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AMENDED IN SENATE JUNE 25, 2012

AMENDED IN ASSEMBLY MAY 22, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1447

Introduced by Assembly Member Feuer

January 4, 2012

An act to add Sections 1795.51 and 2983.35 to the Civil Code, and to add Sections 241 and 241.1 to the Vehicle Code, relating to automobile sales.

LEGISLATIVE COUNSEL'S DIGEST

AB 1447, as amended, Feuer. Automobile sales finance: sellers.

The Rees-Levering Motor Vehicle Sales and Finance Act regulates conditional sales contracts for motor vehicles, and, among other things, requires a person selling or leasing a motor vehicle under a conditional sale contract to disclose certain information to the buyer of the vehicle. A willful violation of those provisions is a misdemeanor and may render the contract unenforceable. A seller who violates the provisions of the act may also be liable to the buyer for monetary damages.

This bill would require a buy-here-pay-here dealer, as defined, to issue a 30-day or 1,000-mile warranty to the buyer or lessee of a used vehicle bought or leased at retail price, and would require the warranty to cover the engine, transmission, drive axle, front and rear wheel drive components, engine cooling system, brakes, front and rear suspension systems, steering, seatbelts, inflatable restraint systems, catalytic

converter or other emissions components, heater, seals and gaskets, electrical, electronic, and computer components, alternator, generator, starter, and ignition system. The bill would require the buy-here-pay-here dealer to either repair those covered parts that fail or, at the buy-here-pay-here dealer’s election, to cancel the sale or lease and reimburse the buyer or lessee, as specified. The bill would require the buy-here-pay-here dealer to pay 100% of the cost of labor and parts for any repairs under the warranty. The bill would void an agreement for the purchase or lease of a vehicle that waives, limits, or disclaims these requirements. The bill would provide that a warranty is deemed to have been issued if a buy-here-pay-here dealer fails to issue a warranty pursuant to these provisions. The bill would prohibit a buy-here-pay-here dealer from requiring, as part of a contract, the buyer to make payments in person, with the exception of the downpayment for the vehicle *and specified deferred portions of the downpayment*, would prohibit the buy-here-pay-here dealer from, after the sale of the vehicle, tracking the vehicle using electronic tracking technology and from disabling the vehicle with starter interrupt technology, except as specified, and would make a violation of these prohibitions a misdemeanor punishable by a fine of up to \$1,000. By creating a new crime, this bill would impose a state-mandated local program. The bill would also make findings and declarations related to buy-here-pay-here dealers.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) A growing number of Californians need cars to get to work
- 4 but cannot qualify for conventional automobile loans.
- 5 (b) Some used car dealers, known as buy-here-pay-here, operate
- 6 a business model under which they stock and sell older,
- 7 high-mileage vehicles to consumers that cannot otherwise qualify

1 for conventional automobile loans. Unlike traditional new and
2 used car dealers, buy-here-pay-here dealers do not assign sales
3 and lease contracts they generate to third-party finance or lease
4 sources. Because buy-here-pay-here dealers maintain and
5 administer their own sales and lease contract portfolios, they do
6 not have to comply with underwriting and loan policies set by
7 traditional lenders and are free to set financial terms that are
8 significantly higher than conventional automobile loans or leases.

9 (c) Consumers who have little or no alternative other than to
10 buy or lease a used vehicle from a buy-here-pay-here dealer are
11 vulnerable to unfair or deceptive practices by buy-here-pay-here
12 dealers.

13 (d) It is the intent of the Legislature in enacting this act to curb
14 unfair and deceptive practices by buy-here-pay-here dealers and
15 to protect the consuming public.

16 SEC. 2. Section 1795.51 is added to the Civil Code, to read:

17 1795.51. (a) No buy-here-pay-here dealer, as that term is
18 defined in Section 241 of the Vehicle Code, shall sell or lease a
19 used vehicle, as defined in Section 665 of the Vehicle Code, at
20 retail price without giving the buyer or lessee a written warranty
21 that shall have a minimum duration of at least 30 days from the
22 date of delivery or when the odometer has registered 1,000 miles
23 from what is shown on the contract, whichever occurs first.

24 (b) The written warranty shall provide that if the buyer or lessee
25 notifies the buy-here-pay-here dealer that the vehicle does not
26 conform to the written warranty, the buy-here-pay-here dealer
27 shall either repair the vehicle to conform to the written warranty,
28 reimburse the buyer or lessee for the reasonable cost of repairs, or
29 cancel the sale or lease contract and provide the buyer or lessee
30 with a full refund, less a reasonable amount for any damage
31 sustained by the vehicle after the sale or lease, excepting damage
32 caused by any nonconformity with the written warranty.

