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## **Credit vs. Cash: Why Gas Stations Can Offer Discounts, But Dealers Can't**

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Have you wondered why gas stations can charge a lower price to people who pay cash, but auto dealers can't? Although federal law says discounts for paying cash instead of credit are allowed (provided you comply with an array of rules), state laws can be more restrictive – and of course in California, they are.

California law states that offering a discount for cash is prohibited (with the exception of certain businesses, including gas corporations). However, the constitutionality of this statute has been challenged. As a result, the state Attorney General is not enforcing the law. The Attorney General has posted the following on its website with respect to this issue:

“Although the Attorney General is enjoined from enforcing this specific statute, California law does prohibit a merchant from engaging in activity that is unfair or deceptive. So, for example, if a merchant charges a credit or debit card surcharge or offers a cash discount, but does not fully disclose this to customers prior to their committing themselves to the goods or services, or if the merchant does not clearly explain its policies regarding debit and credit cards, the merchant may be violating California law.”

Don't get too excited about the fact that the Attorney General cannot enforce the law. Civil remedies can still be pursued, and violation of the law that is not rectified by paying the amount to the cardholder within 30 days after written demand by certified mail can result in three times the amount of actual damages being awarded. Legal fees are also recoverable. The constitutionality of the state law can be raised as a defense to these civil remedies.

However, the Attorney General references the compliance requirements of Regulation Z on its website, which, in addition to other federal laws and state laws, essentially imposes the same requirements on cash discounts as are imposed on advertising a "sale." If a dealer cannot prove that the discounted price offered is truly less than the regular price at which the vehicle is sold, and/or fails to adequately inform all consumers of the available discount, Regulation Z remedies can be pursued. Regulation Z is not facing the same constitutional challenges.

And yet another California law that governs advertising provides that if credit terms for a vehicle are advertised, a person cannot be required to pay a higher price for the vehicle or related goods or services for receiving the advertised credit terms than the cash price for the same goods or services.

At least for now, dealers cannot benefit from the same ability to offer discounts for cash payment that gas stations can.

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