



March 26, 2019

Dear Chairman Fitzpatrick and Members of the Senate Business, Labor, and Economic Committee:

On behalf of the American Consumer Institute, a nonprofit educational and research organization representing the interests of millions of consumers, I am writing you today because of our concerns with House Bill 617, which proposes to regulate large-scale auto industry enterprise computer systems and to rewrite dealer franchise agreements. We believe that this legislation would enable consumer data to be put at risk and contrary to fundamental property rights, and violates both the Montana and U.S. Constitutions. It is our judgment that House Bill 617 is anti-consumer, it would undoubtedly and substantially put the private data of consumers at risk, and it would broadly increase vehicle prices and consumer costs.

Dealer Management Systems (DMSs) have become a key computing system that dealers use for sales, service, finance, inventory, accounting operations and other purposes. DMSs are responsible for ensuring that all data stored on the system, regardless of source, is secure. These systems contain personally identifiable information of consumers, potentially including their names, addresses, phone numbers, Social Security numbers, employment data, purchase history, financial information and other private information that needs protection from the general public, hackers, data brokers, vendors and marketing firms, and other third-parties.

House Bill 617 would require dealer management systems to permit system access to anyone designated by a dealer, without regard to that person's technical competence, ethical values or criminal history, or commitment to utilize the data in ways that do not harm other DMS participants (e.g., auto manufacturers, lenders and consumers). It would not prohibit the resale or secondary use of personal data by "authorized" third-parties; it would not require consumer notification if and when their personal data has been used; and it would not prohibit unauthorized access, collection or retention of consumer data by "authorized" third-parties. In effect, the bill would legalize data breaches of personally identifiable information. Consumers deserve better.

It is axiomatic that every access point into a network is also an access point for hackers and malware, and that each access point increases risk not only to the network but to every participant in the network. Absent clear evidence of social good (which has not been presented in support of this legislation), government regulations mandating unfettered access to otherwise secure networks that carry proprietary, financial and sensitive consumer data will irrationally and unnecessarily put millions of Montana consumers at risk of data breaches and theft.

Additionally, DMS software is copyrighted content. The U.S. Constitution and Title 17 of the United States Code grants ownership in intellectual property as an incentive to creators, including software developers and publishers. A government mandate of who gets access to copyrighted content, particularly for commercial reason, undermines the value of copyrights and the value of the publishers' property, and is likely an unconstitutional taking.

Lastly, House Bill 617, while assuming that automakers will not fairly compensate their dealers for performing warranty repairs, actually provides an incentive for dealers to increase the price of parts and labor on RETAIL consumers (i.e., consumers who seek repairs not covered under warranty). Automakers would be compelled to pay dealers these higher labor rates and parts markups on their warranty claims. Federal court cases, studies and attorney advertising show that laws like this one have resulted in as much as a 90% markup on parts on retail consumers. Automakers ultimately pass these higher costs onto consumers. In fact, new vehicle buyers overpay by nearly \$50 billion due to these protectionist laws.<sup>1</sup> This finding is consistent with analysis done by the Federal Trade Commission.<sup>2</sup>

In our free market system, dealers are free to choose DMSs that offer different prices and features, including different security features, and dealers can also choose to create their own systems. The free market also allows dealers and manufacturers to contract in mutually beneficial ways through negotiations. House Bill 617 is government over-regulation – it interferes with private contracts, will raise costs for Montana automobile purchasers and it puts consumers private data in jeopardy – all with no evident benefit to Montana citizens. In enacted, consumers will pay more for less.

I urge the Chair and members of the committee to consider these issues and act in the best interests of Montana consumers, and in accordance with constitutionally protected property rights.

Respectfully,



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<sup>1</sup> Steve Pociask, "Corporate Welfare: How Automobile Dealership Franchise Regulations Cost Consumers an Additional \$48 billion Annually," American Consumer Institute, 2018, available at <https://www.theamericanconsumer.org/wp-content/uploads/2018/03/ConsumerGram-2018-FINAL-1.pdf>.

<sup>2</sup> Ibid, at fn. 16.