

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
PROFESSIONAL LICENSURE COMMITTEE  
205 RYAN OFFICE BUILDING  
HARRISBURG, PENNSYLVANIA

TUESDAY, DECEMBER 5, 2017

10:03 A.M.

PRESENTATION ON  
HOUSE BILL 1898

BEFORE:

HONORABLE MARK T. MUSTIO, MAJORITY CHAIRMAN  
HONORABLE HARRY READSHAW, MINORITY CHAIRMAN  
HONORABLE ROSEMARY BROWN  
HONORABLE GARY DAY  
HONORABLE KEITH GILLESPIE  
HONORABLE DAVID HICKERNELL  
HONORABLE ZACHARY MAKO  
HONORABLE STEVE MENTZER  
HONORABLE MARGUERITE QUINN  
HONORABLE JAMES SANTORA  
HONORABLE CURTIS SONNEY  
HONORABLE CAROLYN COMITTA  
HONORABLE WILLIAM KORTZ  
HONORABLE ADAM RAVENSTAHL

*Pennsylvania House of Representatives  
Commonwealth of Pennsylvania*

1 COMMITTEE STAFF PRESENT:

2 REPUBLICAN CAUCUS:

3 WAYNE CRAWFORD, EXECUTIVE DIRECTOR/REPUBLICAN RESEARCH  
4 KELLY ROTH, LEGISLATIVE ADMINISTRATIVE ASSISTANT

5 DEMOCRATIC CAUCUS:

6 MARLENE TREMMEL, EXECUTIVE DIRECTOR  
7 KEONTAY HODGE, LEGISLATIVE ADMINISTRATIVE ASSISTANT

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I N D E X

T E S T I F I E R S

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NAME PAGE

REPRESENTATIVE JAMES SANTORA .....4  
PRIME SPONSOR OF HOUSE BILL 1898

MARK STINE.....6, 40  
VICE PRESIDENT, LEGISLATIVE AND PUBLIC AFFAIRS  
PENNSYLVANIA AUTOMOTIVE ASSOCIATION

WAYNE WEIKEL.....25  
SENIOR DIRECTOR, STATE GOVERNMENT AFFAIRS  
ALLIANCE OF AUTOMOTIVE MANUFACTURERS

SUBMITTED WRITTEN TESTIMONY

\* \* \*

(See submitted written testimony and handouts online.)

## P R O C E E D I N G S

\* \* \*

1  
2  
3 MAJORITY CHAIRMAN MUSTIO: Good morning,  
4 everybody. There are other voting meetings  
5 going on so we'll probably have members coming  
6 and going here. I just want to remind the  
7 members that this is being recorded.

8 I would like to call the meeting of the  
9 House Professional Licensure Committee to order.  
10 The first order of business is to take the role.

11 (INTRODUCTION OF MEMBERS.)

12 MAJORITY CHAIRMAN MUSTIO: Thank you.

13 We are holding this public hearing to  
14 take testimony on HB 1898, a legislation which  
15 amends the Board of Vehicles Act. I would like  
16 to recognize the prime sponsor of this  
17 legislation, Representative Jamie Santora, for  
18 opening comments.

19 Jamie, welcome and thank you.

20 You may begin when ready.

21 REPRESENTATIVE SANTORA: Thank you,  
22 Mr. Chairman.

23 I'm just pulling my notes up here.

24 First of all, thank you for holding this  
25 hearing. HB 1898, my legislation amends the

1 Board of Vehicles Act to require all new and  
2 used dealers to disclose to customers if used  
3 vehicles for sale have open, unrepaired recalls  
4 established that manufacturers must compensate  
5 their franchised dealers for when they have used  
6 vehicles in their inventory that have a  
7 stop-sale order issued and recall if repair  
8 parts are unavailable, prohibit manufacturers  
9 from requiring dealers to significantly modify  
10 dealership facilities within 10 years of a prior  
11 modification, establish temporary licenses for  
12 new vehicle dealers while the applicant's  
13 application is pending review by the Board, and  
14 expands the definition of licensing costs to  
15 include the costs related to complying with  
16 Federal and state laws requiring safeguarding of  
17 customer information.

18 This legislation is aimed at consumer  
19 protection and also the protection of our local  
20 businesses throughout Pennsylvania.

21 MAJORITY CHAIRMAN MUSTIO: Thank you.  
22 We've been joined by Representative Quinn and  
23 Representative Ravenstahl.

24 Our first testifier is Mark Stine from  
25 the PA Automotive Association. Mark, if you

1 would like to join us and bring anybody else  
2 with you --

3 MR. STINE: Sure.

4 MAJORITY CHAIRMAN MUSTIO: -- you feel  
5 necessary. Thank you.

6 MR. STINE: Thank you. Thank you very  
7 much.

8 Good morning, Chairman Mustio,  
9 Chairman Readshaw and the fellow members of the  
10 House Professional Licensure Committee. On  
11 behalf of the new vehicle dealers doing business  
12 in the Commonwealth, I appreciate very much  
13 appearing before you today to discuss HB 1898.

14 As you know, this legislation proposes  
15 some amendments to the State Board of Vehicles  
16 Act, most notably by requiring in law the  
17 written disclosure at time of sale the existence  
18 of any open, unremedied recalls. Our  
19 Association feels strongly that such formal  
20 disclosure provides important information to  
21 vehicle purchasers and alerts them to the  
22 existence of a condition that the vehicle  
23 manufacturer, through their dealer network, will  
24 correct free of charge.

25 The vast majority of vehicle recalls are

1 not especially critical, nor do they necessarily  
2 impose immediate safety threats. For example,  
3 some recalls can merely require the correction  
4 of a misprint in the vehicle owner's manual.

