



NJ AUTO INDUSTRY ALERT

December 4, 2015

REGULATORY UPDATE

NJ STATE COMMISSION OF INVESTIGATION RELEASES SCATHING REPORT ON NJ MVC: SIGNIFICANT REGULATORY CHANGES EXPECTED

The New Jersey State Commission of Investigation (SCI) issued a report on December 2, 2015, entitled, [“Gaming the System | Abuse and Influence Peddling in New Jersey’s Used-Car Industry.”](#) The scathing report accuses some New Jersey Motor Vehicle Commission (“MVC”) officials of enabling used-car auto malls or “multi-dealer locations” to circumvent regulations and enforcement, allegedly resulting in fraud, unpaid taxes and "suspicious" financial transactions. *The report contains many recommendations that would significantly change oversight of the entire industry not just for dealers at multi dealer locations.*

The SCI report alleges many dealers at multi-dealer locations engage in "questionable, unscrupulous and possibly illegal activities," while protected by MVC officials. The report concludes, "[m]uch of this occurred at the behest of MVC managers who took it upon themselves to effectuate what amounted to substantive policy and regulatory changes that benefited a narrow private interest — all without the knowledge or authorization of the agency's chief administrator and governing board."

The SCI’s findings were turned over to state and federal law enforcements agencies. The MVC released a statement that said (as the SCI report noted), that the agency has already taken steps to “tighten requirements affecting used-car dealers” and “has drafted pending regulatory amendments geared toward tightening dealer practices.” The MVC also says it has issued more than \$2.5 million in proposed fines to multi-dealer complexes across the state.

SCI RECOMMENDATIONS AND WHAT THEY MIGHT MEAN FOR ALL NEW AND USED CAR DEALERSHIPS

The SCI Report recommends significant reforms including: (1) removing licensing and oversight authority from the MVC’s jurisdiction and giving it to the NJ Department of Law and Public Safety, Office of the Attorney General, Division of Consumer Affairs; (2) creating



a wholesale-only license and exempting wholesale dealers from many of the requirements that strictly pertain to retail transactions (the MVC has discussed creation of such a license category for years); (3) requiring more financial disclosures as a condition of licensure; (4) expanding the basis for denying licenses for certain crimes; (5) adoption of a used car dealer bill of rights; (6) an end to “AS IS” sales; (7) a cooling off period with financial penalties for the purchase of used cars for less than \$40,000.00; and (8) strengthening of NJ’s lobby disclosure requirements. The SCI report also contains some secondary recommendations that would appear to be unconstitutional on their face, such as requiring that New Jersey licensees be residents of the state. We believe such a requirement would not only violate the Commerce Clause, but fail to consider the very practical consideration that many of the new car dealer groups in New Jersey (that also sell a lot of used cars) are actually based out-of-state.

It is important to note that the SCI does not have the ability to implement any changes or press any charges; however, we expect that far-reaching changes will occur. The report could have wide-ranging effects on consumers because it touches on the hot topic of alleged corruption. We anticipate that new bills will likely be introduced in January addressing some, if not all of the recommendations in the SCI’s report. It is also not unreasonable to assume that the MVC will want to police itself and possibly propose new regulations and legislation. Significantly, while change is imminent, nothing will happen overnight. Most of the recommendations made by the SCI are such that they would need to go through the Legislature, which is a reasonably long process with lots of opportunity for input by industry stakeholders, including NJIDA. In the meantime, dealers should expect that the MVC will vigilantly enforce existing regulations and statutes against all dealers equally.

LEGISLATIVE UPDATE

PAYMENT ASSURANCE DEVICE LEGISLATION RUNNING OUT OF TIME IN CURRENT SESSION

Proposed Law Limits Use of Payment Assurance Devices and Conditions Use on 10 Point Interest Rate Deduction; Creates Violation of Consumer Fraud Act

The Legislature is running out of time to pass a bill that limits the use of payment assurance devices by auto dealers and lenders in connection with auto financing in the current two-year



legislative session, which ends on January 11, 2015. Any bills that have not passed by that date will need to restart the legislative process. The bill is ready for a vote in the Assembly but has not yet been considered in the Senate.

As previously reported, the bill as amended, sponsored by Assemblyman Paul Moriarty (D-4, Turnersville), Chairman of the Assembly Consumer Affairs Committee, allows a dealer or lender to install a payment assurance device only if certain conditions, such as written disclosure, warning period before activation, and the customer's ability to start the car in an emergency, are met. Most concerning is that the most recent version 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%.

NJIADA has previously met with Senate sponsor Nilsa Cruz-Perez (D-3, Audobon) to address our concerns—specifically as to how the bill would restrict access to credit for consumers. The bill was referred to the Senate Commerce Committee but has not been posted for consideration.

NJIADA continues to have a dialogue with both the Assembly and Senate sponsors.

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Anthony Bush is a Member in Eckert Seamans' Princeton Office with over two decades of experience with automotive issues. He counsels a wide spectrum of clients including automobile dealerships, operators of wholesale motor vehicle auctions, auto parts distributors, finance companies, and auto body repair facilities. Tony and Eckert Seamans have expertise representing dealers in consumer and corporate litigation, land use matters, business counseling, employment matters, franchise disputes, before the New Jersey Motor Vehicle Commission and New Jersey Department of Law and Public Safety, Division of Consumer Affairs, and in legislative and regulatory issues affecting the automotive industry. Grace Strom Power is an Associate in the Princeton Office and has over 10 years of government affairs experience in both the public and private sectors, advising and representing clients before the New Jersey State Legislature, Office of the Governor, state and local agencies, commissions and regulatory authorities.

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