

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS

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October 28, 2014  
Start: 1:40 p.m.  
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HELD AT: 250 Broadway - Committee Room  
14th Floor

B E F O R E: RAFAEL L. ESPINAL, JR.  
Chairperson

COUNCIL MEMBERS:  
Vincent J. Gentile  
Julissa Ferreras  
Karen Koslowitz  
Rory I. Lancman

## A P P E A R A N C E S (CONTINUED)

Julie Menin, Commissioner  
Department of Consumer Affairs (DCA)

Marla Tepper, General Counsel  
Department of Consumer Affairs (DCA)

Alba Pico, First Deputy Commissioner  
Department of Consumer Affairs (DCA)

Doug James, Senior Advisor  
Department of Consumer Affairs (DCA)

Amit Bagga, Deputy Commissioner  
External Affairs, and Connie Ress is our  
Department of Consumer Affairs (DCA)

Connie Ress, Associate Commissioner  
Marketing Department  
Department of Consumer Affairs (DCA)

Mark Schienberg, President  
Greater New York Auto Dealers Association  
(GNYADA)

Jonathan Bing, Attorney, Wilson Elser  
Government Affairs Council  
Greater New York Auto Dealers Association  
(GNYADA)

Bob Vancavage  
New York State Auto Dealers Association  
(NYSADA)

Paula Frendel, Executive Director  
New York Independent Automobile Dealers  
Association (NYIADA)

Sean Peterson  
Legislative and Regulatory Counsel  
National Independent Automobile Dealers  
Association (NYIADA)

Fred Donnelly, President  
New York Independent Automobile Dealers  
Association (NYIADA)

2 [sound check]

3 CHAIRPERSON ESPINAL: Good afternoon.

4 [gavel] Good afternoon, and welcome to today's  
5 hearing of the Committee on Consumer Affairs. My  
6 name is Rafael Espinal. I'm the Chair of the  
7 Committee. The used car market is an attractive and  
8 affordable option for many New York City residents  
9 who wish to own a car. At the same time, however,  
10 the industry remains the subject of a high volume of  
11 consumer complaints, and its long history of  
12 deceptive and unfair practices. In an effort to  
13 protect both the finances and physical safety of New  
14 York City consumers, the Committee will conduct  
15 today's' hearing into the matter of used car sales,  
16 and outstanding manufacturer recalls. The hearing  
17 will include one oversight topic, and two pieces of  
18 legislation.

19 The oversight concerns used car  
20 dealerships in New York City that sell vehicles with  
21 parts that have been recalled by manufacturers.  
22 According to the National Highway and Transportation  
23 Safety Administration, over 50 million vehicles have  
24 been recalled this year alone. Federal law requires  
25 manufacturers to give notice of any recall to owners

2 of new cars, and to make the necessary repairs at no  
3 cost to the owner. The law does not require a notice  
4 to owners of used cars, and does not impose any  
5 requirement on dealerships that sell used cars. New  
6 Yorkers are protected by the Used Car Lemon Law,  
7 which requires provisions of a written warranty in  
8 most instances, and imposing an implied warranty on  
9 others. Due to strong consumer protection laws in  
10 the State and the City of New York, all vehicles must  
11 be certified, and roadworthy, and it's unlawful to  
12 sell a car as-is.

13 In July of 2014, the Department of  
14 Consumer Affairs announced an investigation into  
15 practices of used car dealers. The compliance with  
16 state laws and whether they were selling vehicles  
17 recalled by the manufacturers without first making  
18 repairs. The Committee looks forward to learning  
19 more about DCA's investigation and its findings. In  
20 addition to this oversight, the Committee will hear  
21 two bills.

22 Intro No. 178 would require that price  
23 displays for used cars state the total selling price  
24 of the vehicle inclusive of administrative fees and  
25 service fees.

2 Intro No. 518 would create a new city law  
3 requiring that dealers of second hand automobiles  
4 first repair vehicles that have been recalled by the  
5 manufacturer before reselling them.

6 The Committee will hear from the  
7 Department of Consumer Affairs, representatives of  
8 the used car industry, and any other interested  
9 parties in attendance who would like to provide  
10 testimony. With that being said, I would like to  
11 call on my colleague from Brooklyn, Jumaane Williams,  
12 who is the sponsor of one of the bills.

13 COUNCIL MEMBER WILLIAMS: Thank you, Mr.  
14 Chair. I want to thank you for allowing this hearing  
15 to go forward on these bills, and we thank you all  
16 for coming to testify on the bills. I'm proud to co-  
17 sponsor along with Council Member Richards on No.  
18 518. I would like to speak a little bit about Intro  
19 No. 178, which is a bill that will require  
20 dealerships to display the total selling price or  
21 all-inclusive pricing of autos used by a tag or sign.  
22 And, Mr. Chair, if you could imagine if you were  
23 shopping for a car one day at a used car dealership  
24 comparing cars based on styles, prices. Even have  
25 called them to find out if the car was available, and

2 making sure that the price was what it was. The  
3 salesman finally-- You get there and the salesman  
4 discusses with you the payment options. And then all  
5 of a sudden they unveil various fees that were  
6 completely unexpected beyond the usual additions for  
7 tax and registration. And that are tacked on  
8 specifically from the dealer, which end up adding as  
9 much as \$5,000 to the total purchase of the car.

10 This experience happened to me a little  
11 over a year ago when I was trying to purchase a  
12 vehicle, and I was very disappointed to say the least  
13 after having this happen at several different car  
14 dealerships. I ended up going to New Jersey to  
15 purchase my car. I was so take aback by the  
16 additional fees, that I sponsored this legislation,  
17 which would ensure the total selling is displayed on  
18 the car's price tag, which will include any  
19 administrative service or other fee charged by the  
20 second hand automobile dealer exclusive of tax and  
21 fees for securing a registration and/or certificate  
22 of title.

23 No consumer should be hit with such  
24 surprise fees regardless if they're purchasing a new  
25 or used car. It's my hope that my colleagues pass

2 this bill to ensure no New Yorker has to go through  
3 the same process I did. On the last and final-- the  
4 last dealership I went to, I explained to the  
5 gentleman that I'm Council Member and this is very  
6 frustrating. And he sat down and discussed the whole  
7 thing with me, and he added frustration that it was  
8 an industry wide problem. Which made him-- a little  
9 bit more difficult for him to do what he has to do  
10 when everyone else doing the same thing.

11 In addition, it's unacceptable for a New  
12 Yorker to buy a car with a manufacturer's recall  
13 without the dealer fixing it. I will turn it over to  
14 my colleague Council Member Richards, who is going to  
15 be speaking about this. And again, I want to thank  
16 Council Member Espinal, and all the Consumer Affairs  
17 Committee for hearing these used car bills. And  
18 thank everyone for providing their testimonies.

19 I would like to add that a few years ago  
20 when I purchased one before that, I had similar  
21 issues, and I'm going to say the name. I called  
22 Major World about a car, a very specific car that I  
23 saw on the site, and asked them if it's there? Is  
24 anything wrong with it? And they said, of course  
25 not. When I got there, they told there is, indeed,



2 something wrong with the car, but they had some other  
3 cars to show me. So I'm very concerned about-- Even  
4 though we have passed some laws having to do with  
5 this, I'm very excited that we're passing some more  
6 to try to get a better handle on this. Thank you.

7 CHAIRPERSON ESPINAL: Thank you, Council  
8 Member Williams. Next, we have Council Member  
9 Richards from Queens.

10 COUNCIL MEMBER RICHARDS: Yes. So glad  
11 not to be from Brooklyn. [laughter] Well, good  
12 afternoon. Thank you. [laughs] Thank you, Chair  
13 Espinal for hosting this hearing, and your committee,  
14 and allowing me to speak on this proposed bill. I  
15 would also like to thank my colleague Council Member  
16 Jumaane Williams for co-sponsoring this bill as we  
17 work hard to protect the consumers of New York City.

18 Today, I would like to bring to your  
19 attention Intro 518, a bill that prohibits a licensed  
20 used car dealership to sell a vehicle that has been  
21 recalled without making the necessary repairs. This  
22 bill is simply about better business practices, and  
23 about protecting consumers. When a consumer goes to  
24 a licensed dealership to purchase a vehicle, it is  
25 fair to have an expectation that what is being

2 presented to them is safe and working. Therefore, it  
3 is fit to hold a licensed dealer responsible for its  
4 inventory that has been recalled by its manufacturer.  
5 It is unfair to sell the vehicle to a consumer and  
6 ultimately pass on the cost and liabilities of a  
7 malfunctioning automobile to the consumer.

8           In order to deter this type of bad  
9 behavior, we are proposing to increase the penalties  
10 for such infractions. And for those that chronically  
11 break the law, we propose that their licensing should  
12 be revoked. The intent of the bill is to protect  
13 consumers while bringing accountability to the  
14 industry. We are not seeking to hurt anyone who is  
15 doing the right thing. With that said, we are open  
16 to hearing all sides, and I look forward to hearing  
17 the prepared testimonies today. Thank you, Chairman.

18           CHAIRPERSON ESPINAL: Thank you, Council  
19 Member Richards. We are also joined by Julissa  
20 Ferreras from Queens. We're going to call up the  
21 first panel. Before we do that, we have to--

22           [background discussion]

23           CHAIRPERSON ESPINAL: We have  
24 Commissioner Julie Menin from DCA; Alba Pico from  
25 DCA; Amit Bagga from DCA; Doug James from DCA; Martha

2 Tepper from DCA; and Connie Ress from DCA. Before  
3 you begin your testimony, I'd like to administer the  
4 oath. Do you affirm to tell the truth, the whole  
5 truth, and nothing but the truth in your testimony  
6 before this committee, and to respond honestly to  
7 Council Member's questions?

8 PANEL MEMBERS: [off mic]

9 CHAIRPERSON ESPINAL: Thank you. Before  
10 your testimony, could you also state your name?

11 [Pause]

12 JULIE MENIN: Thank you. Good afternoon.  
13 I'm Julie Menin, Commissioner of the Department of  
14 Consumer Affairs. And I want to first of all, thank  
15 Chairman Espinal and members of the committee for  
16 inviting us to come here today to talk about these  
17 important issues. I know you acknowledged, Mr.  
18 Chairman, my colleagues, but I just want to take a  
19 moment to acknowledge them as well. Marla Tepper is  
20 the General Counsel of DCA. Alba Pico is our First  
21 Deputy Commissioner. Doug James, Senior Advisor, and  
22 Amit Bagga is our Deputy Commission of External  
23 Affairs, and Connie Ress is our Associate  
24 Commissioner of Marketing. So I just wanted everyone  
25 to know who is here from our team.

2           Your timing is perfect in having this  
3 hearing today because just earlier this morning, we  
4 at DCA announced a settlement with Planet Automotive  
5 for a total of \$441,000 in fines and consumer  
6 restitution, and I'll be talking a little bit about  
7 that later on in my testimony. But I think it was  
8 very fortuitous that the testimony is coming today.

