



NJ AUTO INDUSTRY ALERT

MARCH 2014

NEW JERSEY AUTOMOBILE INDUSTRY TRENDS AND TOPICS: RECENT ENFORCEMENT ACTIVITY BY STATE AGENCIES, LEGISLATIVE TRENDS AND NEW LAWS

[Eckert Seamans Cherin & Mellott, LLC](#) is pleased to partner with the [New Jersey Independent Auto Dealers Association](#) to provide an update to you on a number of important and trending issues affecting New Jersey automobile retailers. Eckert Seamans is a national law firm with over 375 attorneys located in offices throughout the eastern United States. The needs of our clients involve us in virtually every area of the law and most industries. The NJIADA is an organization designed to give independent dealers a unified voice and to provide them with information about how to operate successfully in New Jersey.

RECENT ENFORCEMENT ACTIVITY BY STATE AGENCIES

During the last several months, the Office of the NJ Attorney General and State Division of Consumer Affairs have targeted used car dealers for investigations in connection with alleged: bait and switch practices; failure to disclose prior condition and uses of vehicles (especially water damage); failure to disclose defective mechanical defects; failure to conspicuously disclose total selling price, and other issues such as failure to honor warranties. In at least one instance, suit was recently filed against a seller of used luxury cars that, among other things, states a claim for violations of the NJ Consumer Fraud Act. If found guilty of violating the Act it potentially exposes the dealer to three times compensatory damages and legal fees. The Office of the Attorney General has also filed suit against used car dealers that provide auto body repair services, after undercover investigations allegedly revealed that a few dealers were recommending and performing unnecessary repairs. Again, suit was initiated alleging, among other things, violations of the New Jersey Consumer Fraud Act.

The takeaway from the State's actions is that regulators are not simply waiting for consumer complaints to occur but are *actively looking for violations within the industry*. Importantly, dealers should conduct annual reviews of their procedures and forms to make sure that their practices are in compliance with applicable law, and that employees are properly trained and knowledgeable about these requirements. In light of these enforcement actions, failure to review practices (and forms utilized by dealerships) can be more costly than ever.

NEW JERSEY POLITICAL LANDSCAPE

In his fourth annual State of the State address, Governor Chris Christie declared his intention to focus on cutting property taxes through addressing spending by eliminating payouts for government employees' unused sick time and consolidating local government. The Governor repeated past promises to resist any attempts to raise taxes on individuals and corporations.

The 216th New Jersey Legislature was also sworn in on January 14, 2014 and it will convene for a two-year session. Any bills that did not win approval during the previous session must be reintroduced and start the process again.



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LEGISLATIVE TRENDS

Bill Creates New Form For Sellers of Used Motor Vehicle; Potential Liability If Not Filed

Assemblywoman Nancy Munoz (R-Morris, Somerset and Union) has reintroduced A2322, which would require sellers of used motor vehicles to notify the Motor Vehicle Commission (“MVC”) of the sale by completing a form created by the MVC. To complete the sale, the purchaser would also be required to execute and date the form. Under current law, the MVC is only notified of a vehicle's sale when the purchaser presents the signed-over title in the process of obtaining new registration. The new form would state in a clear and conspicuous manner that, in the event that the purchaser does not register the vehicle, the seller may be held liable as the vehicle's owner for fines, penalties, and towing and storage charges if the form is not completed and submitted to the MVC.

The form would require the seller's relevant personal information, the vehicle identification number, the current or most recent registration number, and any relevant personal information known about the purchaser. The MVC would be required to develop and undertake a public education campaign to inform the public of the requirement.

The bill, which is pending in the Assembly Consumer Affairs Committee, has been proposed in previous legislative sessions. A Senate counterpart has not been introduced.

Bill Would Allow Consumers to Return Vehicles for Full Repayment Under Lemon Law

Assemblyman Dan Benson (D-Mercer and Middlesex), has reintroduced a bill, A1038, that would allow consumers to immediately request that the dealer repurchase a used motor vehicle, or, in the case of a new car, request that the manufacturer, co-manufacturer or post-manufacturing modifier accept immediate return, rather than wait for the dealer to fix the problem. Under current law, dealers and manufacturers have a reasonable opportunity to repair such vehicles before being required to repurchase or accept a vehicle for return. The bill, which is pending in the Assembly Consumer Affairs Committee, has been proposed in previous legislative sessions. Senator Linda Greenstein (D-Mercer and Middlesex) has reintroduced the companion bill in the Senate, where it is currently pending in the Senate Commerce Committee. Neither bill have yet been scheduled for consideration.

Bill Would Require Motor Vehicle Repair Before Sale

Assemblywoman Nancy Munoz (R-Morris, Somerset and Union) has also reintroduced legislation, A2193, that would prohibit the sale of a motor vehicle with an outstanding recall. The bill requires a seller to first contact or access information provided by the vehicle manufacturer or the National Highway Traffic Safety Administration to determine if there are any outstanding recalls on the vehicle that have not been corrected or addressed. The bill prohibits the sale of such a vehicle until any such issues have been corrected. A Senate counterpart has not been introduced.

NEW LAWS

New Law Prohibits Workplace Discrimination Against Pregnant Women

On January 17, 2014, Governor Christie signed a new law that amends the class of protected workers under the New Jersey Law Against Discrimination to include pregnancy. The law took effect immediately and applies to all employers.

Under federal law, employers cannot fire or refuse to hire pregnant women. Now, under state law, employers are prohibited from discriminating against pregnant women and required to provide reasonable



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accommodations so they can continue to work. Such accommodations must be “feasible,” such as allowing more frequent bathroom breaks or transfer to a less hazardous or physically demanding position.

The law provides for an exemption if said accommodation would create a hardship for the employer. For determining whether the accommodation creates an undue hardship on the employer’s business, the law provides the following factors to consider: the overall size of the employer’s business with respect to the number of employees, number and type of facilities, and size of budget; the type of the employer’s operations, including the composition and structure of the employer’s workforce; the nature and cost of the accommodation needed, taking into consideration the availability of tax credits, tax deductions, and outside funding; and the extent to which the accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

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](mailto:abush@eckertseamans.com) at (609) 989-5056 or abush@eckertseamans.com or [Grace S. Power](mailto:gpower@eckertseamans.com) at (609) 989-5008 or gpower@eckertseamans.com.