



NEW JERSEY STATE BAR ASSOCIATION

December 1, 2023

Via Electronic Mail

The Honorable Richard J. Codey
651 Old Mount Pleasant Avenue
Livingston, New Jersey 07039

The Honorable John F. McKeon
221 Main Street
Madison, New Jersey 07940

Re: S2740 (Codey)/A4723 (McKeon) – Requires motor vehicle dealer to offer to delete personal information in motor vehicles in certain situations

Dear Senator Codey and Assemblyman McKeon:

On behalf of the New Jersey State Bar Association, I convey our comments regarding S2740/A4723, which would require motor vehicle dealers to offer to delete personal information in motor vehicles in certain situations.

The NJSBA supports the aim of this bill to protect the privacy of consumers by imposing an obligation upon automobile dealers that take ownership and/or possession of used automobiles as a trade in to remove personally identifiable information (PII). Ensuring a sufficient and effective mechanism that fully and efficiently protects consumers from having their personal data shared with third parties requires a more comprehensive approach to make certain consumers are protected from distribution of their PII.

The NJSBA recommends that the legislation be amended to *require* that the dealer remove a consumer's PII at the time of sale or trade in of a vehicle. We believe that this is the strongest approach to make certain that the personal data of consumers is protected. If the bill does not require motor vehicle dealers to remove PII upon taking possession of a vehicle, it is important that a more comprehensive approach be developed that includes a notice provision and clarity regarding the obligations of motor vehicle dealers and consumers.

We urge you to consider the following amendments:

- **Include a Notice Provision by Motor Vehicle Dealers to Consumers**

The NJSBA recommends that dealers be required to provide explicit notice that a consumer's PII may be conveyed to a third party following a sale or trade in of a vehicle to the motor vehicle dealer. While this legislation provides a mechanism for dealers to

“offer to” remove this data for a reasonable fee, it does not require that dealers provide notice the consumers of this potential issue at the time of trade in or sale.

We read this legislation as an attempt to deal with the dissemination of the PII, which includes data that is used to identify a specific individual. All modern automobiles with vehicle infotainment systems and onboard navigation systems have the ability to collect and save PII especially since consumers can connect their smartphones to the vehicle’s computer system each time the automobile is driven. For example, email addresses and phone numbers may be stored within the vehicle’s computer system. Even an automatic garage door opener, which is usually integrated into the vehicle’s computer system, contains passwords and other information that could potentially expose a consumer’s PII. Information from a consumer’s smartphone will usually include contact lists and could even include banking information. Navigation systems maintain the history of the movement of the vehicle. And evolving technology will likely lead to further PII data collection.

Consumer protection law practitioners have noted that only a small percentage of consumers are aware that such data is maintained and saved within the vehicle’s computer systems. Many consumers are insufficiently educated to appreciate the possible ramifications from the release of this PII to third parties through auto sales and/or leases.

- **Cap the Reasonable Fee**

The NJSBA recommends defining a “reasonable fee” as a nominal fee. This is important in helping ensure that consumers are not deterred from requesting removal of personal information due to the burden of an added expense at the time of trade in or sale of a vehicle.

- **Define “possession”**

The Association recommends that there be a clear definition of when an motor vehicle dealer takes “possession” of a vehicle to ensure there is no question of when the motor vehicle dealer’s obligation to remove PII arises.

- **Timeframe for removal of PII**

The NJSBA recommends imposing a timeframe within which such data must be removed following a dealer’s possession of an automobile.

- **Incorporate a private right of action**

The Association recommends the inclusion of a private right of action to incentivize compliance by dealers. If such right is included, the harm underlying any cause of action must be based upon proof of the failure to erase the PII at the time of the trade in and not upon some future occurrence that results from the dissemination of the PII to third parties to avoid the potential for significant damages resulting from a later known dissemination of PII to a third party.

The NJSBA welcomes an opportunity to speak to you regarding these amendments. We thank you for taking up this important consumer protection issue. Please feel free to contact me at lchapland@njsba.com or 732-214-8510 (o) or 732-239-3356 (c). On behalf of the NJSBA, thank you for your continued leadership.

Very truly yours,

Lisa Chapland

Lisa Chapland, Esq.

cc: Timothy F. McGoughran, NJSBA President
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