



NJ AUTO INDUSTRY ALERT

NOVEMBER 2013

NEW JERSEY AUTOMOBILE INDUSTRY TRENDS AND TOPICS: SETTLEMENT OF CIVIL SUIT, NEW REGULATIONS AND LEGISLATION

[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 SETTLEMENT

Dealers Must Disclose Prior Condition and Use of Vehicles or Face Fines

A used car dealer recently settled a lawsuit with the New Jersey Department of Law and Public Safety, Office of Attorney General, Division of Consumer Affairs without admitting liability and agreed to pay a fine of approximately \$70,000.00 for allegedly misrepresenting vehicles it sold. It was alleged, among other things, that the dealer failed to disclose body damage or repairs and information about prior owners. The law requires dealers to disclose prior damage and “substantial” repair or body work that it knows or should know about and defines “substantial” as having a retail value of \$1,000.00 or more. The law also requires dealers to disclose the nature of prior use of a vehicle if not owned or leased for individual use and the prior use is known or should be known by the dealer. Because even minor fender benders can easily cost \$1,000.00 or more to repair, dealers should disclose as much information as possible about a used car’s history if they have any doubts. Although such disclosures might reduce the sale price for a vehicle, they also could reduce the risk of dissatisfied customers, negative publicity, and help avoid legal liability and costs.

REGULATORY UPDATE

Readoption of Regulations with Amendments Concerning Licenses for Motor Vehicle Dealers and Auto Body Repair Facilities

On November 19, 2013, the New Jersey Motor Vehicle Commission (“MVC”) voted to readopt with amendments certain regulations concerning motor vehicle dealers and auto body repair shops. The vote was needed because the regulations expire after seven (7) years if not readopted. The approved readopted and amended regulations will be published in the New Jersey Register and become effective shortly thereafter. The readopted and amended regulations will also reflect certain public comments, and the MVC’s answers to those comments, which provide additional guidance. Many of the amendments simply make the administrative rules consistent with existing statutes or acknowledge that technology has made them obsolete. Some of the substantive highlights include:



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- **Dealer Plates**

The adopted amendments now authorize dealers to maintain a dealer plate log either in a written format or in an electronic format. Previously the regulation was silent on a dealer's ability to maintain these records electronically. In response to public comment, the MVC indicated that plates permanently assigned to owners, family members, and employees of dealerships would be required to be recorded with detailed vehicle specific information including VIN numbers. Importantly, for all other dealer plates not assigned to a vehicle, the log shall list the plate and that it is available for "demonstrator usage" if being used for testing or other permitted purposes.

- **Mobile Repair Vendors Providing Services at Dealerships**

The MVC affirmed, in response to comments submitted by our firm, that the re-adopted auto body repair licensing regulations do not apply to mobile vendors such as those that supply paintless dent repair, wheel repair, paint repair and windshield repair at motor vehicle dealerships and other locations. In the past there had been substantial fines threatened against a few dealerships for hiring a mobile paintless dent repair vendor. The readoption does not extend the regulations concerning auto body repair facilities to cover mobile vendors. Dealers may continue to hire these vendors to perform services at their locations without penalty.

- **Color Photographs to be Required for Authorized Signatories**

The amendments approved for adoption require all dealership authorized signatories to submit a passport type photograph when applying for a dealer license. The regulations define a signatory as a dealer (a person or entity licensed to buy sell or deal in motor vehicles) and any employee, officer, director, partner or others holding an ownership interest in the business authorized to execute documents on behalf of the dealership. In response to comments from interested stakeholders, the MVC stated it would like the dealer process to be secure and views this as an anti-fraud measure that would allow any of its investigators to properly identify all people authorized to transact business on behalf of a dealership.

- **Consumer Financial Protection Bureau**

The Federal Consumer Financial Protection Bureau ("CFCB") is expected to propose regulations concerning auto lenders that possibly replace the "dealer reserve" model that allows dealers to build into the interest rate an origination fee. The CFCB has warned lenders it believes that discrimination has occurred with regard to women and minorities. Representatives of the CFCB have suggested solutions ranging from a flat fee to a sliding scale or hybrid approach that takes into account the duration of the loan.



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POLITICAL AND LEGISLATIVE UPDATE

Christie Wins Big But Democrats Maintain Legislative Majorities

On November 5, New Jersey voters reelected Republican Governor Chris Christie to a second four-year term over Democratic challenger State Senator Barbara Buono, 60-38. Despite Christie's overwhelming popularity, his coat tails were remarkably small. Both the Senate and Assembly Democrats will maintain their respective 24-16 and 48-32 majorities.

Senate President Sweeney and Governor Chris Christie have partnered together on a number of initiatives throughout the Governor's first term. It is believed the Governor will need Sweeney's cooperation to advance his legislative agenda and boost his bipartisan credentials in advance of a 2016 presidential run.

We expect a tremendous amount of activity as the Legislature enters the Lame Duck session before the current two-year session ends in January. We anticipate that Christie will continue to burnish his pro-business credentials, vetoing unfavorable legislation passed by the Democratic Legislature.

Christie Signs NJ SAFE Act: Requires Notice to Employees and Provides 20 Days of Unpaid Leave for Victims of Domestic Violence

As of October 1, 2013, employers *must conspicuously post notices* about the "The New Jersey Security and Financial Empowerment Act" ([Click here for links to the New Jersey Department of Labor Poster Packet](#)).

Under the new law, an employee who is a victim of domestic violence or of a sexually violent offense may take an unpaid leave of absence, up to 20 days in a one year period. Leave may also be taken by an employee whose child, parent, spouse, domestic partner or civil union partner is a victim of domestic violence or a sexually violent offense. Leave may be taken by victims or relatives of victims to engage in any of the following activities as they relate to the incident of violence: seeking medical attention or recovering from injuries; obtaining services from a victim services organization; obtaining counseling; participating in safety planning, relocating, etc.; seeking legal assistance or remedies; or attending or participating in or preparing for court proceedings.

The law applies to companies with 25 employees or more. Employees must have worked at least 1,000 hours during the immediately preceding 12-month period to be eligible for leave under the Act.

Employers may require employees taking such leave to first use vacation leave, personal leave, or medical or sick leave that is otherwise available to them. In addition, employees must give notice of the leave if it is foreseeable and employers may require documentation of the offense that is the basis of the leave.



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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 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.

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