

HOUSE COMMERCE COMMITTEE

PUBLIC HEARING ON HB 506

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TESTIMONY OF

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Good morning, Chairman Daley, Chairman Hess, Representative Ross and fellow members of the Commerce Committee.

My name is Mark Stine, and I am the legislative director of the Pennsylvania Automotive Association. For the past ninety years, my association has represented the franchised, new vehicle dealers doing business in Pennsylvania.

Currently, there are approximately 1000 such dealers in the Commonwealth. I say "approximately" because, unfortunately, the past two years saw the demise of several hundred of these Pennsylvania business, most of which were owned and operated by the same family for several generations.

We appreciate very much the opportunity to appear before you today to provide some insights into the provisions of Representative Ross' HB 506. I am familiar with the great amount of effort, and the variety of input, that has gone into the crafting of this legislation and commend those who took part in its development.

We also understand the interest and appropriateness of the General Assembly revisiting the statutes addressed in this bill before you today. Indeed, the act directly affecting my industry, the Motor Vehicle Sales Finance Act, has not been significantly revised since its enactment in 1947.

The act has been “tweaked” on occasion, however, and representing my association, I was involved in the most recent amendment of the Motor Vehicle Sales Finance Act in 2002. At that time, this act, which essentially oversees the financing of vehicle sales in Pennsylvania, was amended to accommodate certain current industry practices and products that came into existence in the fifty years since the act’s original implementation.

The legislation offered in April 2002 was prepared with the cooperation of the Banking Department and all interested parties and time-consuming negotiations resulted in an agreed to proposal that moved steadily through the legislative process.

Besides establishing new causes of action for the Banking Department to pursue against its licensees and the authority to charge its licensees for examinations and investigations, the 2002 legislation included many other key consumer protections including:

- Requiring the separate itemization of the charges for all items necessary or incidental to the vehicle sale on the installment sales contract

- Requiring the separate oral and written disclosure (signed by the customer prior to the signing of the installment sales contract) advising the financing applicant that the purchase of non-essential items relating to the vehicle sale (such as service contracts, warranties, or insurance products) are voluntary and not required as a condition of receiving the loan, and
- Requiring installment sales contracts to disclose that the seller may be retaining a portion of the charge of a good or service being financed.

Act 2002-186 also permitted the financing of “after-market” products purchased in conjunction with a vehicle sale, and specifically prohibited dealers making excessive mark-ups of such products.

There is no doubt that Pennsylvania’s consumer public was well served by these relatively recent amendments to the Motor Vehicle Sales Finance Act.

However, one amendment offered in 2002 that was not a part of the legislation when it was introduced continues to trouble my association’s membership. Inserted into the bill’s provision that prohibited excessive mark-ups of after-market products and required the Department to develop guidelines stating what it considers to be excessive was a mark-up cap placed on three particular after-market products. Specifically, service contracts, warranties and debt cancellation and suspension agreements.

By law, the statutorily imposed cap on these individual products was to be temporary “until such time as the department adopts its guidelines.” To date, we are unaware of the development of such guidelines and the caps remain in place and aggressively enforced by department auditors.

As mentioned earlier in my remarks, the charge for these products are specifically disclosed in the installment sale agreement associated with the vehicle sales and the consumer is notified that purchasing (and financing) these products is not a condition of the sale and that the dealer may be a partial recipient of some of the charges for the products. These are voluntarily elected after-market products that the customer desires to have included in his financed transaction.

It is unclear to my membership therefore why three seemingly arbitrarily selected products have their mark-ups established by state law. I personally am at a loss to think of any other industry or product that is subjected to similar treatment. I wish the restaurant that charges me a three hundred percent mark-up on a bottle of wine I get with dinner would have similar limitations.

Even with that example, my decision to purchase that bottle of wine is a voluntary one. Any savvy retailer, whether a restaurateur or a car dealer, should be expected to allow the market to dictate what a customer will reasonably be willing to pay and price his or her products accordingly. Isn't that a more traditional business model?

Finally, I should add that only financed vehicle transactions are subject to the provisions of the Motor Vehicle Sales Finance Act. Therefore, Pennsylvania consumers using cash or direct financing or leasing their vehicle may be charged any level of mark-up for these products. We suspect that these customers are not being unfairly charged for these products. Simply because the competitive marketplace wouldn't allow it.

When considering HB 506 before you today, the Pennsylvania Automotive Association, on behalf of the remaining new vehicle dealers operating in the state, respectfully requests that you reconsider the unfair cap provision currently appearing in the Motor Vehicle Sales Finance Act. Any additional information we could provide you would of course be made available if it would provide you assistance.

Thank you once again for allowing me this opportunity to appear before you.