9           So first of all, just let me say on  
10 behalf of DCA that we greatly appreciate the  
11 opportunity speak with you about the two bills before  
12 the committee today, Intro No. 178 and Intro No. 518,  
13 as well as many important issues related to the  
14 marketing and sales practices of second hand auto  
15 dealers in New York City. It is, of course, the  
16 mission of DCA to empower and protect consumers, as  
17 well as to educate and engage businesses to ensure a  
18 fair and vibrant marketplace. To that end, the  
19 agency licenses, regulates, and educates  
20 approximately 80,000 businesses cutting across 55  
21 different industries in New York City. In addition,  
22 of course, to engaging in wide-ranging enforcement of  
23 the City's Consumer Protection Law.

24           We applaud the committee for its  
25 attention to important issues related to second hand

2 auto dealers. In particular, I want to recognize the  
3 leadership of Council Members Williams and Richards  
4 for introducing the bills that we are discussing  
5 today. Both of these bills will enhance DCA's  
6 ability to protect consumers from improper practices  
7 in the used car marketplace. I am going to provide  
8 specific comments on each of these bills after I  
9 first describe the agency's current work regarding  
10 this industry. So first I'm going to give an  
11 overview of DCA's licensing and enforcement of used  
12 car dealers.

13 DCA currently licenses 869 second hand  
14 auto dealers across the five boroughs. The agency's  
15 oversight of used car dealers recognizes that  
16 purchasing a used car can often be the single biggest  
17 purchase an individual or a family makes in a given  
18 year or even over the course of several years. This  
19 is especially true for lower income New Yorkers, who  
20 often benefit from access to a car, but can also be  
21 subject to crushing debts by owning one.

22 In 2013 and 2014 to date, DCA has  
23 received nearly 500 complaints about second hand auto  
24 dealerships and has secured more than \$1.1 million in  
25 relief and restitution for consumers. Because many

2 consumers do not file complaints with the agency even  
3 when they have been deceived, DCA engages in two  
4 types of proactive enforcement: Patrol based  
5 inspections that address basic consumer and community  
6 based protections, in addition to aggressive case-  
7 based enforcement directed to ensuring that  
8 consumers, who are wronged by car dealers get back  
9 the money they are due. And that dealers do not  
10 continue to engage in illegal and deceptive conduct.

11           So let me first talk a little bit more  
12 about patrol based inspections. DCA inspectors  
13 conduct field inspections of second hand auto dealers  
14 in all boroughs to ensure, among other things, that  
15 businesses appropriately display their license  
16 information; conspicuously post important signage  
17 about consumer rights; keep required books and  
18 records; and provide bills of sale that contain  
19 legally mandated information. Such as notice  
20 certifying that a purchased vehicle is in safe  
21 condition. DCA has also conducted sweeps of second  
22 hand auto dealers in the past to ensure that they are  
23 selling cars that they have advertised.

24           In a proactive effort to ensure that  
25 dealers are aware of how to comply with the law, DCA

2 has now for the first time ever posted 41 of its most  
3 commonly used inspector checklists online in several  
4 languages to make the process more transparent and  
5 accessible. Any business owner can assess these  
6 checklists to see exactly what an inspector will be  
7 looking for. To date, in calendar year 2014, DCA has  
8 conducted 615 inspections of second hand auto dealers,  
9 and issued 338 violations to dealers. These  
10 inspections help to ensure consumers are provided  
11 with key disclosures about the vehicle they purchase,  
12 and the legal protections to which they are entitled,  
13 and help inform larger cases brought by the agency.

14 I'm now going to turn to unlicensed  
15 activity. DCA is also continuing to deliver on Mayor  
16 de Blasio's mandate to support and empower law  
17 abiding businesses by conducting enforcement of  
18 unlicensed second hand auto dealers. In 2013, DCA  
19 issued 47 violations for unlicensed second hand auto  
20 sale activity, and the agency has issued 20 so far  
21 this year. The agency is currently working with the  
22 industry to address the illegal practice known as  
23 curbstoning, which is the sale of used cars from the  
24 curb literally rather than from licensed second hand  
25 auto dealers. Curbstoners disrupt the used car sales

2 market by taking away business from legitimately  
3 licensed used car dealerships without the costs, of  
4 course, that are associated with licensing and  
5 maintaining property where their cars are displayed.  
6 And often sell cars to consumers that are not  
7 roadworthy.

8           Through its current licensing and  
9 regulatory authority, DCA's legal team aggressively  
10 pursues used car dealers engaged in deceptive and  
11 illegal marketing and sales practices. The agency's  
12 recent action against Planet Automotive, which I  
13 mentioned earlier, a second hand auto dealer in Long  
14 Island City-Queens exemplifies DCA's uncompromising  
15 approach against deceptive and predatory practices.

16           So let me talk a little bit about the  
17 Planet Automotive case. DCA charged Planet with  
18 using deceptive advertising to lure customers, and  
19 pressuring those consumers into agreeing to thousands  
20 of dollars in unwanted add-ons such as extended  
21 warranties, and theft protection. And then,  
22 compelling those consumers to obtaining financing  
23 through the dealership.

24           Earlier this year, DCA issued charges  
25 against another group of dealerships engaged in



2 fraudulent and deceptive conduct, including false  
3 advertising, forcing consumers to purchase add-ons,  
4 inducing consumers to sign blank documents, forging  
5 documents, and disturbingly, communicating with a  
6 consumer in his or her native language. And then  
7 having the consumer sign documents written in English  
8 with substantially different terms. In this and  
9 other second hand dealer cases, the agency is  
10 focused, of course, on obtaining restitution for  
11 aggrieved consumers. And ensuring that the  
12 dealership implements policies and procedures that  
13 will bring the dealership into compliance.

14           Through these cases, the agency is  
15 sending a strong and powerful message to the industry  
16 that these types of abusive, illegal practices will  
17 simply not be tolerated. DCA is the first, and to  
18 our knowledge, the only municipal agency in the  
19 country actively working to address a key loophole in  
20 federal law. Which prohibits the sale of new  
21 vehicles with recalled parts that fails to be on the  
22 sale of used vehicles with said recalled parts.

23           Under New York State's Vehicle and  
24 Traffic Law, a vehicle must pass an 18 point  
25 inspection and be considered roadworthy in order to

2 be sold. As the State is not currently inspecting  
3 second hand vehicles for recalled parts, DCA is  
4 utilizing its authority to enforce New York City's  
5 licensing and consumer protection laws to investigate  
6 the extent to which second hand auto dealers are  
7 selling cars that are the subject of safety recalls.  
8 The primary goal of these inspections is to make  
9 certain that no New York City dealer sells second  
10 hand recalled cars until they are fixed.

11 As member of the committee are well  
12 aware, more cars have been recalled in 2014 than in  
13 any other year on record. According to the National  
14 Highway Traffic Safety Administration, approximately  
15 52 million cars have been recalled this year in the  
16 U.S. beating a previous record of 30.8 million in  
17 2004. Reportedly, there are millions of cars sold  
18 each year to unsuspecting buyers that have been  
19 recalled, but remain unfixed. Rather than wait for  
20 tragic statistics, DCA sent subpoenas in July of this  
21 year to approximately 200 second hand auto  
22 dealerships, which is nearly a quarter of all dealers  
23 citywide. In an effort to discover whether dealers  
24 are selling unrepaired recalled cars, providing our  
25 policies on selling unrepaired recalled cars, and

2 revealing how many such vehicles they have sold in  
3 the past year.

4 I will now provide specific comments on  
5 the two bills being considered before the committee.  
6 The first bill, Intro 178 requires that second hand  
7 auto dealers display a stamp, label, or tag that  
8 contains the total selling price including any  
9 administrative, service, or other fee charged by the  
10 second hand automobile dealer, but exclusive of tax  
11 and fees for securing a registration and/or  
12 certificate of title. Improving price transparency  
13 is an important step to empower consumers to make  
14 informed purchase decisions. DCA supports the goal  
15 of this legislation to require more full and complete  
16 price disclosures. We offer the following  
17 suggestions to strengthen the proposed bill:

18 We first recommend that the Council  
19 include in this bill a requirement that the prices of  
20 any offered add-on products are also clearly and  
21 conspicuously posted. All too often dealerships  
22 include in sales agreements thousands of dollars of  
23 unwanted add-on options. Such tactics, of course,  
24 are of serious concern to the agency as consumers are  
25 often tricked into purchasing expensive add-on items

2 such as warranties; theft determent systems,  
3 insurance products; debt cancellation agreements,  
4 known as GAP insurance; exterior or interior surface  
5 protection, as well as window etching.

6           Requiring dealers to post prices of these  
7 products will allow the consumer to avoid being  
8 unwittingly duped into purchasing these products, and  
9 to know the base cost of these items. This posting  
10 will also prevent another predatory practice.  
11 Disconcertingly, many dealers would not only include  
12 such items to inflate the final sales price, but will  
13 also deceptively steer consumers into loans with  
14 rates that are higher than necessary. So that  
15 dealers can receive kickbacks from lenders, as the  
16 vehicle is actually being financed through the dealer  
17 at a rate lower than what has been sold to the  
18 consumer.

19           Following specific comments in both  
20 bills, I will highlight serious concerns DCA has with  
21 respect to second hand auto dealers' financing  
22 practices. To ensure that the price posting  
23 requirement is meaningful, the agency also recommends  
24 the addition of language to the bill that would  
25

2 ensure the posted price is the same price that was  
3 advertised and is reflected in the bill of sale.

4 Finally, to improve the efficacy of this  
5 legislation in meeting its intended purpose, we ask  
6 the Council to consider the following technical  
7 amendments to the bill, which I'm just going to read  
8 into the record.

9 Subpart B: For second hand automobile  
10 dealers required to be licensed pursuant to Section  
11 20-265 of this Code, such stamp, tag, label, or sign  
12 displayed pursuant to subdivision (a) of this section  
13 shall state the total selling price which shall  
14 include any administrative service, inspection, or  
15 other fee charged by the second hand automobile  
16 dealer exclusive of tax and optional fees for  
17 securing a registration and/or a certificate of  
18 title.

19 DCA would also like to work with the  
20 Council to make further amendments to the legislation  
21 to ensure that these protections are also applied to  
22 unlicensed auto dealers by clarifying that the  
23 provisions of this legislation apply to all second  
24 hand automobile dealers that are required to be  
25 licensed by DCA. Clarify the disclosure of any

2 inspection fees, as required. And finally, to ensure  
3 consistency with DCA's rules, as well as the New York  
4 State Attorney General's Advertising Guidelines,  
5 which treat title and registration fees as option  
6 fees. Meaning that it is optional for a consumer to  
7 pay these fees through the dealer as opposed to  
8 obtaining title and registration independently.

