



California Association of Licensed Repossessors "CALR" A Not-For-Profit Since 1961

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Law: Buy Here Pay Here Requirements

Occupational Licensing Industry News OLIN 2015-03

New Requirements for Buy-Here-Pay-Here Dealers

New Information

Effective immediately, new legislation revises the Collateral Recovery Act by prohibiting buy-here-pay-here (BHPH) dealers from using unlicensed repossessors.

BHPH Dealer Defined

A BHPH dealer is a dealer as defined by *California Vehicle Code (CVC) §§241 and 285* that does the following:

- Enters into conditional sales contracts (*California Civil Code (CCC) §2981(a)*) or lease contracts (*CCC §2985.7(d)*) and is subject to specified provisions of CCC, Title 14, Division 3, Part 4, governing vehicle sales, financing, and leasing, except that a "conditional sales contract: does not include a contract for the sale of a motor vehicle if all amounts owed under the contract are paid in full within 30 days."
- Assigns less than 90 percent of all unrescinded conditional sales and lease contracts to unaffiliated third-party finance or leasing sources within 45 days of the sale.

BHPH dealer exclusions:

- A lessor who primarily leases vehicles two model years old or newer.
- A dealer that certifies 100 percent of its vehicles pursuant to *CVC §11713.18* by maintaining an on-site service and repair facility licensed by the Bureau of Automotive Repair and employing a minimum of five master automobile technicians certified by the National Institute for Automotive Service Excellence.

BHPH Dealer Requirements

The new legislation requires BHPH dealers (as defined by *CVC §§241 and 285*) to adhere to certain requirements on every vehicle sold or leased, as follows:

- Requires a licensed repossession agency (LRA) to only transact business with another person or entity as an independent contractor, and prohibits an LRA from allowing anyone other than a qualified certificate holder, its owner, or its officer, to manage its operations or transact business.
- Makes it a misdemeanor, punishable by a fine of up to \$5,000, for a BHPH dealer to knowingly engage a nonexempt unlicensed person to repossess collateral on its behalf.
- Authorizes the Department of Motor Vehicles (DMV) to suspend or revoke the license issued to a BHPH dealer if it violates the act.
- Clarifies that a reposessor shall not appraise or determine the value of any collateral, whether damaged or not.
- Authorizes a reposessor to complete a condition report for collateral that makes a general assessment of the collateral but does not include all damage or missing parts, as specified.

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BHPH Dealer Requirements, *continued*

- Authorizes the Bureau of Security and Investigative Services (BSIS) to assess a \$25 administrative fine against a reposessor for knowingly submitting a false report, not just reports submitted to an employer.
- Requires a reposessor to contact law enforcement within one hour after taking possession of a vehicle, and continue to attempt notification until the reposessor provides notification.
- Prohibits a person, other than a peace officer acting in an official capacity, from interfering with the transport of a vehicle to a storage facility, auction, or dealer by an individual employed by an LRA or reposessor once repossession is complete, as specified, and makes a violation of that provision an infraction.
- Prohibits a tow yard, impounding agency, government agency, or person acting on behalf of these entities from refusing to release a vehicle or collateral to anyone legally entitled to that vehicle or collateral, except a vehicle being held for evidence by law enforcement or a prosecuting attorney.

NOTE: To verify a reposessor is licensed visit the BSIS website at www.bsis.ca.gov.

Background

This is an overview of new BHPH dealer requirements. Refer to www.leginfo.ca.gov for the exact bill language.

Distribution

Notification that this memo is available online at www.dmv.ca.gov/pubs/olin/olin.htm was made via California DMV's Automated E-mail Alert System in January 2015 to the following:

- Dealers

References

California Vehicle Code §§28, 241, 285, 4000, 10856, and 11705
California Business and Professions Code §§7500.2, 7507.115, 7507.125, 7508.1, 7508.4, and 7508.5
California Civil Code §§2981(a) and 2985.7(d) and Title 14, Division 3, Part 4
California Government Code § 41612

Contact

Questions regarding this memo may be directed to the Occupational Licensing Compliance Unit, at (916) 229-3154.

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY [5000 - 9998.11]

(Heading of Division 3 added by Stats. 1939, Ch. 30.)

CHAPTER 11. Repossessors [7500 - 7511]

(Chapter 11 added by Stats. 1981, Ch. 1138, Sec. 11.)

ARTICLE 3. Application of Chapter [7502 - 7502.6]

(Article 3 added by Stats. 1981, Ch. 1138, Sec. 11.)

7502.2.

(a) A financial institution or a buy-here-pay-here dealer, as defined by Section 241 of the Vehicle Code, that knowingly engages a nonexempt unlicensed person to repossess collateral on its behalf is guilty of a misdemeanor, and is punishable by a fine of five thousand dollars (\$5,000).

(b) Within existing resources, the Commissioner of Business Oversight may designate employees to investigate and report on violations of this section by any of the licensees of their department. Those employees are authorized to actively cooperate with the bureau in the investigation of those activities.

(c) A proceeding to impose the fine specified in subdivision (a) may be brought in any court of competent jurisdiction in the name of the people of the State of California by the Attorney General or by any district attorney or city attorney, or with the consent of the district attorney, by the city prosecutor in any city or city and county having a full-time city prosecutor, for the jurisdiction in which the violation occurred. If the action is brought by a district attorney, the penalty collected shall be paid to the treasurer of the county in which the judgment is entered. If the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered and one-half to the treasurer of the county in which the judgment was entered. If the action is brought by the Attorney General, all of the penalty collected shall be deposited in the Private Security Services Fund.

(Amended by Stats. 2014, Ch. 390, Sec. 2. Effective September 17, 2014.)

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CIVIL CODE - CIV

DIVISION 3. OBLIGATIONS [1427 - 3272.9]

(Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273]

(Part 4 enacted 1872.)

TITLE 14. LIEN [2872 - 3081]

(Title 14 enacted 1872.)

CHAPTER 2b. Automobile Sales Finance Act [2981 - 2984.6]

(Chapter 2b added by Stats. 1961, Ch. 1626.)

2983.37.

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

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

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

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

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

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

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

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

(B) The written disclosure provided to the buyer at the time of sale informs the buyer that a warning will be provided five days before the use of the starter interrupt technology for all weekly payment term contracts and 10 days before



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the use of starter interrupt technology on all other contracts, 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 and discloses the manner and method in which that warning will occur. The dealer shall offer the buyer a choice of warning methods, including warning from the device, telephone call, email, or text message, if available, provided that the warning method does not violate applicable state or federal law.

(C) The written disclosure provided to the buyer at the time of sale informs the buyer that in the event of an emergency, the buyer will be provided with the ability to start a dealer-disabled vehicle for no less than 24 hours after the vehicle's initial disablement.

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

(c) Each violation of this section is a misdemeanor punishable by a fine not exceeding two thousand dollars (\$2,000).

(Amended by Stats. 2015, Ch. 179, Sec. 1. Effective January 1, 2016.)

The above is for references only, please refer to the sections of the Civil and Business and Professions Codes or any changes that may have occurred since the publication of this document.

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