



May 21, 2024

The Honorable David P. Sokola  
Chair, Senate Executive Committee  
Dover, DE 19901

**SB 278: RELATING TO COMMERCE AND TRADE  
POSITION: OPPOSE**

Chair Sokola,

On behalf of the Alliance for Automotive Innovation, please accept the following testimony in opposition to SB 278.<sup>1</sup> This bill will have a detrimental impact on the sale and service of electric vehicles in Delaware. It would also limit consumer choice in the marketplace for software upgrades to vehicles owned and leased by consumers. Finally, it adds unnecessary regulation of business-to-business contracts that would increase costs in the distribution of automobiles in the state.

**Is Contrary to Delaware's Electric Vehicle Policy**

Less than six months ago, Delaware adopted the Advanced Clean Cars II (ACC II) standard which sets ambitious sales requirements for sales of zero emission vehicles such as electric vehicles (EVs). The regulation requires 82% of sales to be zero-emission through model year 2032. The manufacturers that Auto Innovators represent distribute vehicles through independent dealers who sell and service vehicles, and thus our members need dealers to be committed to electric vehicles in order to meet Delaware's requirements for EV sales. SB 278 would effectively allow those dealers to reject and reverse any manufacturer requirement or agreement that dealers prepare their stores for the sale and service of EVs.<sup>2</sup>

The bill does that by allowing dealers to demand manufacturers pay them for investments in infrastructure, parts, tools, and equipment if, in the dealer's opinion, it will not realize a reasonable return on investment. Manufacturers are committed to the success of electric vehicles. Dealers need to be too, even during the bumps in the road to their adoption. No state has adopted a similar idea, and Delaware should not lead the way in the wrong direction on electric vehicles.

SB 278 also creates special associational standing rights for dealer associations. This is a potential threat to manufacturers' ability to comply with ACC II because dealer groups could seek to challenge the manufacturers' plans and policies related to EVs and allocation of vehicles. There is no

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<sup>1</sup> From the manufacturers producing most vehicles sold in the U.S. to autonomous vehicle innovators to equipment suppliers, battery producers and semiconductor makers – Alliance for Automotive Innovation represents the full auto industry, a sector supporting 10 million American jobs and five percent of the economy. Active in Washington, D.C. and all 50 states, the association is committed to a cleaner, safer and smarter personal transportation future.  
[www.autosinnovate.org](http://www.autosinnovate.org).

<sup>2</sup> Lines 304-309.

reason for Delaware to grant one association special standing rules, and indeed it creates a moral hazard by inviting other groups to seek the same special standing privileges.

### **Will Limit Consumer Choice**

An emerging market in the automotive industry is improvements to vehicles that consumers can download remotely onto their vehicles without ever leaving the driveway. That can be either a subscription-based feature or a one-time purchase. This is an excellent opportunity for consumers because their vehicles can now adapt to the consumers' changing needs over the period of ownership. Consumers of new cars can change their minds about features, and used car buyers will be able to customize their vehicle features instead of being bound by the original purchaser's decisions.

This bill would jeopardize that in Delaware. It requires manufacturers to pay the selling dealer 20% of the gross revenue derived from those remote sales for five years after the vehicle sale.<sup>3</sup> That is unreasonable and requires paying dealers for doing nothing. What's more, it is a one size solution foisted upon a variety of products that have varying retail prices, varying costs of development, and varying profit margins. This language could easily turn a product that is profitable to market in the other 49 states into something that would lose money in Delaware. Ultimately, Delaware consumers are the ones that lose from such an idea, which has not been adopted in any state.

### **Adds Unnecessary Regulation of Business-To-Business Contracts**

Automobile manufacturers and dealers are sophisticated, established businesses. They have worked together for generations to their mutual benefit. Indeed, they rely upon each other for their success. This bill adds unnecessary cost and regulation to that private contractual relationship. For example, Delaware's law today is similar to the majority of states' laws in that manufacturers may look back one year to audit payments to dealers, in order to make sure that the claims and amounts were correct. SB 278 would halve that audit window to only 180 days.<sup>4</sup> That is too short a period for manufacturers to have confidence that payments are correct. Public policy should not discourage accurate accounts.

The bill also treats manufacturers differently than their competition. Manufacturers offer maintenance plans and service contracts (colloquially called extended warranties) that consumers can buy. Those products compete against products offered by a number of competitors. That competition is good for consumers. SB 278 would force automakers to compete under a different cost structure than their competition.<sup>5</sup> It does that by requiring manufacturers to pay dealers who perform work under those products at a high, statutorily-calculated rate.

In what may be an unintended consequence, SB 278 creates ambiguity in how manufacturers compensate dealers when an EV battery needs to be replaced under warranty. The high, statutorily-calculated markup rate referenced above could result in a charge of several thousand dollars if it were

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<sup>3</sup> Lines 334-348.

<sup>4</sup> Line 115.

<sup>5</sup> Lines 63-64.

to be construed to apply to electric vehicle batteries. This would be an absurd result that is not based on the actual work performed, and the General Assembly should amend the bill to be clear on this point.

**Conclusion**

SB 278 runs counter to Delaware's EV policy and goals. It is bad for consumers. It adds unnecessary cost. For these reasons, we respectfully ask the Committee to hold this bill until these issues are resolved. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Fisher".

Josh Fisher  
Director, State Affairs  
Alliance for Automotive Innovation



# SIERRA CLUB

## DELAWARE CHAPTER

Members of the Senate Executive Committee,

My name is Dustyn Thompson, Chapter Director for the Sierra Club Delaware Chapter. I am writing to voice strong opposition to Senate Bill 278 and its predecessor, Senate Bill 271. This bill poses a significant threat to Delaware's environmental progress, consumer choices, and the integrity of our democratic and legal systems.

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### **\*\*Dark Money Influence\*\***

SB 278, as originally drafted, will serve to permit dark money groups, like the Heritage Foundation and the Koch Network, to use local dealership associations to join an active lawsuit in Delaware courts solely aimed at rolling back the recently adopted Advanced Clean Cars 2 program. This move threatens to deprive Delawareans of vital choices in clean vehicle options available at local dealerships. The bill would also allow these groups to leverage auto associations to file **new** lawsuits against the state and its agencies. It would also allow associations to intervene in administrative procedures, putting them on the same level as our state agencies when negotiating administrative policies and regulations. We have seen this tactic used in other states to roll back environmental progress on tailpipe emissions and prevent renewables from being built to transition our nation off of fossil fuels.