9 Now, I'm going to talk about Intro 518.  
10 The second bill being considered today Intro 518  
11 would amend the Administrative Code to specifically  
12 prohibits second hand auto dealers from selling any  
13 used automobile that a manufacturer has recalled  
14 without repairing it first. Consumers purchasing  
15 used cars have an expectation, which is grounded in  
16 law, that the car they are sold. And if not, has a  
17 dangerous defect that could cause serious harm,  
18 injury, or even death. Compared to other  
19 municipalities in the nation, New York City and DCA  
20 are in a unique position to investigate these  
21 businesses because of the authority DCA has under the  
22 City's Licensing and Consumer Protection laws. And  
23 because it is illegal to sell cars as-is under those  
24 state and city laws.

2           Current, city law enforced by DCA  
3 requires dealers to certify that their vehicles are  
4 roadworthy. And prohibits dealers from misleading  
5 consumers about the safety of their vehicles. As  
6 I've discussed earlier, regulating the sale of  
7 unrepaired recalled cars is already within DCA's  
8 jurisdiction and has been a high priority for the  
9 agency. This legislation would confirm DCA's  
10 position, and by increasing penalties would enhance  
11 the agency's ability to protect New Yorkers by  
12 ensuring that dealers comply. DCA is supportive of  
13 this legislation.

14           We anticipate that the industry will urge  
15 the Council to simply require disclosure of a  
16 vehicle's recall status prior to sale, an approach we  
17 think is inadequate to protect the lives of consumers  
18 who buy cars, as well as those who use the roads. We  
19 recommend clarifying the proposed bill by defining  
20 recall to mean any manufacturer or NHTSA Safety  
21 Recall. Such a provision would not place an undue  
22 burden on auto dealers as information about recall is  
23 quite frankly easily retrievable by inputting a  
24 vehicle identification number on the recall database  
25 website, which is [www.safe.gov](http://www.safe.gov). To ensure that the

2 bill can be enforced, we recommend adding the  
3 following requirements:

4           First, dealers should be required to  
5 maintain documentation that they complied with this  
6 provision. Including maintaining documents that they  
7 confirm the recall status of the vehicle prior to  
8 sale, and that the vehicle was actually repaired.  
9 Amending the proposed bill to provide the  
10 Commissioner with the authority to describe required  
11 documentation would address this concern. Requiring  
12 clear disclosures of the full selling price of a  
13 second hand car, and confirming that the sale of the  
14 second hand car with unrepaired retail parts is  
15 illegal. And is subject to heightened penalties.  
16 would ensure the consumers are better informed about  
17 how much purchasing a second hand car would cost  
18 them. And crucially would reassure that their lives,  
19 and the lives of others are not being endangered by  
20 an unsafe vehicle. At the same time, further reforms  
21 are necessary to protect consumers from predatory  
22 practices by used car dealers.

23           I'm not going to talk very briefly about  
24 dealer financing practices. Such reforms include  
25 stringent regulations of second hand auto dealer



2 financing practice. Dealer financing is not often  
3 only predatory, but often can result in particularly  
4 dire consequences for New Yorkers of limited means.  
5 As I said earlier, a used car is often the largest  
6 purchase a low income family can make. And DCA in  
7 consultation with the Mayor's Office is currently  
8 looking to address this situation in a very serious  
9 way.

10           Nearly 80% of second hand auto sales are  
11 financed through dealers who frequently mark up used  
12 car loans by an average of an additional 2.91%. Too  
13 often the consumers believe the dealer has negotiated  
14 the best rate for them, and they're unaware that  
15 they're actually paying significantly more. These  
16 dealer markups can inflate the cost of loans by over  
17 \$1,200 over a five-year term. Dealer markups also  
18 provide dealers with incentive to sell consumer's  
19 unwanted add-ons to increase the amount of financing  
20 on a loan, and the related markup. A July 2014 New  
21 York Times article noted that subprime auto loans  
22 often come in with exorbitant interest rates that can  
23 exceed 23%. And the Times investigation also found  
24 that dozens of loans that included incorrect  
25 information such as borrower's income and employment.

2 Including people who had lost their jobs or were in  
3 bankruptcy, or were living on Social Security to  
4 quality for loans that they could not afford.

5           Through its Office of Financial  
6 Empowerment, DCA has since 2008 provided more than  
7 50,000 hours of free one-on-one intensive financial  
8 counseling to New Yorkers at 30 different sites  
9 across the City of New York. And many of our clients  
10 we have found have been saddled with auto related  
11 debt. Among those who have such debt, DCA has found  
12 that average amounts are more than \$12,000 and that  
13 70% of these same clients have annual incomes of  
14 \$36,000 or less. For such clients these debts can  
15 amount to over 35% of their annual incomes. The fact  
16 that so many New Yorkers face such financial  
17 challenges renders obviously a careful assessment of  
18 the second hand auto dealer practices to be really  
19 incredibly important.

20           In addition to requiring full disclosure  
21 of the total selling price of a car and criminalizing  
22 the sale of unrepaired cars with recalled parts, DCA  
23 would like to work with the Council to basically have  
24 effective legislation that would also require posting  
25 a Consumer Bill of Rights. Significantly increase

2 regulation of high pressure sale tactics as well as  
3 ban or cap dealer markups, and ban curbstoning, as I  
4 talked about before. We believe that these kinds of  
5 approaches would expand the positive impact of a  
6 statutory code to regulating the industry, and in  
7 particular make sure that New York City's most  
8 vulnerable consumers are better protected from harm.

9 We very much look forward to an ongoing  
10 dialogue with the Council and the committee on all of  
11 these ideas, and thank you so much again for the  
12 opportunity to testify today. And we're happy to  
13 answer any question that you might have for us.

14 CHAIRPERSON ESPINAL: Thank you  
15 Commissioner A and thank you DCA for all the work  
16 that you guys do especially around this issue. I  
17 know it's not-- I would say for a family of low  
18 income, I'm sure it's not an easy process for them to  
19 go out and spend as much money as they do on a car.  
20 And when they do, we want to make sure that they're  
21 getting the best car they can, you know, for their  
22 money's worth. And I purchased a car before, a used  
23 car, it's a very-- Again, it's very uneasy not  
24 knowing whether I'm going to drive the car home. Is  
25 it going to break down on me. Wondering if the lemon

2 law is actually strong enough to cover my car after  
3 it's over.

4 So with that being said, I want to talk  
5 about subpoenas you issued back in July. How many  
6 dealers were found to have policies that were not in  
7 compliance with the law?

8 JULIE MENIN: I'm going to turn it over  
9 to our General Council Marla Tepper who can talk  
10 about the investigation.

11 MARLA TEPPER: Our investigation is  
12 currently ongoing. We have not reached any findings  
13 yet. We will certainly inform the Council when we  
14 make those findings. We issued the subpoenas,  
15 however, to ensure that dealers were complying with  
16 the law, and to determine the scope and extent of  
17 that compliance.

18 CHAIRPERSON ESPINAL: Has DCA issued any  
19 violations as of yet?

20 MARLA TEPPER: Now with regard to this  
21 issue, the investigation is still proceeding. I  
22 would note, however, that the settlement that the  
23 Commissioner described earlier is the first  
24 settlement to actually include terms with regard to  
25 recalls. That settlement prohibits the dealer from

2 selling cars that have not been recalled unless they  
3 were repaired.

4 CHAIRPERSON ESPINAL: Now, going back to  
5 the ruling you did in July in mid-July. Can you  
6 touch on what would be the main-- What are the main  
7 differences between what you guys did internally to  
8 Richard's bill?

9 JULIE MENIN: You mean the comments we're  
10 making on the bill?

11 CHAIRPERSON ESPINAL: On the recalls.  
12 Those that were made. [sic] Yes.

13 [Pause]

14 JULIE MENIN: So this is all in our  
15 written testimony, but we're making a couple  
16 additional suggestions that the dealer should be  
17 required to maintain documentation that they complied  
18 with the provision. Including maintaining documents  
19 that they confirm the recall status of the vehicle  
20 prior to sale. And that the vehicle was actually, of  
21 course, repaired. Amending the proposed bill to  
22 provide the commissioner with the authority to  
23 describe required documentation and rules we feel  
24 would address the concern. And then we also have in  
25 our testimony requiring clear disclosures of the full

2 selling price of a second hand car. And confirming  
3 that the sale of the second hand car with unrepaired  
4 retail parts is illegal, and is subject to heightened  
5 penalties. We believe would ensure that consumers  
6 are better informed.

7 CHAIRPERSON ESPINAL: And I know you also  
8 stated that there's website where the used car  
9 dealers can go into to figure out if there are any  
10 open recalls on the vehicle.

11 JULIE MENIN: Yes, and do you want me to  
12 repeat that again?

13 CHAIRPERSON ESPINAL: No, no--

14 JULIE MENIN: [interposing] Oh, okay.

15 CHAIRPERSON ESPINAL: -- I actually have  
16 it, but my question is if the used car dealer wants  
17 to put the number on the website, would the website  
18 tell you if that car has been serviced? Or if some  
19 of the recalls have been closed on that specific  
20 vehicle?

21 MARLA TEPPER: The website will tell you  
22 whether there's an open recall, or whether that  
23 recall has been addressed yes.

24

25

2 CHAIRPERSON ESPINAL: Okay. All right,  
3 thank you. I'm going to pass it over to Council  
4 Member Williams.

5 COUNCIL MEMBER WILLIAMS: Thank you, Mr.  
6 Chair, and thank you very much for the testimony, and  
7 the support of the bill. I also wanted to be clear,  
8 the fee-- Well, I had mentioned two incidents. One  
9 was a major one, and that was actually several years  
10 ago. And that just seemed to be a bait and switch.  
11 The most recent one didn't involve them. It involved  
12 several other smaller ones, and the fee that they  
13 kept telling me about was a so-called dealer fee. It  
14 wasn't really associated with anything, and it was  
15 literally about five or six thousand dollars. And  
16 they kept saying, Well, did you really think the car  
17 would be that cheap? So do you have any idea what  
18 dealer fees comprise of? And is there any range to  
19 which it can be charged?

20 JULIE MENIN: Yes, Marla is going to  
21 address that.

22 MARLA TEPPER: Yeah. So statutorily, the  
23 car dealers are limited in the fees that they can  
24 exact. And certainly, they need to disclose the  
25 types of fees that they are imposing on consumers.

2 We too often see that dealers are imposing, as you  
3 described, administrative fees. That is illegal  
4 currently under the law, and the proposed legislation  
5 is welcome because it would address disclosures to  
6 consumers of the price upfront. So that they would  
7 not be misled by the imposition of such fees.

8 COUNCIL MEMBER WILLIAMS: And one of the  
9 things I heard. Commissioner also I think you called  
10 it add-ons. That there was a concern that this bill  
11 as written would prevent them from negotiating  
12 legitimate add-ons to when the car is sold if they  
13 want to throw in some extra tires or want to make--  
14 the dealers would throw in the warranty. These I'm  
15 talking about the good actors that actually are  
16 trying to actually do a deal that makes sense and  
17 that works for the consumer. Can you tell me your  
18 opinion of how that would adversely affect a consumer  
19 who may be getting a better deal if they package it  
20 in a certain way?

