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March 20, 2023

Senator Benjamin M. Chipman, Chair
Representative Lynne A. Williams, Chair
Transportation Committee
State House, Room 126
Augusta, ME 04333

RE: LD 639 - An Act to Protect Vehicle Buyers by Limiting Vehicle Document Preparation Fees

Dear Senator Chipman and Representative Williams:

This letter augments the testimony by the Maine Automobile Dealers Association (MADA) at the public hearing in opposition to LD 639. During the public hearing, MADA noted that there are a number of state and federal requirements associated with record maintenance and disclosures required in the course of automobile transactions, which relates to disclosures, record keeping, and dealership employee continuing education.

By way of history, 29 M.R.S. §953-A was originally enacted in the early 1980s with then Senator Beverly Bustin as the sponsor. The purpose of the legislation was to promote clear disclosure of document fees (doc fees). In short, doc fees must be prominently disclosed to any prospective consumer. They must be disclosed on the Monroney label (that is the detailed documentation on the window of every new vehicle). They are separately stated on the Retail Buyers Order provided to customers for their review and signature prior to finalizing the purchase. They must be disclosed with the Used Car Information Act stickers (again, for used cars, on a car window), and in all advertising, which states a specific price for a vehicle.

Several of the laws which impact disclosure include:

1. The Truth In Lending Act, 9-A M.R.S. §8-504; 15 U.S.C. §1601, et seq. The Truth In Lending law in turn has two major regulations, Regulation Z, 12 Code of Federal Regulations, §1026.1, et seq., which is Truth In Lending, and Regulation M, 12 Code of Federal Regulations, §1013.1, et seq., which is Truth In Leasing;
2. Various credit products, including Credit Insurance and Credit Life. 24-A M.R.S. §c.37;
3. GAP Notification. GAP protects against loss when a vehicle is in an accident and there is negative equity;
4. Extended Service Contracts. During the course of any transaction a consumer who desires an extended service contract will get a separate contract with notices included;

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5. The Used Car Information Act, 10 M.R.S. §1471, et seq., which has numerous trade-in requirements. Disclosures regarding the historical use of a vehicle, including whether there has been significant mechanical damage or collision damage, must be included on the Retail Buyers Order Form. In addition, dealers must decide in the sale of the used unit whether to have a warranty of inspectibility, a used car warranty, or as appropriate, a disclosure that the unit is not fit for transportation;
6. The Fair Credit Reporting Act, 15 U.S.C. §1681, et seq., which was enacted to promote accuracy, fairness and privacy of consumer information and protecting consumers from identity theft, fraud and discrimination based on credit history. Regulation of the Fair Credit Reporting Act is by the Federal Trade Commission (FTC) and in part the Consumer Finance Protection Bureau (CFPB). This includes The Red Flags Rule, cited in the code of federal regulations as "Detection, Prevention, and Mitigation of Identity Theft." It also includes The Privacy Rule and Safe-Guards Rule;
7. Federal Requirements dealing with the Federal Office of Foreign Asset Control (OFAC) which is intended to track movement of large sums of money which could relate to money laundering or terrorist activities;
8. The Magnuson Moss Warranty Act, 15 U.S.C. §2301, et seq., governs warranties on consumer products, including cars, and in particular implied warranties. It is regulated by the FTC. Warranty issues also dovetail with Title 11 M.R.S. Article 2 of the Uniform Commercial Code, which addresses express and implied warranties; and
9. The Dodd Frank Wallstreet and Consumer Protection Act. This federal law was enacted after the 2007 financial crisis, is 848 pages long, and created the CFPB.

In addition to the above statutes, dealers routinely have to deal with safety recall standards (10 M.R.S. §1174(3)(C-4)). In addition, when a consumer makes a warranty claim, the dealer needs to be able to explain the process associated with warranty claims and process all the paperwork associated with warranty claims.

By way of comparison, there are various fees charged by banks in a typical home mortgage which do not require the degree of disclosure that is applied to automobiles. For example, one bank estimated that its closing costs ranged in the area of \$3,500, and includes, among other things, an "origination fee" of \$799, an appraisal fee, which averages \$650, title fees, which are in the vicinity of \$1,000, recording fees, which are \$30, flood determination, which is \$20, and a credit report, which is \$58. In short, there are very significant fees associated with a bank closing that do not carry the level of detail or disclosure required of automobile transactions.

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MADA was surprised to see an estimate from the Office of Fiscal and Program Review suggesting that there were no fiscal impacts associated with this legislation. MADA respectfully disagrees. There was testimony that the average doc fee in Maine is \$425. New car dealers sell 120,000 new and used cars per year. For purpose of analysis, MADA assigned an average doc fee of \$425 to each transaction for 120,000 new and used sales, that created \$51 million in doc fees. Reducing that to the sales tax (5.5%) derived \$2.8 million ($120,000 \times \$425 \times 0.055 = \2.8 million) as a doc fee sales tax base from new car dealers. That number needs to be reduced by the proposed \$75 maximum doc fee, which is \$495,000 ($120,000 \times \$75 \times 0.055 = \$495,000$). Subtracting out the difference results in \$2.3 million ($\2.8 million - $\$495,000 = \2.3 million) in lost revenue. While MADA does not have exact numbers, there are approximately 80,000 additional units that were sold by used car dealers. MADA does not know what the average doc fee for such units would be but estimates the total number to be over \$1 million. That results in a loss of sales tax revenue somewhere north of \$3 million.

It was suggested at the public hearing that dealers would just change the price of the car so there would be no fiscal impact. That is incorrect. First, dealers peg their prices off the manufacturer's suggested retail price (MSRP). Changing that pricing to recapture the doc fee amount is certainly not always possible and would have negative competitive implications. In addition, manufacturers are regularly offering various special programs (first time buyer, college graduate, veteran, etc.). Those various programs do not allow for a dealer's price per unit simply to be changed. Also, the primary goal behind Section 953-A, when first enacted, was to provide transparency to the consumer. To suggest that a dealer should change the price and fail to directly disclose the costs associated with doc fees flies in the face of the statute's intent.

There are numerous costs that go into the doc fee. They include, among other things, software and hardware requirements, which depending on the size of the dealership can run between \$3,000 and \$20,000 per month; cybersecurity insurance and coverages; FTC compliance software; FTC compliance hardware and IT; various labor costs; buyers' guides; invoice forms; various contracts, and more. You will recall that Sam Hight, a dealer in Skowhegan and a member of the Board of Directors of MADA, testified that for his dealership the costs were \$160,000. This was for one smaller dealership. Numbers are significantly higher for some of the large dealerships in Maine.

In conclusion, the existing statutory requirements work well. There is no question that consumers understand what doc fees are. Consumers can negotiate the price of a car knowing what the doc fees are. It is quite common for the price of the car to be renegotiated to essentially reduce or eliminate the doc fee amount. Limiting doc fees results in a significant cost to the general fund.

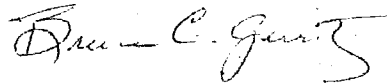
Finally, MADA notes that there were no proponents to the legislation. This legislation did not generate testimony from consumers.

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MADA respectfully urges the Committee to vote LD 639 out unanimous Ought Not To Pass.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Bruce C. Gerrity".

Bruce C. Gerrity

BCG:apl

Cc: Thomas Brown