
THIRD READING

Bill No: AB 1491
Author: Caballero (D), et al.
Amended: 8/22/17 in Senate
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-0, 6/19/17
AYES: Hill, Fuller, Dodd, Galgiani, Glazer, Hernandez, Newman, Pan, Wilk

SENATE JUDICIARY COMMITTEE: 7-0, 7/18/17
AYES: Jackson, Moorlach, Anderson, Hertzberg, Monning, Stern, Wieckowski

ASSEMBLY FLOOR: 63-10, 5/11/17 - See last page for vote

SUBJECT: Sales of dogs and cats: contracts and advertising

SOURCE: American Society for the Prevention of Cruelty to Animals

DIGEST: This bill declares, as void against public policy, a contract for the purchase of a dog or cat which is made contingent on making of payments over a period of time, or other types of lease-to-own agreements that do not immediately transfer ownership of the animal to the purchaser.

Senate Floor Amendments of 8/22/17 make a technical change and add coauthors.

Existing law:

- 1) Regulates retail installment contracts, defined as 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 certain other conditions apply; or (b) payment in more than four installments. (Civil Code (CC) § 1802.6)

- 2) Requires detailed disclosures of contract terms in a retail installment contract, including an itemization of the amount financed, the cash price, sales taxes, administrative finance charges, and the amount of down payment, among other things. Further requires the entire content of the contract, including all terms, obligations, and disclosures, to appear in a single document. (CC §§ 1803.1-1803.3)
- 3) Provides that if the buyer defaults in the performance of obligations, the seller may repossess the goods, or sue for the contract balance. (CC § 1812.2)
- 4) Regulates personal property rental transactions in which the renter has the option to apply a portion of the rent toward purchase of the property. Governs the rental of property for use by a consumer for personal, household, or family purposes for an initial term of 4 months or less. (CC § 1812.622 *et seq.*)
- 5) Establishes the Lockyer-Polanco-Farr Pet Protection Act, related to the retail sale of dogs and cats. Requires that pet dealers possess a permit in order to sell dogs and cats and provide consumers disclosures related to the pet, including breeder information, health records, and any known health condition. Requires that breeders maintain facilities and care requirements for pets. Specifies civil penalties for violating these sections. (Health and Safety Code (HSC) §§ 122125-122220)
- 6) Establishes the Polanco-Lockyer Pet Breeder Warranty Act, related to the sale of dogs by breeders. Defines a dog breeder as a person, firm, partnership, corporation that has sold, transferred or given away 20 or more dogs within one year that were bred and reared on the premises. Specifies information to disclose to the consumer, including records of diseases or illness. Requires dog breeders to maintain the health and safety of the dogs and prohibits them from knowingly selling a dog that is ill. (HSC §§ 122045-122110)

This bill:

- 1) Establishes 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.
- 2) Clarifies that Item #1) above does not apply to payments to repay an unsecured loan for the purchase of the dog or cat.

- 3) Establishes 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.
- 4) Provides that, in addition to any other remedies provided by law, the consumer taking possession of a dog or cat transferred under the terms of a contract described in Item #1) or #3) above shall be deemed the owner of the dog or cat and shall be entitled to the return of all amounts he or she paid under the contract.

Background

According to the author, consumer advocates and animal welfare advocates have raised concerns about a new kind of financing agreement being used by some pet stores in California that puts the safety and welfare of animals at risk—a contract where the consumer (often unwittingly) commits not to purchase, but to lease the desired dog or cat by making monthly payments that reflect near usurious financing fees to be charged that are predatory in nature. These are sometimes referred to as “puppy leasing agreements.”

Regulation of usury laws, retail installment contracts and rent-to-own agreements, generally. Usury is defined by Black's Law Dictionary (5th Ed.) as an unconscionable and exorbitant rate or amount of interest, and a usurious loan is one whose interest rates are determined to be in excess of those permitted by a jurisdiction's usury laws. Under the California Constitution, the interest rate limit for sales contracts is 12 percent, while the interest rate on judgments is limited to 7 percent. (Cal. Const. Article XV, Sec. 1.) However, there are many exceptions to the usury laws, including for large banks and financial institutions, as well as for certain loans secured by real property. In addition, if a consumer expressly agrees to an interest rate higher than the statutory limit, then they effectively waive these protections. As a result, many consumer contracts (including virtually all credit card agreements) legally employ interest rates that exceed these limits.

Existing law, the California Retail Installment Sales Act, generally known as the Unruh Act (not to be confused with the Unruh Civil Rights Act, Section 51 of the Civil Code), regulates consumer retail installment contracts for the sale of personal goods and services on time and revolving charge accounts. Generally speaking, the Unruh Act governs contracts that provide for the purchase to be paid in four or more installments, or which impose a finance charge, higher price, or other cost to the buyer in exchange for deferred payment. As originally enacted, the Unruh Act limited the interest rate that could be charged under such contracts, but those

restrictions were removed in 1988 and no such restrictions exist today in California (although they do in other states).

Rent-to-own (RTO) contracts, also known as rental-purchase contracts, differ from retail installment contracts because there is a lessor-lessee relationship established until the lessee ultimately purchases the property, either by making all of the required monthly payments or by exercising an option to purchase the property before the scheduled end of the lease term, pursuant to the terms of the contract. Existing law, the KARNETTE Rental-Purchase Act (KR-P Act) governs consumer rental transactions of property for personal, household, or family purposes in which the renter has the option to apply a portion of the rent toward purchase of the property. In 2006, the Legislature enacted AB 594 (KARNETTE, Chapter 410, Statutes of 2006) to amend the KR-P Act to establish bright-line pricing limits that cap the cash price of the property and the total amount of payments that can be required under RTO contracts. RTO contracts are leases also subject to regulation under the federal Consumer Leasing Act.

