

# Mid-Year Review of Legislation That Can Impact Your Dealership

*Presented by:*

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# TOPICS

Proposed and New laws that impact New Jersey dealerships

# Legislative Overview

- **Legislative Overview**
- The NJIADA represents dealers' interests in Trenton through its Executive Director Paula Frendel and President Sal Enea.
- The legislature is in session until the end of June when it must pass a budget under state law. NJIADA anticipates a lot of legislative activity this month and then again after November's elections through January.

# New Law

**I. NEW LAW-** At the end of March Governor Christie signed into law legislation that allows for the continued Use of Payment Assurance Devices with **new limitations**.

- Prior to enactment of the law, use of GPS technology to either track a vehicle or for starter interruption purposes was not regulated in New Jersey.
- Effective date **August 1, 2017**.

## New Law Continued...

- The initial version of this bill outlawed use of GPS devices completely.
- Through the efforts of the NJIADA and others the bill went through several iterations and eventually was signed into law.
- The new law adds transparency, provides significant new consumer protections but still allows dealers to sell to economically challenged customers and to make a profit.

## New Law Continued...

- The **NEW LAW** allows for installation of a payment assurance device in connection with auto financing only if certain conditions are met. The provisions include:
  - written disclosure to the customer with the consumer's written acknowledgment that device is installed.
  - prohibition on charging the customer for the device.
  - prohibition on disabling the vehicle while it is being operated.

## New Law Continued...

- prohibition on remotely disabling the vehicle until the vehicle is five (5) or more days in default. (This is the very first time NJ has ever allowed for an opportunity to cure a default on a retail installment auto loan).
- a 72 hour warning prior to remotely disabling the vehicle.
- Failure to comply with the law is a violation of the Consumer Fraud Act (“CFA”) and could result in an award of attorneys’ fees and triple damages.

# New Law Continued...

If your dealership uses GPS devices:





## New law Continued....

- Most GPS manufacturers provide forms to their dealer customers to use with the retail public.

## New Law Continued...

**To ensure compliance with the new GPS law**

**Don't assume that a manufacturers' forms comply with the new law. Have your GPS Disclosure forms reviewed by an attorney or other qualified professional.**

**Make sure that employees are properly trained and knowledgeable about new requirements for when and how a GPS device can be utilized.**

# Proposed Laws

## **II. Bill concerning temporary registrations**

- The bill would increase the number of days a temporary registration is valid from 20 to 30 days if the vehicle is being sold to an out of state consumer.
  
- The bill also allows for a second 30 day temporary registration if the title is lost of a prior lien holder fails to turnover title.

# Proposed Laws Continued...

- The bill would treat all consumers the same regardless of residency.
- Consumers that are NJ resident are already allowed thirty days for their first temporary registration and a thirty day second temporary registration.
- The bill is scheduled for a vote in the assembly on **June 8, 2017**. The senate has yet to take action on the bill.

# Proposed Laws Continued...

## III. Bill amending laws about certain business requirements for dealers.

- The bill would **significantly** amend the requirements about an established place of business for dealers.
- The bill if enacted would codify certain industry wide practices and address what some perceive to be regulatory overreach by the NJ MVC.

# Proposed Laws Continued...

- Allow dealers to temporarily remove business records such as titles, certificates of origin, dealer reassignments or other title work from the licensed location for any business purpose.
- Prevent the NJ MVC from prohibiting an individual from serving as an authorized signatory of more than one dealership at a time.

# Proposed Laws Continued...

- Bar the NJ MVC from regulating building codes, which falls under jurisdiction of the Department of Community Affairs and Municipal officials. The bill makes clear that the NJ MVC would still require a municipal Certificate of occupancy for a license.
- Eliminate the need for office hours.
- Require five business days advance notice before the MVC conducts an audit.

# Proposed Laws Continued...

- In the event of an unannounced audit or investigation that results in a violation then the dealer would have an after the fact opportunity to show they were in compliance and avoid a penalty.
- This bill passed the Assembly 71-0-2 on March 23, 2017 and was voted out of the Senate Commerce Committee on May 15<sup>th</sup>.



# Proposed Laws Continued...

## **IV. Dealer Obligation Legislation**

- When selling to a NJ resident, dealers must: make repairs to correct defects causing a vehicle to fail inspection or to buy it back, unless the purchaser signs a waiver releasing the dealer from that obligation.
- Last year, Gov. Christie conditionally vetoed a bill prohibiting retail purchasers from waiving a dealer's obligation regarding emissions control equipment.

## Proposed Laws Continued...

- The conditional veto essentially reduced the legislature's prohibition against waiver to a mere notice requirement.
- The Legislature did not attempt to override the veto, but the Senate unanimously voted to pass a different bill that essentially mirrored the Governor's recommendations.

## Proposed Laws Continued...

- In the event of a waiver of the dealer obligation, the bill would require disclosure of known defects that may cause a vehicle to pass inspection.
- The senate approved the bill 38-0 and the assembly has yet to schedule the bill for a vote.

