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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
CHICAGO REGIONAL OFFICE

COMMISSION AUTHORIZED

February 22, 1994

The Honorable Rick McConnell
Chairman, Public Policy, Ethics
and Veterans Affairs Committee
House of Representatives
200 West Washington Street
Room 100
Indianapolis, IN 46204

Dear Chairman McConnell:

The staff of the Federal Trade Commission¹ offers this comment on Senate Bill No. 396. This bill would prohibit engaging in the business of acting as a broker to arrange sales or leases of new cars and trucks. We believe that the bill's prohibition of alternative methods of arranging new vehicle transactions would likely reduce competition and deprive consumers of savings that they could realize by using these methods.

I. Interest and experience of the Federal Trade Commission.

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair deceptive acts or practices in or affecting commerce.² Consistent with this statutory mandate, the Commission and its staff work to identify restrictions that hinder competition and increase costs without providing countervailing benefits to consumers.

The Commission has long been concerned about restrictions imposed on retailing methods that can be beneficial to consumers. In the retail automobile market in particular, the Commission has

¹ These comments represent the views of the staff of the Chicago Regional Office and the Bureau of Competition of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioners. Our views on this bill were requested by Representatives Jerry Bales and Rolland Webber.

² 15 U.S.C. § 41 et seq.

ruled that dealers in the Detroit area unreasonably restricted competition by agreeing to limit their hours of operation.³ The staff of the Commission has published economic research about automobile marketing.⁴

The staff of the Commission has submitted comments to state governmental bodies nationwide about proposals to restrict competition among automobile marketers. The staff has frequently commented on proposals to prohibit brokering or regulate off-premises sales, most recently in Missouri,⁵ California,⁶ and Wisconsin.⁷ Three comments were addressed to proposals in Illinois, including one to prohibit brokering.⁸ And the staff commented on a Michigan bill, similar to S.B. 396, that also would have prohibited brokering.⁹

³ Detroit Auto Dealers Ass'n, Inc., FTC Dkt. No. 9189 (February 22, 1989), aff'd in part and remanded in part, 955 F.2d 457 (6th Cir.), cert. denied, 113 S. Ct. 461 (1992); consent agreement accepted for public comment (January 24, 1994).

⁴ See Robert P. Rogers, The Effect of State Entry Regulation on Retail Automobile Markets, Federal Trade Commission, Bureau of Economics Staff Report (January 1986). The Report concluded that state laws restricting the number of automobile dealers in an area were costly to consumers.

⁵ Comment to Sen. J. B. Banks (April 6, 1990).

⁶ Comment to Sen. Quentin L. Kopp (January 5, 1990).

⁷ Comment to Wisconsin Department of Transportation (November 3, 1989).

⁸ Comment to Sen. Aldo A. DeAngelis (March 21, 1989). The bill would also have expanded dealer licensing provisions. Another proposal, the subject of a comment to Gov. James R. Thompson (September 8, 1989), would have tightened market area restrictions on franchised dealerships and extended those restrictions to franchised auto service centers. Governor Thompson amendatorily vetoed the provisions relating to car dealerships and automobile service centers and vetoed the dealer licensing bill. The staff also commented on a bill to prohibit car dealers from holding sales outside their local markets. Comment to Rep. Woods Bowman (April 24, 1987).

⁹ Comment to Sen. Dick Posthumus (September 29, 1988). For other comments on state proposals concerning vehicle sales, see comments to Florida Sen. Gwen Margolis (March 29, 1988); South Carolina Rep. David C. Waldrop, Jr. (March 21, 1988); California Assemblyman Richard Katz (January 29, 1988); and Texas Gov. William P. Clements, Jr. (June 1, 1987).

II. Description of S.B. 396.

The bill would prohibit engaging in the business of acting as a broker to arrange sales or leases of new motor vehicles. The statutory definition of a broker, namely one who, although neither a franchised dealer (or employee) nor the owner, receives a fee or other consideration for arranging a transaction involving a vehicle, would be expanded to include arranging for buying, leasing, and sale for resale.¹⁰ The bill would prohibit engaging in that business for new motor vehicles,¹¹ subject to a penalty of \$5000 per vehicle.¹² Other references to brokering now in the law, which provide for licensing and regulating brokers, would be deleted.¹³

III. Effects of S.B. 396.

The bill would prohibit the business of helping consumers, for a fee, to arrange new vehicle purchases or leases. The expansive definition of "broker" would also likely encompass, and therefore prohibit, many of the car sales activities now sponsored by credit unions, buying clubs, and other organizations. The bill apparently would prevent anyone except dealers and owners (and actual prospective purchasers or lessors) from negotiating sales or leases of new cars and trucks. The effect would be to inhibit existing and potential competition in new vehicle sales and leases.

