

AMENDED IN ASSEMBLY MARCH 26, 2015

AMENDED IN ASSEMBLY MARCH 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 265**

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**Introduced by Assembly Member Holden**

February 10, 2015

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An act to amend Section 2983.37 of the Civil Code, relating to consumer protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 265, as amended, Holden. Consumer protection: buy-here-pay-here dealers.

Existing law requires buy-here-pay-here dealers, as defined, to provide buyers with specific warranties, disclosures, and services. Existing law prohibits a buy-here-pay-here dealer from locating a vehicle with electronic tracking technology or disabling a vehicle with starter interrupt technology ~~unless specified requirements are met, and unless the dealer provides written disclosure to the buyer at the time the vehicle is purchased that the vehicle is equipped with starter interrupt technology and that disclosure informs the buyer that a warning will be provided no less than 48 hours before the use of the starter interrupt technology to shut down the vehicle remotely, as specified.~~ Existing law makes a violation of this prohibition a misdemeanor.

~~This bill would prohibit a buy-here-pay-here dealer from disabling a vehicle with starter interrupt technology unless the dealer also provides the buyer with specific written disclosures and communications 30 days before the dealer disables the vehicle, as specified. The bill would also require a buy-here-pay-here dealer, if that dealer negotiated a contract~~

~~pursuant to these provisions in specified languages, to deliver those written disclosures in the language in which the contract was negotiated. By expanding the scope of a crime, this bill would impose a state-mandated local program.~~

*This bill would instead require the written disclosure provided to the buyer at the time of sale to inform the buyer that a warning will be provided 10 days before the use of the starter interrupt technology and a final warning will be provided no less than 48 hours before the use of the starter interrupt technology to shut down the vehicle remotely, as specified. By expanding the scope of a crime, the 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.

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. Section 2983.37 of the Civil Code is amended~~  
2     ~~to read:~~  
3     ~~2983.37. (a) After a sale of a vehicle under this chapter, a~~  
4     ~~buy-here-pay-here dealer, as defined in Section 241 of the Vehicle~~  
5     ~~Code, shall not do any of the following:~~  
6     ~~(1) Utilize electronic tracking technology to obtain or record~~  
7     ~~the location of the vehicle, unless the buyer is expressly made~~  
8     ~~aware of the existence and use of the tracking technology by the~~  
9     ~~buy-here-pay-here dealer, the buyer's written consent is obtained,~~  
10    ~~and subparagraph (A), (B), or both, apply:~~  
11    ~~(A) The electronic tracking technology is used solely to verify~~  
12    ~~and maintain the operational status of the tracking technology, to~~  
13    ~~repossess the vehicle, or to locate the vehicle to service the loan~~  
14    ~~or keep the loan current.~~  
15    ~~(B) The electronic tracking technology is used solely for an~~  
16    ~~optional service to the buyer and both of the following conditions~~  
17    ~~are met:~~  
18    ~~(i) The agreement to utilize electronic tracking technology for~~  
19    ~~the optional service is separate from the purchase and sale~~

1 ~~agreement, is not a condition of the purchase or sale agreement~~  
2 ~~for the vehicle, and is executed after the completion of the purchase~~  
3 ~~or sale agreement for the vehicle.~~

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

7 ~~(2) Disable the vehicle by using starter interrupt technology,~~  
8 ~~unless the buy-here-pay-here dealer complies with all of the~~  
9 ~~following:~~

10 ~~(A) At the time of the sale, the buy-here-pay-here dealer~~  
11 ~~provides the buyer written notice of both of the following:~~

12 ~~(i) That the vehicle is equipped with starter interrupt technology~~  
13 ~~that the buy-here-pay-here dealer can use to shut down the vehicle~~  
14 ~~remotely.~~

15 ~~(ii) That a warning will be provided no less than 48 hours before~~  
16 ~~the use of the starter interrupt technology to shut down the vehicle~~  
17 ~~remotely and the manner and method in which that warning will~~  
18 ~~occur. The buy-here-pay-here dealer shall offer the buyer a choice~~  
19 ~~of warning methods, including warning from the device, telephone~~  
20 ~~call, email, or text message, if available, provided that the warning~~  
21 ~~method does not violate applicable state or federal law.~~

22 ~~(B) At least 30 days prior to disabling the vehicle for the buyer's~~  
23 ~~failure to tender timely loan repayments, the buy-here-pay-here~~  
24 ~~dealer does both of the following:~~

25 ~~(i) Provides the buyer written notice of all of the following:~~

26 ~~(I) That the loan is past due.~~

27 ~~(II) The amount currently due on the loan.~~

28 ~~(III) The acceptable forms of payment of the amount currently~~  
29 ~~due, so long as that form of payment is not prohibited by~~  
30 ~~subdivision (b).~~

31 ~~(IV) That the buy-here-pay-here dealer may use starter interrupt~~  
32 ~~technology to disable the vehicle as of 30 days from the mailing~~  
33 ~~date of the notice.~~

34 ~~(V) That the vehicle will not be disabled if the buyer tenders~~  
35 ~~the amount specified in subclause (II) to the dealer using an~~  
36 ~~acceptable form of payment within 30 days of the mailing date of~~  
37 ~~the notice.~~

38 ~~(VI) That, if the amount due is not paid, a warning will be~~  
39 ~~provided using the warning method specified at the time of sale~~

1 to the buyer no less than 48 hours before the use of the starter  
 2 interrupt technology to shut down the vehicle remotely.