The state has made significant strides in improving air quality and reducing greenhouse gas emissions. However, SB 278 jeopardizes these efforts by enabling special interests to derail progress toward cleaner transportation through litigation.

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### **\*\*Consumer Choice and Economic Impact\*\***

SB 278 specifically targets companies like Rivian, Polestar, Lucid, Tesla, and other electric vehicle (EV) manufacturers that sell direct to consumers rather than through franchised dealerships. The language in this bill, and in the amendment, effectively bans them from selling their innovative and environmentally friendly vehicles to Delawareans. This bill is not a simple update to the existing code; it is a calculated attempt to stifle competition in the EV market and maintain the dominance of traditional dealerships; undoing a recent Delaware Supreme Court decision that finally allowed Tesla to set up a shop and sell to consumers in Delaware.

Encouraging the adoption of EVs is essential for combating air pollution and reducing our carbon footprint. However, SB 278 would obstruct these efforts by keeping clean vehicles out of



# SIERRA CLUB

## DELAWARE CHAPTER

our state and perpetuating reliance on fossil fuels. Moreover, it would discourage investment in clean technology and limit job opportunities in the EV sector, ultimately harming our economy.

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### **\*\*Legal and Democratic Principles\*\***

One of the most troubling aspects of SB 278 is its disregard for established legal processes and democratic principles around gaining standing to access our court systems and to intervene in administrative processes. The bill grants unprecedented legal powers and advantages to the Delaware Automobile and Truck Dealers Association, allowing them to sue without having to demonstrate actual harm. This extraordinary privilege undermines established legal norms and opens the door for potential abuse of power. The bill specifically grants guaranteed standing to associations to sue anyone, including the state, for any perceived threats to the franchise model of vehicle distribution. This broad authority can be viewed as granting the right to sue for any reason, and while the court system plays out, which can often take years, they also have the guaranteed right to injunctive relief, which would put on hold any policy or program while the case plays out in court. That means that this association can stop any legislation that they view as a threat, without proof of harm, in perpetuity through consecutive lawsuits. This effectively gives special interest groups veto power over environmental initiatives, allowing them to obstruct progress and prioritize profits over public health and safety.

Furthermore, SB 278 sets a dangerous precedent for other trade groups and industries, suggesting that special interests can manipulate our legal system for their benefit. This threatens to erode democratic principles and fairness in our governance.

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### **\*\*Conclusion\*\***

As the Chapter Director for the Sierra Club Delaware Chapter, I urge the committee and the bill's sponsor to engage in further discussions and work towards a consensus-based solution. SB 278, as it stands, represents a significant threat to our environmental progress, consumer choice, and the integrity of our legal and democratic systems.

Thank you for your attention to this matter and for considering my testimony.

**Senate Executive Testimony: May 21, 2024**

**Senate Bill 278**

**Submitted by Emily Knearl, DE Director of Gov't Relations, The Nature Conservancy**

Good afternoon. Thank you for the opportunity to testify today. My name is Emily Knearl, and I am representing The Nature Conservancy in Delaware. I am testifying in opposition of Senate Bill 278 as written.

The General Assembly works to avoid unintended consequences and TNC is concerned that this legislation will have the unintended consequence of hurting consumers and the availability of electric vehicles in Delaware. We recognize that an amendment has been offered as part of this hearing but have not had the opportunity to review the amendment and so are unable to address it today.

As written, SB 278 will:

- Bar non-traditional automakers from serving Delaware consumers.
- Create an unprecedented level of legal standing for the franchise dealer's association, including powers not offered to any other organization in the state.
- Provide franchises the opportunity to reject EV infrastructure and equipment that will be important to serving their customers.

I ask today that the bill remain in committee so that there is an opportunity to continue to improve it to avoid potential unintended consequences that could harm the availability of EVs and Delaware consumers. Thank you.

Senator Sokola



Regarding  
SB-278

## **Corporate Welfare: How Automobile Dealership Franchise Regulations Cost Consumers an Additional \$48 Billion Annually**

Steve Pociask<sup>1</sup>

*This ConsumerGram explores the consequences of various state laws written to advantage automobile dealer franchises. Because many of these laws work to increase vehicle costs and set geographic restrictions that limit price competition, they serve to transfer income from the buying public to dealerships. Specifically, this ConsumerGram finds that American consumers collectively pay \$47.5 billion more per year on the purchase of new automobiles due to regulations that limit dealership competition. Because there is a host of other dealer-friendly laws being enacted and proposed, the total harm to consumers is likely to be much higher than measured here. This raises a question -- why do state legislatures act to advantage already profitable businesses at the expense of consumers?*

### **Regulation and Protection**

Not long after automobiles reached the mass market, manufacturers experimented with different distribution models, eventually settling on dealership franchises as the channel of choice. The resulting contractual arrangements between dealerships and manufacturers were, and still are, mutually beneficial in that both parties require each other to be successful and profitable in order to insure their own success.

Early on, the automobile manufacturing industry began to consolidate from more than one hundred carmakers, eventually reaching three major domestic producers by the 1920s. Over the ensuing decades, some franchise owners expressed concerns that carmakers had market power that could provide negotiating and operational leverage over small franchised

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<sup>1</sup> Steve Pociask is president of the American Consumer Institute, Center for Citizen Research, a nonprofit 501c3 educational and research institute. For more information, visit [www.theamericanconsumer.org](http://www.theamericanconsumer.org).

dealerships.<sup>2</sup> Some dealerships also argued that major investments in showrooms and an inventory of cars could tie up capital and make dealerships vulnerable to short term market fluctuations and demands by major manufacturers.

