AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL No. 956

Introduced by Senator Lieu

January 9, 2012

An act to add Chapter 1b (commencing with Section 18500) to Division 8 of the Business and Professions Code, and to amend Section 22054 of the Financial Code, relating to automobile sellers and lenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 956, as amended, Lieu. Buy-here-pay-here automobile sellers and lenders.

(1) Existing law prohibits a person from acting as a dealer in vehicles, as specified, without a license issued by the Department of Motor Vehicles. Existing law governs conditional sales contracts, as defined, for the purchase of motor vehicles, including the enforceability of those contracts. Existing law also governs lease contracts, as defined, for the lease of motor vehicles, including the enforceability of those contracts. Existing law, the California Finance Lenders Law, the violation of which is a crime, provides for the licensure and regulation of finance lenders by the Commissioner of Corporations, but exempts from its provisions a bona fide conditional contract of sale involving the disposition of personal property when that form of agreement is not used for the purpose of evading provisions of that law.

This bill would enact the Buy-Here-Pay-Here Automobile Dealers Act. The bill would ~~define~~ *identify* a "buy-here-pay-here automobile dealer" as a person who is required to obtain a license from the Department of Motor Vehicles to act as a dealer in vehicles and who also enters into *a specified number of* conditional sales contracts, *as* *defined,* or lease contracts, *as defined, within a certain time period*. This bill would require those dealers to obtain a finance lender license and subject them to ~~the~~ *specified* other provisions of the California Finance Lenders Law. The bill would also define a "buyer-borrower" as a person who enters into a conditional sales contract or lease contract with a buy-here-pay-here automobile dealer.

This bill would govern the terms and conditions of contracts entered into by a buy-here-pay-here automobile dealer and the rights of the parties, including, but not limited to, requiring a notice to a buyer-borrower of specified rights under the contract~~, and would provide a buyer-borrower with a private right of action against a buy-here-pay-here automobile dealer who has violated the provisions of the bill~~.

(2) Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies, as defined, and their employees by the Bureau of Security and Investigative Services within the Department of Consumer Affairs.

This bill would impose additional requirements on a buy-here-pay-here automobile dealer seeking to repossess a vehicle, including, but not limited to, prohibiting a dealer from commencing repossession proceedings due to failure to make a scheduled loan payment prior to the 11th day following the day on which that payment was due, requiring a dealer to hire a licensed repossession agency to repossess the vehicle on the dealer's behalf, and prohibiting the dealer from charging the buyer-borrower a fee exceeding $500 for the dealer's costs in connection with the repossession. The bill would also establish a cap on interest rates that could be charged under a ~~buy-here-pay-here~~ *conditional* sales or lease contract and require a buy-here-pay-here automobile dealer to allow a buyer-borrower 45 days to repay any penalties, fees, and other charges imposed by the dealer on the buyer-borrower in connection with past due payments that have been brought current.

(3) The bill would require that any additional costs to the Department of Corporations in administering the provisions of the bill be borne by buy-here-pay-here automobile dealers through fees charged by the department.

(4) Because this bill would expand the scope of a crime, the bill would create 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:

SECTION 1. Chapter 1b (commencing with Section 18500) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 1b. BUY-HERE-PAY-HERE AUTOMOBILE DEALERS ACT

18500. This chapter shall be known, and may be cited, as the Buy-Here-Pay-Here Automobile Dealers Act.

~~18501. As used in this chapter:~~

~~(a) “Buy-here-pay-here automobile dealer” means a person to whom each of the following applies:~~

~~(1) The person is a “dealer of vehicles,” within the meaning of Section 11701 of the Vehicle Code, subject to the provisions of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.~~

~~(2) The person enters into either of the following:~~

~~(A) “Conditional sales contracts,” within the meaning of subdivision (a) of Section 2981 of the Civil Code, subject to the provisions of Chapter 2b (commencing with Section 2981) of Title 14 of Part 2 of Division 3 of the Civil Code.~~

~~(B) “Lease contracts,” within the meaning of subdivision (d) of Section 2985.7 of the Civil Code, subject to the provisions of Chapter 2d (commencing with Section 2985.7) of Title 14 of Part 2 of Division 3 of the Civil Code.~~

~~(3) The person does not assign 90 percent of the contracts described in paragraph (2) within 30 days following the date as of which the contracts were executed.~~

~~(b) "Buyer-borrower" means a person who enters into a conditional sales contract or lease contract with a buy-here-pay-here automobile dealer.~~

~~(c) "Licensed repossession agency" means a "repossession agency" as defined in Section 7500.2 that is licensed pursuant to the Collateral Recovery Act (Chapter 11 (commencing with Section 7500) of Division 3).~~

