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MEMORANDUM IN OPPOSITION

February 28, 2011

S.3302 Addabbo (Senate Transportation Committee)
A.2094 DenDekker (ON ASSEMBLY TRANSPORTATION AGENDA)

AN ACT to amend the vehicle and traffic law, in relation to establishing the "vehicle lienholder accountability act"; to require lienholders to provide notice to the owner of the vehicle when such lienholder assigns his or her security interest

This memorandum in ***opposition*** is written on behalf of our client, the New York Bankers Association. The Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 200,000 New Yorkers and hold more than $9 trillion in assets.

The New York Bankers Association opposes this legislation that would limit the right of lienholders to assign their security interests in motor vehicles by making the assignment valid only if the lienholder notifies the vehicle owner of the assignment and executes a release of their security interests within ten days of the assignment. This legislation would greatly restrict the ability of lenders to securitize their vehicle loans, resulting in less liquidity in the car loan market and reduced availability of credit for car buyers. We urge that this bill be held.

Current law facilitates the liquidity of the car loan market by allowing lienholders freely to assign their security interests in motor vehicles without affecting the validity of the interest. This legislation would require that lienholders notify vehicle owners of any assignments and execute a release of the security interest within ten days of the assignment. The penalty for failure to provide such notice or execute such release is a fine up to $1,000.

The financing of motor vehicles relies heavily on a complex and interrelated securitization market that allows an individual loan to be packaged with other loans of similar rates and maturities. These loan packages are then underwritten by major securities houses and sold to investors throughout the world. The packaging and sale of interests in motor vehicle loans provides funding to motor vehicle lenders to allow them to make additional loans, keeping the motor vehicle financing market liquid and responsive to changing market demands. The importance of the securitization of motor vehicle loans was emphasized during the past two years when the Federal Reserve Board, in developing programs to aid the secondary market in a variety of loans, developed a secondary market for auto loans when private credit securitization markets froze. See http://www.federalreserve.gov/newsevents/press/monetary/20081125a.htm.

This legislation threatens the ability of New York automobile lenders to participate fully in the securitization market for automobile loans. The securitization market relies on the ability to swiftly transfer and package similar loans through what may be several conduits before interests can be sold to ultimate investors. Because market conditions change quickly, failure to be able to execute these transfers can result in adverse interest rate changes, increased securitization costs or even a failure to find a market for a particular issue. Because the legislation requires that owners be notified and that releases be executed within ten days for every transfer, it will be extremely difficult for lenders to participate in this process. Lenders who cannot participate because of these new notice and release requirements will find their loans less liquid, less marketable and outside the mainstream of auto loan funding. Restricting loan liquidity will increase consumer costs as lenders find it more difficult and costly to fund their motor vehicle portfolios.

In addition, owners whose loans are securitized will receive numerous and potentially confusing notices, without being able to determine which will be the last. Because the servicing of loans sold into the secondary market often remains with the original lender, the owner may ultimately be notified that his or her loan's contact remains exactly where it started, after a number of notices showing the loan's transfer. Because the ultimate loan servicer must notify the consumer of payment and contact information in order to adequately service a loan portfolio, the costs and confusion engendered by all of these notices and releases will ultimately serve no purpose.

This legislation will therefore result in increased costs to consumers and lenders, no benefit to consumers and significant potential confusion on the part of owners. For these reasons, the New York Bankers Association ***opposes*** this legislation and urges that it be held.

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP