

Auto Laws in California

This paper was prepared by the DLIFLC/POM Legal Assistance Office for the purpose of familiarizing military personnel, retired personnel, and their dependents with the law pertaining to common motor vehicle legal problems. Case-specific exceptions may apply to this information. As such, this document is not provided as legal advice and should not be used in place of consulting an attorney.

Purchasing an Automobile

New Automobiles

a) **Financing.** Automobile dealerships frequently offer to arrange financing for their purchasers. While convenient, this form of financing may not be the most advantageous for the purchaser in the long run. Prospective purchasers are advised to check alternative sources of financing (banks, credit unions) and to compare them with the financing offered by the dealer. It is a good idea to determine the total amount which will be paid over the entire term of each financing plan. Substantial differences may be noted.

b) **Warranties.** There are two basic types of warranties: express warranties and implied warranties. Express warranties are those stated in the manufacturer's written warranty. Implied warranties are those imposed by law. The scope of the express warranty is determined from the manufacturer's written warranty statement. Such warranties can vary and it is recommended that prospective purchasers carefully read the warranty pertaining to the particular automobile and, if desired, discuss it with a Legal Assistance Attorney. The implied warranty applicable to a purchase of a new automobile is called the "implied warranty of merchantability". The implied warranty of merchantability is defined by California law to mean that the goods (in this case, the automobile) meet each of the following requirements:

- They pass without objection in the trade under the contract description.
- They are fit for ordinary purposes for which such goods are used.
- They are adequately contained, packaged and labeled.
- They conform to the promises or affirmations of fact made on the container or label.

c) **Effect of Warranty.** The express warranty given by the manufacturer is a representation to the buyer that the automobile's condition is as stated in the warranty or to provide compensation if there is a failure to perform. The implied warranty is in effect a further representation to the buyer that the automobile conforms to the elements of the implied warranty of merchantability. Every new automobile carries the implied warranty of merchantability unless expressly disclaimed by the manufacturer. If, after taking delivery of the automobile, the purchaser discovers that it does not conform to the express or implied warranty, the manufacturer, through its service and repair facility in the state, is required to repair the automobile to bring it into conformity with the warranty. If the manufacturer has failed to maintain service and repair facilities in California, the buyer may return the automobile to the retail dealer. The retail dealer then has the option of repairing the

automobile or replacing it up to 30 days. If the dealer cannot do either, they must take the automobile back and refund the purchase price less the value of the use to the buyer during the period the automobile was in the buyer's possession.

Used Automobiles Purchased from a Dealership

a) Financing. The financing considerations discussed with respect to purchases of new automobiles apply to purchases of used automobiles from dealerships.

b) Warranties. Generally speaking, used automobiles carry no warranties. However, the retailer may give an express warranty with respect to the used automobile and, if he does so, is bound by it. Additionally, if the retailer makes an express warranty, they also gives the implied warranty of merchantability.

Used Automobiles Purchased from Private Individuals

a) Financing. The caveat here is directed to the seller. Installment sales between individuals are not recommended unless the buyer can be absolutely trusted to make the monthly payments. It is recommended that the seller require payment in full for the automobile, thus placing the burden on the buyer to arrange they own financing with a bank or other lending institution. If the seller should decide to accept installment payments from the buyer, they should require the buyer to sign a "promissory note" which is a document legally evidencing the buyer's obligation to pay the debt. Promissory note forms are available at the Legal Assistance Office and at many stationery stores. Even with a promissory note, however the seller may have difficulty collecting their money if the buyer defaults.

b) Title. The seller should ensure that title to the automobile is transferred to the buyer and that the Department of Motor Vehicles reregisters the automobile in the buyer's name. This will protect the seller from liability in the event the buyer has an accident after purchasing the automobile.

c) Warranties. Private individuals can give warranties if they desire, but rarely do so.