In the decades to follow, states began enacting laws to protect local franchises from alleged abuses by automobile manufacturers. In 1956, a federal law was established to limit manufacturers from terminating dealerships and preventing dealers from being forced to purchase vehicles from manufacturers. When this federal law was enacted, 20 states had already similar laws in place. Since then, state regulatory protections for automobile dealer franchises became the norm. What started as a voluntary agreement between manufacturers and dealerships as their sales channels is now a regulatory requirement.<sup>3</sup>

### **No Evidence of Market Failure to Justify State Regulations**

The interdependence between manufacturers and dealerships require that both be successful. Without profitable dealerships, manufacturers cannot sell their products. That was true fifty years ago and that is still true today. This means that there really is no incentive for manufacturers to squeeze dealerships, since that would cause dealers to exit the market and reduce car sales at the financial loss of manufacturers. Moreover, what prospective dealerships would want to enter a market if the prospects for success were low? Given the mutually beneficial relationship between franchises and carmakers, the argument that manufacturers have incentives to exert an unfair advantage over dealerships would appear to be hyperbole by those seeking favorable legislation and not based on sound microeconomic thought.

While some older arguments point to the hypothetical risks from market concentration and high capital-intensity, these arguments lack any empirical support today. For one, the vehicle manufacturing market is no longer concentrated. As **Figure 1** (below) shows, the top two manufacturers have seen their combined market share fall from nearly 80 in the early

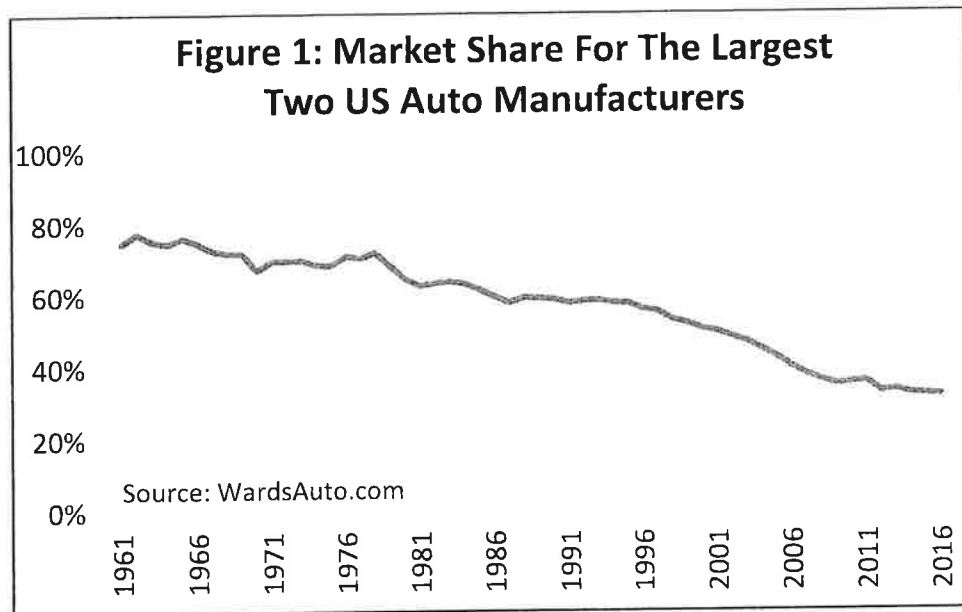
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<sup>2</sup> Francine Lafontaine and Fiona Scott Morton, "State Franchise Laws, Dealer Terminations, and the Auto Crisis," *Journal of Economic Perspectives*, 24:3, 2010.

<sup>3</sup> "State Franchise Law Carjacks Auto Buyers," Mercatus Center, George Mason University, January 20, 2015.



sixties to 30% today, as nearly twenty foreign manufacturers now successfully compete in the U.S. market. In other words, it is a competitive industry. Moreover, the capital-intensity of industries is a cost of doing business and one that is hardly unique to car dealerships.<sup>4</sup> Most importantly, there is no evidence of market failure to justify government interference.



### Welfare for the Rich?

While there is no market failure that would warrant a government remedy, some might portray car dealerships as financially struggling small businesses that urgently need the government's help to succeed. However, the empirical evidence shows that, collectively, dealerships are financially sound, averaging about 30% return on equity for domestics.<sup>5</sup> In fact, there have been a handful of billionaire car dealers, several owning NFL and other major sports teams.<sup>6</sup> Opportunities for high profits is one reason why billionaire Warren Buffett purchased a

<sup>4</sup> Comparing automobile manufacturing to the retail segment "motor vehicles and parts dealers," shows manufacturers spend twice the capital as a percent of value-added output than dealers, according to Gross Product Originating data, Bureau of Economic Analysis at [https://www.bea.gov/industry/gdpbyind\\_data.htm](https://www.bea.gov/industry/gdpbyind_data.htm).

<sup>5</sup> "Dealership Financial Profits," National Automobile Dealers Association, Domestic Dealership Profile, November 2017, <https://www.nada.org/WorkArea/DownloadAsset.aspx?id=21474853576>.

<sup>6</sup> "Forbes 400," *Forbes*, at [https://www.forbes.com/forbes-400/list/#version:static\\_industry:Automotive](https://www.forbes.com/forbes-400/list/#version:static_industry:Automotive), accessed online on February 4, 2018; and "Billionaires list confirms it: There's money in the car biz," *Automotive News*, March 11, 2013.

car dealership that operates in seven states, making the seller of that transaction yet another billionaire car dealer.<sup>7</sup>

Meanwhile, the automobile manufacturing industry has not managed to reach 8% or more in profits in any year during the last decade, a rate reportedly insufficient to recover its return on capital.<sup>8</sup> Because state laws make little distinction between large and small dealers or between wealthy or less wealthy dealers, the focus of these laws is not to help the “little guy.” Instead, dealership-friendly legislation represents welfare for the rich at the expense of consumers because they ultimately push car prices higher.

### **Government Failure: The Spread of Regulations**

Arguments that dealerships need help are weak at best, but the regulations justified by these arguments persist. In fact, despite the lack of empirical evidence support, state legislatures have continued to pass laws favoring dealerships. From 1979 to 2014, laws protecting dealerships from termination increased from 45 states to all 50 states; franchise licensing protection laws for dealers increased from 44 states to 50 states; laws preventing manufacturers from forcing dealers to accept deliveries of vehicles increased from 37 states to 48 states; and exclusive territory protection laws for dealers increased from 27 states to 49 states.<sup>9</sup> Today, all states have passed dealership-friendly franchise regulations, including laws that give automobile dealerships territorial exclusivity and encroachment protections from competition.

