April 30, 2019

Senator Pat Spearman
Chair, Senate Committee on Commerce and Labor
401 South Carson Street
Legislative Building, Room 2132
Carson City, NV 89701-4747

Re: Assembly Bill 477 - An act relating to consumer contracts

Dear Chair Spearman:

I write on behalf of the American Financial Services Association ("AFSA")[1] to express our strong concerns with Assembly Bill 477, which would, among other provisions, impose significant restrictions on the accrual of interest following consumer default for certain consumer transactions. Adopting these restrictions as proposed would set a standard not in place in any other state and disadvantage Nevada consumers, who could face more expeditious repossessions of their vehicles immediately following default as a result of this legislation and also be left with higher costs in financing the purchase of a vehicle.

When consumers finance the purchase of a vehicle using a retail installment sale contract, they agree to repay the amount financed plus interest that accrues at a rate set forth in the contract. AB 477 would stop the accrual of interest at the contract rate immediately upon default by the consumer and only provide for recovery of any such interest upon award by a court, potentially at a much lower rate. While on its face such a restriction may seem consumer-friendly, it will leave borrowers who miss even a single payment more likely to face repossession and elevate what could have been a temporary default into a permanent one.

Default is a broad term with many possible triggers, and the bill does not define when a default occurs and interest stops accruing. In the context of a retail installment contract for a vehicle, default could refer to: the date a borrower first misses a payment, or sometime thereafter; the date a vehicle is repossessed; or even the date a finance company first initiates an action in court. In Nevada, all retail installment contracts are based on a single form contract approved by the state. Nevada's form contract sets forth that default occurs when a borrower is at least 30 days past due on a payment. Because AB 477 does not adequately define default, it is not clear whether the interest restriction would trigger based on the form contract definition of default or at some other time.

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[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.

The definition of default will make a significant difference in how vehicle finance companies view a past due account. Consumers in contractual default will have full access to and use of their vehicles before repossession occurs. It is common for borrowers to temporarily enter a state of default by missing a payment but not lose their vehicles because vehicle finance companies work with consumers who are in default so those consumers can bring their accounts current and avoid repossession. Repossession is a result that neither consumers nor financial institutions desire, and vehicle finance companies seek to avoid it wherever possible. Because of this, 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 before repossession occurs. Financial institutions recognize that each consumer's situation, credit history, and account history varies, and 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 fully recovering a deficiency. Though a last resort, repossession is sometimes the only option available.

Under the proposed restrictions, creditors will be aware that once a consumer is delinquent, the consumer is no longer paying for the vehicle because interest has stopped accruing. Knowing that consumers will not be paying the interest due under the contract while the consumers remain in default, vehicle finance companies may determine it is more appropriate to move on from the losses experienced and repossess vehicles instead of waiting to see if consumers can get back on track with their payments. By complicating the borrower's account, this restriction would make it significantly more costly for vehicle finance companies to spend time working with borrowers who fall behind and cannot immediately bring their accounts current, leaving prompt repossession as the only alternative to waiting for a court to award any interest owed. Nevada's form contract does not include a right to cure—an opportunity to make only the payments owed up through the repossession—so even borrowers who have the means to bring their account current may face difficulty doing so as a result of the interest restrictions. Further complicating this matter, the bill's language does not adequately address when a default occurs if a consumer does cure a past due payment.

In addition to leading to expedient repossessions, the complicated calculation of stopping interest owed under a vehicle contract may have other unintended consequences. Vehicle finance companies will be forced to consider the added costs due to the risk of not recovering those interest amounts the consumer contracted for and may restrict their consumer financing to borrowers with top-tiered credit scores. This could result in less financing resources for those borrowers whose credit ratings are not top tiered, likely the very consumers the legislation seeks to protect.

Such a restriction could also create an incentive for borrowers to stop making payments on their loan in order to stop interest from accruing at the contract rate by triggering a temporary default while still hanging on to their vehicles. Any missed payment beyond 30 days, however temporary, could have significant long-term consequences for a borrower's credit history and credit score.

Further problematic is that the legislation excludes from the bill’s requirements large segments of the vehicle finance industry, including credit unions and banks. The result would be a two-tiered vehicle finance market where captive and other independent Nevada-licensed sales finance companies are subject to significant restrictions and left on an uneven playing field with the rest of the market. These restrictions would limit competition in the state by raising costs for certain companies and leave consumers with fewer choices and worse off as a result.

For these reasons, we respectfully oppose 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 952-922-6500 or dfagre@afsamail.org.

Sincerely,

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cc: Senator Marilyn Dondero Loop
Senator Nicole Cannizzaro
Senator Chris Brooks
Senator Joe Hardy
Senator James Settelmeyer
Senator Heidi Seevers Gansert