Registration, Taxes and Fees

Registration

a) Questions having to do with automobile registration usually involve service members who are not residents of the State of California. Out-of-state automobile registration will be recognized by California for those non-resident service members who have registered their automobiles in their states of domicile or in a state in which they were stationed at the time of registration.

b) Fees. The fee for registration of an automobile in California is \$46. There is an extra fee of \$20 for a vehicle previously registered or purchased outside of the state (subject to a minimum \$10 late fee). Additionally, a vehicle license fee, which is imposed in lieu of property tax, is levied at 0.65% of the market value of the automobile. As the 0.65% vehicle license fee is essentially an ad valorem personal property tax, nonresident service members are exempt from payment under the provisions of the Soldiers and Sailors Civil

Relief Act. To avoid the fee, nonresident service-members need to complete a DMV "Certificate of Non-resident Military Exemption" available at the DMV and Legal Assistance Office.

Sales and Use Taxes

California sales tax is imposed on purchases of automobiles (new or used) from automobile dealers. The California use tax is imposed on sales between private individuals. Military personnel are subject to these taxes. Sales tax rates are 8.25% - 9% depending on the county imposing the tax. Use tax rates are 8.25% - 9%, again depending on the locality. Those purchasing automobiles from private individuals are advised to obtain a Bill of Sale. Bill of Sale forms are available at the Legal Assistance Office. The Bill of Sale states the price of the vehicle and serves as the basis for the use tax computation. If the purchaser does not have a Bill of Sale, the Department of Motor Vehicles will assess the amount of tax liability by determining the approximate value of the automobile.

Traffic Accidents

Accident Reports

Accidents involving death or personal injury must be reported to the Highway Patrol or local police within twenty-four hours. If the accident involves death, injury, and/or property damage of more than \$1000 it must be reported to DMV within 10 days unless the damage is only to your own property.

Insurance/Financial Responsibility Law

California drivers must maintain automobile liability insurance, or post a bond, cash deposit, or DMV-approved self-insurance certificate with the state to ensure financial responsibility to cover damages in the event of an accident. Information pertaining to specific procedures for each alternative may be obtained from the Department of Motor Vehicles.

On-post Traffic Violations

The Federal Police will issue citations for violations such as improper parking, failure to yield to a pedestrian, and exceeding the speed limit. A violation may result in a fine and/or a mandatory appearance before the United States Magistrate's Court.

Alcohol and the Road

DUI

Operating a Motor Vehicle While Under the Influence. In California, it is unlawful to operate a motor vehicle while under the influence of alcohol or drugs. For a first misdemeanor conviction, a person may face between 96 hours to 6 months in jail; a \$390 to \$1000 fine (plus court fees), 3-year term of probation, impoundment of vehicle (at own expense) for 30 days, and a license suspension for up to six months. An individual who injures or kills another person while driving under the influence of alcohol or drugs faces a felony conviction with more serious consequences.

a) A person whose blood contains 0.08 percent blood alcohol content is presumed to be intoxicated.

b) Implied consent. Every person who operates a motor vehicle on the highways of California is determined to have consented to a test of the alcoholic content of his blood.

c) The Test. If an individual is lawfully arrested for an offense committed while driving a motor vehicle and the arresting officer has reasonable grounds to believe that the person is under the influence of alcohol, the officer can require the person to submit to a test for intoxication. The individual may choose among three types of test: blood test, breath test, or urine test (the urine test is only available for some medical exceptions). There is no right to consult with counsel prior to submitting to such a test. Refusal to submit to one of the three types of test will result in suspension of driving privileges for six months. The suspension takes effect ten days after the individual receives notification of it. It may be appealed.

Transporting Alcoholic Beverages

a) It is unlawful to drink all alcoholic beverages while operating a motor vehicle. It is also unlawful for alcoholic beverages to be present in the part of the automobile normally occupied by the passengers or driver if the alcoholic beverages are in an open container, a container with a broken seal, or a container with the contents partially removed. The glove compartment or console are generally considered a part of the car normally occupied by the passengers or driver. Thus alcoholic beverages which have been opened or partially consumed should be stored in the trunk or automobile storage compartment, if there is no trunk.

b) Drivers under 21 years of age may not transport alcoholic beverages in any form while operating a motor vehicle unless accompanied by a parent or legal guardian. A violator may have their car impounded for up to 30 days (if the car is registered in their name) and may have their driver's license suspended for up to 30 days.

If you wish to consult with a Legal Assistance attorney on this matter, visit our office in Building 358, Presidio of Monterey, Monterey, CA or call (831) 242-5083/5084 to schedule an appointment.