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MEMORANDUM

TO: ASSEMBLY CONSUMER AFFAIRS COMMITTEE **VIA EMAIL**

FROM: James B. Appleton, President

DATE: March 4th, 2022

RE: **Assembly Bills For Amendments Only on March 7th, 2022**

- A1559 Imposing certain consumer protection requirements on service contract providers
- A1556 Updating certain notice requirements for actions alleging consumer fraud violations and adding indirect purchasers as parties who can receive damages for antitrust violations

The New Jersey Coalition of Automotive Retailers *(NJ CAR)* is the trade association that represents a network of 500 + franchised new car and truck dealerships in New Jersey. Our members provide vigorous price competition, ready access to warranty and recall services, represent a $34.6 billion industry, and directly employ or support nearly 70,000 jobs in New Jersey. It is because of these invaluable contributions to the New Jersey economy and the communities that benefit from our members, that I write today to offer a few comments for your consideration regarding bills scheduled *for amendments* on March 7th, 2022: A1559 (imposing certain consumer requirements on service contract providers) and A1556 (updating certain notice requirements for actions alleging consumer fraud violations and adding indirect purchasers as parties who can receive damages for antitrust violations).

These bills were before this Committee on February 3rd, 2022, *for discussion only*. At that time, NJ CAR offered written testimony on issues in both bills that we repeat here. First, with respect to A1559, we had expressed concerns that the A1559 was inconsistent with its Senate counterpart, S902. We understand that our concerns about inconsistencies will be addressed on Monday by amending A1559 to be identical to S902. **NJ CAR has no objection to the Senate version.**

Second, we wish to restate our serious concerns about A1556. This bill represents an extreme expansion of New Jersey consumer fraud and antitrust causes of action and will impose significant new costs of doing business in New Jersey. We believe that the expansion of prohibited acts under the New Jersey Consumer Fraud Act (NJCFA) would subject every small and midsized business in New Jersey to class action lawsuits for every conceivable or inadvertent violation of State or federal law. Worse still, these businesses will be forced to pass the cost of defending frivolous lawsuits onto New Jersey consumers through higher prices.

As we mentioned in the previous hearings for this bill in the last legislative session and then again in February, A1556 would make any purported violation of State or federal law a violation under the NJCFA. The automobile industry is already one of the most heavily regulated industries in the country, governed by numerous State and federal statutes and regulations, too numerous to list in this memorandum. That is a net cast so wide that it will inadvertently bring under the auspices of the NJCFA actions that are not intended.

We continue to have grave concern about the addition of the words "abusive or unfair" which are undefined in the bill and would leave our courts with the unenviable task of determining the clear intent of the Legislature. These undefined words, even if they are later defined by the courts, are susceptible to broad interpretations and would subject New Jersey auto dealers and other Main Street business owners to burdensome litigation. Making the NJCFA applicable to every conceivable violation will unjustifiably expose these businesses to a broad range of penalties and force small and midsized business owners to settle every claim just to avoid excessive costs of litigation.

As worded, the bill would expand on what is already one of the oldest and most powerful consumer protection laws in the country. In its current form, the NJCFA already allows the Attorney General broad authority to promulgate rules and regulations that "have the force of law." *See N.J.S.A. 56:8-4*. Any violation of these rules or regulations is already an unlawful practice under the NJCFA.

A1556 also seeks to amend the New Jersey Anti-Trust Act (NJATA) to allow parties, including municipalities and the State, who are harmed by anticompetitive conduct to file suit even if the alleged harmed party is an indirect purchaser who did not deal directly with the defendant. In the automobile industry with its array of Finance and Insurance products it is conceivable to see an indirect purchaser, emboldened by this bill, unjustly claiming that they were affected by some adverse antitrust action and seeking damages against a dealership.

Many of NJ CAR's members are family-owned dealerships ranging from one *(1)* to three *(3)* locations. Allowing indirect purchasers to bring private antitrust claims against Main Street businesses will unnecessarily extend a cause of action to individuals who never had contact with those businesses. A1556 not only allows this form of unfettered attack on Main Street businesses, but it does not define or limit the type of indirect purchasers or situations in which indirect purchasers can bring a claim against a retailer.

A1556 recognizes that allowing both direct and indirect purchasers to sue the same defendant could have severe consequences so it tries to reduce the risk of duplicative recovery. However, the defense provided by the bill fails to acknowledge the crushing financial burden of defending such a claim, even when there is no colorable claim for damages.

NJ CAR acknowledges the important role that the Attorney General's Office plays in New Jersey's Antitrust law. Finding a balanced approach to strengthen the effectiveness of the Attorney General's Office without creating a right of action for indirect purchasers is the right approach. However, even limiting the right of action for indirect purchasers to the state or local governments does not extinguish the potential harm to Main Street businesses which may be dragged into costly litigation. **For those reasons we request that this Committee vote no on A1556.**

Thank you for the opportunity to be part of the discussion for both bills and allowing us to present our recommendations.

Cc:
VIA EMAIL ONLY
Assembly Consumer Affairs Committee
OLS Aides
Democrat Aide
Republican Aide