A prospective buyer may now call on several kinds of assistance in identifying licensed dealers willing to sell at a price the buyer is willing to pay. One source, which has been growing over the last few years, is individual brokers and buying services who offer consumers the service of arranging new car transactions, usually for a set fee. These brokers may solicit competitive bids from dealers for vehicles that meet their customers' requirements. Thus, brokers can save consumers money on the purchase or lease price, and they can also save them "search costs," that is, the cost of time and effort spent on haggling.

¹⁰ S.B. 396, §1, to amend IC 9-13-2-15.

¹¹ S.B. 396, §5, to add IC 9-23-2-15.

¹² S.B. 396, §7, to add IC 9-23-6-10.

¹³ S.B. 396, §§3, 4, 6, and 8, to amend IC 9-22-2-1, IC 9-22-2-5, IC 9-23-3-19, and IC 9-29-8-4.

Another source of assistance is credit unions, which sponsor automobile sales conducted through dealers. In such sales, dealers make vehicles available to credit union members at favorable prices. Credit unions encourage these sales to promote opportunities to provide financing. Dealers may agree to participate to attract potential customers and to ensure higher sales volume, which in turn may make it possible for the dealers to offer substantial savings.¹⁴ Consumers may benefit from lower prices, easier shopping, and better financing arrangements.

Buying clubs and referral services may also arrange to make new cars available to consumers at discount prices. These services, which generally charge an annual membership fee, arrange new car transactions for their members at guaranteed prices with participating dealers. As with the credit unions, dealers may agree with buying clubs to offer cars to the club's members at reduced prices; in return, dealers gain access to customers and perhaps increased volume. A survey of six automobile buying services by Changing Times magazine concluded that customers buying cars through these services would have realized substantial savings on each purchase.¹⁵

But S.B. 396 could eliminate these arrangements along with the vehicle brokerage business, because a credit union or buying club might be illegally acting as a broker if it received "valuable consideration" for its role. For credit unions, that consideration could take the form of the interest paid on their loans; for buying clubs, it could be the fees received from their members. These groups may therefore be prohibited from arranging new vehicle transactions. Prohibiting "brokering" functions, both by individual brokers and by organizations, could eliminate services that benefit Indiana consumers by saving them money and inconvenience.

¹⁴ Credit union-sponsored sales may stimulate other business for dealerships, too. Special financing terms and rates may be offered for the sale, and credit union members may shop with pre-approved financing terms. Moreover, these terms may be kept open after the sale ends, so consumers may have the option to obtain a car that was not available at the sale, still under the sale's financing terms.

¹⁵ Taking the Hassle out of Car-Buying, Changing Times, Aug. 1988, at 37. See also Kiplinger's Personal Finance Magazine, Dec. 1992; Car Buying for Those Who Hate to Haggle, Business Week, Aug. 30, 1993, at 86.

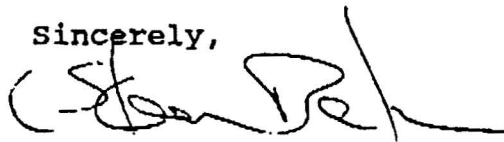
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Finally, S.B. 396 may dampen competition among car dealers. Dealers can now compete with each other to offer attractive prices to credit unions and buying clubs. They may find themselves bidding against each other for sales arranged by brokers. But S.B. 396 would prevent the dealers from engaging in this kind of competition and make it easier for them to keep their prices higher. It would also remove from the marketplace participants whose greater knowledge and experience enables them to help consumers arrange transactions at lower prices.

IV. Conclusion.

S.B. 396 may reduce competition and increase what Indiana consumers pay to buy or lease new vehicles. Prohibiting brokering would eliminate sales techniques that may save Indiana consumers substantial amounts of both money and time in new vehicle transactions.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Steven Baker". The signature is written in a cursive style with a large, sweeping flourish at the end.

C. Steven Baker
Director