21 MARLA TEPPER: We all too often see that  
22 consumers are not getting a good deal with add-ons  
23 that the negotiation is not really a bonafide  
24 negotiation. That it's not really a good deal for  
25 the consumer. To the extent that the prices are



2 posted, that would enable the consumer to know what  
3 the maximum price of that add-on would be. And that  
4 would be helpful if legitimate negotiations are going  
5 to occur. And we would be happy to work with the  
6 Council on crafting language that would address that.

7 COUNCIL MEMBER WILLIAMS: So if the car  
8 is \$10,000 on the sticker, and we negotiate or try  
9 and negotiate it down to \$9,000 or what have you, and  
10 then they want to throw in some tires or throw in  
11 some warranty, and they want to get the warranty  
12 cheaper. You don't think this bill would affect  
13 those negotiations from happening in a way that's  
14 helpful to the consumer?

15 MARLA TEPPER: We think that the price of  
16 the add-ons should be posted so that a consumer is  
17 not misled to believe that they are getting something  
18 for nothing. In fact, the price should be clear from  
19 the beginning. What is the price of the car, and  
20 what is the price of the add-ons. I think if the  
21 Council adopts the suggestions we proposed that would  
22 be helpful for the consumer, and not impede bonafide  
23 negotiations.

24 JULIE MENIN: Right. We'll really just  
25 focus on transparency. Disclosure is the best way to

2 inform the consumer. So we don't want a situation  
3 where consumers are not getting this kind of valuable  
4 information about add-ons that they need to be able  
5 to make an intelligent decision whether or not to  
6 purchase the product.

7 COUNCIL MEMBER WILLIAMS: Thank you, and  
8 then on I think you called it curbstoning? What did  
9 you call it?

10 JULIE MENIN: Curbstoning, right.

11 COUNCIL MEMBER WILLIAMS: So, that  
12 actually in parts of my district that is the only way  
13 to buy a car. [laughs] They're all kind of lined up  
14 on different blocks. What is the enforcement? I  
15 mean I just drive down and I see blocks and blocks of  
16 cars with that white chalk or soap telling people to  
17 call this number. So it doesn't seem like, and I  
18 could be wrong, but it doesn't seem like there's much  
19 enforcement. Is it complaint driven or do you  
20 actually drive around the neighborhoods and see them,  
21 and call the number and do a sting? How does that  
22 work?

23 MARLA TEPPER: Well, we can enforce  
24 against unlicensed activity. We have had occasions  
25 where dealers will park. They're not licensed

2 dealers, but they are dealers because they are  
3 selling multiple cars. Where dealers will park their  
4 cars in streets and parking lots, and we have issued  
5 violations. We're currently exploring the mechanisms  
6 to address this with other agencies such as PD. And  
7 as noted by the Commissioner, we're working with  
8 industry to identify bad players who sell cars in  
9 volume.

10 COUNCIL MEMBER WILLIAMS: So if you have--  
11 - This doesn't count for or make for a gas station?  
12 To my knowledge, you have to have a place that you  
13 can legally have the car. So if you have-- Let's  
14 say you have, let's say you have a valid dealer's  
15 license, and your holding the cars in a gas station,  
16 is that legal or that's not legal either?

17 JULIE MENIN: Alba, do you want to  
18 address that? Alba Pico, our First Deputy  
19 Commissioner handles enforcement. He's going to  
20 handle it, but the main point that I just want to  
21 make sure that everyone is aware of is while we are  
22 focused very much on curbstoning because it's  
23 completely undercutting the legitimate auto dealer  
24 businesses who are doing the right thing by getting a  
25 license. Who are paying the bricks and mortar fee of

2 rent and all the costs associated with it? So we're  
3 really focused on this, and we do want to focus on  
4 the enforcement. And Alba will address your question  
5 on the gas stations.

6 ALBA PICO: So, you're required to be  
7 licensed if you sell more than five motor vehicles in  
8 a year or you display more than two. So we do-- Our  
9 inspectors do patrol. You know, they go business-by-  
10 business.

11 COUNCIL MEMBER WILLIAMS: So I want to  
12 make sure I'm clear that you-- Say that again.  
13 You're required to be licensed if you sell more than  
14 five cars a year.

15 ALBA PICO: In one year, or if have-- if  
16 you display more than two at one time.

17 COUNCIL MEMBER WILLIAMS: Is that on the  
18 street, or you're not allowed on the street ever?

19 ALBA PICO: You're not allowed on the  
20 streets. So what our inspectors do--

21 COUNCIL MEMBER WILLIAMS: [interposing]  
22 Ever?

23 ALBA PICO: Not ever. So what our  
24 inspectors-- It's actually one of our highest  
25 violation categories. So even if you're licensed or

2 not, if it's being displayed on the street, we are  
3 issuing those violations. Plus, if it's on the  
4 sidewalk, it's one of our quality of life violations  
5 that we'll issue. We do it based on complaints or if  
6 we see it, we just go ahead and do that. We do that  
7 on the weekends because it happens more on the  
8 weekends, and it's one of our highest violations.

9 COUNCIL MEMBER WILLIAMS: So now if I'm a  
10 gas station and the cars are housed there, if I'm  
11 selling more than five per year, I have to be  
12 licensed as a dealership, or can I get a dealer's  
13 license and put five cars, six cars on the gas  
14 station and sell them?

15 ALBA PICO: Whoever is the corporation or  
16 the person that is using-- renting the space to do  
17 that is required to be licensed. However, to be  
18 licensed requires a certificate of occupancy that  
19 indicates the proper zoning and use group to be able  
20 to sell his cars.

21 COUNCIL MEMBER WILLIAMS: I see. Thank  
22 you very much. I have questions on the other bill  
23 but I want to make sure that the lead sponsor asks  
24 those.

2 CHAIRPERSON ESPINAL: Thank you. How  
3 many violations were issued to unlicensed used car  
4 dealers?

5 JULIE MENIN: I'm sorry. Say that again.

6 CHAIRPERSON ESPINAL: How many violations  
7 were issued to unlicensed used car dealers?

8 JULIE MENIN: Oh, in the last year?

9 ALBA PICO: Twenty.

10 JULIE MENIN: Twenty.

11 CHAIRPERSON ESPINAL: Twenty?

12 ALBA PICO: We issued 20. One of the  
13 issues that we have is when they do it at private  
14 homes because we do get complaints of people selling  
15 cars from private homes, and it's not their own  
16 personal car. Those cars would be kind of hard for  
17 us to do. We will issue the violation but, however,  
18 it's a residence. It's a private residence, and  
19 that's one of the things that we are looking into  
20 right now to see how we handle this. You also see  
21 those one on the street that have no plates.

22 CHAIRPERSON ESPINAL: Right.

23 ALBA PICO: So those we try to enforce  
24 those, but it is kind of difficult especially when

2 there is no plate because we don't know who to send  
3 that violation to.

4 CHAIRPERSON ESPINAL: So when a violation  
5 is issued, does someone come in and remove the car,  
6 or do you give the unlicensed dealer an opportunity  
7 to move the car?

8 ALBA PICO: You mean on the street?

9 CHAIRPERSON ESPINAL: Yeah, on the  
10 street.

11 ALBA PICO: No, I mean on the street we  
12 issue a violation, and if it's issued and if an  
13 unlicensed dealer is not see it as enough to report,  
14 then the law to go ahead and remove that car. [sic]  
15 If it was an establishment that is doing it  
16 illegally, we do have car locking authority, and then  
17 while we go through the process we can go ahead and  
18 lock that.

19 CHAIRPERSON ESPINAL: And what's the  
20 average fee for someone who is dealing cars without a  
21 license?

22 ALBA PICO: Usually, a settlement is \$75  
23 a settlement, but the fine amount I don't know it  
24 now, but it's usually \$100 a day, and it's from the  
25 day that the violation is issued.

2 CHAIRPERSON ESPINAL: Okay, thank you.  
3 Council Member Richards.

4 COUNCIL MEMBER RICHARDS: Thank you.  
5 [off mic] On selling enforcement, how often does DCA-  
6 - Well, let me rephrase that, how many inspectors  
7 does DCA have for throughout the city? [sic]

8 ALBA PICO: Just over 70.

9 COUNCIL MEMBER RICHARDS: [off mic] And  
10 would you say that's an adequate number for the  
11 amount of territory involved. And I'm not trying to  
12 be--[sic]

13 JULIE MENIN: [interposing] No, it's an  
14 excellent question. I mean obviously we cover an  
15 enormous number of categories at DCA. As I said, we  
16 provide licensing to 80,000 businesses cutting across  
17 55 different industries. We're also very complaint  
18 driven. So I mean to answer your question, of  
19 course, with more inspector we would be able cover  
20 more territory, but it's always a balance. And I  
21 would be remiss if I didn't say one of the things  
22 that we are most proud of at DCA is really working on  
23 fulfilling the Mayor's mandate to reduce fines for  
24 mainly signage violations. As you probably know, we  
25 have and are completely on target to reduce fines by



2 approximately \$5 million in the upcoming fiscal year.  
3 And these are mainly for signage violations. So that  
4 is that balance that we're always seeking to achieve.

5 COUNCIL MEMBER RICHARDS: [off mic]

6 JULIE MENIN: Oh, no.

7 COUNCIL MEMBER RICHARDS: [off mic] That  
8 70 it doesn't include paid sick leave? [sic]

9 JULIE MENIN: That doesn't include paid  
10 sick leave. So paid sick leave is a completely  
11 different vision in the agency.

12 COUNCIL MEMBER RICHARDS: [off mic] I  
13 know that you mentioned that to date you've seen 1  
14 661 [sic] inspection violations. Can you speak to  
15 some of the most common violations. [sic]

16 JULIE MENIN: Sure, and we have really a  
17 list of them. So displaying used vehicles on  
18 sidewalk, roadway, or outside licensed premises.  
19 Failing to post required notice to our customer's  
20 sing. Doing business at a place other than the one  
21 that is designated on the license. Deceptive trade  
22 practices, which is failing to post the required  
23 Federal Trade Commission Buyer Guide. Unlicensed  
24 activity. That is a significant one. Displaying  
25 cars for sale without displaying the selling price.

2 No important notice to the buyer provision. Failing  
3 to answer a notice of hearing or subpoena. License  
4 number not being on the business cards, which is  
5 something that is required, or a refund policy not  
6 posted. So those are the ones that are the most  
7 common.