# Proposed Laws Continued...

## V. Recalls:

- **Bill Would Require Dealerships to Notify Buyers (but Not Fix) Outstanding Recalls When Selling Used Cars on a Retail Basis; Creates Violation of Consumer Fraud Act**
- The Assembly passed a bill (70-0) in March requiring dealerships to check the National Highway Traffic Safety Administration's ("NHTSA") Internet website and inform a potential buyer of any outstanding recalls.

# Proposed Laws Continued...

- The bill makes clear that : (1) dealers would not be liable for any errors contained on the NHTSA website; and (2) 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.

## Proposed Laws Continued...

- The bill makes clear that dealers are not required to fix open recalls prior to selling a vehicle. The bill's sponsor recognized the volume of recalls and that not all recalls involve serious safety concerns and in some cases, especially for non-safety related recalls, the parts may be back ordered or hard to obtain for weeks or months.

# Proposed Laws Continued...

- 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 escalating fines in \$10,000 increments

## Proposed Laws Continued...

- 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.
- The bill in the Senate has yet to be voted out of committee or voted on by the entire Senate.



# Proposed Laws Continued...

- NJ and the federal government both indirectly already address the sale of used vehicles with open safety recalls through oversight of advertising.



# Proposed Laws Continued...

- **Existing laws re sale of vehicles with recalls**
- Federal law **prohibits** the sale of new vehicles with open recalls but does not specifically address used vehicles.
- ***NJ does not currently specifically bar the sale of used vehicles with open recalls.***

## Proposed Laws Continued...

- New Jersey's CFA requires dealers to refrain from affirmative misstatements or omissions regardless of intent when selling a motor vehicle. A representation that a vehicle's airbag doesn't need to be replaced could result in legal exposure if untrue when made even if there was no intent to deceive a consumer.

## Proposed Laws Continued...

- The CFA also requires dealers to disclose substantial (\$1,000.00 or more) repair or body damage to a vehicle if known or should have been known.
- Airbag replacement costs between \$1,000-\$1,500 per airbag.
- Failure to make necessary disclosures under the New Jersey Consumer Fraud Act can subject a dealer to three times compensatory damages, and attorneys' fees.

# Proposed Laws Continued...

- In the last 18 months the Federal Trade Commission (“FTC”) brought lawsuits against several large dealer groups and a manufacturer who advertised rigorous inspections and or safe vehicles but failed to disclose open safety recalls.
- The parties were using words like “certified” and “inspected” in their advertisements.

## Proposed Laws Continued...

- The FTC settled its lawsuits with the dealer groups and manufacturer.
- As part of the settlements, the parties are allowed to continue to advertise vehicles with open safety recalls as "safe" or having undergone a "rigorous inspection" provided they disclose the existence of the open recalls.
- There were no admissions of wrongdoing.

# Proposed Laws Continued...

- Takeaways about recalls: (1) Expect new requirements or enforcement on selling cars with recalls from the state or federal government; (2) if advertising vehicles as certified/inspected and safe disclose open safety recalls.
- For now: **When in doubt, dealers should disclose known open safety recalls. The transparency will create goodwill and potentially mitigate exposure.**

# Proposed Laws Continued ...

## **VI. Electronic Lien and Titling**

- The Assembly Transportation Committee approved a bill earlier this year which would help facilitate establishing an electronic lien and titling (“ELT”) system for New Jersey motor vehicles.
- The bill requires the NJMVC to complete a study to determine if it has the resources and capability to establish and implement electronic lien and titling system.



## Proposed Laws Continued...

- Many states have already adopted ELTs or optional ELTs.
- In July 2014, the New Jersey MVC adopted its own regulations authorizing itself to implement an ELT program. That program has yet to be implemented and the current bill has not been scheduled for a vote in either the senate or the assembly.

# Proposed Laws Continued...

## **VII. Amendments to law concerning family leave and temporary family disability.**

- The bill was introduced in late May into the assembly and was already voted out of committee.
- The bill would greatly expand existing leave times and flexibility.

# Proposed Laws Continued...

## **The bill would :**

- ❑ Increase the maximum number of weeks from 6 to 12 for family leave.
- ❑ Allow time for bonding with a newborn or adopted child to be taken intermittently.
- ❑ Increasing intermittent leave from 42 to 84 days.
- ❑ Increase capped benefits from \$633 to \$932 per week.

## Proposed Laws Continued. ..

- Allow for benefits to parents who have a child through a surrogate.
- Extend existing family leave benefits to include taking time to care for siblings, grandparents, grandchildren and parents in-law. Currently the law covers spouses, domestic partners, children, parents and civil union partners.
- The law would also provide for additional job security and remedies.

# Takeaways from Today:

- Dealers should conduct annual reviews of their procedures and forms to make sure that: (1) their practices are in compliance with applicable law; (2) their transactions are transparent and (3) that employees are properly trained and knowledgeable about all pertinent requirements
- **Support the NJIADA !**

# Questions?

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