5 Typically, however, safety recalls  
6 identified by the manufacturer are remedied by  
7 the adjustment or installation of a particular  
8 part provided by the factory and installed by  
9 the dealer. Because of the relatively minor  
10 nature of most recalls, we often find that, even  
11 when notified of a recall, many vehicle owners  
12 do not take the affected vehicle to the dealer  
13 and have the necessary correction performed.

14 Should the owner service the vehicle at  
15 a new vehicle dealership, which we recommend,  
16 outstanding recalls are routinely identified and  
17 addressed during regular maintenance visits or  
18 while having its annual safety inspection. For  
19 those vehicles serviced outside the franchised  
20 dealer network, however, often corrective recall  
21 services are not performed before the vehicle is  
22 traded in.

23 Should the vehicle not have its  
24 outstanding recall corrected, we believe the  
25 perfect opportunity to determine its recall

1 status is at the time of sale. By simply  
2 tracking the vehicle's VIN number and accessing  
3 a national database, safercars.gov, the dealer  
4 can produce a report that presents the recall  
5 status for that vehicle.

6 As provided for in HB 1898, this report  
7 would be shared with the prospective purchaser  
8 at the time of sale. The preparation of vehicle  
9 history reports is a routine practice associated  
10 with pre-owned vehicle sales, and the inclusion  
11 of an outstanding recall report, from our  
12 perspective, is not overly burdensome to the  
13 dealer and provides a clear and important  
14 benefit to the prospective purchaser.

15 We have been recommending recall  
16 disclosures to our members for a long time as a  
17 responsible business practice. Requiring all  
18 dealers to provide this important information to  
19 purchasers when selling a vehicle will ensure  
20 that the consumer is protected in every  
21 vehicle-dealer sale in the Commonwealth. The  
22 Pennsylvania Automotive Association supports and  
23 encourages this legislative proposal.

24 As I mentioned, most vehicle recalls are  
25 relatively minor in nature. Occasionally,



1       however, the problem identified by the factory  
2       is serious enough that the manufacturer imposes  
3       a stop-sale order on a particular vehicle,  
4       instructing their dealers to suspend the sale of  
5       the vehicle until a corrective remedy is  
6       established.

7               These orders are similar to, but not to  
8       be confused with, the much more serious  
9       do-not-drive orders that the National Highway  
10      Traffic Safety Administration is authorized to  
11      issue.

12      Manufacturer stop-sale orders only apply to  
13      their franchisees because they have no authority  
14      or formalized relationship with unaffiliated  
15      used car dealers. These dealers can therefore,  
16      if they so elect, sell such vehicles.

17              In contrast, franchised new vehicle  
18      dealers are contractually obligated to respect  
19      the safety recall designation policies of their  
20      manufacturers, and therefore honor stop-sale  
21      orders they issue. These vehicles are held by  
22      the dealer until corrective remedies are  
23      developed by the manufacturer and replacement  
24      parts are made available.

25              Unfortunately, sometimes the recall

1 remedy is unavailable to the dealer for extended  
2 periods of time. And because every vehicle in  
3 the dealer's inventory has been purchased by the  
4 dealer, in this case he or she has paid for and  
5 must bear the inventory cost for a vehicle that  
6 the manufacturer is prohibiting them from  
7 selling.

8 To address this situation, other States  
9 are enacting legislation that requires vehicle  
10 manufacturers to reimburse their franchised  
11 dealers for some of the costs incurred when  
12 vehicles they have manufactured are designated  
13 to be unavailable for sale by the dealer.

14 Dealer reimbursements are restricted  
15 solely to in-brand used vehicles being held for  
16 resale by the franchised dealer. Such  
17 reimbursement mechanisms established in other  
18 States are triggered by a designated  
19 number of days after a stop-sale order is issued  
20 by the manufacturer and corrective parts  
21 remain unavailable.

22 Consistent with a Federal law that  
23 provides for a manufacturer/dealer recall  
24 reimbursement mechanism for new vehicles in  
25 similar circumstances, the reimbursement

1 rate for used vehicles provided for in HB 1898  
2 is calculated based on a percentage of the value  
3 of the used vehicle and is only imposed until  
4 the recall remedy parts are available to the  
5 dealer.

6 There is another provision in the  
7 legislation you are considering today that is  
8 modeled after similar legislation being enacted  
9 in other States. As you have probably observed,  
10 new vehicle dealerships have been devoting  
11 substantial resources to their appearance and  
12 have been upgrading and updating their  
13 facilities to accommodate the expectations of  
14 their customers.

15 The manufacturer also imposes specific  
16 dealership facility requirements to create  
17 uniformity within their franchise network.  
18 The cost to franchised dealers of such  
19 manufacturer-imposed facility upgrades can be as  
20 much as a million dollars, and compliance with  
21 their requirements when constructing new  
22 facilities can be ten times that.

23 Our dealers recognize the importance of  
24 branding to a nationwide retail operation and  
25 routinely invest in their facilities to keep

1       pace with manufacturer image concepts.

2               There are certain circumstances,  
3       however, when a manufacturer requires  
4       significant facility alterations by its dealer  
5       within a couple of years after they've completed  
6       the last facility upgrade required by the  
7       manufacturer.

8               Sometimes they are not done paying for  
9       the one significant upgrade when the next one is  
10      imposed. Often these facility alterations,  
11      while imposing significant costs to the dealer,  
12      are cosmetic in nature and appear, to the dealer  
13      at least, to be unreasonably expected.

14              As with other States, HB 1898 prohibits  
15      manufacturers from requiring their franchisee  
16      dealers to significantly modify their dealership  
17      facilities within 10 years after the  
18      construction or major renovation of the facility  
19      that was previously conducted by the dealer in  
20      accordance with the manufacturer's facility  
21      requirements at the time.