8 COUNCIL MEMBER RICHARDS: I wanted to  
9 speak to the curbstoning, and my first car was  
10 actually curbstoned. So I want to put that out  
11 there. It was really a challenge, but one of the  
12 most interesting things I found, and I wasn't  
13 necessarily educated on this issue when I bought my  
14 first vehicle, is the dealer was from New Jersey  
15 selling in New York. So how do we deal with that?  
16 And I didn't find this out until after the fact--

17 JULIE MENIN: [interposing] Right.

18 COUNCIL MEMBER RICHARDS: --until  
19 something went wrong and, you know, you tried to  
20 contact him. I tried to contact him, but how do you  
21 deal with out-of-state--

22 JULIE MENIN: [interposing] Yeah.

23 COUNCIL MEMBER RICHARDS: --people who  
24 are licensed coming back into the city and parking,  
25 curbstoning?

2 ALBA PICO: I mean it's one of the things  
3 that it's hard for us to enforce, and this is why we  
4 do all the education to our New York consumers  
5 because when you are purchasing a car, you really  
6 don't know what you're purchasing and who can you go  
7 to? Just last week, I did an interview with  
8 Telemundo one of those Spanish channels, and there  
9 was somebody that purchased one that was in Brooklyn.  
10 And the person has been very deceived [sic] and now  
11 they lose their money. So tried to deal with it, we  
12 tried to find them. I found out that they have  
13 another business in the Bronx. I sent an inspector  
14 actually there today to see if we can find them and  
15 where they are.

16 COUNCIL MEMBER RICHARDS: What would  
17 happen to a dealer from out of state? Is their fine  
18 the same as someone who is in New York City or would  
19 we look to increase the fine for out-of-starters,  
20 out-of-state individuals doing it? Even though  
21 curbstoning obviously we're going to look to ban it,  
22 but at this moment?

23 ALBA PICO: The current law-- The  
24 current law indicates that the licensed businesses in  
25 New York that have a premises in New York City.

2 COUNCIL MEMBER RICHARDS: Okay.

3 ALBA PICO: That's what the current law  
4 indicates.

5 COUNCIL MEMBER RICHARDS: So if they're  
6 selling in New York is that considered legal then?

7 ALBA PICO: It's illegal--

8 COUNCIL MEMBER RICHARDS: [interposing]  
9 It's illegal.

10 ALBA PICO: --and if we're aware of who  
11 this person is, we will issue them a fine, but their  
12 business address will be where the car was.

13 COUNCIL MEMBER RICHARDS: Okay.

14 ALBA PICO: As you said, the New Jersey  
15 address.

16 COUNCIL MEMBER RICHARDS: Okay, and would  
17 you recommend stiffening penalties on individuals  
18 coming from out of state? Because that's a loophole  
19 and it's probably a big one. I mean if I went  
20 through it ten years ago or however many years ago it  
21 was, you know, are we looking? How do we ensure,  
22 that, you know, we are really holding those  
23 individuals accountable?

24 MARLA TEPPER: I think one of the issues  
25 that you raised was that the car sold from out of

2 state may not have the same protections that we  
3 require here in New York City.

4 COUNCIL MEMBER RICHARDS: No, I didn't  
5 say that. I said that the individuals was licensed  
6 in New Jersey.

7 MARLA TEPPER: Right, and one of-- one of  
8 the issues is that the standards for sale in New  
9 Jersey may not be as protective of consumers as the  
10 standards here in New York. So the way to address  
11 that may be not only to ban the practice of  
12 curbstoning, but to increase the sanctions for  
13 selling cars that do not meet our standards here.  
14 That double kind of penalty may prevent the  
15 proliferation of sales by out-of-towners?

16 COUNCIL MEMBER RICHARDS: Okay. Thank  
17 you. I'm very happy and very thankful to you guys  
18 for supporting Intro 518, and just had one question.  
19 And I certainly agree, and I think that these are  
20 some great recommendations that can go a long way in  
21 strengthening and protecting consumers. I'm  
22 certainly supportive. I just wanted to know so what  
23 would you say the biggest difference between  
24 enforcement, and what you're doing now on Intro 518?

2 JULIE MENIN: That would be the best in  
3 terms of enforcement if the Council Member is asking  
4 if Intro 518 is introduced, what would be then the  
5 biggest difference between what we do now, and versus  
6 what we would do then.

7 ALBA PICO: It's going to be a lot of  
8 books and records that we will have to do more in-  
9 depth searching into it. Usually, the inspector goes  
10 to the premises and they are looking more at signage.  
11 They're looking more at records. They do not ask  
12 detail. These ones we will have to really go ahead  
13 and investigate books and records to see what  
14 vehicles have been sold, what vehicles have been  
15 recalled. So there is going to be a more in-depth  
16 analysis and look at all that.

17 COUNCIL MEMBER RICHARDS: Oh, can I just-  
18 I'll let you go.

19 MARLA TEPPER: I'm sorry. I think that  
20 your question actually reinforces why we are  
21 suggesting that an amendment to the proposed bill to  
22 include recommendations and rules regarding records  
23 that would help us with ensuring that recalled cars  
24 are not being sold.

2 COUNCIL MEMBER RICHARDS: Have you guys  
3 ever thought about creating a database for these--  
4 for the individuals who are licensed to registered.  
5 You know, I would say exactly in what they're doing.  
6 So when they're-- Is there some sort of tracking  
7 mechanism in place for you guys? Because if you only  
8 have 70 inspectors, you know, I can't see you really--  
9 - And obviously, of course, a broad range of  
10 different areas. I don't see how you get to all  
11 these car dealerships to make sure that they're  
12 actually doing what they're saying they're doing. So  
13 have you guys considered creating a database in  
14 particular since you're saying in this particular--  
15 the amendment you're speaking of, you're asking them  
16 to maintain documentation.

17 JULIE MENIN: Right.

18 COUNCIL MEMBER RICHARDS: Would you guys--  
19 - Not that you are going to do it, but would you guys  
20 consider that? Would it be easier for them to upload  
21 this information, and perhaps they can--

22 JULIE MENIN: [interposing] Certainly

23 COUNCIL MEMBER RICHARDS: --start it  
24 voluntarily.

2 JULIE MENIN: Certainly electronic  
3 recordkeeping would greatly expedite our efforts, and  
4 increase efficiency of our efforts.

5 COUNCIL MEMBER RICHARDS: So, would you  
6 consider it?

7 JULIE MENIN: Yes, absolutely.

8 COUNCIL MEMBER RICHARDS: Okay.

9 JULIE MENIN: Electronic recordkeeping  
10 would obviously go a long way in that regards.

11 COUNCIL MEMBER RICHARDS: Thank you so  
12 much.

13 JULIE MENIN: Thank you. Thank you very  
14 much.

15 COUNCIL MEMBER RICHARDS: Thank you for  
16 your commitment in protecting consumers, and we look  
17 forward to continuing this conversation with you.  
18 Thank you.

19 JULIE MENIN: Thank you.

20 COUNCIL MEMBER RICHARDS: Thank you,  
21 Chairman.

22 CHAIRPERSON ESPINAL: Thank you,  
23 Richards. Just for clarification, can you again  
24 explain the difference between selling without a  
25 license, curbstoning.



2 JULIE MENIN: The difference between  
3 curbstoning versus a license?

4 CHAIRPERSON ESPINAL: Selling without a  
5 license?

6 JULIE MENIN: Okay, versus selling  
7 without a license--

8 CHAIRPERSON ESPINAL: [interposing]  
9 Right.

10 JULIE MENIN: --or with a license?

11 CHAIRPERSON ESPINAL: Without a license.

12 JULIE MENIN: Because what the real issue  
13 is that curbstoners don't have a license. So they  
14 are, as I mentioned earlier, completely undercutting  
15 the good actors who actually did the right thing, and  
16 went in and paid for a license. As well as all of  
17 the various bricks and mortar costs that a licensed  
18 entity would face. So this is why we have a very  
19 strong interest for a multitude of reasons in  
20 cracking down on curbstoning. And again, we always  
21 urge people to contact us directly because we're very  
22 consumer complaint drive. It's very helpful for us  
23 to hear about if people see curbstoning in the  
24 neighborhood to please contact us right away.

2 CHAIRPERSON ESPINAL: Do you see a  
3 pattern on the calls you receive the complaints you  
4 receive. Are there certain neighborhoods that have  
5 more influx of these curbstoning cars?

6 MARLA TEPPER: We are currently  
7 identifying neighborhoods where we see more of that  
8 illegal conduct, but I think the answer is yes, we  
9 know that it's more common in parts of Brooklyn and  
10 the Bronx.

11 CHAIRPERSON ESPINAL: I think you stated  
12 that you received over 500 complains in the past  
13 year.

14 JULIE MENIN: Yes.

15 CHAIRPERSON ESPINAL: Now, is there a  
16 pattern in the used car dealers? Is there certain  
17 like-- Are there certain car dealers that are  
18 constantly being complained against than others.

19 JULIE MENIN: Marla will address that.

20 MARLA TEPPER: Yes, unfortunately, some  
21 car dealers are more, getting more complaints than  
22 others, and when they do, we go after them. As we  
23 did with Planet Automotive, which had received a lot  
24 of complaints. And you see the action that we took  
25 against them.

2 CHAIRPERSON ESPINAL: Okay, thank you.  
3 I'm going to pass it back to Jumaane Williams.

4 COUNCIL MEMBER WILLIAMS: Thank you. A  
5 few more questions. One with the-- It sounded like  
6 from what you said if the dealer is outside of New  
7 York, they actually aren't held accountable because  
8 you can't find them at the place of business.

9 ALBA PICO: We will issue a violation for  
10 license activity.

11 COUNCIL MEMBER WILLIAMS: I'm sorry, say  
12 that again.

13 ALBA PICO: We will issue a violation for  
14 license activity, but if you try to collect you can't  
15 contact the business.

16 COUNCIL MEMBER WILLIAMS: But if they  
17 don't pay, that's it?

18 ALBA PICO: That's it. We cannot go  
19 ahead and contact that business. [sic]

20 COUNCIL MEMBER WILLIAMS: I think I had a  
21 question. You worked with the State Attorney-General  
22 didn't you? New York State Attorney-General.

23 MARLA TEPPER: We actually spoke to them  
24 last week about this issue, and hope to work with  
25 them more on it. The issue for us is identifying

2 individuals or businesses who are selling more than a  
3 couple of cars. That's really what we are trying to  
4 focus on.

5 COUNCIL MEMBER WILLIAMS: And then if you  
6 have a dealership license, like I know that people  
7 who have dealership licenses will take people to  
8 auctions and what have you. Is that the same license  
9 as a dealer license at a brick and mortar place? Is  
10 that the same kind of license?

11 ALBA PICO: What I'm aware is the  
12 Department of Motor Vehicles also issues a license--  
13 I don't know if they call it a license or a  
14 certification for people to be able to buy used cars  
15 or sell used cars. But what I'm aware of is that I  
16 don't think they use the DCA license. They use the  
17 New York State Department of Motor Vehicles  
18 certification.

19 JULIE MENIN: Right, and we're looking at  
20 trying to see what can be done to increase  
21 enforcement actions against car auction houses. So  
22 that's something that internally we've been  
23 discussing.

24 COUNCIL MEMBER WILLIAMS: Okay, and with  
25 my bill again it's sort of similar to what my

2 colleague asked. Right now, I guess it sounded like  
3 it was-- It's illegal to pad the price by saying it's  
4 a dealer's fee, is that correct? I just hope that  
5 the price-- In my case, it advertised it as \$10,000  
6 and I went and they added \$5,000 in dealer's fees.  
7 That is currently illegal?

