

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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- 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.



Tim Corcoran, Chief
Occupational Licensing