22              The final two provisions of HB 1898 are  
23      administrative in nature. The first establishes  
24      the availability of a temporary license for  
25      franchised dealers applying for a new dealer

1 license from the Department of State. Our  
2 Association and its new dealer members fully  
3 respect the Department's dealership licensure  
4 requirements set forth in State law and  
5 regulation and the bill's language does  
6 absolutely nothing to change those requirements  
7 or exempt new dealer applicants from them.

8 We also respect, however, the enormous  
9 workload of the dedicated and capable staff of  
10 the Department's Bureau of Professional and  
11 Occupational Affairs, who process all of the  
12 licensure applications for each of the numerous  
13 State health and business licensing boards.

14 The handling of such application  
15 volumes, understandably, can result in taking  
16 several weeks to review and approve new dealer  
17 license applications which, in contrast to  
18 routine professional licensure applications,  
19 have numerous components and must satisfy a  
20 variety of requirements.

21 A new vehicle dealer licensing  
22 application requires certain components, such as  
23 a franchise agreement letter provided to the  
24 dealer by the manufacturer, that are only  
25 available for the dealer to provide to the

1 Department on the day the deal for acquiring the  
2 franchised dealership is closed. And because  
3 Department review of a license application  
4 cannot typically commence until all application  
5 components are received, the new vehicle dealer  
6 who just invested millions of dollars acquiring  
7 a franchise point, and a dealership facility  
8 that has already met the rigorous requirements  
9 of a manufacturer that are far more onerous and  
10 complex than anything the State could conceive,  
11 must wait several weeks until he or she can  
12 operate and sell cars, with perhaps over 80  
13 employees waiting to go to work, as well.

14 Even the Commonwealth is being disserved  
15 by such a situation because the tax revenue  
16 generated by vehicle sales are denied while the  
17 dealership waits for a license to be issued.  
18 I'm happy to report that the Department of State  
19 is aware of this unusual circumstance facing  
20 new vehicle dealers, and we've been working  
21 cooperatively to address the situation.

22 The issuance of temporary licenses by  
23 the Department is not unprecedented. And a  
24 process through which it can issue such a  
25 license to new dealer applicants while certain

1 of the required paperwork catches up to the  
2 application is being worked on as we speak.

3 The enactment of HB 1898 would provide  
4 specific authority to the Department of State to  
5 issue such a temporary new dealer license to do  
6 business without compromising its important  
7 regulatory oversight responsibilities.

8 Finally, HB 1898 amends the Board of  
9 Vehicles Act's definition of documentary  
10 preparation charge by making it more reflective  
11 of the current regulatory compliance environment  
12 and the expanded administrative burdens  
13 associated with compliance. An example would be  
14 the advent of increasingly stringent consumer  
15 privacy protection measures that necessitate  
16 dealer recordkeeping and government reporting  
17 requirements similar to the titling and vehicle  
18 registration paperwork that are currently  
19 provided for in the Act.

20 It is very important to note that this  
21 definitional modernization would in no way raise  
22 the documentary fee permitted to be charged to  
23 vehicle purchasers in Pennsylvania.

24 Thank you once again for your interest in  
25 this timely legislative initiative. At this

1 time, I'm glad to provide the Committee with any  
2 additional background information on HB 1898's  
3 provisions or answer any questions you may have.

4 MAJORITY CHAIRMAN MUSTIO: Thank you for  
5 your testimony.

6 We've been joined by Representative  
7 Gary Day.

8 Any questions from members?

9 Representative Quinn.

10 REPRESENTATIVE QUINN: Thank you,  
11 Mr. Chairman. And it's not a question; it's a  
12 comment.

13 I have a number of car dealerships in my  
14 district. And the application for this, it just  
15 resonates with me when I've seen disruption of  
16 businesses, and I think that's what the one  
17 point here goes to, about the manufacturer not  
18 being able to mandate changes made to the  
19 facility because I saw -- I mean, it's just  
20 crazy. And I think you've been down in my  
21 district to see one dealership have to literally  
22 find a new piece of property, build something  
23 new to comply with thing that just came from the  
24 manufacturer.

25 So I applaud the legislation. I looked



1 and I was happy to see my name on it. Thanks  
2 for your work, and I hope this Committee can  
3 pass it out soon.

4 MAJORITY CHAIRMAN MUSTIO: Yeah, based  
5 on the discussion on the floor yesterday about  
6 people's names on bills --

7 Representative Kortz.

8 REPRESENTATIVE KORTZ: Thank you,  
9 Mr. Chairman.

10 Maybe this question is more apropos for  
11 the prime sponsor, but as far as the  
12 notification of unrepaired recalls, would this  
13 also apply to an auction where someone goes to  
14 buy a car at an auction?

15 Would it be encompassed in there?

16 MR. STINE: No, sir. This was really  
17 drafted for the dealers. And actually, the  
18 auction component wasn't considered when it  
19 was -- but that's a good point.

20 REPRESENTATIVE KORTZ: Well, a lot of  
21 people at auctions are private citizens, but  
22 some of them are dealers that are purchasing and  
23 then they would have to follow up, but the  
24 individual that would be --

25 MR. STINE: Right.

1           REPRESENTATIVE KORTZ: -- trying to get a  
2 car at an auction, would the auctioneer of that  
3 company be required to do that?

4           MR. STINE: Right. Yeah, I guess the  
5 auctions are licensed dealers. So if it is a  
6 dealer-to-consumer transaction, then it would  
7 apply.

8           REPRESENTATIVE KORTZ: Right. Well, a  
9 lot of --

10          MR. STINE: And again, this  
11 safercar.gov, I would think people that are  
12 astute enough to go to an auction -- I mean,  
13 it's an accessible -- you can do it with your  
14 phone.

15          But we didn't consider adding the --  
16 making the requirement language apply to  
17 auctions, but we could look at that.

