



JOAN BALLWEG

PO Box 8952, State Capitol
Madison, Wisconsin 53708-8952
Toll-free: (888) 534-0041
Fax: (608) 282-3641
Rep.Ballweg@legis.wi.gov

WISCONSIN STATE REPRESENTATIVE

41ST ASSEMBLY DISTRICT

**Assembly Bill 635: Reasonable Compensation of a Motor Vehicle Dealer by a Motor Vehicle
Manufacturer, Importer, or Distributor for Certain Motor Vehicle Service Work
Testimony of State Representative Joan Ballweg
Assembly Committee on Consumer Protection
January 9th, 2017**

Thank you, Chair Duchow, and members of the Assembly Committee on Consumer Protection for holding this public hearing on AB 635. This bill prohibits auto manufacturers from assessing a surcharge on auto dealers to protect auto dealers and consumers in Wisconsin.

When a car owner brings their car in for warranty work, the dealer performs the work on behalf of the manufacturer. The rates at which the dealer is reimbursed are determined through the dealer's contract and franchise law. In September of 2016, General Motors informed 25 of their 144 Wisconsin dealerships that due to those dealers' election to be compensated for warranty work at the rate the statute allows, General Motors would assess a surcharge of \$389 per vehicle purchased by the dealer. As of September 2017, Nissan began assessing a \$75 per vehicle surcharge.

These surcharges assessed by the manufacturer cost the consumer and put dealers at a disadvantage, especially those on the state's borders. The cost for warranty work is already built into the price of the vehicle from the manufacturer to the dealer. It is not a free market when a surcharge allows the manufacturer to pick and choose dealers to selectively raise the price of the vehicle, rather than raising the invoice price to all dealers. This will benefit the out-of-state manufacturers, but it hurts Wisconsin dealers and Wisconsin consumers.

As the Alliance of Automobile Manufacturers pointed out in their October 30th letter to legislators, during negotiations for 2011 Act 91, which amended the Motor Vehicle Franchise Law, a similar provision prohibiting surcharges raised by the auto dealers "was removed through negotiation." That is why it is troubling to see auto manufacturers begin surcharges, after the dealers and manufacturers negotiated this through the last amendment to franchise law.

Currently, an individual dealer does not have an ability to negotiate these surcharges with the manufacturer through their contract. That is why the parameters of these contracts need to be set on a statewide basis through franchise law. AB 635 levels the playing field, and it gives auto dealers the ability to negotiate reasonable compensation for warranty work with the manufacturers on a statewide basis through the franchise law.

The Wisconsin Automobile and Truck Dealers Association, Inc. and the Wisconsin Recreational Vehicle Dealers Alliance registered in support of this bill.

Thank you for your consideration of AB 635. Please feel free to contact my office with any questions that you may have.



Luther S. Olsen

State Senator

14th District

TO: Assembly Committee on Consumer Protection
FROM: Senator Olsen
DATE: January 9th, 2018
SUBJECT: Testimony for Assembly Bill 635

Thank you Chairman Duchow and members of the Assembly Committee on Consumer Protection for holding a hearing and allowing me to testify in support of Assembly Bill 635.

In 2011 Senate Bill 96 was passed by the Wisconsin State Legislature, which updated and amended the Wisconsin Motor Vehicle Franchise law. Part of this updated legislation included the reimbursement formula which motor vehicle dealers receive from manufacturers for performing warranty repairs for that manufacturer. Another part that was discussed in meetings but was removed from the original bill, prohibited manufacturers from assessing surcharges for following this reimbursement formula.

After this law was on the books, manufacturers have assessed or indicated surcharges on vehicles for dealerships that have opted to use the compensation formula for warranty work as listed in statute. These surcharges have been at amounts up to \$389 per vehicle.

Assembly Bill 635 would prohibit manufacturers from assessing surcharges on Wisconsin motor vehicle dealers for utilizing the formula provided in state statute. This will help to prevent the cost being forced onto Wisconsin businesses and consumers from large, out of state manufacturers.