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<sup>7</sup> Brendan Coffey, “This Car Dealer Turned Billionaire Got a Little Help from Buffet,” *Bloomberg*, September 24, 2015; and Amarendra Bhushan Dhiraj, “5 Billionaire Car Dealers; Would You Buy a Car from Warren Buffett?” *CEOWORLD Magazine*, October 3, 2014.

<sup>8</sup> Rich Parkin, Reid Wilk, Evan Hirsh and Akshay Singh, “2017 Automotive Trends: The Future Will be Rocky for Auto Companies Unable to Improve Returns on Capital,” PwC, Strategy& Group, 2018, downloadable at <https://www.strategyand.pwc.com/media/file/2017-Automotive-Industry-Trends.pdf>.

<sup>9</sup> “State Franchise Law Carjacks Auto Buyers,” Mercatus Center, George Mason University, January 20, 2015; and Francine Lafontaine and Fiona Scott Morton, “State Franchise Laws, Dealer Terminations, and the Auto Crisis,” *Journal of Economic Perspectives*, 24:3, 2010 (also see an updated appendix accessed on January 20, 2015, at [https://assets.aeaweb.org/assets/production/articles-attachments/jep/app/2403\\_morton\\_app.pdf](https://assets.aeaweb.org/assets/production/articles-attachments/jep/app/2403_morton_app.pdf)).

Territorial exclusivity laws protect dealerships by establishing monopoly market areas that work to reduce intra-brand rivalry. These laws limit market entry and effectively reduce price competition between dealers selling the same brands and models, thereby leading to higher consumer prices and increased dealership profits. By constraining entry and exit, the market is less able to adjust to swings in demand and less able to maximize economies of scale and scope. This adversely affects operational efficiency, and it raises per unit costs and consumer prices.

While the economic theory on entry barriers is clear, so is the empirical evidence. One 2015 econometric study found “relatively strong” intra-brand price effects associated with the geographic distribution of dealerships.<sup>10</sup> For example, the study estimated that the price of a Honda Accord would increase by \$220 and by \$500 when dealers were 10 and 30 miles apart, respectively. In other words, state laws that protect dealerships by allowing territory exclusivity work to increase consumer prices for new vehicles, as well as increase dealership profitability. Economic theory finds that monopoly performance leads to increased consumer prices and profits, as well as restricted industry output and decreased consumer welfare.<sup>11</sup>

Along with exclusive territories and market entry barriers, as noted earlier, state laws have been in place that constrain dealership termination. Generally, state laws do not consider gross inefficiency or financial conditions as potential grounds for termination. Even when good cause for determination can be found, many states provide dealerships time to remedy shortfalls, making termination difficult and costly for manufacturers. Usually, termination requires manufacturers to buy-back unsold cars, as well as parts, accessories, tools and equipment, which further raises the cost for manufacturers.<sup>12</sup> Because state laws impede

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<sup>10</sup> T. Randolph Beard, George Ford, Lawrence Spiwak, “The Price Effects of Intra-Brand Competition in the Automobile Industry: An Econometric Analysis, Phoenix Center for Advanced Legal & Economic Public Policy Studies, Policy Paper No. 48, March 2015.

<sup>11</sup> Consumer welfare is an economic measure of consumer benefits. The welfare decrease noted here includes allocative inefficiencies referred to as the *deadweight loss* to society.

<sup>12</sup> Francine Lafontaine and Fiona Scott Morton, “State Franchise Laws, Dealer Terminations, and the Auto Crisis,” *Journal of Economic Perspectives*, 24:3, 2010.

dealership entry and exit, market forces are not present to determine the optimal number of competitors in any given market and do not determine the most efficient size of dealership operations – yet another cost facing manufacturers, ultimately recovered in consumer prices.

Besides selling new vehicles and trading used vehicles, dealerships can profit many other ways. Manufacturers' warranties provide guaranteed business to dealerships, as well as providing additional traffic to showrooms. While manufacturers' warranties provide dealerships reimbursement for labor and parts, many state laws allow for high markups on reimbursement. In some cases, these markups can nearly double the price of parts, providing handsome profits to dealerships.<sup>13</sup> While these laws increase the reimbursement costs for manufacturers and ultimately automobile prices, these markups also create an incentive for much higher list prices for parts and services. That, in turn, means that consumers will face much higher prices when going to dealerships for services and repairs not covered under warranty.

The recall business is a "golden opportunity for car dealers to make money."<sup>14</sup> Besides profiting from recall reimbursement by manufacturers, dealers can also profit from additional customer services and additional showroom traffic. Yet, some states are considering laws to eliminate risks and downside to dealers. These laws propose additional payments (or interest fees) from manufacturers to franchises when cars sit on a dealer lots during recalls. These car dealer protections are costly for consumers and call into question why consumers should not be allowed to bypass dealerships altogether when buying new vehicles.

In this regard, most state laws prohibit consumers from buying directly from manufacturers, instead requiring dealerships to be the exclusive sales channel for manufacturers. Regarding prohibitions of direct-to-consumer sales, the FTC staff has written that these state laws are both anticompetitive and bad for consumers:

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<sup>13</sup> Some urge dealerships to increase their markups and lobby state laws for higher reimbursements. See Leonard A. Bellavia, "Get What's Yours: Don't Be Afraid to Seek Higher Factory Repayment for Warranty Parts," *Fixed Ops Journal*, June 2017, p. 43.

<sup>14</sup> Lindsay Chappell, "There is Big Money in the Recall Crisis," *Automotive News*, April 11, 2016.

