



NJ AUTO INDUSTRY ALERT

March 19, 2015

LEGISLATIVE UPDATE

Potential Restrictions on Payment Assurance Devices and Buyers Orders

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, which prohibits 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 (5) 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%. We have met 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. NJIDA has 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. Finally, failure to comply with the law would violate the Consumer Fraud Act ("CFA") and could result in an award of attorneys' fees and triple damages.

Arbitration Provisions Used By Dealers Under Attack by Proposed Legislation, The Courts And The Consumer Financial Protect Bureau

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, among other things, their ability to: request a jury trial; file a class action; pursue any rights under the NJ Consumer Fraud Act, Lemon Law or any other federal or state consumer protection law, or waive the right for NJ to serve as the jurisdiction to resolve a dispute. Under the bill, not only would such provisions be unenforceable, but 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 that the US Supreme Court has held that the national policy in favor of



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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 given that the US Supreme Court favors arbitration rights.

NJ Supreme Court requires clarity in arbitration provisions

In September, the NJ Supreme Court held a standard form provision requiring arbitration at either party's request was not enforceable because it was not clear to consumers that by agreeing to arbitration that they had waived their right to sue in court and have a jury decide a NJ Consumer Fraud Act Claim.

The CFPB is poised to attempt to regulate mandatory arbitration provisions

In mid-March, the CFPB released a study that included in its findings that arbitration clauses limit the number of consumers that recover compensation as they bar class action arbitrations, that purportedly there is no evidence that arbitration reduces costs for consumers, and that consumers don't know that they are subject to such provisions until they have a problem. The CFPB noted that the federal Dodd-Frank law requires it to study use of arbitration clauses in consumer finance markets and potentially regulate them.

Conclusion

Dealers should conduct periodic reviews of their forms to insure that they comport with all appropriate legal standards.

All Buyers Order forms used by dealers should:

- 1) Be clear and concise about any waivers.
- 2) Define remedies not subject to arbitration.
- 3) Make the arbitration, and class action/jury waiver provisions conspicuous so that a consumer knows they are specifically waiving their right to a jury trial in addition to agreeing to arbitration to resolve any disputes.



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Anthony Bush is a Member in Eckert Seamans' Princeton Office and has more than two decades of commercial litigation and regulatory experience with an emphasis on issues impacting the automotive industry. His clients include operators of wholesale motor vehicle auctions, auto dealerships, wholesale auto parts distributors, finance companies, lessors, and auto body repair facilities. Tony and Eckert represent clients in corporate and consumer litigation including class actions, 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. 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.

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