



CAPITOL REPORT

NJSBA to legislators: Bill forcing dealerships to notify consumers of recalls not really consumer protection bill

The NJSBA urged the Senate to vote no on S-2740 (Beach)/A-4292 (Greenwald) because of the bill's potential impact on the Consumer Fraud Act. The bill, first introduced on June 14, requires dealerships to notify buyers of recalls on used motor vehicles for sale and limits attorneys' fees in certain consumer actions. The bill was heard in the Senate Commerce Committee on June 18 with just one group in support of it—the New Jersey Association of Automobile Retailers. All but one member of the committee—Senator Nicholas Scutari—voted in favor of the bill's release from committee. Among the mandates in the bill are:

- A dealer cannot sell or transfer a used vehicle without first contacting or accessing information provided by the National Highway Traffic Safety Administration (NHTSA) to determine whether there are any open recalls on the specific vehicle and if there are, the dealer must provide the prospective purchaser with a printed copy of the recall information from that website;
- There shall be a conclusive presumption that a dealer had no knowledge of the existence of an open recall on a used vehicle if the

dealer accesses the NHTSA's website and inputs the vehicle identification number of the automobile for sale, and finds no open recalls for the used vehicle;

- The dealer has no legal duty regarding the accuracy, errors, or omissions of the National Highway Traffic Safety Administration's website;
- The dealer is not required to provide the prospective purchaser with any recall information that may be added to the NHTSA's website after the dealer has printed a copy of the recall information and provided it to the prospective purchaser of the used vehicle;
- An individual who suffers an ascertainable loss of moneys or property as a result of an unlawful practice engaged in by a car dealer may bring a consumer fraud action for compensatory damages. In cases of egregious violations, the court may award treble damages. The court may also award reasonable attorneys' fees in an amount of up to \$1,000, or up to one third of the amount of damages awarded to the person in interest and the reasonable costs of suit. This creates an exception for car dealers under the Consumer Fraud Act, which does not

place conditions on treble damages or limits on attorney's fees in any other action brought under the act.

In a letter opposing the bill, the NJSBA pointed out that the New Jersey Consumer Fraud Act—one of the strongest consumer protection laws in the nation—included the attorney fee-shifting to ease access to the courts for the consumer, incentivize attorneys to take on these cases, and help reduce the burdens on the Division of Consumer Affairs through the promotion of increased private enforcement.

"The bill's limitations frustrate and subvert the fundamental mission of the private action provisions enacted almost 50 years ago," said NJSBA President John E. Keefe Jr. in the statement. "Even worse, they will discourage the pursuit of such actions. Should this become law, New Jersey consumers will be afforded less protection and little recourse when confronted with fraudulent sales practices."

The NJSBA continues to monitor the bill's progress.

New Jersey becomes second state to ban marriages under age 18

Governor Phil Murphy signed into law a ban on marriages under age 18 last week, making New Jersey the second state, joining Delaware, in banning marriages altogether for anyone under age 18. The NJSBA supported the bill with amendments to lower the ban to age 16 and to require judicial review for marriages between 16 and 18. Supporters of the bill argued that research showed women married under age 18 suffered negative psychological, social, educational and financial consequences, according to a press release issued by Murphy.

The law became effective immediately, overriding prior law, which allowed 16- and 17-year-olds to get married with parental consent and minors under the age of 16 to get married with parental consent and approval from a judge.

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