



NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

2521 BROWN BOULEVARD
ARLINGTON, TX 76006-5203

817.640.3838 / FAX 817.649.5866
WWW.NIADA.COM

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Assemblyman Mike Feuer, Chair
Judiciary Committee
State Capitol, Room 2013
Sacramento, CA 94249

RE: Opposition to Assembly Bill 1447

Dear Chairman Feuer,

After carefully reviewing Assembly Bill 1447 and its inevitable effects on California's working class drivers, low wage earners, and consumers with low credit scores who have limited access to reliable transportation, I am writing to inform you the National Independent Automobile Dealers Association (NIADA) opposes this Bill.

Although there are other factors, the level of risk inherent in traditional automotive lending transactions is directly related to a customer's FICO score and annual income. Making these lending decisions is typically easy and more formulaic. For the lender itself, these transactions translate into less risk, easier collections, and more predictable outcomes. For the customer, the lower risk to the lender generally translates into little or no down payment, lower interest rates, greater vehicle selection and flexible financing options.

In non-traditional, deep sub-prime automotive lending, the decision to finance these transactions is much more complex. Buy-here pay-here (BHPH) or deep sub-prime lenders know the risk associated with these transactions is very high because consumers often have lower credit scores, bankruptcies, previously repossessed vehicles, lower incomes, seasonal or short job time, transient rental histories or a past track record of non-payment of debt. The BHPH or deep sub-prime lender assumes a much higher risk, which requires a labor intensive, highly specialized, concentrated customer service endeavor that statistically results in higher losses and customer default rates despite their best efforts. For the BHPH customer, this increased risk usually means higher down payments, higher interest rates, shorter term loans, smaller vehicle selection and more underwriting scrutiny to ensure the installment contract payments are affordable when compared against verifiable household income.

According to our close industry associates at the National Alliance of Buy Here Pay Here Dealers (NABD), as published in their 2011 Benchmarks, the average gross dollar loss rate as a percentage of the principal loan amount was 38.61%, and the average rate at which BHPH dealers charge-off non-performing installment contracts is approximately 30%. Simply stated,

these dealers know that nearly 1 in 3 installment contracts financed will end up as a charged-off account due to non-payment by the customer.

Because the risk factors inherent with BHPH and deep sub-prime auto financing are higher, these businesses are continually looking for practical, consumer-friendly ways to lower their risk and help their customers. Many of these lenders seek to use the collections tools cited in AB 1447 such as customer references, global positioning devices and ignition override technology, which with proper disclosure have not been prohibited by state or federal laws. Prohibiting the use of these tools would not only severely inhibit lending practices, but also acceptable collection efforts of an industry that caters to the under-served segment of high risk auto credit consumers.

Due to the lack of positive credit history underwriters often use customer references as character references before the sale to ensure at least a remedial level of credit worthiness. After the sale, these customer references are an invaluable tool in assisting with repayment of the contractual obligation. It is not uncommon for BHPH customers to move residences or change jobs during their loan term and cease contact with their lender. Legally calling consumer provided references is an acceptable collection practice under federal and state statutes to locate and re-establish contact with a consumer as long as no personal, private or account information is disclosed. Many times the difference between account charge-off, repossession, and negative credit reporting is a good customer reference list a BHPH dealer can legally use to stay in contact with a customer during employment, residential or other life transitions.

Additionally, the practice of using payment assurance technology such as global positioning devices or ignition override tools is a widely accepted practice that allows BHPH dealers to grant consumer credit with more flexible contract terms, lower down-payment requirements and access to higher valued vehicles because the dealers have a greater assurance that their collateral can be located in the event of customer default. According to the NABD's October 2011 survey of BHPH dealers representing more than 110,000 automotive credit transactions, 84% of respondents said they believe payment assurance devices allow greater flexibility in credit granting criteria. 80% believe the use of payment assurance devices allows them to finance customers with lower down-payments and 80% granted credit terms on higher valued vehicles if a payment assurance device is installed.

Furthermore, as noted in the NABD October 2011 survey, BHPH operators have observed that consumers benefit from payment assurance devices by building positive repayment behavior. Some global positioning and ignition override devices include a payment reminder feature that alerts the customer to an upcoming payment and promotes a more timely payment by the customer. For example, 90% of survey respondents say customers are generally responsive to the payment reminder warning and subsequently make their payments. Consistent, on-time payments can lead to improved credit scores.

New and used automotive dealerships are among the most highly regulated businesses in our economy and contribute significant revenues to state and federal treasuries through the collection of sales tax and additional fees. Any addition to the existing oversight provided by the Federal Trade Commission, the Internal Revenue Service, the newly minted Consumer Financial Protection Bureau, the Department of Transportation and a myriad of state and local agencies, would be onerous for California's dealers who offer BHPH financing. Passing AB 1447 will create a disincentive for dealerships to continue in this business and make it more difficult to provide reasonable automotive financing for consumers who need reliable vehicles to get to their

jobs, schools and doctors appointments. It is reasonable to think with fewer BHPH options, these consumers will seek other transportation solutions. The most likely alternative would be to buy from unlicensed, private sellers or curb stoners who have no incentive to protect the consumer from an unsafe vehicle history, branded titles, or odometer discrepancies. These unlicensed private sellers have no verifiable system through which to collect and remit sales tax to the proper agencies and leave the unsuspecting buyer with no recourse when a problem arises.

Since 1946, the NIADA has been an advocate for independent auto dealers around the country who wish to provide a better buying experience for their customers. NIADA member dealers offer quality products and services and abide by a strict Code of Ethics. We applaud your efforts to cull out the non-compliant businesses in the automotive finance industry that take advantage of consumers, cut corners and play by their own rules. As one of the largest trade associations in the country representing nearly 20,000 independent auto dealers in all fifty states, we share your concern and wish to work with you to eliminate the kinds of business practices that put consumers at risk. However, the NIADA does not believe that AB 1447 is the best vehicle in which to do that and will ultimately hurt the very consumers it seeks to protect.

Lastly, if in fact AB 1447 has been offered in direct response to the allegations raised in the series of articles written last fall by Ken Bensinger in the *LA Times*, we would strongly disagree that any new legislation like AB 1447 would address the alleged practices or the inaccurate portrayal of dealers in the industry that he highlighted in these articles. Instead, we maintain the solution is adequate enforcement of existing laws and regulations, not new legislation.

In the meantime, I would encourage you to vote against AB 1447 and join with NIADA, our Legislative Committee, Legislative Counsel, state affiliates and other industry experts that agree this legislation is an inadequate solution to a problem that has not accurately been defined.

Thank you for your time and consideration of our position. I am

At your service,



Steve Jordan
Chief Operating Officer
NIADA

Cc: Members of the California Assembly Committee on Judiciary
Ken Shilson, President, NABD
Larry Laskowski, Executive Director, IADAC