~~18502. (a) Notwithstanding Section 22054 or any other provision of law, except as otherwise expressly provided in this chapter, a buy-here-pay-here automobile dealer shall be subject to the provisions of the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code).~~

~~(b) A buy-here-pay-here automobile dealer shall be exempt from the provisions of Sections 22320, 22320.5, and 22330 of the Financial Code.~~

~~(c) Notwithstanding Section 22250 of the Financial Code, a conditional sales contract or a lease contract entered into by a buy-here-pay-here automobile dealer shall be subject to the provisions of the Financial Code referenced in Section 22250.~~

~~18503. (a) In lieu of the notice required by subdivision (h) of Section 2982 of the Civil Code, a conditional sales contract or lease contract entered into by a buy-here-pay-here automobile dealer shall include the following notice, in at least eight-point boldface type:~~

~~"If you have a complaint concerning this buy-here-pay-here automobile dealer or the contract, you should try to resolve it with the dealer.~~

~~Complaints concerning unfair or deceptive practices or methods by the dealer may be referred to the city attorney, the district attorney, an investigator for the Department of Motor Vehicles, or an investigator for the Department of Corporations, or any combination thereof.~~

~~After this contract is signed, the dealer may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the dealer to make a unilateral change.~~

~~I have read and understand the terms of this notice.~~

~~Borrower's Signature"~~

~~(b) The contract shall not be binding unless the buyer-borrower has acknowledged in writing that he or she has read and understands the notice required by subdivision (a).~~

~~18504. (a) A buy-here-pay-here automobile dealer shall be prohibited from commencing repossession of a vehicle subject to a conditional sales contract or lease contract due to the buyer-borrower's failure to make a scheduled payment prior to the 11th day following the date on which that payment was due.~~

~~(b) Following commencement of repossession proceedings against a buyer-borrower for delinquent payments under a conditional sales contract or lease contract, if the buyer-borrower pays the delinquent amount in full, the buyer-borrower shall be entitled to 45 days thereafter to pay the buy-here-pay-here automobile dealer the amount of any delinquency charges, penalty interest, and fees arising out of the delinquency and commencement of repossession proceedings.~~

~~(c) A buy-here-pay-here automobile dealer shall not do either of the following:~~

~~(1) Physically repossess a vehicle other than through engaging the services of a licensed repossession agency.~~

~~(2) Charge a buyer-borrower an amount exceeding five hundred dollars ($500) in fees or charges resulting from the commencement by the buy-here-pay-here automobile dealer of any action to repossess a vehicle.~~

~~(d) The provisions of subdivisions (a), (b), and (c) shall be included in the terms and conditions of a conditional sales contract pursuant to Section 2981.9 of, or lease contract pursuant to Section 2985.8 of, the Civil Code.~~

~~18505. A buyer-borrower who has entered into a conditional sales contract or lease contract with a buy-here-pay-here automobile dealer shall have a private right of action against that dealer for any violation of this chapter by that dealer.~~

~~18506. Notwithstanding any other law, the annual percentage rate charged to a buyer-borrower pursuant to a buy-here-pay-here sales or lease contract shall not exceed the federal funds rate in~~

~~effect at the time the contract was executed plus an additional 17 percent.~~

18501. As used in this chapter:

(a) "Dealer of vehicles" is one within the meaning of Section 11701 of the Vehicle Code, subject to the provisions of Article 1 (commencing with Section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(b) "Conditional sales contract" is one within the meaning of subdivision (a) of Section 2981 of the Civil Code, subject to the provisions of Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code.

(c) "Lease contract" is one within the meaning of subdivision (d) of Section 2985.7 of the Civil Code, subject to the provisions of Chapter 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) "Buyer-borrower" means a person who enters into a conditional sales contract or lease contract with a buy-here-pay-here automobile dealer.

(e) "Licensed repossession agency" means a "repossession agency" as defined in Section 7500.2 that is licensed pursuant to the Collateral Recovery Act (Chapter 11 (commencing with Section 7500) of Division 3).

18502. (a) On or before January 31, 2013, and annually thereafter, every dealer of vehicles that entered into one or more conditional sales contracts or lease contracts during the preceding calendar year shall calculate the percentage of those contracts entered into during that year that the dealer assigned or sold to an unaffiliated third party within 30 days of consummation.

(b) Any dealer of vehicles that commenced business during a calendar year and that entered into conditional sales contracts or lease contracts for less than one full calendar year as of December 31st of the year in which it commenced business shall calculate the percentage of those contracts that were assigned or sold to unaffiliated third parties within 30 days of their consummation, based on the number of months during which that dealer of vehicles engaged in business during that calendar year, but shall in no event base its calculation on fewer than three full calendar months of data. A dealer meeting the criteria of subdivision (d) shall perform annual calculations in accordance with subdivision (a) in subsequent years.

