



NJ AUTO INDUSTRY ALERT

January 30, 2015

RECALL BILLS PASS ASSEMBLY

LEGISLATIVE UPDATE

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, 2015 the Assembly passed bill A-3725 68-0-2 requiring dealerships to check the National Highway Traffic Safety Administration's ("NHTSA") Internet 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 that dealers will not be liable for any errors contained on the NHTSA website and clearly states that there is an irrebuttable 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 that 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 back ordered 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

On January 29, 2015 the Assembly passed A1892 - "Safe Motor Vehicle Rental Act"—by a vote of 49-20-0. The act 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 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.

Anthony Bush is a Member in Eckert Seamans' Trenton 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 Trenton 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.

For more information about the NJIADA, contact Paula Frendel at njiada.pfrendel@gmail.com

For more information about any of the issues above, or any other legal issues impacting your dealership, contact Tony Bush at (609) 989-5056 or abush@eckertseamans.com or Grace S. Power at (609) 989-5008 or gpower@eckertseamans.com.

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