



October 1, 2018

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: SB 2484 - Relating to payment assurance devices

Dear Governor Cuomo:

I write on behalf of the American Financial Services Association (“AFSA”)¹ to express our concerns with SB 2484 and urge you to veto the bill, which would create certain conditions for the use of payment assurance devices in connection with a loan for the purchase or lease of a motor vehicle. We have serious concerns about this bill, as New York consumers could face higher costs in financing the lease or purchase of a vehicle as a result of the legislation.

Many financial institutions use payment assurance devices in the form of electronic tracking and starter interrupt technology to decrease the risk of default and costs of recovery by allowing the GPS-location and/or the disabling of a vehicle by remote means, resulting in reduced default rates and rapid and efficient repossession where necessary. The reduced risk also enables financial institutions to offer financing to borrowers who may not have otherwise been able to obtain credit. Increased costs resulting from this legislation are likely to fall on all New York consumers in the form of higher costs for credit and may further tighten the availability of affordable credit to consumers with less than perfect credit histories.

Repossession is a result that neither consumers nor financial institutions want. Vehicle finance companies seek to avoid repossession wherever possible, using this process only as a last resort. For these reasons, financial institutions put a considerable amount of time and effort into proactively reaching out to their customers experiencing financial difficulty to work with them to resolve account issues and avoid repossession whenever possible and recognize that each individual’s situation, credit history, and account history vary; therefore, they work with individuals on a case-by-case basis to find ways to remedy an account problem whenever possible.

Financial institutions nearly always lose money in the repossession process due to the costly act of physical repossession and the unlikelihood of recovering the deficiency. Though a last resort, repossession is sometimes the only option available. Electronic tracking and starter interrupt technology provide an alternative option to traditional repossession, making physical

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

repossession of a vehicle unnecessary except in the most extreme cases of default. This allows a consumer to avoid costs of repossession, the embarrassment of having a repossession company take the vehicle (often from a home or office), the inconvenience of retrieving the vehicle, the cost of tow and impounding, the risk of damage to the vehicle, and a repossession notation on a consumer report.

It is critical that any legislation regulating the use of this technology recognize these key differences between physical repossession and the temporary disabling of a vehicle's starter and that these distinctions are reflected in each process' treatment under the law without putting at risk many of the consumer-friendly advantages payment assurance devices may provide versus physical repossession.

The advance notice requirements in SB 2484 are overly burdensome and costly, with little added consumer benefit. The activation of a device should not come as a surprise to any consumers. Borrowers know when they are behind on payments, and advance notice is provided, sometimes days ahead of time, before their vehicle's starter interrupt device is activated. However, the bill's requirements for notice via registered or certified mail no later than ten days prior to the date on which the creditor obtains the right to remotely disable the vehicle may place the creditor in a position of mailing out the required notice while simultaneously working with the consumer to ensure payment, just so the creditor may maintain its right to use a device in the event of default.

This process is further complicated by the requirement that the notice be mailed to the address at which the debtor will be residing on the expected date of the remote disabling of the vehicle. Such a requirement relies on debtors to maintain current and future addresses with the creditor and would leave creditors with a vague obligation to make a determination about a customer's location at some point in the future. This requirement also raises significant questions about the creditor's responsibilities in the event the debtor changes residences between the time the notice is sent and the date a vehicle is disabled.

For these reasons, we respectfully urge you to veto this legislation as proposed. Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss this further, please do not hesitate to contact me at (202) 469-3181 or mkownacki@afsamail.org.

Sincerely,



Matthew Kownacki
Manager, State Research and Policy
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517