



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

[SFRO letterhead] May 26, 1995

The Honorable **Joan Lambert**
The State Assembly of Nevada
401 S. Carson Street
Carson City, NV 89710

Dear Ms. Lambert:

The staff of the Federal Trade Commission⁽¹⁾ is pleased to offer this response to your request for comment on Assembly Bill 205. This bill would redefine "new" and "used" vehicles and change the permitted functions of dealers in a way that could discourage the business of acting as a broker to arrange sales or leases of new cars and trucks. We believe that the bill's effects on alternative methods of arranging new vehicle transactions could 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 or 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 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 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 automobile brokering or to regulate off-premises sales, most recently in Minnesota,⁽⁵⁾ California,⁽⁶⁾ and Indiana,⁽⁷⁾ and also in Missouri, Wisconsin, Illinois, and Michigan.⁽⁸⁾

II. Description of A.B. 205.

The bill would amend the definition of "new vehicle" by adding the criterion of having less than 2500 miles on the odometer.⁽⁹⁾ The definition of "used vehicle" would also be changed correspondingly.⁽¹⁰⁾

A.B. 205 would introduce a distinction between new and used vehicle dealers.⁽¹¹⁾ A "used vehicle dealer" would be limited to acquiring used vehicles for resale.⁽¹²⁾ The bill would, however, permit used vehicle dealers to sell new vehicles at wholesale to other dealers (new or used), and to sell new vehicles "on consignment from a person not licensed as a vehicle dealer."⁽¹³⁾ A used vehicle dealer apparently would not otherwise be permitted to transact with consumers concerning new vehicles.

The bill would also change what new vehicle dealers are authorized to do, by preventing them from making retail sales of vehicles for which they do not have a manufacturer's franchise.⁽¹⁴⁾ A new vehicle dealer apparently could perform the other services listed in the statutory definition of "dealer" even with respect to new vehicles for which it lacks a franchise.

III. Effects of A.B. 205.

Nevada law authorizes licensed vehicle dealers to engage in a broad range of activities. Dealers in used vehicles can and apparently do help consumers arrange purchases of new vehicles, by performing brokering functions included in the statute's definition of "dealer." A.B. 205 would prevent used vehicle dealers from continuing to perform those functions with respect to new vehicles. New vehicle dealers could still perform other kinds of dealer activities, including some brokering functions, for new vehicles for which they lack manufacturer franchises.(15) The effect of preventing anyone except new vehicle dealers from offering such services could be to inhibit existing and potential competition in new vehicle sales and leases.

Where the law permits, a prospective buyer may 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 in other parts of the country, 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 shopping and haggling. In Nevada, used vehicle dealers apparently perform similar services, by arranging to buy, deliver, and resell new vehicles to consumers.

Another source of assistance in many states 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.(16) 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 in many states. These services, which generally charge consumers 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.(17)

Under A.B. 205, vehicle brokering services to consumers could be curtailed, because parties that now offer those services would be prevented from continuing to do so, while those that are still permitted to offer the services may have little incentive to promote them. Used vehicle dealers could no longer transact with consumers concerning vehicles with less than 2500 miles on the odometer (or vehicles that had not previously been registered). A used vehicle dealer would be limited by law to the functions of buying and reselling used vehicles, and thus could not offer consumers search and negotiation assistance for new vehicle transactions, as "new" would be defined by A.B. 205. Moreover, a used vehicle dealer could not buy a new vehicle from a dealer and immediately resell it to a consumer. Such a transaction is not included in the two proposed exceptions to the ban on dealing in "new" vehicles, which would permit wholesale sales to other dealers and retail sales on consignment from someone who is not a dealer. The narrowness of those exceptions confirms that the effect of A.B. 205 could be to bar used vehicle dealers from the business of assisting consumers with new vehicle transactions.

Nevada law already prevents parties other than dealers from performing brokering services for compensation. A credit union or buying club might be acting as a broker if it received something of value from the seller or purchaser for matching them up. For credit unions, such consideration could take the form of the interest paid on their loans; for buying clubs, it could be the fees received from their members. A.B. 205 would make the situation worse, by changing the definitions of "dealer" to prevent anyone other than a new vehicle dealer from offering brokering services for new vehicles.(18)

New vehicle dealers may not promote those services as aggressively as other firms would. One aspect of brokering services that consumers are likely to find most attractive is the prospect of obtaining the lowest possible price. New vehicle dealers would not be expected to view that prospect with the same enthusiasm. Instead, new vehicle dealers might have incentives to keep retail prices high.

A.B. 205 would remove from the marketplace participants whose knowledge and experience enables them to help consumers arrange transactions at lower prices. Curtailing "brokering" functions could eliminate services that benefit Nevada consumers by saving them money and inconvenience.

IV. Conclusion.

A.B. 205 may reduce competition and increase what Nevada consumers pay to buy or lease new vehicles. Prohibiting brokering except by new vehicle dealers could discourage sales techniques that may save Nevada consumers substantial amounts of both money and time in new vehicle transactions.

Sincerely,

Jeffrey Klurfeld
Director

(1) These comments represent the views of the staff of the Bureau of Competition of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioner.

(2) 15 U.S.C. § 41 et seq.

(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 orders issued against certain respondents, April 20, 1994 and July 10, 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. Leonard R. Price (March 31, 1995).

(6) Comment to Rep. Ted Weggeland (April 29, 1994); see also comment to Sen. Quentin L. Kopp (January 5, 1990).

(7) Comment to Rep. Rick McConnell (February 22, 1994).

(8) Comment to Missouri Sen. J. B. Banks (April 6, 1990); comment to Wisconsin Department of Transportation (November 3, 1989); comments to Illinois Sen. Aldo A. DeAngelis (March 21, 1989), Gov. James R. Thompson (September 8, 1989), and Rep. Woods Bowman (April 24, 1987); and comment to Michigan 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).

(9) A.B. 205, §2. The current definition, which would be retained, is a vehicle that has never before been registered. NRS 482.076.

(10) A.B. 205, §3, to amend NRS 482.132.

(11) A.B. 205, §5, to amend NRS 482.322(1). A "dealer," as defined by NRS 482.020(1), means someone who, for compensation, sells, buys, offers, displays, negotiates or attempts to negotiate a sale or exchange of an interest in a vehicle or who induces or attempts to induce a person to buy or exchange an interest in a vehicle; or who receives or expects a commission, money, "brokerage fee" or other value from the seller or purchaser of a vehicle; or who is engaged in selling or buying or taking in trade vehicles for the purpose of resale, sale or offering for sale or consignment to be sold or otherwise dealing in vehicles, whether or not he owns them.

(12) A.B. 205, §4, to amend NRS 482.133; now, the definition simply connects the statutory definitions of "dealer" and "used vehicle".

(13) A.B. 205, §6, to add NRS 482.305(2).

(14) A.B. 205, §6, to amend NRS 482.350.

(15) New vehicle dealers could not buy and resell new vehicles (those with less than 2,500 miles) for which they lacked franchises, though.

(16) 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.

(17) 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.

(18) This assumes that the proposed limitation on the brands that new vehicle dealers may "sell at retail," A.B. 205, §6, to amend NRS 482.350, is not interpreted to prohibit offering brokering services in connection with retail sales of other brands.