18          REPRESENTATIVE KORTZ: But just to  
19 comment --

20          MR. STINE: Yeah.

21          REPRESENTATIVE KORTZ: -- there are  
22 people that go there just to buy a car to have  
23 one, such as myself.

24          MR. STINE: Sure.

25          REPRESENTATIVE KORTZ: I've gone once.

1 MR. STINE: Especially at the public  
2 auctions, particularly.

3 REPRESENTATIVE KORTZ: Sure. Thank you,  
4 Mr. Chairman.

5 MAJORITY CHAIRMAN MUSTIO: Thank you,  
6 Representative Kortz.

7 Representative Gary Day.

8 REPRESENTATIVE DAY: Thank you,  
9 Mr. Chairman.

10 Mr. Chairman, I don't know if it's  
11 appropriate, but I would like to address that  
12 question. And also, I have comments on the  
13 bill.

14 Would now be the time to do both?

15 MAJORITY CHAIRMAN MUSTIO: It's  
16 appropriate.

17 REPRESENTATIVE DAY: Okay. I always  
18 look at -- just to address your comment -- I  
19 look at it as when dealer services are  
20 provided -- so in that case, if the auctioneer  
21 was providing dealer services, I think it would  
22 apply. But if they weren't and they were  
23 somehow under some legal mechanism, that it was  
24 a private seller to a private -- then we  
25 wouldn't be requiring that of the auctioneer.

1           That's the way I look at what your  
2 question was.

3           Mr. Chairman, on the bill, this is good  
4 legislation. There is a consumer protection  
5 requirement in here requiring dealers to  
6 disclose recalls.

7           There is also protection for our dealers  
8 in Pennsylvania from onerous manufacturer  
9 requirements. And the temporary license  
10 component is something that I view as very  
11 business friendly.

12           I know some people, smaller people who  
13 wanted to get into -- they might have a repair  
14 business and they want to sell a few cars, and  
15 the dealership licensing process is quite a long  
16 process. So to get them up and running in this  
17 temporary situation, I think, is very positive  
18 for small businesses in my district and  
19 throughout Pennsylvania.

20           So it's for these reasons that I'm a  
21 co-sponsor. And I would like to just urge all  
22 of my colleagues to vote in favor of this bill.

23           MAJORITY CHAIRMAN MUSTIO: Any other  
24 questions?

25           If not, I have several.

1           Just so we can understand some things  
2 here -- at least so I can understand them -- you  
3 talked about the manufacturer stop-sale orders  
4 only apply to their franchisees because they  
5 have no authority or formalized relationship  
6 with unaffiliated used car dealers.

7           How does this apply with the regular  
8 floor planning for the new cars that are on the  
9 lots?

10           I mean, are those vehicles also  
11 purchased by the dealers?

12           MR. STINE: Oh, absolutely.

13           MAJORITY CHAIRMAN MUSTIO: So there's  
14 not a --

15           MR. STINE: Really, the first owner of  
16 any vehicle, even a new vehicle, is the owner.  
17 There was a misconception because people were  
18 like, oh, well, so the manufacturers ship you  
19 the cars and then if you sell them you pay them  
20 for it.

21           Absolutely not. They have to pay for  
22 every one of those vehicles and --

23           MAJORITY CHAIRMAN MUSTIO: Is it  
24 customary -- I shouldn't say customary.

25           Are there a lot of situations where, on

1 new cars, there are stop-sale orders --

2 MR. STINE: On --

3 MAJORITY CHAIRMAN MUSTIO: -- or do they  
4 have to be on the market a certain period of  
5 time?

6 MR. STINE: I guess there are examples  
7 of it, but yeah, really, whether it's new or  
8 used, it is really whenever they identify the  
9 defect. So that really doesn't necessarily have  
10 to do with the age of the vehicle.

11 MAJORITY CHAIRMAN MUSTIO: So when I  
12 bring my car in and trade it in, and it turns  
13 out that there's a recall order on it, does  
14 that, when the dealer runs the VIN and he sees  
15 that recall order, this would require him to let  
16 the person who's trading it in know, as well?

17 So that has an impact on the trade-in  
18 value of that vehicle?

19 MR. STINE: It conceivably could. You  
20 know, whether or not the dealer elects to run  
21 that report -- one, it's being traded in. I  
22 would think a good used car manager would  
23 consider that.

24 But again, most of these just require,  
25 okay, well, the guy didn't even know it had an

1 outstanding recall; we'll take care of it. That  
2 aside, really, the next section of the bill,  
3 when parts aren't unavailable, is really what  
4 that section is for.

5 MAJORITY CHAIRMAN MUSTIO: Does the bill  
6 define how major renovations are --

7 MR. STINE: The term is significant.  
8 That would be -- well, what's a significant  
9 facility upgrade?

10 Should any dealer avail themselves to  
11 the provisions in this and protest the  
12 manufacturer, it would be up to the Vehicles  
13 Board to determine what is a reasonable -- what  
14 would be a significant physical upgrade.

15 MAJORITY CHAIRMAN MUSTIO: And I'm not  
16 familiar with franchise agreements, so are the  
17 franchise agreements regulated by State law?

18 Are they pretty much boilerplate, or do  
19 they vary by manufacturer?

20 MR. STINE: Vary by manufacturer, my  
21 counsel informs me.

22 MAJORITY CHAIRMAN MUSTIO: And then,  
23 just one last --

24 MR. STINE: Sure.

25 MAJORITY CHAIRMAN MUSTIO: -- question.

1           As it relates to your last section where  
2 you said, it's very important to note that this  
3 definitional modernization would in no way raise  
4 the documentary fee permitted to be charged.

