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RE: HB 5099 – AAC Repossession of Motor Vehicles from Retail Buyers

There has been proposed legislation the last two years that would overturn part of the Federal Bankruptcy Reform Act of 2005 as it relates to motor vehicles. As representatives of the Auto Alliance, we are pleased that this proposal has not been enacted.

In 2007, HB 6070 was amended to include this language in the Judiciary committee. The bill was given a public hearing in which one person testified in support. The proposal subsequently died in committee without a vote.

In 2008, the proposal came as an amendment to HB 5130 in the last hours of the legislative session. The amended bill passed the House and later died in the Senate.

In short, this legislation would deny creditors the ability to make the filing of a Chapter 7 Bankruptcy an event of default under a retail installment contract and specifically circumvent Section 521(a) and (d) of the Bankruptcy Code. This legislation would encourage debtors, who are not behind in their auto payments, to refuse to take the action contemplated by the Bankruptcy Code if they wish to retain possession of their cars – reaffirmation of the debt or redemption of the collateral. They would instead be allowed to unilaterally turn their contract into a month to month agreement without consequence for future defaults

Current Chapter 7 Bankruptcy law affords all debtors three options with respect to their secured auto debt: (1) Reaffirmation - they can reaffirm the underlying obligation and retain possession of the car; (2) Redemption - they can pay the replacement value of the car in one lump sum payment (regardless of the outstanding debt) and get clear title to the vehicle; or (3) Surrender - they can surrender the car and walk away owing nothing. House Bill 5099 resurrects the fourth option (known as "Ride Through") wherein the debtor retains possession of the car without reaffirming or redeeming but supposedly keeps current on their payments. Essentially, the debtor would unilaterally convert the contract into a month to month non-recourse agreement with all the rights and none of the obligations on the side of the bankruptcy debtor. This fourth option of "Ride Through" was expressly abolished in the 2005 Bankruptcy Reform Act and Congress made it explicitly clear that a creditor could declare a default under its contract as a result of the debtor's bankruptcy filing and repossess the car if the debtor retained possession but failed to reaffirm or redeem.



Because the debt is discharged as part of the bankruptcy, the discharged customer who is no longer in bankruptcy has no personal liability to his creditor and therefore can walk away from the obligation at any time and owe nothing. This is true even if they fail to return the vehicle since the creditor's rights following a bankruptcy discharge are only in the collateral and not personally against the debtor. Thus, without personal liability for the debt, the debtor has no incentive to keep the vehicle in good shape or even maintain insurance on it, all to the detriment of the creditor. Current bankruptcy law allows a creditor in the aforementioned situation to declare bankruptcy a default under its contract and repossess the collateral to protect its interests.

Since the customer is relieved of their personal liability for the debt, the creditor cannot attempt to collect any money from them personally. Creditors face significant exposure to litigation if they contact debtors who retain their vehicles without reaffirming or redeeming, because it is illegal to try and collect a now discharged debt. As a result creditors are prohibited from sending the debtor their usual monthly invoice (since the debt has been discharged) and can't offer debtors the type of assistance and services that they offer other customers who are experiencing financial problems. This proposed legislation would also have a significant chilling effect on the creditor's ability to contact the debtor to even check on the status of the collateral or see if the debtor is maintaining insurance on the vehicle. In addition, the failure to reaffirm prevents discharged Chapter 7 debtors who "ride through" and stay current under their contract from reaping the benefit of their timely payments on their credit report, which would ordinarily help bankrupt customers rebuild their credit rating,

Although we appreciate the opportunity to address this issue early on in the legislative session, there are serious concerns as to how, especially now, this legislation will impact consumer lending. If HB 5099 were to become law lenders may be reluctant to extend credit and/or may be forced to increase interest rates to certain consumers. Lenders and consumers alike are already facing stricter scrutiny during these tough economic times and adding additional risk into the system will only worsen the economy even further. Finally, I don't need to remind you of the dire straights the industry is in - - I would hope that the General Assembly would not consider bills that will add to their woes this session.

Filing for bankruptcy is a difficult decision and has serious consequences. Consumers should not be encouraged to avoid their contractual commitments by declaring bankruptcy. For these reasons outlined above, we would respectfully urge you to reject HB 5099.

Very truly yours,

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