



Motorcycle Dealers Association of Indiana

150 West Market Street, Suite 812, Indianapolis, IN 46204

(317) 635-1441

TOLL FREE INDIANA (800) 872-0363

FAX: (317) 685-1028

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April 20, 2010

2010 LEGISLATION INFORMATION, REGULATORY REMINDERS AND CALL TO ACTION

The MDAI Board of Directors would like to take this opportunity to inform MDAI members of some important new motorcycle legislation, give you some federal regulatory reminders and ask for a 'call-to-action' on an important federal legislative action. Please read the information regarding the topics listed below to protect your franchised motorcycle business.

- **SEA 31: Motorcycle Handlebar Height Restrictions – July 1, 2010**
- **“Red Flags” Rule – Enforcement Deadline June 1, 2010**
- **Safeguards Rule Compliance**
- **CALL TO ACTION: Dealers Urged to Contact Their Senators in Support of the Brownback Amendment to Preserve Affordable Vehicle Finance Options**

SEA 31: Motorcycle Handlebar Height Restrictions

The 2010 Indiana General Assembly recently passed SEA 31 which changed the current required motorcycle handlebar height from a rise not more than 15 inches above the level of the driver's seat or saddle when occupied to **“not higher than the shoulders of the driver when the driver is seated in the driver's seat or saddle.”** This means the handlebar height restriction is based on each rider's shoulder height when seated as opposed to a general specific number of inches. The new Indiana law takes effect July 1, 2010.

The MDAI Board had been informed that Harley-Davidson is releasing a new product with handlebars 18” above the level of the driver's seat. Precautions should be made to make sure customers purchasing this vehicle, or any other motorcycle, are within the new handlebar guidelines when seated.

“Red Flags” Rule Enforcement Deadline – June 1, 2010

The FTC will begin enforcing the Red Flag's Rule on June 1, 2010. Under the Red Flags Rule, which went into effect on January 1, 2008, certain businesses and organizations are required to spot and heed the red flags that often can be the telltale signs of identity theft. To comply with the new Red Flags Rule – enforced by the Federal Trade Commission (FTC), the federal bank regulatory agencies, and the National Credit Union Administration (NCUA) – you may need to develop a written 'red flags program' to prevent, detect, and minimize the damage from identity theft.

There are four basic steps to designing a program to comply with the Rule:

1. Identify relevant red flags;
2. Detect red flags;
3. Prevent and mitigate identity theft; and
4. Update your program periodically.

("Red Flags" Rule – continued)

In addition, your program must spell out how it will be administered. The program should be appropriate to the size and complexity of your dealership, as well as the nature of your operations.

The ADAI website – www.adai-inc.org – (open to MDAI members) has **"Red Flags" Rule** information as well as a sample Identity Theft Prevention Program (ITPP) and sample documents. Just click on the large red flag on the left-hand side of the page.

Although there are no criminal penalties for failing to comply with the Red Flags Rule, creditors (dealers) that violate the Rule may be subject to civil monetary penalties. But there's an even more important reason for compliance: It's just plain good business. It assures your customers that you are doing your part to fight identity theft.

FTC Safeguards Rule (Privacy Program) Compliance

The MDAI Board of Directors asks MDAI members if their FTC Privacy Safeguards Program is up to date and complete. Why? Because:

- The FTC required you to complete a privacy program by May 23, 2003.
- The fines for non-compliance can be severe ... \$11,000 per day per occurrence!

The five elements of a safeguards privacy program are:

1. Assessing the risks associated with the security of your customer information.
2. Assigning an employee to be your information security program coordinator.
3. Taking steps to ensure that your vendors are capable of complying with the Safeguard's Rule – the dealership must oversee its relationships with vendors.
4. Developing a written security program and training your employees to follow it.
5. Planned updates and reviews of your program.

Identity theft is a wide-spread problem which could open your customer – not to mention your dealership - to a myriad of timely and costly resolutions. MDAI recommends that you have your program reviewed by a law firm or accounting firm. A review will indicate where your program might be weak or lacking.

Again, the ADAI website, www.adai-inc.org, has Safeguards Rule data in the "Fact Sheets and Information" section for you to read or download and print.

CALL TO ACTION: Dealers Urged to Contact Their Senators in Support of the Brownback Amendment to Preserve Affordable Vehicle Finance Options

NADA alerts dealers: **"Auto financing may be at risk"** - The U.S. Senate is soon to consider a financial regulation bill that could subject auto [and motorcycle] dealers to a whole new set of burdensome regulations. The bill would create a Bureau of Consumer Financial Protection which would have sweeping powers to control dealer-assisted financing and even commissions for auto [motorcycle] salespeople. "Auto [motorcycle] dealers should be excluded from the bureau," Ed Tonkin, chairman of the National Automobile Dealers Association (NADA) said. "Wall Street caused the financial meltdown, not local auto dealers on Main Street." "We're not seeking exemption from federal and state regulation. There are already effective federal and state laws that govern dealer-assisted financing," Tonkin added.

Sen. Sam Brownback (R-Kan.) is sponsoring an amendment which would exempt auto dealers from this new bureau. In the next couple of weeks, the full Senate is expected to consider the Brownback Amendment.

