



## California New Car Dealers Association

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August 19, 2010

The Honorable Ellen Corbett  
Chairperson, Senate Judiciary Committee  
State Capitol, Room 5108  
Sacramento, California 95814

***Re: SB 1004 (Huff), As Amended August 16, 2010 – Salesperson Licensing  
Reforms/Credit Score Disclosure  
Position: SPONSOR***

Dear Senator Corbett:

The California New Car Dealers Association (CNCDA) is a statewide trade association that represents the interests of over 1100 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale and leasing of new and used motor vehicles, but also engage in automotive service, repair and part sales. We are writing as the sponsors of SB 1004 which updates California's dealer salesperson law to allow dealers to post copies (rather than originals) of licenses at the dealership and clarifies that common controlling ownership is sufficient for a salesperson to move from store to store (rather than the current law requirement of identical ownership *and* structure). The bill also allows dealers to reclaim deposits posted in lieu of bonds five years after bonds have been in place and with approval of the Director of the Department of Motor Vehicles (DMV). Finally, SB 1004 implements a compromise that would modify the dealer credit score disclosure requirement in the Vehicle Code so that it incorporates the new Federal Trade Commission (FTC) model form which must be used by dealers beginning January 1, 2011.

### **Dealer Salesperson Changes.**

The Vehicle Code provisions governing the rules for dealer salespersons have not been modified in several years and in at least two respects are outmoded. First, posting original salesperson licenses—as is currently required—is both archaic and unnecessary. So long as an accurate copy of the license is posted where customers can locate it, the purpose of the statute is maintained. SB 1004 provides additional protection by requiring the salesperson surrender the original to the dealer for the length of the employment relationship.

Another provision of the bill also modernizes an inflexible rule. Corporate structures for individual stores may differ for tax or business reasons (LLCs, LLPs, Sub. S Corps., C Corps., etc.), but so long as the controlling owner is the same, a dealer should have the ability to shift a salesperson from one store to another. Under current law, in order to move between dealerships, a salesperson would likely be forced to resign his or her employment and be “rehired” at the second store unless both the ownership *and* structure are identical. For large dealer groups, including publicly traded companies, this rule is a serious impediment, yet serves no particular purpose. Dealers should have the flexibility to move salespeople to stores under common controlling ownership where sales potential is the greatest at any particular time.

### **Recovery of Dealer Bond Deposits.**

SB 1004 also addresses another problem facing some dealers. The Vehicle Code requires every licensed dealer to post a bond with the DMV in the amount of \$50,000 (or \$10,000 for ATV or motorcycle dealers or wholesale only dealers) to protect against fraud and monetary loss to a purchaser, seller, financing agency, or government agency. *See* Vehicle Code §§ 11710 and 11710.1. A dealer does have the option of posting a cash deposit in lieu of securing a bond. However, the dealer can only receive a return of such a cash deposit if ordered by the DMV director following 3 years after the dealer has ceased to do business and “if there director is satisfied that there are no outstanding claims against the deposit.” Vehicle Code § 11710.2.

While the statute was no doubt intended to protect potential future claimants against the dealer, it has the unintended consequence of *requiring* the dealer to cease operations and wait three years in order to secure the return of his or her deposit. For longstanding new car dealers, they are faced with either suing the DMV (with attorneys fees coming from the deposit), ceasing operations or attempting to persuade a surety company to issue a bond for a period in the distant past for which the cash deposit was intended to cover. DMV indicates that they receive a dozen or more inquiries a year about return of cash deposits for operating dealers who, despite the absence of any present or expected future claims, cannot retrieve their own deposits pledged to the DMV. In fact, in at least one instance a dealer had to secure a bond dating back to 1962 to replace a \$5,000 deposit.

SB 1004 allows dealers with their bonds in good standing for five years, at the discretion of the DMV Director, to secure the return of a cash deposit without closing their business.

### **Credit Score Disclosure.**

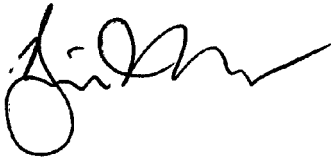
The FTC recently adopted a new “Risk Based Pricing” regulation that requires businesses that use credit reports to make financing decisions to provide a notice to a limited category of consumers who are granted credit on terms “materially less favorable than the most favorable terms available to a substantial proportion of consumers.” Since it would be extremely difficult for the average car dealer to undertake a complicated statistical analysis to determine which customers fall into the above category, the FTC’s final rule permits dealers to instead provide every customer applying for credit with a new federal credit score disclosure form containing the consumer’s credit score and relevant information concerning their credit score. The new federal credit score disclosure notice is more comprehensive than, and improves upon, the credit score disclosure notice currently required by the California Vehicle Code.

Since the FTC regulation (which takes effect January 1, 2011) allows dealers to provide credit score disclosures in lieu of risk-based pricing notices, state legislation is needed to harmonize California's credit score disclosure requirements with the new FTC rules. Without this change, dealers would be faced with providing two separate credit score disclosures, adding unnecessary expense and confusing consumers.

SB 1004 implements a compromise with the opponents to AB 2118 (Hernandez) of 2010. That measure, which was defeated by the Senate Judiciary Committee earlier this year, sought to eliminate duplicate the credit score disclosure requirements in federal and state law described above. The amendments now contained in SB 1004 resolve the key issue of dispute between dealers and consumer groups: what happens when a dealer obtains and uses more than one credit score in a transaction? As agreed to by the parties, dealers will be able to use the federal model form in such instances, but must give to the consumer *each* credit score obtained and used by the dealer. With this agreement, *there is no known opposition to the credit score disclosure provisions, nor any other section, of SB 1004.*

Based upon the foregoing, we respectfully urge your "AYE" vote on SB 1004. Should you or your staff have any questions or comments, please do not hesitate to give me a call.

Very truly yours,



Brian Maas  
Director of Government Affairs

BWM:ef

cc: The Honorable Bob Huff  
Members of the Senate Judiciary Committee  
Benjamin Palmer, Consultant, Senate Judiciary Committee  
Mike Petersen, Senate Republican Caucus  
Ralph Simoni, California Advocates, Inc.