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Honorable Bill Emmerson
Room 4082, State Capitol

AUTOMOBILE SALES - #1220970

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Dear Senator Emmerson:

QUESTION

Do the requirements of Assembly Bill No. 1534 of the 2011-12 Regular Session (Ch. 741, Stats. 2012), as applied only to buy-here-pay-here automobile dealers and not to traditional new or used car dealers, violate the equal protection clauses of the United States and California Constitutions?

OPINION

The requirements of Assembly Bill No. 1534 of the 2011-12 Regular Session, as applied only to buy-here-pay-here automobile dealers and not to traditional new or used car dealers, do not violate the equal protection clauses of the United States and California Constitutions.

ANALYSIS

By way of background, Assembly Bill No. 1534 of the 2011-12 Regular Session (Ch. 741, Stats. 2012; hereafter A.B. 1534) defines a buy-here-pay-here automobile dealer as a seller who enters into conditional sale contracts or lease contracts and assigns less than 90 percent of all unrescinded contracts to unaffiliated third-party finance or leasing sources within 45 days of the consummation of those contracts, except as specified (Secs. 241 and 241.1, Veh. C.). A.B. 1534 requires a buy-here-pay-here automobile dealer to affix and display, as specified, a label on any used vehicle offered for retail sale that states the reasonable market value of the vehicle (Sec. 11950, Veh. C.). That label must contain information about how and when the vehicle's reasonable market value was determined (Ibid.). Further, A.B. 1534 requires the dealer to provide the prospective buyer with a copy of any information

from a nationally recognized pricing guide, such as the Kelley Blue Book or Edmunds, used to determine the vehicle's value (*Ibid.*).

The equal protection clauses of the United States and California Constitutions require that persons "similarly situated with respect to the legitimate purpose of the law receive like treatment" (*Gawzner Corp. v. Minier* (1975) 46 Cal.App.3d 777, 784 (hereafter *Gawzner*), citing *Purdy and Fitzpatrick v. State of California* (1969) 71 Cal.2d 566, 578; *Plyler v. Doe* (1982) 457 U.S. 202, 216; Sec. 1, 14th Amdt., U.S. Const.; Sec. 7, Art. I, Cal. Const.¹). If persons are not similarly situated for purposes of the law, "an equal protection claim fails at the threshold" (*People v. Buffington* (1999) 74 Cal.App.4th 1149, 1155; hereafter *Buffington*).

If two groups are similarly situated and the distinction does not involve a suspect classification such as race, the classification need only bear some rational relationship to a conceivable legitimate state purpose (*McDonald v. Board of Election Com'rs of Chicago* (1969) 394 U.S. 802, 807-809). The rational basis standard applies to "claims of discrimination caused by economic and social welfare legislation" (*Safeway Inc. v. City and County of San Francisco* (N.D. Cal. 2011) 797 F.Supp.2d 964, 972; hereafter *Safeway*). Under this standard, governmental classifications are valid "if any state of facts reasonably may be conceived" in their justification (*McGowan v. State of Md.* (1961) 366 U.S. 420, 425-426; *Facundo-Guerrero v. Workers' Comp. Appeals Bd.* (2008) 163 Cal.App.4th 640, 655). Legislation imposing a classification generally will not be set aside unless that classification is palpably arbitrary and beyond rational doubt erroneous (*Dribin v. Superior Court In and For Los Angeles County* (1951) 37 Cal.2d 345, 351). Further, the party challenging the classification has the burden of showing that the Legislature acted arbitrarily in concluding that the facts justified the particular classification (*Mathews v. Workmen's Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 738-739).

With these principles in mind, we turn to the threshold question of whether buy-here-pay-here automobile dealers and traditional new or used car dealers are similarly situated with respect to the purpose of the law. An equal protection problem arises only where two similarly situated classes of individuals or groups are treated differently with respect to the legitimate purpose of the law (*Buffington*, *supra*, at p. 1155). Here, we think the legitimate purpose of A.B. 1534 is to protect consumers from unfair pricing practices (Assem. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended March 14, 2012, p. 1). In this regard, we believe that the committee analyses demonstrate that buy-here-pay-here automobile dealers and traditional new or used car dealers are not similarly situated in three ways.²

¹ "The equal protection guarantees of [both Constitutions] are substantially equivalent and analyzed in a similar fashion" (*People v. Leng* (1999) 71 Cal.App.4th 1, 11).

