

STATE OF CALIFORNIA



MEMO

To : POLICY AND PROCEDURE COMMITTEE **Date:** March 20, 2014
KATHRYN ELLEN DOI, CHAIR
BISMARCK OBANDO, MEMBER

From : WILLIAM G. BRENNAN

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

A California Initiative to Protect Buyers of Used Vehicles entitled the Car Buyer Protection Act ("CBPA") was approved for circulation in California as a contender for the November 4, 2014 ballot as an initiated state statute. Four versions of the initiative (#13-0033, #13-0035, #13-0036, #13-0037) were filed in quick succession in late October 2013, and all were approved for circulation.

If Version 13-0033 qualifies for the ballot and is approved by the state's voters, it will:

- Require auto dealers to repair manufacturer-recalled safety defects on used vehicles before sale or lease to consumer.
- Prohibit dealers from using certain high-pressure tactics, or canceling or changing vehicle sale or lease contracts at additional buyer expense, after delivery of vehicle.
- Require a minimum 30-day, 1,000 mile warranty on used vehicles.
- Limit financial incentives to dealers for arranging vehicle financing.
- Require criminal background checks on dealer employees with access to customers' personal information.
- Impose liability on dealers for identity theft at dealership.
- Eliminate New Motor Vehicle Board ("Board") administrative review of consumer protection violations.

If Version 13-0035 qualifies for the ballot and is approved by the state's voters, it will:

- Require auto dealers to repair manufacturer-recalled safety defects on used vehicles before sale or lease to consumer.

If Version 13-0036 qualifies for the ballot and is approved by the state's voters, it will:

- Require auto dealers to repair manufacturer-recalled safety defects on used vehicles before sale or lease to consumer.
- Require criminal background checks on dealer employees with access to customers' personal information.

- Impose liability on dealers for identity theft at dealership.

If Version 13-0037 qualifies for the ballot and is approved by the state's voters, it will:

- Require auto dealers to repair manufacturer-recalled safety defects on used vehicles before sale or lease to consumer.
- Prohibit dealers from using certain high-pressure tactics, or canceling or changing vehicle sale or lease contracts at additional buyer expense, after delivery of vehicle.
- Require minimum 30-day, 1,000 mile warranty on used vehicles.
- Limit financial incentives to dealers for arranging vehicle financing.
- Require criminal background checks on dealer employees with access to customers' personal information.
- Impose liability on dealers for identity theft at dealership.

The initiative was filed by Consumers for Auto Reliability and Safety ("CARS"), a consumer organization led by Rosemary Shahan. Signatures for all four versions are being sought at the present time. Over 504,000 signatures are needed in order to qualify for the ballot and all signatures need to be submitted before May 19 for version 13-0033 and May 27th for the remaining versions.

As noted above, the only version which directly impacts the Board is version 13-0033. If enacted, the initiative would eliminate Board administrative review of consumer protection violations. This is an important, but rarely used authority that the Board has to overrule the DMV when the agency disciplines an auto dealer or manufacturer for violating consumer protection laws. 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.

The most controversial instance where the Board reviewed by way of an Appeal a DMV Director's decision occurred in 1996 when Director Sally Reed ordered that Chrysler's license be suspended for 45 days, preventing the shipment of new vehicles to California during that time. Chrysler had allegedly resold 116 "lemons" between 1991 and 1992 without disclosing the vehicles' repair history. After numerous meetings, the Board ultimately issued an order reversing the DMV's decision and remanded the matter to take additional evidence. The DMV appealed the Board's decision and the case was eventually referred to an administrative law judge for further hearings. Eventually, it settled, but many car buyers' advocates were upset by actions taken by the Board believing that Chrysler

should have been severely punished. The Board's dilemma was that the Director's action against Chrysler additionally impacted Chrysler dealers throughout the state that had nothing to do with selling "lemon" vehicles. At the time, Shahan called the delay in imposing sanctions on Chrysler "bad news for consumers because [auto makers] feel they can get away with it."

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 April 9, 2014, General Meeting. If you have any question or require additional information, please contact me at (916) 324-6197.

cc: Glenn Stevens