folks.

Chris Capurso (10:16):
Yes, yes. And it's one that doesn't, I guess, neatly fit into the buckets. I suppose it could be in clear and conspicuous disclosures, but it's kind of its own separate thing. And that's the idea of this three-day cancellation right for used vehicles. Under the law, a dealer cannot sell or lease a used vehicle at retail for $50,000 or less without giving the buyer or lessee a three-day right to cancel. Now currently there's kind of this optional two-day cancellation contract idea. It was honestly kind of confusingly written in the law. It's very clear now, there is a three-day right to rescind, right to cancel for sales or leases of used vehicles of $50,000 or less. There is an exception if the vehicle has been driven more than 400 miles between execution of the transaction and the attempted cancellation. So that certainly seems like an industry insertion right there. It's like somebody can't just buy the car, go on a joyride for a weekend and come back and don't want it anymore. So very similar to a return policy where, I don't know, somebody uses a hammer and wrecks it, it's like, "This thing just didn't work." So obviously this is a big thing. There are specific requirements for trade-ins. What if the person has traded in a vehicle and the dealer has sold the vehicle in those three days or in the time, maybe they return it after one day, but if they've already seen the vehicle, the trade-in vehicle, out the door by the time the vehicle they sold comes back to them, there are specific ways the dealers are supposed to deal with that, how they compensate the consumer, things like that.

Obviously those are their own operational compliance issue trying to figure out, "Okay, are we gonna hold on to vehicles for a little bit longer just because of the specter of this and not having to deal with kind of these extra requirements if the vehicle is out the door?" Just a lot of considerations. And that's honestly kind of an ancillary issue to the main one. It's one of those things that's kind of branching off from the main right. I mean, obviously cancellation, you have to have procedures built in for that so that you can roll back the sale, do all those types of things. And then totally separate from that, it is honestly helpful that the statute thought of this, is trade-ins. Like obviously that's gonna be a part of almost every vehicle transaction. What do you do, and what do you do if the thing is out the door? So in some respects it's nice that the statute actually contemplates this. There's of course a required disclosure that needs to be in sales documents. Obviously a dealer can't interfere with that right. That's kind of a UDAP type thing. You can't have any kind of interference in somebody exercising the right. And just in general, it's an interesting item that has to be put in there now in California with this three-day right. Again, only used vehicles and only used vehicles where the price is $50,000 or less. But still, that's gonna be a heavy majority of used vehicles. Right? So it's just another thing, even in addition to those four buckets, that dealers and honestly anybody dealing in that state need to be really thinking about. Obviously we've talked about the buckets, we've talked about the three-day cancellation right, we've talked about the compliance things. Right? Let's shift to enforcement and litigation risk. The money aspects, as it were.

Brooke Conkle (13:31):
The money.

Chris Capurso (13:32):
Brooke, what's going on there?

Brooke Conkle (13:34):
That's right, Chris. Let's talk dollars. This is where compliance failures really can translate into legal exposure. The CARS Act is enforceable under California's existing consumer protection framework. So it is enforceable by private plaintiffs, it is enforceable by the Attorney General, it is enforceable by the DMV. And given how aggressively the California Attorney General's office pursues consumer protection matters, this is going to be a priority for them. And we would expect to see pretty robust enforcement once October 1st comes around. And on the private litigation side, violations of the CARS Act feed directly into the California Consumer Legal Remedies Act and the Unfair Competition Law, the CLRA, the UCL, which already provide for private rights of action and also include statutory damages, injunctive relief, and as we all know, attorneys' fees. And the plaintiffs' bar in California is extremely well organized. They know this law, they know what provides for a violation of the law. They're going to be watching this extremely closely. And Chris, in particular, that 48-hour refund window that you mentioned that comes along with the three-day right to cancel, that is particularly ripe for litigation. Delays or incomplete refunds are the kind of discrete, documentable harm that can drive serious litigation risk, sometimes class action complaints. On the lender side, lenders who purchase retail installment sales contracts from dealers should not assume that they are insulated. The existing legal framework can expose assignees to dealer-level claims in certain circumstances. There's the Holder Rule. It's always going to be hanging over everybody. So lenders need to be paying close attention to what their dealer partners are doing.

Chris Capurso (15:31):
You always have to put in that Holder Rule thing just to bring everybody full circle.

Brooke Conkle (15:36):
That's right. That's right.

Chris Capurso (15:38):
So obviously, October 1st, unbelievably, very close.

Brooke Conkle (15:44):
Terrifyingly close.

Chris Capurso (15:45):
Not only from this respect, but from just a general passage of time discussion, very terrifying. What should clients be doing right now related to the California CARS Act?

Brooke Conkle (15:56):

Chris, when you and I sit down and look at this law, there really are sort of five things that we both tend to point to. The first is advertising and pricing disclosures. And this is not limited to our friends in California. This is a nationwide priority. Every touchpoint where a consumer sees a price needs to meet a clearly and conspicuously standard. We're talking California today, but that is a priority for the FTC as well as the folks in California. Second, the F&I process is gonna have a lot of new elements. The voluntary nature of every add-on product needs to be documented in every deal. And with updated consent forms and itemized disclosures, the paper's going to change. That is going to be a given with this CARS law. Third is training your people. The sales and F&I staff really need to understand what the law requires, what's new in the process, and what they have to know when they communicate with customers. The consequences of getting it wrong are pretty steep here. And the law is only as good as the person sitting across from the consumer. Training your people is going to be a really important step. Fourth, we've talked record keeping, building that infrastructure. Two years of retention for advertisements, written communications, and contracts. That requires a documented process. Whether you are doing it manually or through a compliance management system, that process really needs to have a specific focus. And then the last one that we talk about is talking to your litigation counsel before a complaint lands on your desk. The disclosures you make, the forms you use, and how you handle cancellation requests are all going to matter enormously for future litigation. Listen to those canaries in the coal mine, your customer complaints. That is going to be sort of your roadmap for what you need to do better. Design your compliance program with your litigation posture in mind from the very start.

Chris Capurso (18:00):
And with that, we'll wrap it up for the California CARS Act at this time. I'm sure we're going to be talking about it more, but again, we just wanted to give that general, we're a couple of weeks out kind of podcast and just see how everybody's doing and make sure everybody understands exactly what is coming into play in California and potentially in other states if they use it as a framework. But with that, we're gonna wrap it up for today's podcast. Thank you to our audience for tuning in. Don't forget to check out our blogs where you can subscribe to the entire blog or just the specific content you find most helpful. That's the consumerfinancialserviceslawmonitor.com and the troutmanfinancialservices.com blogs. And while you're at it, why don't you head on over to troutman.com and sign up for our consumer financial services mailing list so you can stay abreast of current issues with our insightful alerts and advisories and receive invitations to our Industry Insider webinars. And of course, please mark your calendars for this podcast, *Moving the Metal*, which we will be releasing every two weeks in 2026, generally, outside of special episodes like this, that'll be generally the second and fourth Tuesdays of each month. And as always, if you have any questions or if we can help in any way, please reach out to us. Until next time.

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