Thank you members, I ask for your support on Assembly Bill 635 and I am happy to answer any questions that you may have.



Wisconsin State Representative • 64th Assembly District

January 9, 2018

Assembly Committee on Consumer Protection
Assembly Bill 635
Representative Peter Barca

Chair Duchow and members of the Assembly Committee on Consumer Protection; thank you for holding a public hearing on Assembly Bill 635, which will prohibit car manufacturers from passing retaliatory surcharges on to local auto dealers for seeking fair compensation for their work.

The state's motor vehicle franchise law regulates and maintains a somewhat delicate balance between auto manufacturers and local auto dealers, two facets of a connected industry, and their interaction with consumers. To achieve this proper balance our law must be analyzed and modified periodically to address issues that come forward.

Under the law, dealers can seek reasonable compensation for their covered work, such as addressing defective parts, for the consumer on behalf of the manufacturer to ensure the vehicle is safe and the customer is satisfied. The appropriate compensation is determined by factors articulated in the vehicle franchise law. However, two manufacturing companies have notified Wisconsin dealerships they are adding a per vehicle surcharge to recover their costs for this covered work, which upsets the balance sought through the franchise law.

The focus of this legislation is to restore stability and make clear that manufacturers cannot offset costs required of them by the law through this sort of additional, end-run fee. Currently 13 states include this restriction in their franchise law and more are expected to follow, as courts have found statutes prescribing this prohibition on surcharges are indeed constitutional.

This legislation has the support of the Wisconsin Automobile and Truck Dealers Association representing 800 businesses, including over 450 franchised automobile dealers employing 25,000 people in our state. These are Wisconsin jobs that could be adversely impacted if our state does not act to restore balance to our vehicle franchise law.

I am proud to work in a bipartisan manner with Representative Ballweg again to address this important dealer industry issue, as we had in 2011 when we passed an earlier set of reforms to level the playing field for our local auto dealers and manufacturers.

Thank you for your time today and I would appreciate your support when Assembly Bill 635 comes for a vote before this committee.

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January 9, 2018

Re: Oppose Assembly Bill 635 – Overage Recoupment Prohibition on Warranty Claims

Dear Chairwoman Duchow:

On behalf of the Alliance of Automobile Manufacturers, I would like to thank you for the opportunity to express our opposition to Assembly bill 635, legislation that will create poor public policy to the detriment of manufacturers and Wisconsin consumers. The Alliance is a trade association representing twelve of the world's leading car and light truck manufacturers, including BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America, and Volvo Car USA. Together, Alliance members account for roughly 70% of the cars and light duty trucks sold throughout the United States each year.

Assembly bill 635 resurrects a concept that negotiating parties excluded from the last major amendment to the Motor Vehicle Franchise Law passed in 2011 (Act 91) which created new Wisconsin-specific costs for manufacturer's warranties. In 2011, through negotiations, a provision was ultimately removed that would prohibit manufacturers from imposing overage recoupments to address added costs. This bill would recreate the same problem and the legislature should not overturn an agreement between policymakers and stakeholders that was reached so recently.

Not only would this legislation resurrect an old problem, it creates a new one. Assembly Bill 635 would require all manufacturers to reimburse a dealer for any warranty work any time that the dealer provides "reasonable proof" that the work was done. As anyone who has run a business before can attest to, allowing several individuals to submit claims for expense or timesheets in any reasonable way that the individual wishes – with no regard to uniformity – is a recipe for chaos, disorganization, and unnecessary administrative costs for no logical reason. If dealers submit claims to a manufacturer in an inconsistent manner then it will be exceedingly difficult for manufacturers to have clear standards for how to approve claims.

Additionally, this legislation would only require proof that the dealer did the repair with no regard to whether the repair was necessary or even correctly performed. If manufacturers are unable to validate whether repairs were necessary and properly performed, then customer safety and vehicle quality can be affected due to the manufacturer not being able to know about a specific vehicle or trends in vehicles. This would result in a manufacturer having a difficult time identifying red flags that suggest a



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202.326.5500 | www.autoalliance.org

dealer is not performing repair properly. This is problematic for consumers who rightfully expect the repairs to be done properly.