Recent reports of consumer experiences with pet leasing contracts raise significant consumer protection concerns. According to the author, the type of financing agreements for pet ownership identified by consumer advocates and highlighted in recent media reports are structured as leasing agreements rather than as lending agreements--in order to circumvent usury laws that cap what lenders can charge consumers—resulting in troubling examples of consumers charged exorbitant amounts beyond the cash price of the pet. The author cites a number of accounts appearing in recent media articles describing the experiences of consumers who, knowingly or unknowingly, entered into a leasing agreement for a pet dog or cat at extremely high rates of financing. One family thought they had bought a dog for \$2,400 from a San Diego-area pet store, but without realizing it, had agreed to make 34 monthly lease payments of \$165, after which they had the right to buy the dog for a balloon payment of about two months' rent. (Patrick Clark, "I'm Renting a Dog?" Bloomberg (March 1, 2017).

Another family from Oceanside who entered into a leasing contract for a puppy that required 27 monthly payments totaling \$2,687, after which they had the right to pay \$93.52 to end the lease or twice that amount (\$187.04) to purchase the pet, plus additional fees and taxes. The pet store's initial asking price for the puppy in this case was just \$495. (Ashly McGlone, "Couple shocked at 'dog lease' deal." San Diego Union-Tribune (November 28, 2014.)

In both cases, the financing agreement offered at the pet store was through a company called Wags Lending, perhaps the most well-known of several companies

that offer these types of financing agreements through pet stores in California. Started in 2013, Wags Lending was reportedly already used by 350 pet retail stores and breeders in 40 states by its first year of operation. According to a Bloomberg writer, Wags Lending charges effective interest rates ranging from about 36 percent to 170 percent on an annualized basis, based on sample rates published on its Web site. This fact is not immediately apparent because Wags doesn't show its pricing in terms of Annual Percentage Rate, since it asserts it is underwriting leases, not loans. Importantly, because the contracts at issue in this bill are deliberately structured as lease agreements rather than loan agreements, they are not subject to usury laws or other laws regulating lenders, and this is true not only in California but likely in many other states where these contracts are being used.

Pet leasing contracts may also threaten the safety and welfare of the animal.

Whether these types of financing agreements are better regulated as loans rather than leases, the proponents of the bill take the broader view that leases for dogs and cats should be deemed void against public policy because of the threat to animal welfare that they may create. Specifically, they contend that the repossession or potential repossession of pet dogs or cats pursuant to a lease contract creates unique animal welfare concerns that don't arise with respect to furniture, appliances or other inanimate forms of property, and therefore it should be against the public policy of California to allow rent-to-own contracts for dogs and cats.

Pet leasing agreements specifically contemplate several ways in which the pet could end up back in the possession of the lessor. First, the lessor may repossess the animal if the consumer defaults on the lease payments (increasingly likely given that the consumer presumably could not afford to buy the pet outright for the initial store price). Second, even if the consumer makes all the required monthly lease payments, he or she may decline to exercise the option to purchase the animal—effectively returning the pet to the lessor or financing company. Finally, the lessor may unilaterally repossess the pet if conditions of the lease are violated (e.g. it learns the animal is being mistreated or not being cared for properly).

According to the proponents, the pet store that initially housed the dog or cat is no longer party to the transaction once the lease agreement is effective, and it is not unusual for the financing company to have assigned the contract to a third party company that primarily specializes in managing or collecting on debt obligations. Under these circumstances, what is to happen to the pet when the lease is terminated or expires?

According to the articles cited by the author, Wags Lending says that return of pets after the full term of the contract is rare, and that it does take steps to find new homes for pets in cases where the lease was ended early, including trying to convince the pet store to take back the pet. However, as discussed above, it is hard to assess what remarketed value or diminished "realized value" the asset has after repossession when the asset is a dog or cat that has been separated from the family it lived with for months or years previously.

Furthermore, a financing company or debt collection company is not in the business of re-homing pets or reselling them on the market, so it is conceivable and even likely that such pets will unfortunately end up being relinquished to animal shelters if they cannot be resold or found a new home by the company repossessing them.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/23/17)

American Society for the Prevention of Cruelty to Animals (source)
Humane Society of the United States
San Diego Humane Society
State Humane Association of California
Social Compassion in Legislation

OPPOSITION: (Verified 8/23/17)

None received

ARGUMENTS IN SUPPORT: Supporters state that purchasing a puppy or kitten from a retailer or breeder can be costly. In some cases, the cost can rise to as high as several thousands of dollars. As a result, a developing trend has been to offer consumers financing options that make adopting a new pet appear to be more accessible. According to supporters, the RTO structure is like a car lease in which the consumer pays fixed monthly payments and is then given the opportunity to purchase the puppy, kitten, or other pet at the end of the term by making a balloon payment. At the end of the lease term, the lessee may have paid twice or even three times the amount of the initial cost that the pet otherwise would have cost.

Supporters are seriously concerned about this detrimental form of financing that is contrary to public policy, in that allows usurious fees to be charged to the consumer, is predatory in nature, and puts the safety and welfare of animals at risk.

ASSEMBLY FLOOR: 63-10, 5/11/17

AYES: Acosta, Aguiar-Curry, Arambula, Baker, Berman, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Cervantes, Chau, Chávez, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dababneh, Daly, Eggman, Flora, Fong, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Quirk, Quirk-Silva, Reyes, Ridley-Thomas, Rodriguez, Rubio, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Travis Allen, Bigelow, Brough, Chen, Harper, Kiley, Mathis, Mayes, Obernolte, Voepel

NO VOTE RECORDED: Dahle, Frazier, Gallagher, Melendez, O'Donnell, Patterson, Waldron

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