5           So you're just going to be listing  
6 additional items that --

7           MR. STINE: Yeah, exactly. I didn't  
8 want anybody -- I wanted to make it clear that  
9 the Board of Vehicles Act provides for the  
10 documentary fee and puts maximum charges that  
11 can be sold to -- that could be charged to  
12 customers that are -- I just wanted to make sure  
13 the Committee is aware that, while the  
14 definition of a documentary charge is being, you  
15 know, modernized to come up to the current, it's  
16 not changing that figure one bit.

17           Anything that would require an act of  
18 the General Assembly and the approval of the  
19 Attorney General --

20           MAJORITY CHAIRMAN MUSTIO: Thank you.

21           Do any other members have questions,  
22 follow-up questions?

23           Okay. Thank you for your testimony.

24           MR. STINE: Thank you, Mr. Chairman.

25           MAJORITY CHAIRMAN MUSTIO: All right.



1 Our next testifier is from the Alliance of  
2 Automobile Manufacturers, and it's Wayne Weikel.

3 Thank you for appearing today.

4 You may proceed.

5 MR. WEIKEL: Good morning, Mr. Chairman,  
6 members of the Committee.

7 My name is Wayne Weikel. I'm with the  
8 Alliance of Automobile Manufacturers.

9 The Alliance is a trade association  
10 representing 12 of the world's leading car  
11 manufacturers who, together, combine to sell 76  
12 percent of the vehicles that are registered on  
13 Pennsylvania roadways.

14 I have provided written testimony, so I  
15 will only provide a couple of highlights here  
16 today.

17 Under existing Federal law, automakers  
18 pay dealers at an annualized rate of 12 percent,  
19 or one percent monthly, for any vehicle that is  
20 not able to be sold due to an open recall. Just  
21 to the point of your question, no new vehicle  
22 can be sold with any open recall. So it's not  
23 just safety recalls, it's any recall.

24 But HB 1898 looks to take this principle  
25 of paying dealers when they're not able to sell

1 a vehicle and it applies it to the sale of used  
2 vehicles. But instead of tracking with the  
3 Federal law, which is 12 percent annually, this  
4 bill is drafted to require an analyzed rate of  
5 21 percent of the car's value.

6 We believe this rate is excessive. And  
7 we also think it's out of step with what other  
8 States have done in this area.

9 In the last two years, 12 States have  
10 taken action on this type of issue. Six States  
11 have come in at 12 percent; and six States have  
12 come in at a higher percent of 18 percent. No  
13 state has passed a rate that is as high as  
14 1898's.

15 We also take issue with the grace period  
16 that Mark explained, which is the time period  
17 before which a manufacturer has to start paying  
18 a dealer for these outstanding recalls.

19 The intent of these payments is for a  
20 manufacturer to pay a dealer for vehicles that  
21 -- costs incurred while a vehicle would have  
22 otherwise been sold. In the natural course of  
23 retail, however, there's a period where the  
24 vehicle is in the possession of the dealer, but  
25 has not yet been sold.

1           During this period, the vehicle is  
2 transported or received. It's inspected. It's  
3 reconditioned. It's advertised and ultimately  
4 put on the lot for sale.

5           There's no reason that a manufacturer  
6 should be paying -- should be obligated to make  
7 payments during this period, when a dealer may  
8 not have otherwise sold the vehicle regardless  
9 of having a stop-sale order.

10           While obviously, this is subject to a  
11 lot of different variables, it's not uncommon  
12 for a used vehicle to sit on a dealer's lot for  
13 45 to 60 days. We just think any legislation in  
14 this area should acknowledge this industry  
15 reality.

16           Finally, I just want to touch on the  
17 facility upkeep provisions contained in  
18 Section 3. The distribution system for  
19 automobiles is rather unique in that  
20 manufacturers of a product are prohibited by law  
21 from selling that product. Instead, they have  
22 to contract with a third-party to sell that  
23 product.

24           For the privilege, though, of being the  
25 exclusive provider of this manufacturer's

1 product, auto dealers agree to uphold a  
2 manufacturer's brand and image. Showroom  
3 facility requirements are part of this  
4 agreement.

5 We simply believe that a 10-year period  
6 is too long to prohibit a manufacturer from  
7 controlling its brand. Imagine a showroom in  
8 2000 that hadn't been updated since 1990 or  
9 before; a lot can change in a whole decade.

10 As the consumer is the one who suffers  
11 from an outdated facility, we just believe that  
12 a 7-year period is more appropriate to consider  
13 in this bill.

14 Finally, I just want to say, we have  
15 seen these bills in a lot of States. In each  
16 instance, the Alliance and our members have  
17 worked to -- worked with the local dealer  
18 representatives and attempted to work out these  
19 bills.

20 We appreciate that forcing legislators  
21 to choose winners and losers between business  
22 interests is not ideal, and we have worked to  
23 avoid that outcome in many locations. And to  
24 that end, I want to thank Mark and his people  
25 here in the Commonwealth for their time last

1 week. We had a very productive meeting with  
2 them.

3 It is our hope that we can continue  
4 these discussions and work out our remaining  
5 points of conflict before any action is taken on  
6 this bill. I thank you for your time, the  
7 opportunity to present, and I'm happy to answer  
8 any questions.

9 MAJORITY CHAIRMAN MUSTIO: Thank you.

10 Any questions from members?

11 Yes. Representative Quinn.

12 REPRESENTATIVE QUINN: Hi. Thank you  
13 for your testimony today.

14 I know I had just made comments about  
15 the facility upgrades. You just said that the  
16 consumer is the one that suffers if it's not  
17 upgraded.

18 Could you tell me what kind of  
19 suffering --

20 MR. WEIKEL: Sure.

21 REPRESENTATIVE QUINN: -- the consumer  
22 would have?

23 MR. WEIKEL: You know, the reason that  
24 we have these requirements is so that a consumer  
25 gets to go into a facility that has a certain

1 panache, a certain image, a certain transaction  
2 enjoyment. You know, we just think there should  
3 be a minimum standard.

