

SENATE JUDICIARY COMMITTEE
Senator Hannah-Beth Jackson, Chair
2017-2018 Regular Session

AB 1491 (Caballero)
Version: July 3, 2017
Hearing Date: July 18, 2017
Fiscal: No
Urgency: No
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SUBJECT

Sales of dogs and cats: contracts and advertising

DESCRIPTION

This bill would prohibit contracts that transfer possession of a dog or cat but do not immediately transfer ownership, as specified. This bill would provide that consumers taking possession of a dog or cat under such contracts would be deemed the owner of the animal and would entitle them to the return of all amounts paid.

BACKGROUND

The Unruh Retail Installment Sales Act governs retail sales contracts in which the goods are sold for a deferred payment in four or more installments. The act provides a series of limitations on what can be included in such contracts and the fees and charges that can be imposed on consumers. It also requires certain protective provisions to be included in such contracts and certain disclosures to be made.

The Karnette Rental-Purchase Act governs the use of rental-purchase agreements in retail sales. Such agreements involve a lessor renting or leasing property for use by a consumer for an initial term that may be renewed or extended where the consumer acquires an option or other legal right to become the owner of the property. The Karnette Act was passed to address the widespread use of these contracts, which fell outside of the coverage of the Unruh Retail Installment Sales Act.

The legislative findings supporting the Karnette Act state that consumers enter into rental-purchase contracts that do not adequately disclose the actual terms and cost of the transaction or the consumer's liability for certain breaches of the contract, and contain unfair provisions, including unfair terms related to fees and charges, the exercise or the termination of purchase option rights, property loss and damage, and the repair or replacement of improperly functioning rental property. The Karnette Act was therefore passed to ensure that consumers would be protected from misrepresentations and unfair dealings by ensuring consumers are adequately informed of all relevant terms, including the cash price, periodic payments, total

purchase price, and other applicable charges or fees, before they enter into rental-purchase contracts.

The Karnette Act was intended to do all of the following: (a) prohibit unfair or unconscionable conduct toward consumers in connection with rental-purchase transactions, (b) prohibit unfair contract terms, including unreasonable charges, (c) prevent the forfeiture of contract rights by consumers, (d) provide a right of reinstatement and a reasonable formula for the exercise of purchase option rights under a rental-purchase contract, (e) provide reasonable requirements for the servicing, repair, and replacement of improperly functioning rental property, and (f) cover rental-purchase transactions under existing laws, including laws governing debt collection, cosigners, home solicitation contracts, and warranties.

This bill addresses the use of these types of financing and contracting in connection with the ownership of cats and dogs. Evidence suggests that this is a growing practice and that some of the business practices being used are of questionable legality under existing law. In response, this bill would provide that these types of contracts in this context are void as a matter of public policy.

CHANGES TO EXISTING LAW

Existing law provides that contracts which are contrary to an express provision of law; contrary to the policy of express law; or otherwise contrary to good morals are unlawful. (Civ. Code Sec. 1667.)

Existing law, the Unruh Act, governs the use of retail installment contracts. (Civ. Code Sec. 1801 et seq.)

Existing law defines a “retail installment contract” to mean any contract for a retail installment sale between a buyer and seller, which provides for (a) repayment in installments, whether or not such contract contains a title retention provision, and in which the buyer agrees to pay a finance charge or an equivalent, or (b) which provides for payment in more than four installments. When taken or given in connection with a retail installment sale, the term includes but is not limited to a security agreement and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of their value and by which it is agreed that the bailee or lessee will become, or for no other or for a nominal consideration has the option of becoming, the owner of the goods upon full compliance with the terms of the contract. (Civ. Code Sec. 1802.6.)

Existing law places certain limitations on the terms and conditions of a retail installment contract, including restrictions on fees and charges. (Civ. Code Sec. 1805.1 et seq.) Certain prohibited contractual provisions include:

- the buyer agrees not to assert against a seller a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in Section 1804.2 of the Civil Code;
- the seller or holder of the contract or other person acting on his or her behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods; and
- the buyer agrees to the payment of any charge by reason of the exercise of his or her right to rescind or void the contract. (Civ. Code Sec. 1804.1.)

