

# New Jersey Legislative Update

SUMMARY OF BILLS WE'RE FOLLOWING

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## LEGISLATIVE OVERVIEW

Earlier this year, Eckert Seamans began representing NJIADA's interests in Trenton.

Here is a summary of some of the bills we are following.

### Proposed Law Limits Use of Payment Assurance Devices and Conditions Use on 10 Point

#### Interest Rate Deduction; Creates Violation of Consumer Fraud Act

Assemblyman Paul Moriarty (D-4, Turnersville), chairman of the Assembly Consumer Affairs Committee, previously released legislation from the NJ Assembly Consumer Affairs Committee on January 12, 2015. The initial version of the bill prohibited the use of payment assurance devices by auto dealers and lenders in connection with auto financing.

The bill was amended in late February and would allow a dealer or lender to install a payment assurance device only if certain conditions are met. The following provisions, with which we are substantially in agreement, include:

- Written disclosure to the customer.
- Prohibition on charging the customer for the device.
- Prohibition on remotely disabling the vehicle until the vehicle is five or more days in default.
- A 48 hour warning prior to remotely disabling the vehicle.
- Prohibition on disabling the vehicle while it is being operated, and the ability of the customer to start the car in an emergency.

However, the amended bill also contains a provision that mandates a 10 point reduction in the interest rate charged for auto loans where a payment assurance device is used, essentially limiting the maximum

interest rate to 19.99 percent. In addition, failure to comply with the law would violate the Consumer Fraud Act and could result in an award of attorneys' fees and triple damages.

We have met with Chairman Moriarty and expressed our concerns with this provision. While we understand the desire to address high interest rates, we oppose doing so in a piecemeal fashion. Chairman Moriarty has honored his commitment to work with us on our concerns. However, it is likely that the bill will move forward with the mandated reduced interest rate.

With and on behalf of NJIADA, we have also begun to work on the bill with Senator Nilsa Cruz-Perez (D-3, Audobon), the Senate sponsor, as it has not yet moved in that house.

## RECALL BILLS

### Bill Requires Dealerships to Notify Buyers (but Not Fix) Outstanding Recalls When Selling Used Cars on a Retail Basis; Creates Violation of Consumer Fraud Act

On January 29, the Assembly passed A-3725, requiring dealerships to check the National Highway Traffic Safety Administration's website and inform a potential buyer of any outstanding recalls.

The sponsor, Assembly Consumer Affairs Chairman Paul Moriarty, significantly revised the bill, which now clarifies dealers will not be liable for any errors contained on the NHTSA website and clearly states there is an irrebuttal presumption that the dealer had no knowledge of a recall if the information was not on the NHTSA website at the time of the sale.

The amended bill makes clear dealers are not required to fix open recalls prior to selling a vehicle, which would not be practical. (Currently, approximately one in six cars has an open recall. Not all recalls involve serious safety concerns and in some cases, especially for non-safety related recalls, the parts may be

backordered or hard to obtain for weeks or months.)

Importantly, the bill also does not apply to wholesale transactions, sales between dealers, sales to owners and operators of junk businesses or motor vehicle junk yards or any entity or person involved in dismantling, destroying or recycling motor vehicles.

Failure to disclose an outstanding recall under the bill would constitute a violation of the New Jersey Consumer Fraud Act, with up to a \$10,000 fine for a first offense and up to \$20,000 for any subsequent offense. Violations could also result in cease and desist orders issued by the attorney general, the assessment of punitive damages, and the awarding of treble damages and attorney costs. Treble damages and attorney's fees could also be awarded to retail consumers in private causes of action.

Sen. Nilsa Cruz Perez is sponsoring the bill in the Senate, but has not yet been posted the bill for consideration in committee.

### Bill Would Ban the Rental or Sale of Rental Cars With Safety Recalls

In January, the Assembly passed A1892 – "Safe Motor Vehicle Rental Act" – which prohibits rental companies from renting, leasing, or selling unrepaired motor vehicles which are subject to safety recall without repairing the problem. It has not been introduced in the Senate.

Under the bill, if the rental company becomes aware of a safety recall during the term of a rental/lease it would be required to make "reasonable efforts" to contact the renter/lessee, inform them of the recall and offer to provide a comparable replacement at no charge. Under the bill, failure to comply would make it a violation of the New Jersey Consumer Fraud Act, subjecting the rental company to awards of treble damages, attorney's fees and other costs.

The bill would not apply to the sale of a vehicle to dealer or any other party engaged in



IN MAY, GOVERNOR CHRISTIE CONDITIONALLY VETOED LEGISLATION (S-394/A-4246) THAT WOULD HAVE PROHIBITED RETAIL PURCHASERS OF USED VEHICLES FROM WAIVING A DEALER'S OBLIGATION REGARDING EMISSIONS CONTROL EQUIPMENT.

the business of selling vehicles or to motor vehicle junk yards or any entity or person involved in dismantling, destroying or recycling motor vehicles. It only would apply to retail transactions by a car rental company.

The bill also makes clear that there would be no liability for a rental company if it checked the National Highway Traffic Safety Administration's website and there were no open recalls at the time of the rental or sale.

**Christie Conditionally Vetoes Dealer Obligation Legislation**

In May, Governor Christie conditionally vetoed legislation (S-394/A-4246) that would have prohibited retail purchasers of used vehicles from waiving a dealer's obligation regarding emissions control equipment.

