



NJ AUTO INDUSTRY ALERT

Legislation Important to the Used Car Dealer Community

November 4, 2016

NJ Payment Assurance Device Legislation Advances Out of the Senate Commerce Committee, Proposed Law Limits Use of Payment Assurance Devices and Conditions Use on 10 Point Interest Rate Deduction; Creates Violation of Consumer Fraud Act.

The Senate Commerce Committee Released S712, which limits the use of payment assurance devices by auto dealers and lenders in connection with auto financing. *Companion legislation already passed in the Assembly by a vote of 53-21.* The bill allows a dealer or lender to install a payment assurance device only if certain conditions, such as written disclosure, warning period before activation, and the customer's ability to start the car in an emergency, are met. In addition, 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.

The NJIADA testified before both the Assembly Consumer Affairs and Senate Commerce Committees and voiced its concerns over a provision of the legislation that mandates a 10 point reduction in the interest rate charged for auto loans when a payment assurance device is used, essentially limiting the maximum interest rate to 19.99%. During both hearings, several members of the committees voiced other concerns that we anticipate will be addressed through amendments. The NJIADA and Eckert Seamans continue to work with the sponsors, Senator Nilsa Cruz-Perez, Assemblyman Paul Moriarty and with Governor's counsel.

Dealer Obligation Legislation Advances

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. In May 2015, Governor Christie conditionally vetoed legislation that would have prohibited retail purchasers of used vehicles from waiving a dealer's obligation regarding emissions control equipment.

Governor Christie's conditional veto essentially reduced the legislature's prohibition against waiver to a mere notice requirement. 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 Legislature did not attempt to override the veto during 2015, but instead on October 20, 2016 the Senate passed a new bill (S452) by a vote of 38-0. The 2016 bill basically reflects the Governor's recommendations and would require the waiver to include a brief description of known defects that may need to be resolved in order to obtain a certificate of approval for the vehicle. The bill has been referred to the Assembly Consumer Affairs Committee for consideration.

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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.

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