



NJ AUTO INDUSTRY ALERT

July 27, 2015

DEALERS FACE HEIGHTENED SCRUTINY BY ATTORNEY GENERAL; LEGISLATURE CONTINUES SEEKING EXPANDED EMPLOYEE PROTECTIONS AND BENEFITS

The Office of the New Jersey Attorney General and State Division of Consumer Affairs continue to aggressively investigate and pursue new and used car dealerships

Recently, the Division of Consumer Affairs obtained a \$135,000.00 settlement plus restitution against the owner of two new car stores. The settlement resolved complaints that the dealership engaged in unconscionable commercial practices and deceptive advertising practices in their advertisement and sale of new and used motor vehicles. As is often the case in these types of suits, the state alleged the dealer violated the Consumer Fraud Act and Motor Vehicle Advertising Regulations by, among other things, engaging in "bait and switch" tactics by featuring motor vehicles in advertisements that were not actually available for purchase or lease, allegedly failing to disclose to customers that some used motor vehicles had previously been used as rental vehicles and/or had sustained significant prior damage. (*Significant damage meaning damage worth \$1,000.00 or more that the dealer allegedly knew or should have known about.*) Under the settlement, the dealer is required to search all of its inventory offered for sale by using a vehicle history service to determine if the vehicles were involved in accidents or damaged and disclose it to consumers, conspicuously disclose all prior uses, damage and repairs; include in all advertisements the statement that "price(s) include(s) all cost so be paid by consumer except for licensing costs, registration fees and taxes."; conspicuously disclose in all ads disclaimers and time limitations; and refrain from advertising motor vehicles for sale without possessing the title to them (which provision is contrary to existing state law).

In another recent action, the state filed suit against the owner of two Sussex County new and used car stores, making the following allegations: failure to provide license plates, title and or registration prior to the expiration of temporary title and or registration; failure to timely pay off loans on trade-ins, failure to refund overpayment of Motor Vehicle Commission fees; failure to honor negotiated sales prices; failure to disclose fees i.e. "online fee", "tire fee" etc. to consumers or misrepresenting that such fees were mandatory.

TAKEAWAYS FOR DEALERS: Dealers should vigilantly adhere to the statutes and regulations that govern their business activity and take steps to ensure that their employees are properly trained and knowledgeable about the requirements. Please contact us if we can assist you in reviewing existing policies and training, as failure to do so can be costly.



Legislation Limiting Employment Credit Checks Passes State Senate

Legislation that would prohibit employers from obtaining, requiring, or discriminating on the basis of credit reports has gained approval from the New Jersey State Senate by a 22-16 vote on June 29th. The proposal, a substitute for S1130 and S524, passed along partisan lines. The bill has been heralded by its sponsors as a consumer friendly measure that would protect those who have suffered from previous financial difficulties.

The legislation would prohibit employers from inquiring into the credit history or financial status of a current or prospective employee, except in limited circumstances including (1) management positions which involve setting the financial direction or control of the business; (2) employees with access to customers', employees', or employers' personal belongings, financial assets, or financial information other than information customarily provided in a retail transaction; (3) employees with a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, transfer money or enter into contracts or involves leases of real property; (4) employees that provide an expense account for travel; or (5) state and federal law enforcement officers. The bill would create a new right to sue employers.

The Assembly bill, A2298, was introduced in the Assembly Labor Committee in February 2014 and was scheduled for consideration before the Assembly Labor Committee on June 18, 2015; however, the bill was not released. We do not anticipate further movement on the bill until the Fall.

Paid Sick Leave Still Pending Before the New Jersey Legislature

Legislation that would mandate paid sick leave for both full and part-time employees is ready for a vote in both houses of the State Legislature.

The bill, S785/A2354, would mandate that all NJ businesses provide employees with one hour of earned sick leave for every 30 hours worked. However, employers with more than 10 employees in New Jersey would not be required to allow more than 72 hours of earned sick leave to accrue at any one time or to carry forward to the next year. For employers with less than 10 employees in the state, that number drops to 40 hours of earned sick leave to be accrued or carried-forward. The bill provides that employees may use earned sick leave for themselves or to care for a family member. Employees could also use the time for absence to attend to the circumstances resulting from domestic violence, against the employee or a family member. *Business groups have been critical of the bill as harmful to small business.* Sick leave has already been mandated in six cities:



Jersey City, Paterson, Newark, Passaic, Irvington and East Orange. Trenton and Montclair voters approved referendums in November 2014 and ordinances in those cities took effect this year.

The bill, sponsored by Senate Majority Leader Loretta Weinberg (D-Teaneck) and Assemblywoman Pam Lampitt (D-Voorhees), was considered to be a priority to the Democratically-controlled Legislature earlier this year; however, the Assembly and Senate are reportedly not in agreement over certain issues, with different versions of the bills pending in both houses. Should the two house agree on a consensus version, further action is not anticipated until the Fall due to the summer legislative break. In addition, it is widely anticipated that should the partisan measure reach Republican Governor Chris Christie's desk, he would veto the bill.

By: Anthony Bush and Grace S. Power of Eckert Seamans Cherin & Mellott, LLC

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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