8 MARLA TEPPER: Yes, that's currently  
9 illegal.

10 COUNCIL MEMBER WILLIAMS: So then, how  
11 would this bill help us get to that if it's already  
12 illegal?

13 MARLA TEPPER: This bill laudably speaks  
14 to price posting. So that the disclosure of the  
15 price is clear to the consumer, and also what the  
16 price includes and doesn't include. So I think that  
17 it would help confirm existing law.

18 COUNCIL MEMBER WILLIAMS: Well, we would  
19 have to do enforcement still to make sure that  
20 they're posting it correctly.

21 MARLA TEPPER: That's correct.

22 JULIE MENIN: And then another advantage,  
23 of course, is consumer awareness. It's always  
24 helpful for our agency and department when people are  
25 aware that this is a prevalent issue. And that

2 consumers are being taken advantage of in these  
3 situations. It's helpful just from an awareness and  
4 communications standpoint to have this out there.

5 COUNCIL MEMBER WILLIAMS: And with Intro  
6 518, one of the issues that I heard from the  
7 industries knowing about the recall. So I wanted to  
8 get your input. I think would the bill-- Or do we  
9 want to make sure that it's done if the knowledge is  
10 there, or that it's done irrespective if the  
11 knowledge is there? And how do we make sure that the  
12 dealer knows that the recall needs to happen? The  
13 recall fix needs to happen?

14 MARLA TEPPER: Our proposal would be that  
15 prior to each sale, the dealer checks the website  
16 safercar.gov and check the recall status of the car,  
17 and that be a requirement. And we would also propose  
18 that records have to be maintained to show that the  
19 dealer actually checked that website prior to sale.

20 COUNCIL MEMBER WILLIAMS: So that website  
21 lists all makes and models and recalls up until that  
22 point?

23 MARLA TEPPER: Yes, and as of August you  
24 can retrieve by VIN number what is the status of your

2 car. So it's very easy for a dealer to find that  
3 information.

4 COUNCIL MEMBER WILLIAMS: What's the  
5 website. I want to check my car.

6 JULIE MENIN: Safecar.gov.

7 COUNCIL MEMBER WILLIAMS: What is that?

8 JULIE MENIN: Safecare.gov. So this is  
9 not an onerous requirement for them to have to check  
10 the website.

11 COUNCIL MEMBER WILLIAMS: Okay. Well  
12 thank you, and thank you Commissioner.

13 JULIE MENIN: Thank you.

14 COUNCIL MEMBER WILLIAMS: This is the  
15 best interaction we've had since you were the  
16 Commissioner so it's been a good one. The last time  
17 you were very deftly navigating a bunch of interests  
18 at one time. And you did a fantastic job, and I'm  
19 sure you're doing a fantastic job here.

20 JULIE MENIN: Thank you so much, and we  
21 look forward to continuing to work with the committee  
22 on this. Thank you.

23 CHAIRPERSON ESPINAL: Thank you, Jumaane.  
24 What's been the industry's overall response to your  
25 new policy?

2 JULIE MENIN: I'm going to let Marla  
3 address that because we've been in the same  
4 conversations on this.

5 MARLA TEPPER: We're pleased to say that  
6 the industry has been cooperating with us. In fact,  
7 the attention to curbstoning is something that they  
8 have brought to our attention. We obviously knew  
9 about it, but we are working with them on that issue,  
10 which I think reflects a cooperative spirit between  
11 the agency and the industry. And we look forward to  
12 working collaborative with them to ensure mutual  
13 interest in keeping New York City consumer safe on  
14 the roads.

15 CHAIRPERSON ESPINAL: So DCA is only  
16 concerned with safety recalls? So let's say for  
17 example the computer module that controls my AC is  
18 recalled, you're not looking into those.

19 JULIE MENIN: Right. I mean one of the  
20 things obviously is we're concerned with the ones  
21 that are on the federal website safecar.gov, which  
22 obviously relate to safety. But, of course, we want  
23 to ensure that consumers are getting what they paid  
24 for, that they're not getting a lemon. That they're  
25 not getting-- So there are other issues that don't



2 necessarily revolve around safety, but go to really  
3 is the consumer getting the product that they believe  
4 they paid for?

5 CHAIRPERSON ESPINAL: Okay. Thank you.  
6 Any other questions from my colleges. No. Thank  
7 you, Commissioner.

8 JULIE MENIN: Thank you.

9 CHAIRPERSON ESPINAL: Thank you for your  
10 testimony.

11 JULIE MENIN: Thank you.

12 CHAIRPERSON ESPINAL: I'd like to call up  
13 the next panel. Mark Schienberg, Jonathan Bing,  
14 Robert Vancavage, and Sean Peterson.

15 [Pause]

16 CHAIRPERSON ESPINAL: Please state your  
17 name before you begin your testimony.

18 MARK SCHIENBERG: Mark Schienberg,  
19 President of Greater New York Auto Dealers  
20 Association.

21 JONATHAN BING: Jonathan Bing, Wilson  
22 Elser, Government Affairs Council for the Greater New  
23 York Auto Dealers Association.

24

25

2 CHAIRPERSON ESPINAL: [off mic] You can  
3 begin your testimony in whatever order you would  
4 like. [sic]

5 COUNCIL MEMBER: [off mic]

6 MARK SCHIENBERG: Oh, yeah, okay. Well,  
7 thank you for the opportunity to appear today to  
8 provide the perspective the retail automobile  
9 industry with regard to two open items on the agenda,  
10 Bill No. 518 regarding the sales of used cars with  
11 open recalls, and Bill No. 187 regarding item pricing  
12 on used vehicles.

13 My name is Mark Schienberg, and I'm the  
14 President of the Greater New York Auto Dealers  
15 Association, a not-for-profit trade association  
16 headquartered in Whitestone, Queens. We represent  
17 400 franchise new car dealers in the 12 down state  
18 counties in New York, including nearly 100 in the  
19 City of New York alone. Greater New York Auto  
20 Dealers Association members are in engaged in the  
21 retail sale and leasing of new and used vehicles and  
22 servicing, repairs, and supplying parts for new and  
23 used vehicles. Automobile dealerships are small  
24 businesses that have a significant impact, positive  
25 impact on the economy of New York City.

2 GNYADA dealers in New York City alone  
3 employ more than 9,700 people and represent an annual  
4 payroll of \$512 million. These dealers also spend  
5 \$100 million annually on advertising. Our members in  
6 this region collect and pay nearly \$2 billion in  
7 sales taxes annually for State and local governments.  
8 Greater New York Auto Dealers Association and its  
9 members produce and promote the New York  
10 International Auto Show at the Jacob Javits  
11 Convention Center every spring, which generates more  
12 than a quarter of a billion dollars in economic  
13 activity for the New York City each year.

14 This testimony is being presented jointly  
15 on behalf of the members of the Greater New York Auto  
16 Dealers Association, and the National Automobile  
17 Dealers Association. GNYADA represents more than  
18 16,000 franchise new car dealers nationwide who sell  
19 new and used motor vehicles, and engage in service  
20 repairs and part sales including 1,800 who sell  
21 medium and heavy-duty trucks.

22 First, to discuss Bill No. 518 on the  
23 recall issue, 518 as drafted, would require a dealer  
24 to repair any imperfections on a used vehicle that  
25 has been recalled by a manufacturer regardless of the

2 reason for that recall before the dealer could sell  
3 that used vehicle. We are urging the Council not to  
4 pass this bill as drafted. The industry's history of  
5 working with its partners in government is extensive.  
6 Greater New York Auto Dealers Association's record  
7 include developing groundbreaking policies like the  
8 country's first auto dealer advertising guidelines,  
9 the first used car lemon law in the nation, and the  
10 first retail motor vehicle leasing act.

11 GNYADA also worked with New York City  
12 Department of Consumer Affairs to devise leasing  
13 forms, the New York City Department of Transportation  
14 with other agencies on numerous educational forums,  
15 on road safety, and the New York City Department of  
16 Education to prepare young men and women for jobs in  
17 the auto industry. 518 would have serious negative  
18 impacts on the market. As currently drafted, 518  
19 would have the devastating impact of increasing the  
20 cost of used cars for consumers in New York City  
21 while decreasing the value in the marketplace. All  
22 without appreciable-- for the following reasons:

23 Dealers will incur significant costs in  
24 time and labor just to determine the recall status of  
25 used cars they have taken in trade from consumers and

2 otherwise purchased for their inventory. If dealer  
3 finds an open recall involving a vehicle that is a  
4 brand that the dealer does not sell new, the dealer  
5 will be forced to try to arrange with one or more  
6 dealers of that brand to obtain authorized repairs.  
7 Under the best circumstances, significant time and  
8 labor costs will be incurred attempting to obtain  
9 repairs for those open recalls no matter how  
10 significant or insignificant those repairs might be.

11           If a manufacturer has yet to devise a  
12 remedy or a manufacture a part necessary for recall,  
13 518 would focus dealers to hold-- would force  
14 dealers to hold onto vehicles at significant cost  
15 including floor plans, interest, storage lot costs,  
16 and depreciation. The legislation will likely result  
17 in excluding trade-ins or sales of certain used  
18 vehicles in certain neighborhoods entirely. For  
19 example, there are more than ten vehicle brands that  
20 do not have any dealers where authorized recall work  
21 could be formed such as on Staten Island alone. We  
22 note that as presently drafted, 518 appears to  
23 include as an unintended consequence a requirement to  
24 repair the entire used vehicle once it has been  
25 recalled for any reason at all. Thus, even a cosmetic

2 or other non-safety related issues, such as a dent,  
3 would prevent the sale of a recalled vehicle even  
4 after that recall work is completed.

5           The legislation is also too broad and  
6 overreaching in that it purports to relate to all  
7 safety recalls not just those critical in nature.  
8 Non-critical safety recalls include when a vehicle's  
9 owner manual contains a misprint or when the recall  
10 relates to a safety problem that might develop  
11 sometime in the future. But with a visual inspection  
12 can be determined not to create a present or near-  
13 term danger. It would appear that the cost imposed  
14 by 518 far outweigh any benefits when such non-  
15 critical issues are involved. More likely than not  
16 if an open recall is identified, dealers will be  
17 forced to decrease the value of the customer's  
18 vehicles they intend to trade in. Predictably  
19 resulting in some number of those consumers going to  
20 out of the city or out of the state dealers who are  
21 not subject to the 518.

22           Other consumers will sell their vehicles  
23 in the wholly unregulated private marketplace. This  
24 predictable market disruption will translate into  
25 lost sales, lost consumer retention, lost jobs, lost

2 tax revenues, lost investments by businesses due to  
3 the decreasing business values and profitability, and  
4 lost opportunities that can never be regained.

5           Used cars for sale in New York already go  
6 through an extensive safety processes. It was  
7 mentioned a little bit earlier before, but let me  
8 repeat it on some of the issues. This law is not  
9 necessary because all New York dealers inspect all  
10 vehicles prior to sale, and these automobiles are  
11 subject to extensive safety checks. New York State  
12 Department of Motor Vehicles regulations go even  
13 further than the safety inspection requirements  
14 recommended by the federal government. Vehicles are  
15 physically inspected for any defect in 18 critical  
16 systems and parts including essential safety systems  
17 such as steering, suspension, and braking. As well  
18 as other critical parts such as headlamps, brake  
19 lights, windows, glass, mirrors, and wipers.