*“A fundamental principle of competition is that consumers – not regulation – should determine what they buy and how they buy it. Consumers may benefit from the ability to buy cars directly from manufacturers – whether they are shopping for luxury cars or economy cars. The same competition principles should apply in either case.”<sup>15</sup>*

There are other laws that help dealerships at the expense of manufacturers and therefore consumers. Most states forbid manufacturers from forcing new vehicles on dealerships, prohibiting different treatment between dealerships operating within the same state that would otherwise drive out inefficiency, preventing different treatment between dealerships operating in different states, and requiring manufacturer incentives for dealership facility improvements whether improvements are ever made. Again, these provisions are costly for manufacturers, who can only recovery these costs by raising vehicle prices.

Despite the lack of empirical evidence showing market failure, state laws continue to be enacted that favor often well-heeled car dealers at the expense of car buyers. Contrary to the public interest, these state laws work to transfer income from consumers to car dealers.

### **Evidence of the Impact on Consumer Prices**

A study by staff at the Federal Trade Commission (FTC) looked at restrictions on territorial and market entry, and empirically found that these regulations served to reduce competition – pushing up consumer prices in 1978 by 7.63% in markets with increasing populations and 6.14% overall.<sup>16</sup> By the study’s admission, these estimates significantly understate the negative impact that regulations have on consumers costs. In addition, this study does not consider the costs of other state laws favoring dealers over consumers and manufacturers, which has grown significantly in the last decades. Also, since 1978, the U.S.

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<sup>15</sup> Marina Lao, Debbie Feinstein and Francine Lafontaine, “Direct-to-Consumer Auto Sales: It’s Not Just about Tesla,” Federal Trade Commission, May 11, 2015.

<sup>16</sup> Robert P. Rogers, “The Effect of State Entry Regulation on Retail Automobile Markets,” Federal Trade Commission, Bureau of Economics Staff Report, January 1986.

population has grown substantially, making competitive restrictions on relevant market areas substantially costlier than observed in the study.

Besides ignoring the many different franchise regulations that have been enacted, the political process produces other costs, commonly referred to as *rent-seeking*. Rent-seeking occurs when some economic entities (such as dealerships and manufacturers) expend political and lobbying resources to obtain or prevent economic gains that create no additional wealth or economic benefit for society.<sup>17</sup> While the study acknowledges that they did not include the historical costs associated with “rent-seeking” by dealers and others who spent funds to influence state and local politicians, the decades of accumulating and sweeping legislative activity has undoubtedly led to a massive misallocation of resources away from producing what consumers want.

Since none of these costs were included in the FTC study, its decades old data significantly understates the total costs of franchise regulations on society today. For simplicity, however, we conservatively assume that dealership-friendly regulations impose a modest 7.63% effect on consumer prices, as quantitatively measured in the FTC study.

### **Evidence on Market Performance**

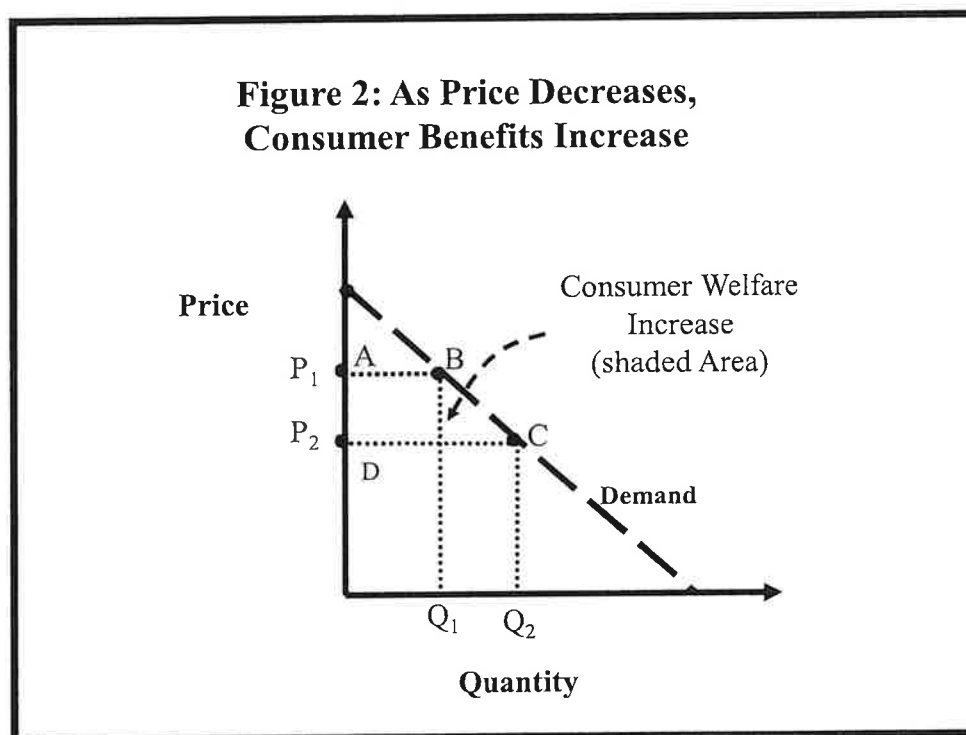
Short-run elasticity of demand for new automobiles has been estimated to be in the range of -1.2 to -1.5.<sup>18</sup> Taking the midpoint of this range, we assume the price elasticity to be approximately -1.35. As noted earlier, because these regulations provide dealers the ability to price over cost, removing these regulations would lower new vehicle prices and stimulate consumer demand, thereby increasing consumer welfare.

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<sup>17</sup> This is a well-accepted notion in the economics of public choice literature. James Buchanan, Robert Tollison and Gordon Tullock, *Toward a Theory of the Rent-Seeking Society*, College Station: Texas A&M Press, pp. 97–112. 1980.

<sup>18</sup> Patrick L. Anderson, Richard D. McLellan, Joseph P. Overton and Gary L. Wolfram, Nov. 13, 1997, online at [http://scholar.harvard.edu/files/alada/files/price\\_elasticity\\_of\\_demand\\_handout.pdf](http://scholar.harvard.edu/files/alada/files/price_elasticity_of_demand_handout.pdf). Also see James W. Brock, *The Structure of American Industry*, Waveland Press, Oak Grove, IL., thirteen Edition, 2016, Chapter 6.