Assembly bill 635 raises the cost of doing business for manufacturers in Wisconsin while also creating a risk of harm to Wisconsin automobile consumers. Lastly, the Alliance believes private contracts freely initiated between two business entities should not be permitted to be constantly rewritten by the legislature. We thank you for the opportunity to express our opposition to AB 635. The Alliance urges you to oppose this legislation and vote against the passage of Assembly bill 635.

Sincerely,

Leighton J. Yates
Manager, State Affairs

CC: Assembly Committee on Consumer Protection



P.O. Box 219
1227 North Fourth Street
Tomahawk, WI 54487-0219
(715) 453-2119
Fax: (715) 453-4323

January 6, 2018

Representative Cindi S. Duchow
Chair – Committee on Consumer Protection
Room 304 North
State Capitol
Madison, WI 53708

Re: AB 635

Dear Ms. Duchow:

I own and operate Heritage Chevrolet, Inc. located in Tomahawk, WI. We employ 23 persons and serve a community with a population of about 3500 people and a market area as defined by General Motors of approximately 10,000. We have served this area for 22 years this month. I regret I am unable to attend your hearing in person.

Approximately three years ago, we applied to General Motors to be reimbursed for warranty parts and labor sales at a retail rate, as permitted by Wisconsin law. We did this because General Motors standard rate of reimbursement was requiring us to charge our non-warranty customers more for our service and parts, because General Motors reimbursement was inadequate to cover our costs on warranty repairs.

As a franchised dealer, we are required by General Motors to incur costs for equipment and training that an independent repair facility would not be required to incur. We do not object to incurring these costs, because it enables us to give our customers quality service for the products we sell. We consistently rank among the top three dealers in our district for customer service satisfaction.

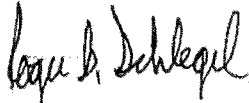
At this time, General Motors is proposing to charge us an additional surcharge of \$389.00 per vehicle purchased from them to cover their increased warranty cost as a result of dealers receiving retail reimbursement for warranty claims. This is not based on the amount of increased costs for our dealership, but rather their alleged increased costs for all dealers in the state that are receiving retail reimbursement. In our case, this \$389.00 surcharge would exceed the increased amount we receive from retail reimbursement of warranty claims by approximately \$18,000.00 per year.

As a result, we would have to increase the amount we charge our customers for non-warranty work to cover this cost. In effect, consumers again are subsidizing the manufacturer for inadequate payment for warranty work.

Our dealership has operated at a loss for the past three years. We have cut costs wherever possible, but we are unable to absorb the costs associated with warranty repairs on behalf of the manufacturer. Ultimately the manufacturer controls warranty costs by the quality of the product they produce. Consumers are entitled to protection of their investment in a vehicle and that cost should be borne by the manufacturer.

Assembly Bill 635 protects the consumer in that assures the availability of service in their local community and requires that the manufacturer be responsible for the costs associated with their product.

Sincerely,
Heritage Chevrolet, Inc.

A handwritten signature in cursive script, appearing to read "Roger G. Schlegel".

Roger G. Schlegel
Dealer Principal

cc: Representative Joan Ballweg
William Sepic



404 E. Division Street
P.O. Box 109
Neillsville, WI 54456-0109
715-743-3207
Toll Free 888-743-3207

January 8, 2018

Representative Cindi S. Duchow
Chair-Committee on Consumer Protection
Room 304 North
State Capitol
Madison, WI 53708

Re: AB 635

Dear Representative Duchow:

I apologize for not being able to attend your hearing regarding the above bill, but I do wish to give you an honest explanation of what Bill AB 635 means to us as a small business in central Wisconsin and how it affects Wisconsin consumers.

I am a Certified Public Accountant and moved back to Neillsville, at the age of 28, to take over the family Chevrolet-Oldsmobile dealership when my father suddenly passed away. My son, my brother and his son and myself now operate 3 General Motors dealerships, a Ford dealership and a Chrysler-Dodge-Jeep-Ram dealership. The dealerships are located in Neillsville, Black River Falls, Marshfield and Spencer. We currently have 97 full-time and 18 part-time employees. We are proud of our employees and the communities we serve.

