



## **NJ AUTO INDUSTRY ALERT**

**May 19, 2015**

### **GOVERNOR CONDITIONALLY VETOES BILL CONCERNING DEALER OBLIGATIONS FOR EMISSIONS; ENFORCEABILITY OF ARBITRATION PROVISIONS USED BY DEALERS CONTINUE TO BE ERODED BY THE COURTS**

#### **Christie Conditionally Vetoes Dealer Obligation Legislation**

Last week, Governor Christie conditionally vetoed legislation (S-394/A-4246) that would have prohibited retail purchasers of used vehicles from waiving a dealer's obligation regarding emissions control equipment. Under current law, motor vehicle dealers who sell used vehicles to retail consumers are required to make any repairs necessary to correct a defect which would cause a vehicle to fail inspection or to buy it back, unless the purchaser signs a waiver releasing the dealer from that obligation.

Governor Christie's conditional veto essentially reduces the legislature's prohibition against waiver to a mere notice requirement. Dealers' would be obligated to let retail consumers know what would be needed to pass inspection if they were to waive the dealer obligation. In his [statement](#), the Governor identified his concerns—specifically, that the bill would “negatively impact the market for used vehicles that, while currently below inspection standards, still have value for hobbyists, mechanics, and resellers. . . . and unintentionally shutter that market.”

The bill previously passed the Senate unanimously (37-0) and in the Assembly by wide margins (58-14-1). The Legislature will now have the opportunity to override the veto or re-enact the bill with the recommended amendments, at which time it will be returned to the Governor for signature. Despite its initial bipartisan support, we do not anticipate the Legislature will attempt to override the bill.

#### **Appellate Court holds Arbitration Provision in Buyer's Order Not Enforceable With Respect To a Supplemental Warranty**

In *Bacon v Bob Ciasulli Auto Group, Inc. d/b/a Toyota Universe* a New Jersey Appellate Court upheld a lower court ruling denying the dealer's motion to dismiss a retail consumer's case and to compel arbitration consistent with an arbitration clause found in a retail buyer's order form used by many dealers. The consumer's claims arose from an extended service agreement applied for on the date of purchase but not paid for until ten days later. The dealership argued that the arbitration clause in the sales agreement covered the dispute because it arose out of the sales agreement. The Appellate Court found the extended services agreement to be a separate contract entered after the purchase of the vehicle was completed, that did not have an arbitration provision and it did not refer to the sales contract's arbitration provision. The court also noted that the NJ Supreme Court has held contractual arbitration provisions are not enforceable if they



do not clearly and unambiguously inform a consumer that in addition to mandating arbitration they are waiving their right to sue or go to court to obtain relief. The *Bacon* opinion was not officially published and therefore it is not binding precedent. However, in recent months arbitration provisions have been under attack by the NJ Courts, the NJ Legislature and the Federal Consumer Financial Protection Bureau. Dealers should ensure that all agreements entered into with retail consumer including Buyer's orders, Extended Warranty Agreements, etc. should be clear and concise about remedies not subject to arbitration and contain conspicuous waiver provisions 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. As always we recommend that dealers should conduct annual reviews of their procedures and forms to make sure that their practices are in compliance with applicable law, that their transactions are transparent and that employees are properly trained and knowledgeable about all pertinent requirements.

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