The benefits of increased consumer welfare resulting from a reduction in territorial regulations can be estimated and is depicted as the shaded trapezoid ABCD in **Figure 2** (below), labeled as the *Consumer Welfare Increase*. This welfare increase can be approximated by the reduction in price resulting from the decrease in state regulations (noted as the decrease from  $P_1$  to  $P_2$ ) and the corresponding increase in demand (noted as the increase from  $Q_1$  to  $Q_2$ ).



Motor Intelligence estimates that manufacturers delivered 17.2 million light vehicles during 2017.<sup>19</sup> Because regulations enable dealerships to price over cost, removing these regulations would lower prices by 7.6% and bring 2 million more vehicles to the U.S. market, based on the price elasticity of demand. Based on the average transaction price for vehicles for December 2017, the 7.6% decrease in price and corresponding 10.3% stimulation in market demand would produce consumer welfare improvement of roughly \$47.5 billion per year – all

<sup>19</sup> Motor Intelligence, "U.S. Market Sales: U.S. Market Light Vehicle Deliveries – December 2017, Final Results," January 3, 2018.

from the elimination of territorial exclusivity regulations.<sup>20</sup> The sheer size of potential welfare gains demonstrates the significant costs these regulations impose on consumers.

### **The Public's Interest**

Public policies that impose regulations and taxes on large businesses do not spare consumers the cost. This *ConsumerGram* discusses the many different types of state laws that are designed to help dealerships at the expense of automobile manufacturers and ultimately consumers. While the result of these regulations clearly increases costs for manufacturers, evidence is clear that it also does so for consumers. We find that state laws that establish and protect exclusive territories for dealerships are costing consumers \$47.5 billion more per year. Considering the many other dealer-friendly regulations and the continued expansion in protectionist legislation, the estimate presented here should be considered low.

Successful automobile dealerships provide quality services to consumers that fully meet their needs. Success is not dependent on state legislatures for help. It is not the role of regulators to prop up poor performing businesses, particularly since the resulting laws serve only to undermine competition and to lead to reduced consumer benefits. The public policy focus here should be on the public's interest, not the manufacturers and not the dealerships interests.

In conclusion, policymakers need to stem these regulations and stop interfering with mutually agreed upon franchise contracts. These protectionist regulations are anticompetitive and clearly anti-consumer.

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### ***About the American Consumer Institute Center for Citizen Research***

*The American Consumer Institute Center for Citizen Research is a 501(c)(3) nonprofit educational and research institute. For more information, please visit [www.theamericanconsumer.org](http://www.theamericanconsumer.org).*

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<sup>20</sup> "Average New-Car Prices Rise Nearly 4% for January 2018 on Shifting Sales Mix, According to Kelley Blue Book," February 1, 2018, at <https://mediaroom.kbb.com/2018-02-01-Average-New-Car-Prices-Rise-Nearly-4-Percent-For-January-2018-On-Shifting-Sales-Mix-According-To-Kelley-Blue-Book>.





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May 1, 2024

The Honorable President Pro Tempore David Sokola  
Chair  
Senate Executive Committee  
Delaware Senate  
411 Legislative Avenue  
Dover, DE 19901

*RE: SB 278 (Poore) – Motor Vehicle Dealers*

Dear Senate President Sokola and Members of the Committee,

On behalf of TechNet, I'm writing to provide remarks in opposition to SB 278.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and 50-state level. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over 4.4 million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance. TechNet has offices in Austin, Boston, Chicago, Denver, Harrisburg, Olympia, Sacramento, Silicon Valley, and Washington, D.C.

TechNet is vigilant against vague, overbroad, unnecessary, harmful, or hostile laws and regulations that stifle innovation. Certain requirements outlined in SB 278 are concerning, and TechNet is opposed to the bill.

The bill will force manufacturers and distributors to pay dealers 20% of gross revenues that automakers receive from the sales of accessories, options, add-ons, features, improvements, and upgrades within a five-year period of any sale, activation, or renewal of such product or service. The ability for a consumer to upgrade their vehicle allows for a consumer's experience to be enhanced throughout the course of their vehicle ownership. Delawareans with new vehicles can keep or change features they may prefer or dislike, and used vehicle owners can customize their experience. Requiring manufacturers to provide a portion of revenue to dealers is inherently anti-competitive. Furthermore, requiring manufacturers and distributors to disclose to dealers quarterly statements for such sales is an overreach and impedes on a company's right to privacy.

As drafted, SB 278 permits dealer associations to use standing to sue to stop policies of automakers they may not align with. This will lead to unfair business practices. For example, SB 278 would allow associations to collect damages even though its members were the ones harmed, not the association. Furthermore, this bill lacks transparency as Delaware's dealer associations could sue manufacturers on behalf of dealers whose identities would be unknown. Additionally, this bill could lead to costly litigation for manufacturers, dealer associations, and dealers, ultimately negatively impacting Delaware consumers who may experience higher prices due to the costs of litigation. Finally, special standing rules in one area of the economy could encourage other special interest groups to ask lawmakers for similar special treatment.

Protectionist bills impede the advancement of consumer-friendly technology and innovation, and TechNet seeks to encourage, enable, and advance American leadership in innovation. For the reasons stated above, TechNet is opposed to SB 278. Thank you for your consideration, and please don't hesitate to reach out should you have any questions. We look forward to continuing these conversations with you.

Sincerely,



Margaret Durkin  
TechNet Executive Director, Pennsylvania & the Mid-Atlantic



May 21, 2024

The Honorable David P. Sokola  
Chair, Senate Executive Committee  
Dover, DE 19901

**SB 278: RELATING TO COMMERCE AND TRADE  
POSITION: OPPOSE**

Chair Sokola:

On behalf of Kia America, please accept the following testimony in opposition to SB 278.

This bill will undermine the ability of automobile manufacturers to sell and service electric vehicles in Delaware.

Kia is focused on becoming a global leader in electrification by offering award-winning EVs, hybrids and plug-in hybrids.

Kia is investing \$28B to offer at least seven dedicated EVs in the U.S. market by 2027, and most of those will be manufactured in North America.

Delaware's Section 177 state ZEV mandate requires automobile manufacturers to sell an increasing percentage of zero-emission vehicles (ZEVs) each year starting with 2027 Model Year. The ZEV mandate will gradually increase from 43% of each brand's sales in 2027 to 82% in 2032.

