

Introduced by Senator LieuJanuary 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 introduced, 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 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 conditional sales contracts or lease contracts. This bill would require those dealers to obtain a finance lender license and subject them to the 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 sales or lease contract and require a buy-here-pay-here automobile dealer to allow a buyer-borrower 2 months 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:

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

4
5 CHAPTER 1b. BUY-HERE-PAY-HERE AUTOMOBILE DEALERS
6 ACT
7

8 18500. This chapter shall be known, and may be cited, as the
9 Buy-Here-Pay-Here Automobile Dealers Act.

10 18501. As used in this chapter:

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

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

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

18 (A) “Conditional sales contracts,” within the meaning of
19 subdivision (a) of Section 2981 of the Civil Code, subject to the
20 provisions of Chapter 2b (commencing with Section 2981) of Title
21 14 of Part 2 of Division 3 of the Civil Code.

22 (B) “Lease contracts,” within the meaning of subdivision (d) of
23 Section 2985.7 of the Civil Code, subject to the provisions of
24 Chapter 2d (commencing with Section 2985.7) of Title 14 of Part
25 2 of Division 3 of the Civil Code.

26 (3) The person does not assign substantially all of the contracts
27 described in paragraph (2) within 30 days following the date as of
28 which the contracts were executed.

29 (b) “Buyer-borrower” means a person who enters into a
30 conditional sales contract or lease contract with a
31 buy-here-pay-here automobile dealer.

32 (c) “Licensed repossession agency” means a “repossession
33 agency” as defined in Section 7500.2 that is licensed pursuant to
34 the Collateral Recovery Act (Chapter 11 (commencing with Section
35 7500) of Division 3).

36 18502. (a) Notwithstanding Section 22054 or any other
37 provision of law, except as otherwise expressly provided in this
38 chapter, a buy-here-pay-here automobile dealer shall be subject

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

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

11 (1) Take any action to repossess a vehicle other than through
12 engaging the services of a licensed repossession agency.

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

17 (d) The provisions of subdivisions (a), (b), and (c) shall be
18 included in the terms and conditions of a conditional sales contract
19 or lease contract.

20 18505. A buyer-borrower who has entered into a conditional
21 sales contract or lease contract with a buy-here-pay-here
22 automobile dealer shall have a private right of action against that
23 dealer for any violation of this chapter by that dealer.

24 18506. The interest rate charged to a buyer-borrower pursuant
25 to a buy-here-pay-here sales or lease contract shall not exceed the
26 federal funds rate in effect at the time the contract was executed
27 plus an additional 17 percent.

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

30 22054. ~~This~~ *Except as otherwise provided in Chapter 1b*
31 *(commencing with Section 18500) of Division 8 of the Business*
32 *and Professions Code, this division does not apply to bona fide*
33 *conditional contracts of sale involving the disposition of personal*
34 *property when these forms of sales agreements are not used for*
35 *the purpose of evading this division.*

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

39 (b) Any additional costs to the Department of Corporations
40 resulting from its administration of Section 1 of this act shall be

1 borne by buy-here-pay-here automobile dealers through fees
2 charged by the department, which fees shall not exceed the
3 reasonable regulatory costs of administering those provisions.

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.