3 (ii) Communicate, within 48 hours of mailing the notice required  
 4 by clause (i), to the buyer that the notice has been sent. The  
 5 buy-here-pay-here dealer shall offer the buyer at the time of sale  
 6 a choice of communication methods, including, a telephone call,  
 7 email, or text message, if available, provided that the warning  
 8 method does not violate applicable state or federal law. The  
 9 communication required by this clause shall provide the buyer  
 10 with notice of the following:

11 (I) That the loan is past due.  
 12 (II) The amount currently due on the loan.  
 13 (III) The acceptable forms of payment of the amount currently  
 14 due, so long as that form of payment is not prohibited by  
 15 subdivision (b).  
 16 (IV) That written notice of the past due loan has been mailed  
 17 to the buyers last known address and provide the mailing date of  
 18 the notice.  
 19 (V) That the buy-here-pay-here dealer may use starter interrupt  
 20 technology to disable the vehicle as of 30 days from the mailing  
 21 date of the notice.  
 22 (VI) That the vehicle will not be disabled if the buyer tenders  
 23 the amount specified in subclause (II) to the dealer using an  
 24 acceptable form of payment within 30 days of the mailing date of  
 25 the notice.  
 26 (VII) That, should the loan not be paid, a warning will be  
 27 provided to the buyer, using the method specified at the time of  
 28 sale, no less than 48 hours before the use of the starter interrupt  
 29 technology to shut down the vehicle remotely.

30 (C) A buy-here-pay-here dealer shall keep a physical copy of  
 31 all notices sent pursuant to clause (i) of subparagraph (B) for at  
 32 least one year following the mailing date of that notice.

33 (D) Any buy-here-pay-here dealer who negotiated any contract  
 34 pursuant to this chapter primarily in Spanish, Chinese, Tagalog,  
 35 Vietnamese, or Korean, orally or in writing, shall deliver the notice  
 36 required by subparagraph (B) to the other party to the contract in  
 37 the language in which the contract was negotiated.

38 (E) In the event of an emergency, the buyer will be provided  
 39 with the ability to start a dealer-disabled vehicle for no less than  
 40 24 hours after the vehicle's initial disablement.

1 ~~(b) A buy-here-pay-here dealer shall not require the buyer to~~  
2 ~~make payments to the seller in person. For purposes of this~~  
3 ~~subdivision, “payments” does not include the downpayment. If~~  
4 ~~the buyer tenders timely payment of a deferred downpayment, the~~  
5 ~~dealer shall not repossess the vehicle or impose any other charge~~  
6 ~~or penalty on the grounds that the payment was not made in person.~~

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

9 *SECTION 1. Section 2983.37 of the Civil Code is amended to*  
10 *read:*

11 2983.37. (a) After a sale of a vehicle under this chapter, a  
12 buy-here-pay-here dealer, as defined in Section 241 of the Vehicle  
13 Code, shall not do any of the following:

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

19 (A) The electronic tracking technology is used solely to verify  
20 and maintain the operational status of the tracking technology, to  
21 repossess the vehicle, or to locate the vehicle to service the loan  
22 or keep the loan current.

23 (B) The electronic tracking technology is used solely for any  
24 optional service to the buyer and both of the following conditions  
25 are met:

26 (i) The agreement to utilize electronic tracking technology for  
27 the optional service is separate from the purchase and sale  
28 agreement, is not a condition of the purchase or sale agreement  
29 for the vehicle, and is executed after the completion of the purchase  
30 or sale agreement for the vehicle.

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

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

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

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

11 (C) In the event of an emergency, the buyer will be provided  
12 with the ability to start a dealer-disabled vehicle for no less than  
13 24 hours after the vehicle’s initial disablement.

14 (b) A buy-here-pay-here dealer shall not require the buyer to  
15 make payments to the seller in person. For purposes of this  
16 subdivision, “payments” does not include the downpayment. If  
17 the buyer tenders timely payment of a deferred downpayment, the  
18 dealer shall not repossess the vehicle or impose any other charge  
19 or penalty on the grounds that the payment was not made in person.

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

22 SEC. 2. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 the only costs that may be incurred by a local agency or school  
25 district will be incurred because this act creates a new crime or  
26 infraction, eliminates a crime or infraction, or changes the penalty  
27 for a crime or infraction, within the meaning of Section 17556 of  
28 the Government Code, or changes the definition of a crime within  
29 the meaning of Section 6 of Article XIII B of the California  
30 Constitution.