20           Inspections are not limited to just parts  
21 or systems. They have been subject to recall.  
22 Following that inspection and upon sale, dealers are  
23 required to issue a state mandated certificate of  
24 adequacy with the sale of any used vehicles. This  
25 certificate must state that a vehicle's condition is

2 satisfactory for the use on the state's highways at  
3 the time it is delivered to the consumer. This  
4 process has been relied upon successfully in New York  
5 State for decades. With regard to vehicles brands  
6 other than those in which they sell, many dealers  
7 also will when possible have recall repairs made at a  
8 competitor's repair shop prior to offering them for  
9 sale. In addition, industry practices that dealers  
10 that have knowledge of a NHTSA stop drive order for a  
11 particular vehicle refrain from selling that  
12 automobile.

13           The proposed legislation raises several  
14 practical concerns. GNYADA urges the Council to  
15 consider several practice issues implicated by its  
16 legislation. First, a day of sale VIN check for an  
17 open recall is extremely unlikely to be accurate.  
18 Recall information from auto makers is uploaded  
19 weekly to the NHTSA database in batches. The  
20 database is not up-to-date at any given moment with  
21 regard to recalls or repairs that have been  
22 completed. All of the existing recall databases have  
23 lag times built into them, including NHTSA and Carfax  
24 and even the manufacturer's own proprietary systems.



2           In addition, automobile dealers will be  
3 subject to potential liability even when making good  
4 faith efforts to review the recall status of a  
5 vehicle if a pre-existing recall is discovered only  
6 after the sale. Requiring a check of the system  
7 immediately prior to delivery could prevent dealers'  
8 efforts to fulfill consumer's contract obligations to  
9 deliver used vehicles on or before an estimated  
10 delivery date that is required on consumer contracts  
11 under New York State law.

12           Indeed, a last minute VIN check that  
13 reveals an open recall, or misses a repair that has  
14 already been made would require the vehicle to be  
15 held or sent for repair. Thus, delaying delivery for  
16 what could be a definitive period of time. 518 would  
17 result in a significant increase in the cost incurred  
18 by used vehicle dealers. Federal law ensures that  
19 when there is a lack of remedy or parts to a no sale  
20 order results in a delay that causes increased dealer  
21 inventory costs, manufacturers must reimburse dealers  
22 for those costs. Under 518, however, there is no  
23 mechanism for New York City to require vehicle  
24 manufacturers to reimburse dealers for the cost of  
25

2 holding used vehicles in inventory nor will the City  
3 provide any compensation.

4 Greater New York Auto Dealers Association  
5 commends the Council for its commitment to vehicle  
6 safety issues. We welcome this dialogue as an  
7 opportunity to not only share information with the  
8 Council, but to explore ways to ensure that New York  
9 City's vehicle safety policies achieve those goals.

10 Regarding Bill 178. 178 would require  
11 that second hand auto dealers display a stamp, tag,  
12 or label that states the total selling price of the  
13 vehicle including administrative services, or other  
14 fees that will be charged by the dealer. Our concern  
15 with this bill is that it is overbroad, duplicative,  
16 and fails to recognize or at least take into account  
17 the commercial reality and circumstances that occur  
18 with the sale of a used vehicle. New York City  
19 already has a stringent item pricing law that is  
20 enforced by the New York City Department of Consumer  
21 Affairs. This legislation would duplicate that law,  
22 and in these circumstances would only serve to  
23 confound small businesses giving rise to opportunity  
24 to fine well intentioned but confused small  
25 businesses twice for the same actions.

2           Every buyer is in different  
3 circumstances, and unlike most commodities, each used  
4 car is unique. Used cars are an item for which the  
5 price is virtually always negotiated between the  
6 buyer and the seller because of the wide range of  
7 options that are available in connection with that  
8 purchase. These options include financing with the  
9 state of registration potential, export to a foreign  
10 country, inclusion of an extended warranty, additions  
11 of customized items, and the providing of new tires.

12           If this law were adopted as drafted, a  
13 consumer will not be able to negotiate for any  
14 improvements to a used vehicle because they would not  
15 be listed on a pre-sale tax or label. For example,  
16 under this bill, the dealer may inadvertently violate  
17 the law by providing a customer with new tires.  
18 State law requires that the dealer collect a \$2.50  
19 fee per new tire for the purpose of remediating used  
20 tire dumps. As the fee would not be listed on the  
21 label if the new tires were negotiated at the time of  
22 sale, the dealer will have to choose between either  
23 rejecting the customer's request, or violating this  
24 law by providing new tires on the used car.

2           New York City already has a stringent  
3 item pricing law that is enforced by the Department  
4 of Consumer Affairs. This legislation would  
5 duplicate that law. And under these circumstances  
6 would only serve to confound small businesses giving  
7 rise to opportunities to fine well intentioned by  
8 confused dealers twice for the same action. This law  
9 would also have a chill to the sale of used cars to  
10 out-of-state residents because the cost to register  
11 and title cars vary state. And that variable amount  
12 cannot be anticipated by the pre-sale sticker. We  
13 urge the Council to reconsider this legislation.  
14 Thank you for the opportunity to testify today, and  
15 I'm happy to answer any questions you might have.  
16 Thank you.

17           SEAN PETERSON: Chairman Espinal, members  
18 of the Committee on Consumer Affairs. My name is  
19 Sean Peterson. I'm the Legislative and Regulatory  
20 Counsel for the National Independent Automobile  
21 Dealers Association or NYIADA. NYIADA is among the  
22 nation's largest trade associations representing the  
23 used motor vehicle industry comprised of more than  
24 38,000 licensed used car dealers across the country.  
25 Since 1946, NYIADA has represented the voice and

2 interest of used car dealers on issues of national  
3 importance particularly in Washington, D.C. Coupled  
4 with the State Association Network across the  
5 country, our grassroots framework provides a dual  
6 area of advocacy unmatched in the used motor vehicle  
7 industry.

8           For 68 years, NYIADA has engineered  
9 programs and leveraged technology to fulfill its  
10 mission to advance, educate, and promote the  
11 independent used car dealer. NYIADA stands tall for  
12 its members who subscribe to a strict code of ethics  
13 of duty, honor, and integrity, and who believe in the  
14 advancement of small business in support of the free  
15 market system. NYIADA is a federated trade  
16 association with affiliated state associations in 46  
17 states. The New York Independent Automobile Dealers  
18 Association being among that group.

19           When a dealer enrolls as a member of the  
20 New York State Association, that dealer also becomes  
21 a member of NYIADA. In becoming a member of both a  
22 state and national association, the dealer's  
23 interests are represented at the local, state, and  
24 national level. By and large, NYIADA members are the  
25

2 quintessential small business owner. More than half  
3 have five or fewer employees.

4 NYIADA is honored to have been invited by  
5 the Council to provide testimony on an issue that is  
6 of great interest across the country that being the  
7 impact to the consumers and the industry of  
8 manufacturer recalls on used vehicles. This issue is  
9 being debated in many locations from the White House  
10 to the halls of Congress, in state legislatures and  
11 now in this great city.

12 NYIADA and its dealer members are  
13 concerned about consumer safety, and as members  
14 NYIADA members, NYIADA dealers, subscribe to a strict  
15 code of ethics that lends itself to taking care of  
16 their customers now and in the future offering better  
17 products, services and buying experiences.

18 NYIADA members are committed to selling  
19 safe vehicles. Because of the breadth of the current  
20 discussion on manufacturer recalls and the  
21 significant impact it will have on the economy, it is  
22 important that this issue be fully studied, and all  
23 ramifications thoroughly understood before any action  
24 is taken. The present recall process is entirely  
25 controlled by three entities: The United States

2 Government through the National Highway  
3 Transportation Safety Administration, the vehicle  
4 manufacturers, and franchise dealers. Manufactures  
5 either on their own discovery or upon direction from  
6 NHTSA make a determination that a vehicle must be  
7 recalled. Once that determination has been made, the  
8 manufacturer is required to notify the present owner  
9 of the vehicle that a recall has been issued, the  
10 reason for that recall, and whether there is fix  
11 available for it.

12 Federal law requires that the  
13 manufacturers repair recalled vehicles at no charge  
14 to the owner. Manufacturers only allow their dealer  
15 network to repair those recalled vehicles.  
16 Independent dealers do not have any control or  
17 participation in any part of this process. They do  
18 not have the authority, and frankly, do not have the  
19 expertise to determine whether or not a vehicle  
20 should be recalled. In fact, they are in the same  
21 position as any public consumer, that as a vehicle  
22 owner. They have no more access to recall  
23 information than any other vehicle owner.

24 One of the concerns with the current  
25 recall process is the fact that owners of recalled

2 vehicles often do not heed the recall notices sent  
3 from the manufacturers to have a vehicle fixed.  
4 Perhaps the owner is too busy to take the vehicle to  
5 the franchise dealership for repair, or perhaps the  
6 franchise dealership is unable to accommodate an  
7 owner at a desired time. A recent Congressional  
8 research service report notes that recalled vehicles  
9 are often not repaired because the manufacturer might  
10 take as long as a year to procure the parts necessary  
11 for the repair. We have seen that be the case with  
12 some of the very recent high profile recalls that  
13 have made news.

14           Disseminating information from the  
15 manufacturers to the current vehicle owner is not an  
16 exact science given the transiency of the vehicle and  
17 how quickly title may be transferred. This is  
18 particularly true when independent dealers are those  
19 vehicle owners. An independent dealer may only have  
20 a vehicle in its inventory for a few days or for a  
21 few hours. The title transfer from the transform to  
22 the independent dealer then to the dealer's customer  
23 may happen instantaneously. Thus, the independent  
24 dealer is often never going to receive notice from  
25 the manufacturer that a vehicle has been recalled.



2           Historically, recall information has been  
3 made known to the public at large by announcements  
4 from NHTSA that a particular year, make, and model  
5 has been recalled with a brief explanation as to the  
6 recall. However, these announcements never included  
7 a specific vehicle identification number for  
8 consumers or dealers to check whether that particular  
9 vehicle is subject to recall. The only way to obtain  
10 that information about whether a specific vehicle was  
11 subject to the recall was directly from the  
12 manufacturer or from one of its franchised  
13 dealerships. Many times neither the franchise  
14 dealership nor the manufacturer would share this  
15 information with independent dealers.

16           As we heard earlier, in August of this  
17 year NHTSA released a new tool that now allows the  
18 public, both dealers and consumers--- It's available  
19 to all to search whether a specific vehicle has open  
20 recalls. This new tool has opened the possibility  
21 for any consumer or any dealer to check a particular  
22 vehicle identification number for open recalls at any  
23 time. However, it's important to note that this tool  
24 is very much in its infancy, and let me echo what we  
25 just heard that not all the kinks are worked out with

2 this particular system. Information is only uploaded  
3 on a very infrequent basis in order to be VIN  
4 specific -- real time VIN specific. Excuse me,  
5 vehicle searches.