Existing law, the Karnette Rental-Purchase Act, governs the use of rental-purchase transactions. A "rental-purchase agreement" is defined as an agreement between a lessor and a consumer pursuant to which the lessor rents or leases, for valuable consideration, personal property for use by a consumer for personal, family, or household purposes for an initial term not exceeding four months that may be renewed or otherwise extended, if under the terms of the agreement the consumer acquires an option or other legally enforceable right to become owner of the property. A rental-purchase agreement is considered a lease. (Civ. Code Sec. 1812.620 et seq.)

Existing law requires that every rental-purchase agreement be contained in a single document, setting forth all of the agreements of the lessor and the consumer with respect to the rights and obligations of each party. Every rental-purchase agreement shall be written in at least 10-point type in the same language as principally used in any oral sales presentation or negotiations leading to the execution of the agreement, and shall clearly and conspicuously disclose all of the following:

- the names of the lessor and the consumer, the lessor's business address and telephone number, the consumer's address, the date on which the agreement is executed, and a description of the property sufficient to identify it;
- whether the property subject to the rental-purchase agreement is new or used. If the property is new, the lessor shall disclose the model year or, if the model year is not known by the lessor, the date of the lessor's acquisition of the property. If the property is used, the age or the model year shall be disclosed if known by the lessor;
- the minimum period for which the consumer is obligated under the rental-purchase agreement; the duration of the rental-purchase agreement if all regularly scheduled periodic payments are made, designated as the "rental period"; and the amount of each periodic payment;
- the total of payments and the total number of periodic payments necessary to acquire ownership of the property if the renter makes all regularly scheduled periodic payments;
- the cash price of the property subject to the rental purchase agreement;
- the cost of rental;
- the amount and purpose of any other payment or fee permitted by this title in addition to those specified pursuant to paragraphs (3) and (4), including any late payment fee;

- a statement that the total number and dollar amount of payments necessary to acquire ownership of the rental property disclosed under paragraph (4) does not include other fees permitted by this title, such as late payment fees, and that the consumer should read the rental-purchase agreement for an explanation of any applicable additional fees;
- whether the consumer is liable for loss or damage to the rental property and, if so, the maximum amount for which the consumer may be liable as provided in subdivision (a) of Section 1812.627;
- a notice that makes clear the consumer does not acquire ownership until all payments are made;
- a description of the consumer's right to acquire ownership of the property before the end of the rental period as provided in subdivisions (a) and (b) of Section 1812.632;
- a description of the consumer's reinstatement rights as provided in Section 1812.631;
- if warranty coverage is transferable to a consumer who acquires ownership of the property, a statement that the unexpired portion of all warranties provided by the manufacturer, distributor, or seller of the property that is the subject of the rental-purchase agreement will be transferred by the lessor to the consumer at the time the consumer acquires ownership of the property from the lessor; and
- a description of the lessor's obligation to maintain the rental property and to repair or replace rental property that is not operating properly, as provided in Section 1812.633. (Civ. Code Sec. 1812.623.)

Existing law prohibits a rental-purchase agreement or any document that the lessor requests the consumer to sign from containing certain provisions, including provisions by which:

- the consumer authorizes the lessor or its agent to commit any breach of the peace in repossessing the rental property or to enter the consumer's dwelling or other premises without obtaining the consumer's consent at the time of entry;
- the consumer waives or agrees to waive any defense, counterclaim, or right the consumer may have against the lessor, its agent, or its successor in interest;
- the consumer is required to pay a downpayment, more than one advance periodic rental payment, or any other payment except a security deposit;
- the consumer grants a security interest in any property;
- except as authorized, the consumer is obligated to make any balloon payment; and
- the total of payments exceeds the amount permitted. (Civ. Code Sec. 1812.624(a).)

Existing law provides that any provision in a rental-purchase agreement that is prohibited shall be void and unenforceable and a violation of the Kernet Act. A rental-purchase agreement which contains any provision that is prohibited is voidable by the consumer. (Civ. Code Sec. 1812.624(b).)

This bill would provide that a contract entered into on or after January 1, 2018, to transfer ownership of a dog or cat in which ownership is contingent upon the making of payments over a period of time subsequent to the transfer of possession of the dog or

cat, is void as against public policy. However, this provision would not apply to payments to repay an unsecured loan for the purchase of the dog or cat.