33 (c) The written warranty shall provide that the buy-here-pay-here
34 dealer shall pay 100 percent of the cost of labor and parts for any
35 repairs pursuant to the warranty, and may not charge the buyer or
36 lessee for the cost of repairs or for inspecting the vehicle, tearing
37 down the engine or transmission or other part, or for any
38 deductible. Any person performing repairs pursuant to this
39 subdivision shall comply with the requirements of an automotive

1 repair dealer pursuant to Chapter 20.3 (commencing with Section
2 9880) of Division 3 of the Business and Professions Code.

3 (d) The buy-here-pay-here dealer or its agent may elect to refund
4 the buyer or lessee a full refund, less a reasonable amount for any
5 damage sustained by the vehicle after the sale or lease, excepting
6 damage caused by any nonconformity with the written warranty,
7 rather than performing a repair. In the event that the
8 buy-here-pay-here dealer cancels the sale or lease, all of the
9 following shall apply:

10 (1) The buy-here-pay-here dealer shall give written notice to
11 the buyer or lessee of the election to cancel the sale or lease by
12 personal delivery or first-class mail.

13 (2) The buyer or lessee shall return the vehicle in substantially
14 the same condition as when it was delivered by the
15 buy-here-pay-here dealer, reasonable wear and tear and any
16 nonconformity with the written warranty excepted.

17 (3) The buy-here-pay-here dealer shall provide the buyer or
18 lessee with a receipt stating all of the following:

19 (A) The date the vehicle was returned to the buy-here-pay-here
20 dealer.

21 (B) The vehicle identification number.

22 (C) The make, year, and model of the vehicle.

23 (D) The odometer reading at the time that the vehicle was
24 returned to the buy-here-pay-here dealer.

25 (E) A statement that the buy-here-pay-here dealer has canceled
26 the sale or lease.

27 (F) The amount of the buyer's or lessee's refund.

28 (4) The buy-here-pay-here dealer shall not treat the return of
29 the vehicle pursuant to the contract cancellation provisions of this
30 subdivision as a repossession.

31 (5) The buyer or lessee shall execute the documents necessary
32 to transfer any interest in the vehicle to the buy-here-pay-here
33 dealer or to remove the buyer or lessee from any registration or
34 title documents.

35 (6) The buy-here-pay-here dealer shall refund to the buyer or
36 lessee, no later than the day after the day on which the buyer or
37 lessee returns the vehicle and the notice of election to cancel is
38 given to the buyer or lessee, all amounts paid under the sale or
39 lease agreement, less a reasonable amount for property damage

1 sustained by the vehicle after the sale or lease, excepting damage
2 caused by any nonconformity with the warranty.

3 (e) The written warranty shall cover at least the following
4 components:

5 (1) Engine, including all internally lubricated parts.

6 (2) Transmission and transaxle.

7 (3) Front and rear wheel drive components.

8 (4) Engine cooling system.

9 (5) Alternator, generator, starter, and ignition system, not
10 including the battery.

11 (6) Braking system.

12 (7) Front and rear suspension systems.

13 (8) Steering system and components.

14 (9) Seatbelts.

15 (10) Inflatable restraint systems installed on the vehicle as
16 originally manufactured.

17 (11) Catalytic converter and other emissions components
18 necessary for the vehicle to pass a California emissions test.

19 (12) Heater.

20 (13) Seals and gaskets on components described in this
21 subdivision.

22 (14) Electrical, electronic, and computer components, to the
23 extent that those components substantially affect the functionality
24 of other components described in this subdivision.

25 (f) Any Used Car Buyer's Guide displayed on a vehicle offered
26 for sale or lease by a buy-here-pay-here dealer shall list each of
27 the above systems and components and shall specify that the
28 buy-here-pay-here dealer will pay 100 percent of the cost of parts
29 and labor for repairs covered by the warranty.

30 (g) The buy-here-pay-here dealer shall make the repair or
31 provide a refund notwithstanding the fact that the warranty period
32 has expired if the buyer or lessee notified the buy-here-pay-here
33 dealer of the failure of a covered system or part within the warranty
34 period.

35 (h) This section shall not apply to any defect or nonconformity
36 caused by the unauthorized or unreasonable use of the vehicle
37 following the sale, or to any property damage not to the vehicle
38 arising out of the failure of a covered part.

39 (i) In any proceeding in which the exclusion of coverage
40 permitted by subdivision (h) or the deduction allowed by paragraph

1 (6) of subdivision (d) is an issue, the buy-here-pay-here dealer
 2 shall have the burden of proof.

3 (j) A buy-here-pay-here dealer shall not sell or lease any vehicle
 4 unless the vehicle meets all of the equipment requirements of
 5 Division 12 (commencing with Section 24000) of the Vehicle
 6 Code.

7 (k) Any agreement between a buy-here-pay-here dealer and a
 8 buyer or lessee that disclaims, limits, or waives the rights set forth
 9 in this section shall be void as contrary to public policy.