4 You know, we certainly wouldn't want to  
5 argue every possible example of actions that  
6 have been taken by manufacturers that could be  
7 viewed as egregious by dealers, but -- we don't  
8 want to be unreasonable, but we think seven  
9 years is the right number.

10 REPRESENTATIVE QUINN: Right. And I  
11 just think your word, suffering, is a little bit  
12 overkill in that.

13 Thank you.

14 MR. WEIKEL: Fine. I will not contest  
15 that.

16 MAJORITY CHAIRMAN MUSTIO: Thank you.  
17 Representative Day.

18 REPRESENTATIVE DAY: Thank you,  
19 Mr. Chairman.

20 What is the life cycle of a model year  
21 of a new vehicle?

22 Like, I think I have a lay idea, but I'm  
23 curious what that --

24 MR. WEIKEL: It's a little complicated.  
25 A manufacturer -- for example, a manufacturer on

1 January 2nd, 2018 can begin selling a 2019  
2 vehicle.

3 REPRESENTATIVE DAY: Excuse me. Let me  
4 -- let me reframe my question because I know  
5 where you're going. I didn't mean to ask that  
6 question.

7 The question I'm trying to ask is, when  
8 Toyota makes the Camry, how long does the Camry  
9 stay?

10 And I think -- I guess I will tell you  
11 what I think I know. About three years and then  
12 there's model, you know, some kind of upgrades  
13 that makes it different. It could be two years,  
14 two to three years, but it's still a Camry and  
15 then they --

16 MR. WEIKEL: Sure.

17 REPRESENTATIVE DAY: -- do upgrades  
18 again in three years; six years total. And then  
19 they run it out to about 10 years. And  
20 sometimes that model goes away or sometimes it  
21 stays on forever.

22 So I'm curious, the average model, what  
23 is that life span? Because I think we might be  
24 around eight to 12 years or something.

25 MR. WEIKEL: Sure. I think that's a

1 reasonable way to explain it. Usually, if a  
2 new -- obviously, a name of a car can go on for  
3 many years -- but if you get a major refresh of  
4 a vehicle, that might last for three or four  
5 years.

6 Then a manufacturer might do what they  
7 call a mid-model refresh, which they sort of  
8 change it. It's sort of the same, but maybe  
9 they've tweaked the headlights, changed minor  
10 bits.

11 Then they probably run three or four  
12 years before they're planning to make another  
13 major change. For the sort of larger changes,  
14 it's a seven- or eight-year cycle change. But  
15 obviously, it varies between each manufacturer  
16 and each product.

17 REPRESENTATIVE DAY: Is that why you  
18 recommend seven years, because of that?

19 MR. WEIKEL: No. I don't think there's  
20 any correlation between that.

21 REPRESENTATIVE DAY: Okay.

22 MR. WEIKEL: I think it's just a number  
23 that's, you know -- how long has a facility --  
24 and again, this is the minimum. It's just to  
25 establish that there is a time when -- doing it



1 more frequently than seven years would probably  
2 be viewed as egregious.

3 As Mark said, they might still be paying  
4 off a loan that they had previously. Seven is a  
5 rather arbitrary number, but we think it's more  
6 appropriate than 10.

7 REPRESENTATIVE DAY: What have you  
8 identified as the points of contention for you?

9 One is seven years rather than 10 years  
10 contained in the bill.

11 What are some of the other points that  
12 you think we need to be looking at?

13 MR. WEIKEL: Sure. As I started my  
14 comments, the rate. In the bill, it speaks of  
15 the rate in the context of monthly payments, but  
16 I think more people, naturally, think in the  
17 context of annual, APR. It's how most other  
18 things are operated.

19 We think that's -- we see no reason that  
20 it shouldn't track the Federal law, which is 12  
21 percent.

22 REPRESENTATIVE DAY: Federal law is 12;  
23 and this one you've calculated at 21?

24 MR. WEIKEL: At 21.

25 REPRESENTATIVE DAY: Okay.

1 MR. WEIKEL: It's a minimum of --

2 REPRESENTATIVE DAY: Any other  
3 components that we should be looking at?

4 MR. WEIKEL: And then the grace period  
5 is -- it's 15 days in the bill. You know, we  
6 think a longer period is more appropriate, given  
7 that's just the natural course of this.

8 REPRESENTATIVE DAY: You said 45 to 60.  
9 Do you have a number?

10 MR. WEIKEL: We have searched high and  
11 low. We can't find an industry average, so it's  
12 anecdotal on all sides on that. But it's not  
13 uncommon to have --

14 REPRESENTATIVE DAY: Thank you.

15 MR. WEIKEL: -- 45 days. I think 60  
16 would be considered long, but --

17 REPRESENTATIVE DAY: Thank you for being  
18 here today. And thanks for representing  
19 manufacturers.

20 Thank you, Mr. Chairman.

21 MAJORITY CHAIRMAN MUSTIO: Thank you.  
22 Representative Santora.

23 REPRESENTATIVE SANTORA: Thank you,  
24 Mr. Chairman.

25 Talking about the renovations or updates

1 to a dealership, I come from the real estate  
2 development world. We don't amortize things  
3 over seven years. We amortize them over 10, 15,  
4 20, 30 -- 25 sometimes.

5 I don't know too many dealers going out  
6 and getting five-year loans on their  
7 renovations. They are 10 and 15 years.

8 My family business builds and renovates  
9 car dealerships all up and down the east coast.  
10 Those guys struggle to come up with those last  
11 payments because they have to borrow X.

12 They need certain amounts of cash flow,  
13 and they become the bank. This is -- to now  
14 potentially squeeze this to seven, it doesn't  
15 work for me. I will be honest with you.