² It is presumed that the Legislature adopts proposed legislation with the intent and meaning expressed in legislative committee reports (*O'Brien v. Dudenhooffer* (1993) 16 Cal.App.4th 327, 334).

First, unlike traditional new or used car dealers, buy-here-pay-here automobile dealers do not generally assign the sale and lease contracts they generate to third-party finance or lease sources (Sen. Com. on Judiciary, Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended June 25, 2012, at p. 3 (discussing the proposed definition of buy-here-pay-here dealer); see also Sec. 22054, Fin. C. (exempting bona fide conditional contracts of sale from the California Finance Lenders Law (Div. 9 (commencing with Sec. 22000), Fin. C.)). Because they finance their own sales, they are free to set financial terms that include higher interest rates, including rates that can be "nearly triple the national average for a used-car loan" (Id., at p. 1, citing Bensinger, *A vicious cycle in the used-car business*, Los Angeles Times (Oct. 30, 2011), hereafter Bensinger). As noted in the Bensinger article cited by the Senate Judiciary Committee, "In a conventional loan, the dealer is a middleman. The purchase money is provided by a bank or finance company. In a Buy Here Pay Here loan, there is no outside money. The cars are sold on installment plans... The arrangement allows Buy Here Pay Here dealers to make their own rules and set their own interest rates, with far less regulatory scrutiny than mainstream lenders receive" (Bensinger, *supra*). Persons in the "same general type of business may be differently classed where their methods of operation are not identical" (*Marsh & McLennan of Cal., Inc. v. City of Los Angeles* (1976) 62 Cal.App.3d 108, 121 (no equal protection violation to treat insurance brokers and insurance agents differently)). In our view, because buy-here-pay-here dealers are not subject to the same financial regulations that apply to lenders commonly used by traditional new or used car dealers, buy-here-pay-here dealers and traditional new or used car dealers are not similarly situated with respect to protecting consumers from unfair pricing practices.

Second, buy-here-pay-here automobile dealers serve a different clientele than traditional new and used car dealers. The Senate Committee on Judiciary analysis for A.B. 1534 states that the buy-here-pay-here model specializes "in high interest vehicle loans for people with poor credit" (Sen. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended June 25, 2012, p. 4). Likewise, the Assembly Committee on Judiciary analysis for A.B. 1534 notes that because the law does not require used cars to display a window label or sticker containing the manufacturer's retail price, some "unscrupulous used car dealers" set the price of the car after running the customer's credit report or otherwise "drastically overprice a used vehicle for low-income consumers who cannot afford a new car but are particularly compelled to obtain a car for everyday needs" (Assem. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended March 14, 2012, p. 1). Buy-here-pay-here dealers "prey on vulnerable customers by charging exorbitant interest rates on overpriced, high mileage cars" (Sen. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended June 25, 2012, p. 4). Further, many of these customers "lack [i]nternet access, speak limited English, are brand new to the car-buying marketplace, or are just uncertain of where to find the information" (Id., at pp. 4-5). In *Gawzner*, the court struck down a provision prohibiting motels, but not hotels, from displaying outdoor rate advertising unless the signage contained certain information. The court found that motels and hotels were similarly situated because motels and hotels each rely upon the motoring public for business (*Gawzner, supra*, at p. 791). In contrast to *Gawzner*, the legislative findings

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here demonstrate that buy-here-pay-here automobile dealers do not rely on the same clientele as traditional new or used car dealers. Accordingly, this finding by the committee analyses is further evidence that these different types of dealers are not similarly situated in regard to the need for protection against unfair pricing practices.

