

Assembly Bill No. 2667

CHAPTER 426

An act to amend Section 1812.622 of, and to add Section 1812.650 to, the Civil Code, relating to electronic devices.

[Approved by Governor September 18, 2014. Filed with
Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2667, Bloom. Rental-purchase agreements: electronic devices: monitoring technology.

Existing law, the Karnette Rental-Purchase Act, provides for the regulation of rental-purchase agreements, as defined. Existing law requires rental-purchase agreements to contain specified notices, including, among other things, information on costs and terms of payment. Existing law makes it a misdemeanor to willfully violate the provisions regulating rental-purchase agreements.

This bill would add to these provisions regulating rental-purchase agreements provisions requiring a lessor to provide clear and prominent notice to a consumer and obtain express consent from the consumer at the time the lessor and the consumer enter into a rental-purchase agreement for an electronic device if that device has geophysical location tracking technology installed by the lessor and would prohibit a lessor from installing the technology without providing clear and prominent notice and obtaining express consent from the consumer. The bill would prohibit a lessor from using, selling, or sharing geophysical location tracking technology on an electronic device for any purpose other than the repossession of the electronic device when there is a violation of the rental-purchase agreement, pursuant to the law, or when requested by the consumer. The bill would prohibit a lessor from using or installing monitoring technology on an electronic device for any purpose other than to provide remote technical assistance when requested by the consumer. The bill would provide for the expiration of and notification related to geophysical location tracking technology.

Because a willful violation of these provisions would be a crime, this bill would impose a state-mandated local program.

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.

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

SECTION 1. Section 1812.622 of the Civil Code is amended to read:
1812.622. As used in this title:

(a) “Advertisement” means a commercial message in any medium that directly or indirectly solicits or promotes one or more specific rental-purchase transactions, excluding instore merchandising aids. This definition does not limit or alter the application of other laws, including Chapter 5 (commencing with Section 17200) of Part 2 and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code, to rental-purchase transactions.

(b) “Consumer” means a natural person or persons who rent or lease personal property from a lessor pursuant to a rental-purchase agreement or to whom a lessor offers personal property for use pursuant to a rental-purchase agreement.

(c) “Lessor” means any person or entity that provides or offers to provide personal property for use by consumers pursuant to a rental-purchase agreement.

(d) “Rental-purchase agreement,” except as otherwise provided in this subdivision, means an agreement between a lessor and a consumer pursuant to which the lessor rents or leases, for valuable consideration, personal property for use by a consumer for personal, family, or household purposes for an initial term not exceeding four months that may be renewed or otherwise extended, if under the terms of the agreement the consumer acquires an option or other legally enforceable right to become owner of the property. A rental-purchase agreement is a lease subject to Title 1.5 (commencing with Section 1750) and Title 1.7 (commencing with Section 1790).

“Rental-purchase agreement” shall not be construed to be, nor be governed by, and shall not apply to, any of the following:

(1) A retail installment sale, as defined in Section 1802.5.

(2) A retail installment contract, as defined in Section 1802.6.

(3) A retail installment account, as defined in Section 1802.7.

(4) A lease or agreement that constitutes a security interest, as defined in Section 1201 of the Commercial Code.

(5) A consumer credit contract, as defined in Section 1799.90.

(e) “Cash price” means the price of the personal property described in the rental-purchase agreement that the consumer may pay in cash to the lessor at the inception of the rental-purchase agreement to acquire ownership of that personal property.

(f) “Cost of rental” means the difference between the total of all periodic payments necessary to acquire ownership under the rental-purchase agreement and the cash price of the rental property that is subject to the rental-purchase agreement.

(g) “Fee” means any payment, charge, fee, cost, or expense, however denominated, other than a rental payment.

(h) “Appliance” means and includes any refrigerator, freezer, range including any cooktop or oven, microwave oven, washer, dryer, dishwasher, or room air-conditioner or air purifier.

(i) “Electronic set” means and includes any television, radio, camera, video game, or any type of device for the recording, storage, copying, printing, transmission, display, or playback of any sound or image, but does not include any item that is part of a computer system.

(j) “Computer system” means a computer processor and a video monitor, printer, and peripheral items primarily designed for use with a computer. Audio and video devices, which are commonly used for entertainment and into which data may be downloaded from a computer, are not part of a computer system.