SB 278 undermines Delaware's ZEV mandate. Kia distributes vehicles through independent dealers who sell and service vehicles, and thus Kia needs dealers to be committed to electric vehicles in order to meet Delaware's requirements for ZEV sales. SB 278 would effectively allow those dealers to reject and reverse any manufacturer requirement or agreement that dealers prepare their stores for the sale and service of EVs.

For these reasons, and many more, Kia respectfully opposes SB 278

Thank you for your consideration.

Sincerely,

Stephen Kosowski  
National Manager, Long Range Strategy & Planning  
Kia America



May 22, 2024

The Honorable David P. Sokola  
Chair, Senate Executive Committee  
Dover, DE 19901

**RE: OPPOSITION TO SENATE BILL 278**

Dear Chair Sokola:

On behalf of Ford Motor Company, I am writing to express our opposition to Senate Bill 278, including Senate Amendment 1 presented at yesterday's Senate Executive Committee hearing.

We value our partnership with our Ford and Lincoln Dealers in Delaware, and we are proud of the work we do together to serve our customers and each other. However, we believe SB 278 will negatively impact consumers and the electric vehicle (EV) marketplace.

SB 278 would make Delaware only the second state to require manufacturers to compensate dealers 8% of the gross revenue generated from the sale of "over-the-air" vehicle features and services. However, SB 278 is broader in terms of both the scope of compensation and the mandated five-year payment period. Ford is currently exploring dealership incentives and has already launched revenue-sharing opportunities with our dealers, and SB 278 could limit our flexibility to identify compensation models that create appropriate value for customers, dealers, and Ford.

SB 278 would also make Delaware an outlier by granting special associational standing rights for dealer associations to litigate against manufacturers, circumventing the state's traditional legal process.

SB 278 would uniquely interfere with voluntary business agreements between dealers and manufacturers unlike any other state, which could impact the sale and service of EVs in Delaware. Ford believes collaborative engagement with our dealers is a better way to develop reasonable programs and standards that support an unparalleled and affordable ownership experience for our EV customers.

In conclusion, Ford respectfully asks this Committee not to advance SB 278 as it would make Delaware an outlier on these and other controversial issues that do not benefit consumers or support the EV marketplace. I welcome the opportunity to meet with you or any Committee Members to discuss solutions that would align Delaware with other states, and I will gladly make myself available at your convenience (313-495-0593 or [jheinon3@ford.com](mailto:jheinon3@ford.com)).

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin Heinonen".

Justin Heinonen  
Regional Director, Government Affairs  
Ford Motor Company



American Lung Association Testimony Senate Bill 278  
Senate Executive Committee  
April 24, 2024  
Oppose

Chair Sokola and Members of the Senate Executive Committee:

On behalf of the American Lung Association in Delaware, thank you for the opportunity to provide comments on Senate Bill 278. The American Lung Association opposes provisions in SB 278 that would weaken the state's commitment to adopting the Advanced Clean Cars II standards.

The Lung Association is the oldest voluntary public health association in the United States, currently representing the more than 34 million Americans living with lung diseases. The organization works to save lives by improving lung health and preventing lung disease through research, education and advocacy.

The American Lung Association opposes provisions of SB 278 that would weaken the health benefits provided to the state through the Advanced Clean Cars II standards and future vehicular air quality regulations – and make compliance more challenging. We express concerns about the amendment<sup>1</sup> that would require a manufacturer grant a dealer's request to return and reimburse the costs associated with a franchise agreement of EVs sold within two years of the agreement if the dealer "reasonably believes that the volume or service is inadequate to realize a reasonable return on investment."

The American Lung Association is committed to the successful implementation of the manufacturing sales standards set in Advanced Clean Cars II to increase the availability and decrease costs of electric vehicles for public health. While the organization has worked in many states to advance legislation and efforts that ease implementation of the standard and help facilitate compliance, we raise concerns about the lack of clarity and detail on how this return process would be used and determined – and whether it is necessary given growing demand for electric vehicles in Delaware.

Sales demand for EVs is growing in Delaware: EV sales in the state increased to 9.7% in the 2023 quarter, up from 7.1% a year earlier.<sup>2</sup> Advanced Clean Cars II will increase the available models and drive down costs, which will have an additional unknown impact on future demand. If dealers make incorrect assumptions about whether a return on investment will be made, the return process would create excessive levels of volatility and risks for manufacturers working to comply with the regulation. In turn, this process would create additional unnecessary compliance costs for manufacturers, decrease the availability of EV models, and reduce the strength of the air quality and equity benefits Advanced Clean Cars II will provide, and create additional unnecessary compliance costs for manufacturers.

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<sup>1</sup> Amendment to §4913(b)(16), Lines 304-309.

<sup>2</sup> [Alliance for Automotive Innovation, 2023](#). "Electric Vehicle Quarterly Report."



Transportation continues to be a leading source of harmful air and climate emissions in Delaware. The American Lung Association's "[State of the Air](#)" 2024 report found that Delaware received a "C" Grade for high ozone in New Castle. Delaware is home to 93,970 adults and children living with asthma who face greater risk and need stronger protection against harmful ozone ("smog") and particle ("soot") pollutants. Air pollution can cause health emergencies including asthma attacks, heart attacks, and other lung and cardiovascular diseases.

Reductions in pollution from vehicles, such as those that will result from Delaware's adoption of Advanced Clean Cars II, will provide the state with public health savings and benefits. The American Lung Association "[Zeroing in on Healthy Air](#)" report found that policies supporting a transition to zero-emission transportation powered by a clean electric grid in Delaware could generate \$5.1 billion in public health benefits, 11,200 avoided asthma attacks, and 55,100 avoided lost workdays, if paired with a transition to zero-emission electricity.

I ask you to amend these two provisions to allow Delaware to maintain its best-practice, timely regulations for motor vehicle emissions that improve air quality and protect public health. Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script that reads "Aleks Casper".