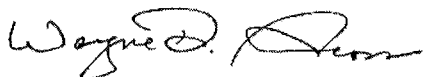
Our General Motors service departments do not operate at a profit. Each year we are required by General Motors to purchase specialized tools and equipment, from their designated suppliers, that GM feels might be needed to repair a vehicle covered under the GM warranty. Most of the required tools are never used by smaller dealers like us. In addition, each of our GM dealerships is required to pay \$575.00 per month to access the GM web site in order for our technicians to complete their training that is required by GM. After incurring the above costs and training, GM then dictates to the dealers how much time and what hourly rate they will pay dealers for labor on warranty repairs. The amount we are paid by GM for warranty repairs has been less than our costs and therefore we have had to increase our charges to customers for non-warranty work.

In order to stop the subsidizing of warranty work by our customers, we applied to General Motors to be reimbursed at a retail rate, the same rate that we charge our customers, as is permitted by Wisconsin law. As a result of several Wisconsin dealers being granted a retail rate for warranty reimbursement, GM is now proposing to charge all dealers receiving a retail rate an additional \$389.00 per vehicle that is purchased from them. If the dealer agrees to discontinue the retail rate reimbursement GM will discontinue the surcharge. Obviously the surcharge is the manufacturer's way to threaten and to discipline their dealers and a way for the manufacturer to circumvent the Wisconsin franchise law.



I appreciate your consideration of our point of view and hope that you will support AB 635. This bill will protect dealers and consumers from costs that should be paid for by the manufacturer.

Sincerely,
Gross Auto Group

A handwritten signature in cursive script, appearing to read "Wayne D. Gross".

Wayne D. Gross
President

cc: Representative Joan Ballweg
William Sepic

1/8/2018

Representative Cindi S. Duchow

Chair Committee on Consumer Protection

Room 304 North State Capitol

Madison, WI. 53708

Re: AB635

Dear Ms. Duchow,

Please accept my apologies for being unable to attend the hearing in person. My schedule simply won't allow it. I have been in the automobile business for 43 years and have been a dealer for 27 years. I have owned and operated Toycen of Ladysmith, a Chevrolet Buick dealership for 23 years in a financially challenged part of our state. We have generally been profitable, but it has taken a lot of hard work and careful discipline of expenses to continue to be profitable. We have always had what I consider to be an amicable partnership with General Motors.

Thanks to the current legislation regarding Manufacturer's reimbursement to dealers, we have finally reached the point where GM is paying close to what our retail customers pay for service work performed. This past year, we sold \$489,000 of labor in total; warranty work accounted for approximately 20% of that amount. At year's end, our service department ended with a net profit of \$1746.00, a razor thin margin. This is also giving our service department credit for parts sold through their efforts. Without that profit, we would have lost \$59,334 in our service department with just labor sales. In addition, our new car department lost \$24,000 for the year. Thanks to a robust used car and parts business, we were able to maintain a total dealership profit but as you can see, it is a challenge. We need every dollar for warranty reimbursement just to remain marginally profitable.

If the manufacturer is allowed to surcharge our new vehicles we will have no choice but to return to the old system of a lessor reimbursement for warranty repairs. That will mean that our retail customers will be forced to subsidize warranty repairs. We simply will have no choice but to pass on the costs to someone. This is unfair to our customers and is simply not right. General Motors and all manufacturers should pay their fair share to have the vehicles they built, repaired at a fair, equitable rate. To allow them to now surcharge vehicles, would not be fair to us or our customers. It would result in a two tiered pricing system that would add massive confusion and in the end; the consumer would pay more for vehicles purchased.

I hope you agree with me and will help prevent a surcharge from being put in place. Thank you for your time and I am most happy to discuss this anytime.

Sincerely,

Dan Toycen

Toyce of Ladysmith

Ladysmith, WI.

Cell 715 828 5027