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## **GARDEN STATE BAR ASSOCIATION OPPOSES PROPOSED CHANGES TO THE N.J. CONSUMER FRAUD ACT**

**(Trenton, New Jersey, September 25, 2018)** The Garden State Bar Association (“GSBA”) opposes Assembly No. 4292 (“A-4292”) which was recently introduced in the New Jersey General Assembly. The GSBA has reviewed the bill and its Senate counterpart, S-4270, and have identified several areas of serious concern. This bill will place limits on certain provisions under the New Jersey Consumer Fraud Act (“CFA”), and could close the doors of the courthouse to many victims who have been defrauded by unscrupulous car dealers. The proposed revisions will leave consumers without the ability to find representation if they are fraud victims. Consumers will also lose many of the protections of New Jersey’s well-regarded Consumer Fraud Act. In addition, it will permit car dealers to sell unsafe vehicles to New Jersey car buyers, without any meaningful risk of responsibility for untoward and unsafe business practices.

A-4292 limits the damages and attorney’s fees available to consumers who prevail in an action against a car dealer for CFA violations. The purchase of a vehicle is a very large expenditure for most people. The bill will deprive consumers of their rights at the point of purchase or repair of their vehicle. The bill results in disparate racial discrimination against vulnerable minority car buyers—who are often the victims of unscrupulous dealers. Specifically, the bill:

- Provides that prevailing plaintiffs “may” receive threefold damages, hence eliminating the mandatory attorney’s fee award currently afforded to prevailing plaintiffs under the CFA.
- Eliminates mandatory threefold damages to prevailing plaintiffs. The treble damages available under the CFA are the “teeth” of the statute that serve to deter car dealers from engaging in deceptive sales practices. Allowing such damages to be discretionary introduces a random element of subjectivity that would create inconsistent enforcement of the CFA.
- Eliminates the mandatory award of reasonable attorney’s fees for plaintiffs. The subsection again substitutes the word “may” for “shall,” as it relates to attorney’s fees for prevailing plaintiffs in CFA suits. This will similar trigger inconsistency in outcomes and erode the efficacy of the private enforcement which has been the hallmark and strength of the CFA for decades.

- Limits attorney's fee awards to thirty percent of a plaintiff's recovery. This has the effect of ensuring that no attorney will ever be able to afford to help victims of such practices.

No sector of the economy deserves special immunity from the consequences of fraud upon the public. This bill provides a dangerous and unwarranted immunity to used car dealers that will put consumers in harm's way. The bill would also leave victims with little recourse should they be injured or worse.

Car buyers expect a car dealer to stand behind their product as an assurance of its roadworthiness; this bill would allow used car dealers to sell potentially unsafe cars and be immune from the consequences of their actions. The GSBA stands alongside the National Association for the Advancement of Colored People, New Jersey State Bar Association, New Jersey Association for Justice, Hispanic Bar Association of New Jersey, New Jersey Citizen Action, Consumer League of New Jersey and many other consumer groups who oppose this legislation. We call on the New Jersey legislature join us in our opposition.