16 And I'm going to highly encourage my  
17 colleagues to support me on the 10-year piece of  
18 this. I think it's important to the dealers.

19 I believe the big guys can handle it,  
20 and I'm not going to mention names, but they own  
21 multiple dealerships. It's not a problem.  
22 They've got cash flow.

23 It's going to hurt the little guys.  
24 It's going to hurt the one-offs. It's going to  
25 hurt the guy that owns two dealerships and

1 worked his butt off to get that second  
2 dealership, but he performs so well as a dealer,  
3 not necessarily in volume, but his ratings and  
4 everything else have been there -- her ratings  
5 have been there -- and was able to acquire that  
6 second dealership.

7 I just don't want to so them get hurt.  
8 So I'm going to -- I'm going to hold hard on  
9 this one for the 10 years.

10 The stop-sale, it says right in your  
11 note, when the manufacturer issues a stop-sale  
12 directive -- we're not talking new cars where  
13 the dealer can pick up the phone to another  
14 dealer and do a dealer trade. We're talking  
15 about a red Honda Accord with tan interior that  
16 somebody walked on the lot and said, I only want  
17 a red Honda Accord 2008. I don't want anything  
18 else.

19 So there is some justification for these  
20 dealers that cannot sell that car until it's  
21 fixed. And hopefully it just motivates the  
22 manufacturers to move forward.

23 So we're willing to work. I know the  
24 trade folks are willing to work on it. We'll  
25 come up with something, but let's think about

1 the people that are putting it all out there and  
2 have to make a living and keep the salespeople,  
3 the mechanics, the secretaries, everybody  
4 employed, as well.

5 I appreciate your testimony. It does  
6 open my eyes to a few things. And I'm willing  
7 to sit down and talk and listen and come to a  
8 final product on this. I think we have a good  
9 product here, but if we can make it better, I'm  
10 always willing to listen.

11 Thank you.

12 MR. WEIKEL: Thank you.

13 MAJORITY CHAIRMAN MUSTIO: Thank you.  
14 Representative Kortz.

15 REPRESENTATIVE KORTZ: Thank you,  
16 Mr. Chairman.

17 Thank you, sir, for your testimony  
18 today. Obviously, it sounds like the biggest  
19 problem you have is the 21 percent, the 1.75  
20 percent per month. If that was put at  
21 one percent, would you guys be behind it?

22 MR. WEIKEL: Yeah, I mean, I think it's  
23 an equation. So you're talking -- you know,  
24 they are both variables.

25 The grace period -- when you have to

1 start paying and how much you have to start  
2 paying kind of go hand in hand. But you know,  
3 we would be very happy to see one percent.

4 REPRESENTATIVE KORTZ: So you would go  
5 along with the rest of the bill as it is?

6 MR. WEIKEL: I would, obviously, you  
7 know -- we are hoping to see some language back  
8 from PAA and kind of continue to work through  
9 it. Obviously, I represent members and I would  
10 have to get their approval on it, but you know,  
11 we think there is some room to work with us.

12 REPRESENTATIVE KORTZ: Okay. Thank you.  
13 Thank you, Mr. Chairman.

14 MAJORITY CHAIRMAN MUSTIO: Spoken truly  
15 like somebody who is in government relations.

16 MR. WEIKEL: If I could, just one final  
17 -- just since it came up. We didn't really take  
18 issue or have concern with the dealers providing  
19 the recall notice at time of sale. We're very  
20 encouraging of States coming up with ways to get  
21 these cars in to be repaired.

22 We are graded on how well we do on these  
23 recall systems. We have suggested in some  
24 States, for States that have an annual  
25 inspection, at the time of annual inspection,

1 hand the owner the list of outstanding recalls.  
2 And we're also -- this is helpful for the  
3 dealers.

4 The Alliance of Automobile Manufacturers  
5 and Global Automakers -- it's the other trade  
6 association -- we've actually been working on  
7 coming up with our own system and developing it  
8 out of our pocket to allow batch lookups.

9 The challenge with the safer car site  
10 that Mark referenced, you have to put in each  
11 VIN number separately. There's no way for a  
12 dealer to do their entire inventory.

13 We're working out of our own pocket for  
14 States so that they can do, you know, thousands  
15 at once and not have to do it individually. So  
16 this is something we're all on the same page  
17 for, you know. It's in the consumer's best  
18 interest. It's in public safety interest.

19 So I just wanted to let you know that  
20 since it was brought up.

21 MAJORITY CHAIRMAN MUSTIO: We've been  
22 joined by Chairman Gillespie.

23 One of the things I found over the  
24 years, regardless of what the topic is, is when  
25 the person that testifies first or second or

1 third, and somebody else comes after, members  
2 may have other questions, right, but we don't  
3 get an opportunity as a group to ask those. So  
4 I would be curious, Representative Kortz, if you  
5 would be willing to ask that same question to  
6 Mark Stine while he's here.

7 Because I'd be interested in their  
8 response on your comment about the one percent  
9 per month.

10 Is that --

11 MR. STINE: Representative Kortz, may I?

12 MAJORITY CHAIRMAN MUSTIO: Feel free to  
13 stay here. Dialogue is good, so --

14 MR. STINE: And actually, what I was  
15 going to, not rebut, but certainly bring to the  
16 Committee's attention -- and my colleague here  
17 mentioned the Global Automakers, which is they  
18 are a companion agency/association who  
19 represents manufacturers. Some of them even are  
20 members of both of your organizations, I  
21 believe.

22 That figure that is in the bill right  
23 now, the percentage figure you're talking about,  
24 it wasn't an arbitrary thing we came up with.  
25 The 1.75 percent figure you're talking about



1       came from an agreement that was reached at the  
2       national level with the Global Automakers,  
3       between them and the National Auto Dealer's  
4       Association, the dealers' counterpart, with  
5       another auto association that represents  
6       manufacturers. And they agreed to that 1.75  
7       figure, as well as the 15-day figure.