Aleks Casper  
Director of Advocacy  
American Lung Association, Delaware





**MOTORCYCLE  
INDUSTRY  
COUNCIL**



April 24, 2024

The Honorable Nicole Poore  
411 Legislative Avenue  
Legislative Hall, 1st Floor  
Dover, DE 19901

The Honorable Valerie Longhurst  
411 Legislative Ave  
Legislative Hall  
Dover, DE 19901

**Re: SB 278 AMENDMENT REQUEST – Exclude motorcycles**

Dear Senator Poore and Representative Longhurst:

The Motorcycle Industry Council (MIC)<sup>1</sup> respectfully requests that you **amend SB 278 to exclude motorcycles from the legislation.**

SB 278 creates several new requirements and prohibitions for motor vehicle manufacturers and distributors (OEMs) relative to relationships with their authorized dealers. However, we believe these provisions were created to address automobile concerns, in part associated with changing technologies and practices of the automobile industry. Motorcycle dealerships are very different from automobile dealerships and the Federal Trade Commission recently recognized this when siding with MIC in their Combating Auto Retail Scams (CARS) Rule. The CARS Rule as originally drafted would have captured ALL motor vehicle retailers, but after receiving MIC's arguments, the FTC narrowed the rule's scope to exclude motorcycle dealerships. We suggest you take a similar approach with SB 278.

Motorcycle dealerships are very different from large automobile dealership conglomerates and erecting additional barriers through legislation only serves to create an environment for motorcycle OEMs and dealers where options become more limited to respond to economic challenges. Ultimately, when the cost of doing business increases, it hurts everyone – consumers, OEMs, and dealers. Higher costs of business would be especially harmful for the motorcycle industry because motorcycles are primarily discretionary recreational purchases.

The following highlights our concerns with detrimental provisions in SB 278:

***§ 4903 – Auditing and Claim Submission Time Limits***

Amendments to this section would reduce auditing periods for warranty repairs and incentive compensation from one year to 180 days. Due to motorcycle OEMs' fiscal accounting, periods shorter than one year are not long enough for them to conduct discovery and audit procedures.

Proposed changes would also allow a dealer to submit claims for reimbursement up to 180 days. Motorcycle OEMs offer reasonable deadlines for dealers to complete warranty reimbursement claims. They must receive claims in a timely manner to identify potential trends and potential safety issues. If claims were delayed beyond such reasonable deadlines, it would cause delays in discovery of these issues that could jeopardize customer safety.

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<sup>1</sup> The Motorcycle Industry Council (MIC) is a not-for-profit, national trade association representing several hundred manufacturers, distributors, dealers and retailers of motorcycles, scooters, motorcycle parts, accessories and related goods, and allied trades.

#### ***§ 4913(e) – Over-the-air updates (OTA)***

The motorcycle industry should be excluded from OTA requirements because these types of remotely activated add-on products are extremely rare in the motorcycle industry as compared to the automobile industry which has far more computerized systems that may require OTA updates. Without specific concerns from motorcycle dealers, it does not make sense to regulate motorcycles in the same way as automobiles.

Over-reaching legislation locks in potentially unworkable business practices in perpetuity and does not allow for an incremental approach for addressing concerns. Delaware should allow additional time to see how remote activations evolve for motorcycles and then make informed decisions based on specific feedback from motorcycle dealers without stifling innovation and flexibility. Motorcycle OEMs need more flexibility to adapt to changing markets and economic conditions given that motorcycles are much more likely to be discretionary recreational purchases. Adding limitations designed for the automobile industry onto motorcycle OEMs harshly affects the motorcycle industry because our OEMs produce lower quantities of vehicles at much lower average prices.

Given lower motorcycle margins, any additional revenue loss required by mandated payments of 20% of revenue for five years after purchase will have an outsized negative impact on the motorcycle industry compared to the automobile industry. It also makes more sense for motorcycles to retain flexibility as these technologies develop given lower production volumes. Added flexibility allows motorcycle OEMs to maintain more standardized factory processes without having to potentially make numerous sub-models to account for producing vehicles both with and without certain specialized optional features. For example, it makes more sense for a motorcycle OEM who makes dual purpose motorcycles (both on- and off-road capabilities) to be able to keep these types of options on the same platform to reduce cost pressures and manufacturing hurdles. So if you ride mostly off-road, you may not want a feature like cruise control, but if you ride mostly on-road, this may be more attractive. Likewise, if a motorcycle OEM can rely on being able to keep cruise control as an option to be purchased later, that provides more flexibility, lowers initial purchase price, and offers benefits to a wider spectrum of motorcycle consumers with different riding habits. Another example would be for an add-on option for something like a quickshifter, which may have greater novelty as an option for riders who have never had a motorcycle with a quickshifter. Under this scenario, an option available through remote activation would allow you to try it, and only pay for it if you want to keep it. Maintaining more flexibility for the motorcycle industry offers different riders the ability to try new riding systems, while the OEM is afforded a simpler manufacturing process, which lowers price pressures. This also simplifies inventory needs from motorcycle dealers who often sell multiple line-makes and are not tied to one OEM the way most automobile dealerships are these days.

#### ***§ 4920 – Association standing***

The motorcycle industry should be excluded from dealer association standing requirements because state franchise laws only govern agreements between OEMs and dealers. A dealer's association is not bound by state franchise laws. Given that the dealer's association is not a dealer and motorcycle OEMs do not have a contractual obligation with a dealer's association, it is unreasonable to suggest that the association should have standing to protest alleged OEM actions or conduct and be allowed to attempt to prove damages.

Enacting these provisions would also undoubtedly lead to increased litigation, which would have an outsized negative impact on the motorcycle industry because automobile OEMs have far more revenue to address litigation due to higher profit margins and sales volumes compared to motorcycles. This could result in damagingly high costs of doing business in Delaware for motorcycle OEMs relative to automobile OEMs, which will ultimately hurt motorcycle consumers more.



**For these reasons, we oppose SB 278 unless amended to exclude motorcycles.** Thank you for your consideration of these comments. Should you have any questions, please do not hesitate to contact me at [sschloegel@MIC.org](mailto:sschloegel@MIC.org) or 703-446-0444 x 3202.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott P. Schloegel".

Scott P. Schloegel  
Senior Vice President, Government Relations

Cc: Members, Senate Executive Committee