10 (l) If a buy-here-pay-here dealer fails to give a buyer a written
 11 warranty pursuant to this section, the buy-here-pay-here dealer
 12 shall be deemed to have provided the warranty as a matter of law.

13 SEC. 3. Section 2983.35 is added to the Civil Code, to read:

14 2983.35. (a) After a sale of a vehicle under this chapter, a
 15 buy-here-pay-here dealer, as defined in Section 241 of the Vehicle
 16 Code, shall not do any of the following:

17 (1) Utilize electronic tracking technology to obtain or record
 18 the location of the vehicle, unless the buyer is expressly made
 19 aware of the existence and use of the tracking ~~device~~ *technology*
 20 by the buy-here-pay-here dealer, the buyer's written consent is
 21 obtained, and either subparagraph (A) or (B), *or both*, apply:

22 (A) ~~The location of the vehicle~~ *electronic tracking technology*
 23 is used solely to verify and maintain the operational status of the
 24 tracking technology, to repossess the vehicle, or to locate the
 25 vehicle to service the loan or keep the loan current.

26 (B) The electronic tracking technology is used solely for any
 27 optional service to the ~~consumer~~ *buyer* and ~~all~~ *both* of the following
 28 conditions are met:

29 ~~(i) The use of electronic tracking technology is disclosed by the~~
 30 ~~buy-here-pay-here dealer to the buyer.~~

31 ~~(ii)~~

32 *(i)* The agreement to utilize electronic tracking technology for
 33 the optional service is separate from the purchase and sale
 34 agreement, is not a condition of the purchase or sale agreement
 35 for the vehicle, and is executed after the completion of the purchase
 36 or sale agreement for the vehicle.

37 ~~(iii)~~

38 *(ii)* The buyer is permitted to cancel the optional service at any
 39 point in the future without affecting the sale of the vehicle, and is
 40 informed of his or her ability to do so.

1 (2) Disable the vehicle by using starter interrupt technology,
2 unless the buy-here-pay-here dealer complies with all of the
3 following provisions:

4 (A) Notifies the buyer in writing at the time of the sale that the
5 vehicle is equipped with starter interrupt technology, which the
6 buy-here-pay-here dealer can use to shut down the vehicle
7 remotely.

8 (B) The written disclosure provided to the ~~consumer~~ *buyer* at
9 the time of sale informs the ~~consumer~~ *buyer* that a warning will
10 be provided no less than 48 hours before the use of the starter
11 interrupt technology to shut down the vehicle remotely and
12 discloses the manner and method in which that warning will occur.
13 The dealer shall offer the ~~consumer~~ *buyer* a choice of warning
14 methods, including warning from the device, telephone call, email,
15 or text message, if available, provided that the warning method
16 does not violate applicable state or federal law.

17 (C) In the event of an emergency, the ~~consumer~~ *buyer* will be
18 provided with the ability to start a dealer-disabled vehicle for no
19 less than 24 hours after the vehicle's initial disablement.

20 (b) A buy-here-pay-here dealer shall not require the buyer to
21 make payments to the seller in person. For purposes of this
22 subdivision, "payments" does not include the downpayment,
23 *including any portion of the downpayment that is deferred until*
24 *not later than the second otherwise scheduled payment and that*
25 *is not subject to a finance charge.*

26 (c) A violation of this section is a misdemeanor punishable by
27 a fine not exceeding one thousand dollars (\$1,000).

28 SEC. 4. Section 241 is added to the Vehicle Code, to read:

29 241. A "buy-here-pay-here" dealer is a dealer, as defined in
30 Section 285, who is not otherwise expressly excluded by Section
31 241.1, and who does all of the following:

32 (a) Enters into conditional sale contracts, within the meaning
33 of subdivision (a) of Section 2981 of the Civil Code, and subject
34 to the provisions of Chapter 2b (commencing with Section 2981)
35 of Title 14 of Part 4 of Division 3 of the Civil Code, or lease
36 contracts, within the meaning of Section 2985.7 of the Civil Code,
37 and subject to the provisions of Chapter 2d (commencing with
38 Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil
39 Code.

1 (b) Assigns less than 90 percent of all unrescinded conditional
2 sale contracts and lease contracts to unaffiliated third-party finance
3 or leasing sources within 60 days of the consummation of those
4 contracts.

5 SEC. 5. Section 241.1 is added to the Vehicle Code, to read:

6 241.1. The term “buy-here-pay-here” dealer does not include
7 any of the following:

8 (a) A lessor who primarily leases vehicles that are two model
9 years old or newer.

10 (b) A dealer that does both of the following:

11 (1) Certifies 100 percent of used vehicle inventory offered for
12 sale at retail price pursuant to Section 11713.18.

13 (2) Maintains an onsite service and repair facility that is licensed
14 by the Bureau of Automotive Repair and employs a minimum of
15 five master automobile technicians that are certified by the National
16 Institute for Automotive Service Excellence.

17 SEC. 6. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.