



MEMO

To : POLICY AND PROCEDURE COMMITTEE **Date:** January 17, 2014
RAMON ALVAREZ C., CHAIR
GLENN STEVENS, MEMBER

From : WILLIAM G. BRENNAN
DANA F. WINTERROWD

Subject: DISCUSSION CONCERNING PENDING VOTER INITIATIVE - CAR BUYERS PROTECTION ACT

The following provides information about a potential voter initiative entitled, the “Car Buyer Protection Act.”

In October of last year, 2013, a private entity named Consumers for Auto Reliability and Safety (otherwise known as “CARS”) filed four similar proposed initiatives, each of which identifies itself as the *Car Buyers Protection Act* (CBPA). Each version of the proposed CBPA contains a different mix of proposed statutory additions or changes. However, only the first version contains all of the changes proposed in each of the versions. Also, only the first version of the CPBA would have a direct and immediate impact on the Board, because that version would amend Vehicle Code sections 3050 and 3052, in ways that would limit the Board’s jurisdiction to hear appeals, as more particularly discussed below. Other provisions of the CBPA could, in some circumstances, have limited impact on the Board, because those provisions would add or amend statutes in ways that, in some instances, could generate issues that could arise in some Board proceedings. A copy of the first version of the CBPA is attached to this memorandum.

As with the proposed CBPA, every proposed initiative must be filed with the Office of the Attorney General (OAG). For each proposed initiative the OAG must draft a “circulating title and summary” (CTS), and deliver the CTS to the proponents of the proposed initiative, the Secretary of State, the Assembly and the Senate. The proponents use the CTS to draft petitions that are circulated among the public to gather signatures in support of the proposed initiative. Such petitions must be signed by registered voters and the number of those signatures must be equal to at least five percent of the total votes cast for Governor at the last gubernatorial election. Also, proposed initiatives may be presented to the voters only in general elections. Currently, the total number of signatures required for initiative statutes to qualify for placement on the general election ballot is 504,760.

On December 26, 2013, the OAG issued a CTS for each version of the CBPA. However, according to press reports, CARS has not decided which version of the CBPA, if any, will be circulated among the public for signature collection. CARS must submit the required

signatures to voting officials within 150 days after the OAG provided the CTS to CARS. The 150 day deadline following December 26, 2013, is May 25, 2014.

As stated above, the first version of the CBPA would amend Vehicle Code sections 3050 and 3052. Those sections, within the Board's practice act, authorize the Board to hear and determine the appeal of limited types of decisions made by the Director of the Department of Motor Vehicles.

However, under the following provisions of the proposed CBPA, any appeal from a Director's decision would be removed from the Board's jurisdiction,

...when the decision fines, penalizes, or otherwise disciplines a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative for violations of any statute or regulation intended to protect car buyers, lessees, or the public.

And, instead of the Board's current jurisdiction for such appeals, the CBPA provides,

New motor vehicle dealers, manufacturers, manufacturer branches, distributors, distributor branches, or representatives may seek review of disciplinary decisions involving violations of statutes or regulations that protect consumers or the public only in a court of competent jurisdiction.

In other respects, the proposed CBPA would add or amend several Vehicle Code and Civil Code sections in ways that would impact some transactions involving new motor vehicles, and therefore approval of those proposals could change the number or nature of requests directed to the Board's mediation program and might also be raised in relation to collateral issues in other Board proceedings. As summarized below, the CBPA would also:

- Add Vehicle Code section 11713.05 (imposing qualifications and standards for new dealership employees),
- Add Civil Code section 1670.8 (restricting circumstances where contracts could be cancelled),
- Add Civil Code section 1798.98 (allowing dealer liability including where a transaction is, "procured through identity theft..."),
- Amend Civil Code section 2982.10 (prohibiting fractional 'reserves'), and
- Add and amend laws related to used or rental vehicles.

This matter is for information only at the February 4, 2014, General Meeting. If you have any question or require additional information, please contact me at (916) 324-6197 or Dana at (916) 327-3129.

cc: Bismarck Obando