AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JUNE 19, 2012

AMENDED IN SENATE MAY 21, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL No. 956

Introduced by Senator Lieu
(Principal coauthor: Assembly Member Feuer)
(Coauthor: Senator Correa)
(Coauthors: Assembly Members Alejo and Wieckowski)

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, *and to add Sections 241 and 241.1 to the Vehicle 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 sale 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 a ~~"buy-here-pay-here automobile dealer" as a seller~~ *"buy-here-pay-here" dealer as a dealer, as defined,* who enters into conditional sale contracts, as defined, or lease contracts, as defined, ~~does not routinely assign those~~ *and assigns less than 90% of all unrescinded* contracts to an unaffiliated ~~third-party~~ *3rd-party* finance or leasing source~~, and collects payments on or otherwise services~~ *within 45 days of the consummation of* those contracts. The bill would exclude from this definition automobile sellers who meet specified requirements. This bill would require those dealers to obtain a finance lender license and subject them to 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 sale contract or lease contract with a buy-here-pay-here automobile dealer. The bill would provide that the Department of Corporations would have regulatory jurisdiction over the lending and repossessing activities of buy-here-pay-here automobile dealers, as specified.

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.

(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~~ *16th* 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 conditional sale 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 state findings and declarations of the Legislature with regard to buy-here-pay-here automobile dealers.

~~(3)~~

(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. The Legislature finds and declares all of the following:

(a) A growing number of Californians who need cars to get to work cannot qualify for conventional automobile loans.

(b) Some used-car dealers, known as buy-here-pay-here dealers, operate a business model under which they stock and sell older, high-mileage vehicles to consumers who cannot otherwise qualify for conventional automobile loans. Unlike traditional new and used-car dealers, buy-here-pay-here dealers do not assign sales and lease contracts they generate to third-party finance or lease sources. Because buy-here-pay-here dealers maintain and administer their own sales and lease contract portfolios, they do not have to comply with underwriting and loan policies set by traditional lenders and are free to set financial terms that are significantly higher than conventional automobile loans or leases. The result of these high cost financial terms is a considerable increase in the number of defaults compared to conventional loans or leases.

(c) The buy-here-pay-here dealers' business model of maintaining and administering their own contract portfolios creates less of an incentive to work with consumers to maintain their vehicles. The incentive for buy-here-pay-here dealers is to recover the consumer's vehicle and resell that same vehicle to another consumer. This incentive does not exist for other used-car dealers, as their contract portfolios are assigned to third-party finance or lease sources. Third-party sources want consumers to pay off their loans in full and do not receive an economic advantage from repossessing the vehicle.

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

(e) It is the intent of the Legislature in enacting the Buy-Here-Pay-Here Automobile Dealers Act to curb unfair and deceptive practices by buy-here-pay-here dealers and to protect consumers and the public.

~~SECTION 1.~~

SEC. 2. 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) "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 sale 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 sale 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).

(f) "Buy-here-pay-here automobile dealer" is a dealer within the meaning of Section 241 of the Vehicle Code.

~~18502. (a) "Buy-here-pay-here automobile dealer" means a seller who does all of the following:~~

~~(1) Enters into conditional sale or lease contracts.~~

~~(2) Does not routinely assign the conditional sale contracts or lease contracts to an unaffiliated third-party finance or leasing source.~~

~~(3) Collects payments on or otherwise services conditional sale contracts or lease contracts.~~

~~(b) Notwithstanding subdivision (a), a seller is not a buy-here-pay-here automobile dealer if the seller does both of the following:~~

~~(1) Certifies 100 percent of the seller's vehicles pursuant to Section 11713.18 of the Vehicle Code.~~

~~(2) Maintains an on-site service and repair facility that is licensed by the Bureau of Automotive Repair and employs a minimum of five master automobile technicians as certified by the National Institute for Automotive Service Excellence.~~

~~18503.~~

18502. (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 shall 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 automobile dealer~~, pursuant to the calculations required under Section 18502~~.

(c) The Department of Corporations shall have regulatory jurisdiction, limited to lending and repossessing activities, over buy-here-pay-here automobile dealers pursuant to this chapter and the California Finance Lenders Law.

~~18504.~~

18503. (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 sale contract or a lease contract entered into by a buy-here-pay-here automobile dealer shall be subject to Sections 22154, 22155, 22201, 22202, 22300, 22305, 22306, 22307, 22309, 22313, 22314, 22315, 22320.5, 22322, 22323, 22325, 22326, 22327, 22334, 22400, 22751, and 22752 of the Financial Code.

(c) Notwithstanding any other law, the annual percentage rate charged to a buyer-borrower pursuant to a conditional sale 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.~~

18504. (a) In lieu of the notice required by subdivision (h) of Section 2982 of the Civil Code, a conditional sale 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.~~

18505. (a) A buy-here-pay-here automobile dealer shall be prohibited from commencing repossession of a vehicle subject to a conditional sale contract or lease contract due to the buyer-borrower's failure to make a scheduled payment prior to the ~~11th~~ *16th* 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 sale 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 sale contract pursuant to Section 2981.9 of, or lease contract pursuant to Section 2985.8 of, the Civil Code.

~~SEC. 2.~~

SEC. 3. 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. 4. Section 241 is added to the Vehicle Code, to read:

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

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

(b) Assigns less than 90 percent of all unrescinded conditional sale contracts and lease contracts to unaffiliated third-party finance or leasing sources within 45 days of the consummation of those contracts.

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

241.1. The term "buy-here-pay-here" dealer does not include any of the following:

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

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

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

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

~~SEC. 3.~~

SEC. 6. In enacting Section ~~1~~ *2* 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.

~~SEC. 4.~~

SEC. 7. 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.

O