8               So while I believe the Alliance was a  
9       part of those negotiations, they weren't part of  
10      the national agreement, but Aston Martin,  
11      Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati,  
12      Maclaren, Nissan, Subaru, Suzuki and Toyota were  
13      all a party to that agreement and agreed.

14             That language is what appears in the  
15      bill today. I'm saying we're certainly willing  
16      to discuss some movement, because some other  
17      States have come down a little bit from the 1.75  
18      figure. We're open to that, but that was the --  
19      I just wanted the Committee to know that PAA  
20      didn't sit down and make up this figure and want  
21      to be overreaching or anything like that. It  
22      came from a national settlement.

23             MAJORITY CHAIRMAN MUSTIO: Thank you.

24             Now, we did get a letter from the Global  
25      Automakers opposing the legislation, but they

1 don't specifically address --

2 MR. STINE: I would imagine not.

3 MAJORITY CHAIRMAN MUSTIO: -- specific  
4 items in the bill like yours does. No.

5 One question for you, Mr. Weikel, if you  
6 could expand, please. In your second paragraph,  
7 you talk about voluntary programs that the auto  
8 manufacturers have already implemented.

9 Are they implemented to address some of  
10 the points of concern?

11 And if they are implemented for that,  
12 what is the problem with getting those in  
13 legislation, so that everybody is on the same  
14 playing field?

15 MR. WEIKEL: Sure. I will answer it in  
16 sort of two different ways that auto  
17 manufacturers address these in.

18 Generally, auto manufacturers do help  
19 their dealers with financing on their entire  
20 industry floor plan. Whether the car is under a  
21 recall or not, auto manufacturers, many of them,  
22 help fund the financing of those vehicles, you  
23 know, at a favorable rate.

24 So that's already out there, that they  
25 are being assisted on the front end. Separate

1 manufacturers have gone out and -- you know, we  
2 don't deny that this is an issue. It certainly  
3 came to light with this Takata airbag situation,  
4 where not only was it widespread, but the  
5 solution just has not been quick to materialize.

6 There are only four airbag manufacturers  
7 in the world and there is no additional supply.  
8 You can't just turn and go to another  
9 manufacturer.

10 So now that Takata has filed for  
11 bankruptcy, it's a hugely problematic challenge.  
12 Auto manufacturers don't walk away from that  
13 risk. So that's why we've come up to 12 percent  
14 to track with the Federal law.

15 But yes, individual auto manufacturers,  
16 as I understand it, these are generally not  
17 public -- Mark, you actually may have more  
18 knowledge on this than I do.

19 For antitrust reasons, we actually don't  
20 talk about what our dealers -- our manufacturers  
21 do with dealers directly. I have heard  
22 anecdotally that a lot of manufacturers are  
23 paying rates that -- either directly on a recall  
24 or have found other ways to reimburse, whether  
25 it's favorable pricing on cars or other things.

1           So it is an interesting business  
2 relationship, back and forth. We're all on the  
3 same side trying to sell vehicles, but I can't  
4 speak with specificity of -- I do know they are  
5 out there.

6           Mark may know better than I on which  
7 have. And for the purpose of the bill, it's  
8 creating the minimum floor.

9           MAJORITY CHAIRMAN MUSTIO: All right.  
10 Any other comments?

11          MR. STINE: And again, as far as a  
12 reasonable -- right. We're not asking -- it's  
13 not like we -- oh, if you're going to tell us we  
14 can't sell this vehicle, well, then buy them  
15 back.

16          Again, we're on the same team. You make  
17 them; we sell them. But this one percent --  
18 well, the percentage, whatever we come up with  
19 -- is very routine practice and is certainly not  
20 like becoming a profit center by the dealers, by  
21 any means, on the backs of the manufacturers.

22          MAJORITY CHAIRMAN MUSTIO: And I forgot  
23 about the airbag issue.

24          Is that what has really brought this to  
25 the forefront?

1           MR. STINE:  It's the most visible  
2           example.

3           MR. WEIKEL:  Yeah.  I mean, I think  
4           that's what heightened the issue, but that  
5           brought the NHTSA, National Highway Traffic  
6           Safety Administration, to sort of deal with  
7           recalls a little differently.  And they've been  
8           expecting more from manufacturers, to have  
9           quicker -- and come forward with information  
10          earlier, which is all fine.

11          The challenge in this, the part of the  
12          reason it applies to more than just airbags,  
13          they don't let us -- you know, if we identified  
14          a problem, they don't let manufacturers  
15          re-engineer the product, start production, so  
16          that when they issue a recall, they have the  
17          product in line to sell it.

18          We would be fined if we somehow hid the  
19          recall for a period while we got ready for it.  
20          So just based on how recalls work and how  
21          they're regulated, there's a natural delay  
22          between, we issue a recall, okay, now we have to  
23          go fix whatever part was the problem, get  
24          someone to manufacture it, and then deliver it.

25          So it's a challenging problem.  But yes,

1 Takata is when everyone realized, wait a second,  
2 these are, you know, huge numbers. And the  
3 problem is just not going away quickly.

4 MAJORITY CHAIRMAN MUSTIO: Okay. Thank  
5 you.

6 And thank you members. That concludes  
7 the hearing.

8 MR. STINE: Thank you, Mr. Chairman.

9 MR. WEIKEL: Thank you.

10 (Whereupon, the hearing concluded at 10:45 a.m.)

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CERTIFICATE

I hereby certify that the proceedings  
are contained fully and accurately in the notes  
taken by me on the within proceedings and that  
this is a correct transcript of the same.

*Tracy L. Markle*

Tracy L. Markle,  
Court Reporter/Notary