(c) Any dealer of vehicles that has less than three full calendar months of data with which to calculate a percentage of assigned contracts pursuant to this section shall perform the required calculation as soon as possible after acquiring three full calendar months of data, and annually thereafter on or before January 31st of each year.

(d) A dealer of vehicles that assigns fewer than 90 percent of all conditional sales contracts and lease contracts to unaffiliated third parties within 30 days of the consummation of those contracts, as calculated pursuant to subdivision (a), (b), or (c), as applicable, shall be deemed to be a "buy-here-pay-here automobile dealer."

18503. (a) Notwithstanding Section 22054 of the Financial Code or any other law, and except as otherwise expressly provided in this chapter, a buy-here-pay-here automobile dealer may not do business in California unless licensed by the Department of Corporations pursuant to the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code).

(b) A dealer of vehicles shall obtain a California Finance Lenders Law license no later than six months following the date on which it meets the definition of a buy-here-pay-here dealer, pursuant to the calculations required under Section 18502.

18504. (a) Notwithstanding Section 18502 or any other law, a buy-here-pay-here automobile dealer shall be exempt from the provisions of Sections 22320, 22320.5, and 22330 of the Financial Code.

(b) Notwithstanding Section 22250 of the Financial Code, a conditional sales contract or a lease contract entered into by a buy-here-pay-here automobile dealer shall be subject to the provisions referenced in Section 22250 of the Financial Code.

(c) Notwithstanding any other law, the annual percentage rate charged to a buyer-borrower pursuant to a conditional sales contract or lease contract with a buy-here-pay-here automobile dealer shall not exceed the federal funds rate in effect at the time the contract was executed plus an additional 17 percent.

18505. (a) In lieu of the notice required by subdivision (h) of Section 2982 of the Civil Code, a conditional sales contract or lease contract entered into by a buy-here-pay-here automobile dealer shall include the following notice, in at least eight-point boldface type:

"If you have a complaint concerning this buy-here-pay-here automobile dealer or the contract, you should try to resolve it with the dealer. Complaints concerning unfair or deceptive practices or methods by the dealer may be referred to the city attorney, the district attorney, an investigator for the Department of Motor Vehicles, or an investigator for the Department of Corporations, or any combination thereof.

After this contract is signed, the dealer may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the dealer to make a unilateral change.

I have read and understand the terms of this notice.

____
Borrower's Signature"

(b) The contract shall not be binding unless the buyer-borrower has acknowledged in writing that he or she has read and understands the notice required by subdivision (a).

18506. (a) A buy-here-pay-here automobile dealer shall be prohibited from commencing repossession of a vehicle subject to a conditional sales contract or lease contract due to the buyer-borrower's failure to make a scheduled payment prior to the 11th day following the date on which that payment was due.

(b) Following commencement of repossession proceedings against a buyer-borrower for delinquent payments under a conditional sales contract or lease contract, if the buyer-borrower pays the delinquent amount in full, the buyer-borrower shall be entitled for 45 days thereafter to pay the buy-here-pay-here automobile dealer the amount of any delinquency charges, penalty interest, and fees arising out of the delinquency and commencement of repossession proceedings.

(c) A buy-here-pay-here automobile dealer shall not do either of the following:

(1) Physically repossess a vehicle other than through engaging the services of a licensed repossession agency.

(2) Charge a buyer-borrower an amount exceeding five hundred dollars ($500) in fees or charges resulting from the commencement

by the buy-here-pay-here automobile dealer of any action to repossess a vehicle.

(d) The provisions of subdivisions (a), (b), and (c) shall be included in the terms and conditions of a conditional sales contract pursuant to Section 2981.9 of, or lease contract pursuant to Section 2985.8 of, the Civil Code.

SEC. 2. Section 22054 of the Financial Code is amended to read:

22054. Except as otherwise provided in Chapter 1b (commencing with Section 18500) of Division 8 of the Business and Professions Code, this division does not apply to bona fide conditional contracts of sale involving the disposition of personal property when these forms of sales agreements are not used for the purpose of evading this division.

SEC. 3. (a) In enacting Section 1 of this act, it is not the intent of the Legislature to affect or limit existing legal rights, remedies, or claims available under current law.

(b) Any additional costs to the Department of Corporations resulting from its administration of Section 1 of this act shall be borne by buy-here-pay-here automobile dealers through fees charged by the department, which fees shall not exceed the reasonable regulatory costs of administering those provisions.

SEC. 4. 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.

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