Third, the types of vehicles sold by buy-here-pay-here automobile dealers are different from those sold by traditional new and used car dealers. The committee analyses refer to the vehicles sold by buy-here-pay-here automobile dealers as "high mileage," "road-worn," and "clunkers," and suggest that these vehicles are unlikely to survive the life of the loan (Sen. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended June 25, 2012, p. 1, citing Bensinger, p. 4). In our view, the committee analyses demonstrate that the vehicles sold by buy-here-pay-here automobile dealers may be less reliable and more prone to costly repairs and maintenance than the vehicles sold by a traditional new or used car dealer. The lesser quality of these vehicles sold by the buy-here-pay-here automobile dealers in light of the relatively high borrowing and repair costs demonstrates that these dealers are not similarly situated with respect to protecting consumers from unfair pricing practices.

Thus, it is our opinion that buy-here-pay-here automobile dealers and traditional new or used car dealers are not similarly situated in regard to the legitimate purpose of the law for the reasons discussed above. Accordingly, it is our opinion that the requirements that are imposed by A.B. 1534 on buy-here-pay-here automobile dealers do not violate the equal protection clauses of the United States and California Constitutions (*Buffington*, supra, at p. 1155).

However, if a court were to conclude that the two classes of dealers in question are similarly situated in regard to the legitimate purpose of the law, the court would next consider whether the classifications made by A.B. 1534 are rationally related to a legitimate state interest, as A.B. 1534 constitutes economic and social welfare legislation (*Safeway*, supra, at p. 972). Here, the legitimate state interest is in protecting consumers from unfair pricing practices (Assem. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended March 14, 2012, p. 1). The committee analyses detail these unfair pricing practices, which include setting the price for a vehicle after running a credit check on the consumer and overpricing vehicles for low-income consumers (Assem. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended March 14, 2012, p. 1; Sen. Com. on Judiciary Rep. on Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended June 25, 2012, pp. 4-5, citing Bensinger, supra; Assem. Floor Analysis, Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended May 21, 2012, p. 2). A.B. 1534 thus aims to address a legitimate state interest.

Having determined that A.B. 1534 seeks to address a legitimate state interest, the next question is whether the bill's provisions providing for classification are rationally related to that interest. In *Gawzner*, the court held that the law regulating signage at motels, but not at hotels, was not rationally related to the legitimate state interest of protecting the motoring

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public because, although both types of establishments relied on the motoring public for business, only motels were subjected to the signage restrictions: "it is discriminatory to restrict the outdoor rate advertising of one in an attempt to protect the motoring public and not to restrict the other's advertising of the same nature" (*Gawzner, supra*, at p. 791). In contrast to *Gawzner*, we believe that applying the provisions of A.B. 1534 only to buy-here-pay-here automobile dealers is rationally related to the legitimate state interest of protecting consumers from unfair pricing practices.

A.B. 1534's price labeling requirement and the requirement that the buy-here-pay-here automobile dealer disclose the information used to determine that price are rationally related to protecting consumers from unfair pricing practices that are more likely to occur among those dealers. As noted in the Assembly Floor analysis for this bill, some dealers set the price for a car after running the customer's credit report or simply overprice the car for low-income customers, a practice employed by "unscrupulous used car dealers, particularly those of the so-called 'buy here, pay here' variety" (Assem. Floor Analysis, Assem. Bill No. 1534 (2011-12 Reg. Sess.), as amended May 21, 2012, p. 2). A.B. 1534 addresses these problems by advising the consumer of the reasonable market value of the car and the information used to determine that value (Sec. 11950, Veh. C.). Moreover, the bill's requirement that the dealer provide a copy of that information to the prospective buyer further serves to protect the consumer from overpricing or from having the vehicle's price determined based on the consumer's credit score. In our view, requiring buy-here-pay-here automobile dealers, and not traditional new or used car dealers,³ to place a sticker listing the reasonable market value on the cars they are selling and the source relied upon for that value, and requiring only those dealers to provide a copy of the information used to determine the vehicle's value, is rationally related to protecting consumers from unfair pricing practices.

³ Traditional dealers, as noted above, are already required to put a window label or sticker containing the manufacturer's retail price (subd. (f), 15 U.S.C. Sec. 1232).

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CONCLUSION

For the reasons stated above, it is our opinion that the requirements of Assembly Bill No. 1534 of the 2011-12 Regular Session, as applied only to buy-here-pay-here automobile dealers and not to traditional new or used car dealers, do not violate the equal protection clauses of the United States and California Constitutions.

Very truly yours,

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ARK:rjc