(k) “Lessor’s cost” means the documented actual cost, including actual freight charges, of the rental property to the lessor from a wholesaler, distributor, supplier, or manufacturer and net of any discounts, rebates, and incentives.

(l) “Total of payments” means the total amount of periodic payments necessary to acquire ownership of the property that is the subject of the rental-purchase agreement if the consumer makes all regularly scheduled payments.

(m) “Electronic device” means a desktop or laptop computer, handheld device, tablet, smartphone, or other electronic product or device that has a platform on which to download, install, or run any software program, code, script, or other content.

(n) “Geophysical location tracking technology” means hardware, software, or an application that collects and reports data or information that identifies the precise geophysical location of an item, including technologies that report the GPS coordinates of an electronic device, the WiFi signals available to or actually used by an electronic device to access the Internet, the telecommunication towers or connections available to or actually used by an electronic device, the processing of any reported data or information through geolocation lookup services, or any information derived from any combination of the foregoing.

(o) “Monitoring technology” means any hardware, software, or application utilized in conjunction with an electronic device that can cause the electronic device to capture, monitor, record, or report information about user activities with or without the user’s knowledge.

(p) “Remote technical assistance” means collaborative access by the user and technician to connect to an electronic device for the purpose of providing technical support to the user.

(q) “Express consent” means the affirmative agreement to any use or installation of geophysical location tracking technology or remote technical assistance. Express consent does not include consent given when either option is highlighted or preselected as a default setting.

SEC. 2. Section 1812.650 is added to the Civil Code, to read:

1812.650. (a) A lessor shall provide clear and prominent notice to a consumer and obtain express consent from the consumer at the time the

lessor and the consumer enter into a rental-purchase agreement for an electronic device if that device has geophysical location tracking technology installed by the lessor, and at any time the geophysical location tracking technology is activated or used by the lessor.

(b) For purposes of this section, “clear and prominent notice” means notice presented in an understandable language and syntax, in the predominantly used language for that communication, and that:

(1) In textual communications, the required disclosures are separate and apart from a privacy policy, data use policy, terms of service, end-user license agreement, lease agreement, or other similar document, and of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend in print that contrasts highly with the background on which they appear.

(2) In communications disseminated orally or through audible means, the required disclosures are unavoidable and delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend.

(3) In communications disseminated through video means, the required disclosures are in writing in a form consistent with paragraph (1) and appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them.

(4) In communications made through interactive media, including the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with paragraph (1), in addition to any audio or video presentation.

(c) A lessor shall not use, sell, or share geophysical location tracking technology on an electronic device for any purpose other than the repossession of the electronic device when there is a violation of the rental-purchase agreement, pursuant to law, or when requested by the consumer.

(d) Clear and prominent notification shall be displayed on an electronic device if geophysical location tracking technology is activated or used by the lessor. This notification requirement shall be suspended if the consumer or lessor reports that the electronic device has been stolen and has filed a police report stating that the electronic device has been stolen. For purposes of this subdivision, “filing a police report” means the filing of a consumer’s or lessor’s complaint with the police department in any form recognized by that jurisdiction.

(e) A lessor shall provide that any geophysical location tracking technology that has been installed by the lessor on an electronic device, or can be activated by the lessor, expires upon the first instance the electronic device connects to the Internet after completion of the purchase of the electronic device.

(f) A lessor shall not use or install monitoring technology on an electronic device for any purpose other than to provide remote technical assistance when requested by the consumer.

(g) A lessor shall provide clear and prominent notice to a consumer and obtain express consent from the consumer for the installation or use of any

software that allows the lessor to provide remote technical assistance and upon the activation and deactivation of any remote technical assistance when requested by the consumer.

(h) A lessor shall not acquire any data when providing remote technical assistance beyond what is necessary to provide assistance to the user and beyond what the user has consented to. Any data acquired during the period of consumer consented technical assistance shall not be retained, used, or sold for any purpose.

(i) This section shall not be interpreted to require a lessor to enter into a rental-purchase agreement with any consumer who does not provide express consent to the above-described provisions of the rental-purchase agreement.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.