This bill would provide that a contract entered into on or after January 1, 2018, for the lease of a dog or cat that provides for or offers the option of transferring ownership of the dog or cat at the end of the lease term is void as against public policy.

This bill would provide that in addition to any other remedies provided by law, the consumer taking possession of a dog or cat transferred under such contracts as described above shall be deemed the owner of the dog or cat and shall be entitled to the return of all amounts the consumer paid under the contract.

COMMENT

1. Stated need for the bill

According to the author:

Leasing or renting pets has become an increasingly common practice, but it comes at a high price, both financially and emotionally. Furthermore, the lending has been structured to be predatory in nature. Often times, families that lease these puppies and kittens pay twice or even three times the amount of the initial cost that the pet otherwise would have cost! A household with access to traditional credit outlets could avoid these additional usury costs. Given the emotional nature of purchasing a new pet, families often do not take the time to fully understand the financial implications of the transaction. Once the true cost is realized, these families must decide if they can keep their new furry friends, or if they have to cancel their contract. In the event of a default or cancellation, the future welfare of the pet is put into question, given that the lending company has no interest in maintaining the pet. AB 1491 would help by specifying that financing schemes that do not immediately transfer full ownership of a pet to a buyer may not be utilized to finance the purchase of a dog or cat.

By precluding these types of transactions, we can protect consumers from unscrupulous lending practices involving the purchase of a pet and reduce the potential that the puppy, kitten or other animal will be relinquished to a shelter due to financial circumstances.

2. Contracting schemes ill-suited for the sale of dogs and cats

This bill comes in response to a growing practice of using various retail installment contracts or rent-to-own agreements in connection with the ownership of dogs and cats. The American Society for the Prevention of Cruelty to Animals (ASPCA), the sponsor of this bill, explains the function is to “specify that financing schemes in which a consumer intends to purchase a companion animal, but full ownership of the pet is not

immediately transferred to the purchaser may not be utilized to finance the purchase of a dog or cat." In fact, this bill would declare such contracts void as against public policy. A consumer taking possession of a dog or cat pursuant to such contracts would be declared the owners and be entitled to the return of all amounts paid in connection with the transaction.

Acknowledging that these contracting arrangements are justifiable in certain contexts, ASPCA argues these agreements are "wholly ill-suited and unconscionable" for the purchase of a dog or cat. It contends "[n]either the financing scheme nor current California laws contemplate the responsibilities required to care for an animal in the event of repossession. As such, it is highly likely that the pet would be relinquished to an animal shelter in the event of the purchaser's default, resulting in a detriment to the purchaser, the financing company and, most importantly, the welfare of the animal."

From a practical and moral perspective, the repossession of a pet pursuant to these types of contracts is problematic. Cats and dogs are not commodities. The laws governing these contracts fail to address the unique circumstances of transferring possession and ownership of these animals. It is arguably unlikely that companies providing such contracts or their associated debt collection companies are in the business of finding these pets new owners when the pets are repossessed, and there are not clear guidelines for how the animals would be handled upon a consumer's default. While the Unruh and Karmette Acts have attempted to address the particular burdens these contracts place on consumers, they do not properly contemplate the transfer of cats and dogs.

The sponsor and those writing in support have provided numerous examples of the harm being done by these contracts in this context. Examples of consumers unwittingly entering into agreements to lease or to pay over installments for their dogs or cats while thinking that they were taking ownership at the point of sale. These types of contracts are often used to target a particular population. One business providing these types of contracts in unorthodox contexts such as cats and dogs, explained the attraction was to "niches where [they're] dealing with emotional borrowers." Such contracts can include provisions that allow companies to "take back the Pet wherever [they] find it and peacefully enter any property where the pet may be to do so."

Social Compassion in Legislation writes in support: "Many consumers have reported that they were unaware that they had committed to paying two to three times the retail price of their pet utilizing the financing. Equally disturbing, some consumers have reported that they were unaware of that they were entering into a lease contract rather than a purchase contract for their new pet."

Support: Social Compassion in Legislation

Opposition: None Known

HISTORY

Source: American Society for the Prevention of Cruelty to Animals

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote:

Senate Business, Professions and Economic Development Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 63, Noes 10)

Assembly Judiciary Committee (Ayes 10, Noes 1)
