

December 22, 2023

The Honorable Raj Mukherji
New Jersey General Assembly
State House
P.O. Box 098
Trenton, NJ 08625-0098

Re: A1971/S332 – collection and disclosure of personal data by certain entities

Dear Assemblymember Mukherji,

I write on behalf of the American Financial Services Association (AFSA),¹ to express slight concerns with and request further amendments to A1971 & S332, which were amended by the Assembly Judiciary Committee and on the Assembly floor earlier this week.

We appreciate the Assembly's inclusion of a clear exception for financial institutions subject to the federal Gramm-Leach-Bliley Act and their affiliates. While this exception generally covers our members and their operations, several of the bills' other exceptions would indirectly affect our members and data they use. The exemptions related to the federal Driver's Privacy Protection Act (DPPA) and Fair Credit Reporting Act (FCRA) relate to data regularly used by financial institutions and crucial to our members' everyday operations. As amended, we are concerned that the current DPPA and FCRA exceptions are not sufficient to protect our members' access to this crucial data.

The DPPA generally limits the disclosure and use of consumer information gathered by state DMVs and requires a consumer's express consent to do so, with a few very specific exceptions. Financial institutions use such information from state agencies, including the New Jersey Motor Vehicle Commission (MVC), for a number of essential purposes. These uses include verifying vehicle title history and lienholder status; identifying vehicle owners for automated traffic & toll enforcement; and ensuring vehicle information matches if the financial institution takes possession of a vehicle. In addition to disrupting these important processes, new restrictions on sharing information would also make it more difficult to detect and prevent fraud, such as title washing, odometer rollbacks, or identity theft. Verifying the details of a specific vehicle or consumer's history involves comparing information available to a lender from various sources and limiting information availability hinders a lender's ability to do so. Making it more difficult, or even impossible, to obtain this critical information will mean additional compliance costs and increased risk of costly fraud.

As drafted, the DPPA exception would apply to data collected directly through the MVC and would not cover the same data provided through third-party service companies that are typically another source of the data for financial institutions. Third-party servicers provide motor vehicle information in a secure,

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.

efficient and timely manner, and alleviate the MVC from having to dedicate additional resources necessary toward providing the information to the hundreds of legitimate requestors in a secure and compliant manner. For these reasons, we respectfully request the bill be amended to read (additions underlined, removals struck through):

10. Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) shall apply to:
e. the sale of a consumer's personally identifiable information ~~by the New Jersey Motor Vehicle Commission that~~ as is permitted by the federal "Drivers' Privacy Protection Act of 1994," 18 U.S.C. s.2721 et seq.;

Similar to DPPA data, our members utilize data from consumer reporting agencies, as authorized by the FCRA, for numerous purposes in order to offer credit to New Jersey consumers, including vehicle financing, mortgages, credit cards and personal loans. To best ensure that financial institutions continue to have access to credit reporting data, we believe additional clarification to the exception related to FCRA data is necessary. For this reason, we respectfully request the bill be amended to read (additions underlined, removals struck through):

10. Nothing in P.L. , c. (C.) (pending before the Legislature as this bill) shall apply to:
f. "...personal data collected, maintained, communicated, used, processed, sold, or disclosed bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency, as defined in 15 U.S.C. s.1681a(f), furnisher, or user that provides information for use in a consumer report, and by a user of a consumer report, if the collection, maintenance, communication, use, processing, sale, or disclosure of the personal data is ~~limited, governed, and collected, maintained, disclosed, sold, communicated, or used only as regulated and~~ authorized by the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq., and implementing regulations;"

These two proposed clarifying changes would protect access to this crucial DPPA and FCRA data for financial institutions and align New Jersey's law with the consumer data protection laws enacted by more than a dozen other states.

Thank you in advance for your consideration of our comments. If you have any questions, or would like to discuss our concerns further, please do not hesitate to contact me by phone at 952-922-6500 or e-mail at dfagre@afsamail.org. Thank you again for your time and consideration.

Sincerely,



Danielle Fagre Arlowe
Senior Vice President
American Financial Services Association