This bill could affect motorcycle dealers as well. That is why the MDAI Board urges all MDAI members to contact Senators Bayh and Lugar to support the Brownback Auto Dealer Amendment to the Senate Financial Reform Bill, and to include the amendment in any compromise legislation. Call the Capitol switchboard at (202) 225-3121 or Senator Bayh's office at (202) 224-5623 and Senator Lugar's office at (202) 224-4814. You may also contact them via Senator Bayh Web Form: bayh.senate.gov/WebMail1.htm or Senator Lugar Email: senator_lugar@lugar.senate.gov. A copy of the **Supporting Arguments** and an **Issue Brief** are on the following pages.

Brownback Auto Dealer Amendment - Supporting Arguments

1. Wall Street caused the financial meltdown, not local auto dealers on Main Street.

- The fact is auto loans had nothing to do with the economic crisis. Financial reform legislation should focus on what caused the crisis: the big financial institutions of Wall Street.
- The auto finance model is sound. Auto financing is not broken. Vehicle financing is secured by a depreciating asset (the vehicle), which lenders must factor into their underwriting. This forces lenders to look to the borrower for repayment of the loan. Therefore, lending decisions must be based on due diligence. Unlike mortgages, auto finance did not experience a subprime lending crisis and has never posed a systemic risk.

2. Adding another layer of regulation will reduce availability of credit and increase costs to consumers.

- Dealers are not lenders; they are facilitators. Dealers provide optional retail finance services at their dealerships in virtually every community in the country. Dealers increase financing competition by providing consumers with a wide variety of options from multiple financing sources. Dealers increase access to credit for consumers. Because of this competition, dealer-assisted financing reduces the cost of credit to consumers.
- Access to affordable credit is essential for automobile buyers. Ninety-four percent of all vehicle sales in 2008 were financed. Congress should not take any action that could increase the cost of credit to consumers.
- Over-regulation would put at risk the efficiency of the current system. The fact is, dealer-assisted financing provides affordable options for consumers of all economic levels. And the service is entirely voluntary. Plus, if consumers are not satisfied with financing at the dealership, they can go elsewhere to refinance, many times at no additional cost.
- According to data from the Federal Trade Commission in 2009, less than 2% of consumer complaints were auto related. An even smaller percentage was related to auto finance.

3. Dealers are not seeking exemption from federal and state regulation; there are already effective federal and state laws that govern dealer-assisted financing.

- It is false to suggest that without the new bureau dealers would be left unregulated and in need of additional regulation. Dealers are subject to extensive federal regulation (e.g., the Truth in Lending Act, Fair Credit Reporting Act, etc.) and are also subject to the full range of state consumer protection statutes.
- Banks and finance companies that underwrite and service auto loans would be covered by the proposed bureau. Therefore, there is no reason for further regulation of auto dealers.

April 14, 2010



National Automobile Dealers Association



SUPPORT THE BROWNBACK DEALER AMENDMENT

Preserve Affordable Auto Finance Options for Consumers in the Senate Financial Reform Bill

Issue

The Senate financial regulation bill (bill unnumbered) would create a Bureau of Consumer Financial Protection (BCFP), which would have new and extremely broad authority to regulate most financial products, including dealer-assisted financing. The auto finance model is sound, based on due diligence, and decreases the cost of credit to consumers. NADA supports an amendment to be offered by Sen. Sam Brownback (R-Kan.) to the financial regulation bill. Dealers are already effectively regulated by the Federal Reserve Board, the Federal Trade Commission (FTC) and state consumer protection agencies.

Background

The House financial reform legislation (H.R. 4173) which passed in December 2009 included a bipartisan amendment that would not subject motor vehicle dealers (except for “buy here, pay here” financing) to regulation by the proposed Consumer Financial Protection Agency (similar to the Senate-proposed BCFP), but would maintain consumer protection regulations administered by the Federal Reserve, the FTC, and state agencies. This amendment was offered in the Financial Services Committee by Rep. John Campbell (R-Calif.) and passed on a 47-21 vote. An amendment to nullify the Campbell amendment on the House floor was withdrawn.

Key Points

- **Financial reform legislation should focus on what led to the economic crash in 2008, and not be used as a reason to increase unnecessary regulation on small business dealers.** Auto loans did not contribute to the worst financial crisis since the Great Depression. Auto finance lenders *must* look primarily to the borrower for repayment, since vehicle financing is secured by a depreciating asset (the vehicle). Unlike mortgages, auto finance did *not* experience a subprime lending crisis and does not pose a systemic risk.
- **Dealers would continue to be regulated by the FTC and the Federal Reserve under the Brownback amendment.** Dealers are already subject to extensive federal regulation (e.g., the Truth In Lending Act, Fair Credit Reporting Act, etc.) and are also subject to the full range of state consumer protection statutes.
- **Banks, finance companies and “buy here, pay here” dealers that underwrite and service auto loans would be covered by BCFP, making additional regulation of dealers costly and unnecessary.**
- **The Brownback Amendment is necessary because the broad authority granted to the BCFP seriously threatens to limit dealer-assisted financing and the convenience and competition this financing offers consumers at all economic levels.** Since 94 percent of all vehicle sales in 2008 involved financing, it is essential to preserve dealer-assisted financing and affordable credit for consumers.

Status

The Senate Banking Committee passed the Senate financial regulation bill on a party-line vote of 13-10 on March 22 with no amendments considered. Senator Brownback’s amendment, which would exempt dealers (except for “buy here, pay here” financing) from BCFP regulation but maintain other federal regulation, is expected to be considered on the Senate floor in late April or May.

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