Under current law, motor vehicle dealers who sell used vehicles to retail consumers are required to make any repairs necessary to correct a defect which would cause a vehicle to fail inspection or to buy it back, unless the purchaser signs a waiver releasing the dealer from that obligation. Governor Christie's conditional veto essentially reduces the legislature's prohibition against waiver to a mere notice requirement.

If the conditional veto were enacted, dealers would be obligated to let retail consumers know what would be needed to pass inspection if they were to waive the dealer obligation. In his statement, the governor identified his concerns – specifically that the bill would “negatively impact the market for used vehicles that, while currently below inspection standards, still have value for hobbyists, mechanics, and resellers. . . . and unintentionally shutter that market.”

The bill previously passed the Senate unanimously (37-0) and in the Assembly by wide margins (58-14-1). The Legislature will now have the opportunity to override the veto or re-enact the bill with the recommended amendments, at which time it will be returned to the governor for signature. Despite its initial bipartisan support, we do not anticipate the Legislature will attempt to override the bill.

**“Ban the Box” Became Law**

The law, which took effect March 1, 2015, prohibits employers from asking job applicants about their criminal

background until after the first interview. If a job applicant voluntarily discloses their criminal history, an employer is permitted to make inquiries before or during the initial interview.

The law allows employers to inquire about an applicant's record after the first interview, although there are limitations, despite an employer's well founded safety and financial concerns.

Fines are \$1,000 for the first violation, \$5,000 for the second, and \$10,000 for each subsequent violation

On March 16 the Department of Labor published proposed regulations to correspond to the new law which have not yet become effective. The proposed regulations provide some clarity about what is intended by an employment application and clarify exceptions to the law and importantly clarify that it includes interns and apprentices whether paid or unpaid.

**Bill Seeks to Bar Contracts that Force Consumers to Waive Rights**

In February, the New Jersey Assembly Consumer Affairs Committee passed A-4097, which would bar provisions in consumer contracts requiring customers to waive things such as their ability to: request a jury trial; file a class action; pursue any rights under the NJ CFA, Lemon Law or any other federal or state consumer protection.

Under the bill, if a consumer demonstrated a violation in a consumer contract, they would be entitled to a \$100 civil penalty and attorney's fees for bringing the claim. The ability to recover attorney's fees is significant. If claims are brought in class actions dealerships could be liable to all their customers with contracts containing the void provisions.

Business groups testified before the committee and correctly noted the US Supreme Court has held that the national policy in favor of arbitration requires enforcement of arbitration clauses that bar consumers from bringing class action lawsuits or from serving as a class representative in an arbitration. At least one of the bill's sponsors publicly acknowledged that the bill needs to be amended.

**Optional Electronic Lien and Titles**

A3211 is up in Assembly

Appropriations. The bill establishes an electronic lien and titling system for New Jersey motor vehicles. It was previously released from the Assembly Transportation Committee. The Senate version hasn't moved since it was introduced in the Senate Transportation Committee in September.

This is a bizarre twist. The MVC was already authorized to have ELT by separate regulations that were adopted in July 2014. They have been moving the program forward and will put it out to bid soon.

We have asked those in charge of legislative affairs at the MVC about the bill, which authorizes something legislatively that they are already doing. The response we have received is that the sponsor doesn't seem to care that regulatory authority already exists.

**Bill A-3905 Authorizes Operators of Motor Vehicles to Display Electronic Proof of Insurance**

This bill provides that an insurance card may be displayed or provided in either paper or electronic form. The departments of Banking and Insurance have primary responsibility for promulgating regulations but the NJ Motor Vehicle Commission is supposed to be consulted.

The act was signed on May 7, 2015.

**Prohibits Employer Credit Check**

Senate committee passed S-524/S1130. It prohibits an employer from requiring a credit check on a current or prospective employee, unless the employer is required to do so by law, or reasonably believes that an employee has engaged in a specific activity that is financial in nature and constitutes a violation of law.

**ELECTION/SESSION UPDATE**

The entire Assembly is up for reelection in November. Once the budget is passed by July 1, we anticipate a slowdown in legislative activity, picking up in late Fall. There will then be a busy lead up to the end of the current legislative session, which ends in January.

Democrats maintain strong majorities in both houses, and we do not anticipate that Democrats will lose any seats in the upcoming Assembly elections. 🚗

# NextGear Integrates KBB Values Within Apps

INTEGRATION PROVIDES CURRENT MARKET-REFLECTIVE VALUES  
BY SUBPRIME AUTO FINANCE NEWS STAFF

In effort to help dealers monitor their floor planning resources more efficiently, NextGear Capital has added Kelley Blue Book values to its myNextGear Web and mobile applications. As a result of this integration between the two Cox Automotive business units, NextGear Capital customers can now receive current market-reflective values at no additional cost for new and used vehicles.

“By continually adapting the way we put information in front of our customers, we can offer them greater flexibility in how they do business,” said Bryan Everly, chief technology officer with NextGear Capital.



“We are constantly challenging ourselves to make our product better, and that includes providing cross-platform functionality with other Cox Automotive solutions,” Everly continued.

The addition of Kelley Blue Book values comes less than a year after NextGear Capital added MMR values to myNextGear. Through these evaluation tools, dealers have access to entry-level data to help them make informed purchasing and selling decisions from either the comfort of their office or on the go.

“Trusted by consumers and the industry, it was a natural choice to provide Kelley Blue Book values to NextGear Capital customers,” said Dan Ingle, vice president of vehicle values and industry solutions for Kelley Blue Book. “Kelley Blue Book's information will not only help mitigate risk, but this aligns with the overall company strategy to provide relevant market-reflective values at the point they are needed in the transaction process.” 🚗