6 Just this past week, the website crashed  
7 because of the overload of users trying to obtain  
8 information on the most recent air bag recall. That  
9 story was reported just this week by CNN. And that  
10 NYIADA applauds the attempt to make real time recall  
11 information more readily available. But all of the  
12 kinks need to be ironed out before the system can  
13 truly be effective, and thus wholly relied upon. We  
14 continue the support and will work with NHTSA in this  
15 process. During this recall debate across the  
16 country, there have been many proposals, including  
17 what this Council has proposed, the complete  
18 prohibition on the sale of a used vehicle with any  
19 open recall unless said dealer repairs the recall.  
20 Again, let me support some of the concerns that have  
21 been raised here in recent testimony, some that we  
22 echo as well.

23 While NYIADA and its dealer members are  
24 concerned about consumer safety, as members NYIADA  
25 cannot support the prohibition on sales as contained

2 in this legislation for a litany of reasons. First,  
3 it is important to note that not all recalls are the  
4 same. Some pertain to what may be construed as  
5 safety issues, such as air bags. And other have no  
6 impact on the safety or drivability of the vehicle  
7 whatsoever. For example, manufacturers have issued  
8 recalls because of a misprint in an owner's manual,  
9 or because a vehicle's paint job may experience  
10 flaking due to improper mixture of the paint.  
11 Certainly, non-safety recalls deserve to be fixed  
12 just as much as safety recalls. However, vehicles  
13 should not be grounded and commerce halted because of  
14 a misprint in an owner's manual.

15           It has been suggested by some that a  
16 solution to the concern NYIADA and others in the  
17 industry have raised about the wide variety of  
18 recalls would be to create a scale from which to rank  
19 them. Those recalls that pose fire hazards or  
20 significant safety issues, for example, would rank  
21 higher than those that do not. Proponents of this  
22 ranking system propose that those vehicles with  
23 recalls that rank higher could not be sold until the  
24 dealer fixes the recall.

2           The problem with this proposal is that  
3 there is no current ranking system in federal law.  
4 Neither manufacturers nor NHTSA look at recalls from  
5 this perspective. They are the experts in  
6 determining whether a recall should be issued and  
7 what the fix is. Independent dealers, franchise  
8 dealers, the Department of Consumer Affairs nor this  
9 Council are qualified to make any decision on what  
10 should be recalled or how it ranks. That simply is  
11 an unworkable solution.

12           Second, NYIADA cannot support the  
13 prohibition on sales until a recall fix is repaired  
14 given the fact that a great number of recalled  
15 vehicles often do not have a fix readily available.  
16 We have seen from some of the recent recalls that  
17 have made national news cycle that it often takes a  
18 significant amount of time for manufacturers to  
19 determine the appropriate fix and even longer to  
20 provide the technical specification and parts for the  
21 vehicle to be repaired.

22           Furthermore, more often than not,  
23 manufacturers and NHTSA publicly state that grounding  
24 a vehicle pending repair is not necessary. During  
25 the recent GM recall over faulty ignition switches, a

2 recall that affected millions upon millions of  
3 vehicles, several members of Congress and safety  
4 advocates called on NHTSA to ground those vehicles  
5 until the time as parts became available for the  
6 repair.

7           Plaintiffs in a federal lawsuit made the  
8 same request of the court. Both NHTSA and a federal  
9 judge declined to do so indicating that the cars  
10 could be driven safely. As NHTSA's determination in  
11 the GM ignition switch recall shows it is not  
12 necessary to ground vehicles pending a repair every  
13 time a recall issued even when some of those recalls  
14 affect safety. NYIADA believes that this is sound  
15 public policy.

16           NYIADA is also concerned about the  
17 proposed language when independent dealers do not  
18 have the ability to repair the vehicles themselves.  
19 Independent dealers are beholden to the same process  
20 as any other vehicle owner for the repair. Take the  
21 vehicle to a franchise dealer. This can pose  
22 economic and competitive challenges to the  
23 independent dealer. Independent dealers are in  
24 competition with franchise dealers used car  
25 operations. The possibly exists, and I merely

2 suggest that the possibly might exist, that a  
3 franchise dealer will move its competitor's repair to  
4 the back of the line behind its own inventory, and  
5 that of other customers that come in the door. With  
6 limited parts availability, coupled with a ban on  
7 selling the vehicle pending repair, independent  
8 dealers may be left out in the cold.

9           The other economic challenge many  
10 independent dealers face in having to rely on  
11 franchise dealers for repair is proximity of  
12 franchise dealers. Perhaps this is not as big a  
13 concern in New York City, although we just heard  
14 testimony that this issue does exist. But it is of  
15 great concern in rural areas across the country. The  
16 closest franchise dealership may be more than 100  
17 miles away. The independent dealer would incur the  
18 cost to transport and personnel time in moving that  
19 vehicle to and from the franchise dealership. And as  
20 we heard, some of the issues relative to financing if  
21 that vehicle is held out of commission.

22           It has been suggested by some that with  
23 the public availability or recall information now  
24 available by specific VIN that the dealer should  
25 disclose the existence of recall information as part

2 of the sales transaction. While this is a  
3 proposition that warrants further discussion, certain  
4 considerations must be accounted before NYIADA can  
5 fully endorse it. First, we must be certain that the  
6 information in the NHTSA database is accurate, up to  
7 date, and the database is fully functional.

8 NYIADA does not want to put dealers,  
9 franchise or new, in a position where they are  
10 required to make a representation about a vehicle's  
11 open recall condition that they do not know to be  
12 100% accurate. As recalls get repaired, the  
13 information related to the fix must be transmitted to  
14 the manufacturer and then to NHTSA in a timely manner  
15 to ensure that future owners do not believe an open  
16 recall exists when, in fact, it has been corrected.

17 Moreover, any disclosure requirement that  
18 would be considered must include immunity for the  
19 independent dealer against the veracity of that  
20 information. What do I mean by that? Because  
21 independent dealers do not have any control over the  
22 recall process, they should not be held responsible  
23 for the accuracy of the information in the recall  
24 database.

2 NYIADA would be open to discussions on  
3 the requirement that dealers provide the consumer  
4 with a copy of the recall database information  
5 pertaining to that particular vehicle identification  
6 number, if the only requirement is to provide that  
7 information. In exchange, legislative or  
8 administrative requirements must expressly state that  
9 the dealer is not responsible for errors or omissions  
10 contained in that recall report.

11 This idea is identical to a law that the  
12 State of California passed in 2012 requiring dealers  
13 to provide to each customer a copy of a vehicle  
14 history report from the National Motor Vehicle  
15 Titling Information System operated by the U.S.  
16 Department of Justice. The California Legislature  
17 provided express language protecting dealers from  
18 errors and omissions contained in those NMVTIS  
19 reports. The specific California language states: A  
20 dealer shall not be liable for errors or omissions  
21 contained in the NMVTIS vehicle history report that  
22 is obtained from the NMVTIS data provider or for  
23 failure to provide information added to the NMVTIS  
24 after the vehicle-- Excuse me. After the dealer  
25 obtained a NMVTIS Vehicle History Report pursuant to



2 the particular law, that is in California Vehicle  
3 Code Section 1713.26(e). This was a provision that  
4 independent dealers in California fully supported and  
5 the same concept could be easily implemented with  
6 respect to the recall database. Again, and NYIADA  
7 would be willing to discuss this idea in greater  
8 detail.

9           As I conclude, let me be perfectly clear  
10 in reiterating that NYIADA and its dealer members are  
11 concerned about consumer safety, and as members  
12 subscribe to this code of ethics to ensure that their  
13 customers are fully taken care of. As a matter of  
14 best practice, NYIADA encourages its dealers to only  
15 make representations about vehicles that they know to  
16 be accurate whether it's regarding the open recall  
17 status of the vehicle, vehicle condition, or  
18 otherwise. NYIADA encourages its members to assist  
19 their customers, gather as much information about a  
20 vehicle, including the existence of open recalls so  
21 that those customers can make a well informed  
22 purchasing decision.

23           Finally, as a matter of best practice,  
24 and not legislative directive, NYIADA encourages all  
25 independent dealers to take additional steps

2 necessary to identify vehicles and their inventory  
3 that have open recalls, and have those vehicles fixed  
4 when those fixes are readily available to them.  
5 Again, thank you for inviting NYIADA to testify  
6 before the committee. We look forward to working  
7 with you on this important issue as we move forward.  
8 I'm happy to answer questions that the committee  
9 members may have.

10 CHAIRPERSON ESPINAL: Thank you, Sean,  
11 for your very details and intensive testimony. It's  
12 much appreciated. For the sake of time, we're going  
13 to turn the clock on for five minutes, and allow for  
14 the next testimony. I also want to recognize Paula--

15 PAULA FRENDEL: [interposing] Frendel

16 CHAIRPERSON ESPINAL: --Frendel. Thank  
17 you.

18 PAULA FRENDEL: Chairman Espinal, and the  
19 members of the Committee on Consumer Affairs. My  
20 name is Paula Frendel, the Executive Director of the  
21 New York Independent Automobile Dealers Association.  
22 I am accompanied by Fred Donnelly, the President of  
23 the New York Independent Automobile Dealers  
24 Association. NYIADA would like to thank the  
25 committee for the opportunity to testify. NYIADA is

2 an affiliate of NYIADA and supports their testimony  
3 regarding the recall issue brought to us today.

4           We would like to share some of the  
5 experiences and hurdles our New York City dealer  
6 members have had to overcome in the last couple of  
7 months complying with the DCA's demand for a used car  
8 dealer to repair open recalls prior to sale. The  
9 following statements have been submitted to NYIADA as  
10 part of our testimony today. One of our members had  
11 a vehicle at the manufacturer for three weeks for a  
12 repair of bolt on the third row seat on an SUV. In  
13 this instance, this law hurt the consumers as they  
14 needed to take delivery of that car to transport  
15 their family. This consumer was not able to have the  
16 SUV repaired at a time that was convenient for them.  
17 In addition, the consumer was not offered a rental  
18 car, which would have been offered to them, if they  
19 had brought the SUV to the manufacturer themselves.

20           In another example of dealer quotes they  
21 tried to bring their vehicle to the franchise dealers  
22 to have their vehicles repaired. But the dealers  
23 would not accept the car without proper plates on the  
24 car. They said the insurance company will not allow  
25 vehicles in the facility without proper plates and

2 registration. The manufacturers required the  
3 vehicles to have plates at the time of repair. This  
4 requirement forces the dealer to use their dealer  
5 plates, which should be used for transporting and  
6 test drive while these cars are being repaired.  
7 Since dealer plates are a limited resource, this  
8 basically puts the dealer out of doing any other  
9 business during the time that their cars are being  
10 repaired for recall.

11 Another dealer writes: Costs to the  
12 Dealer. I cannot bring a vehicle to the manufacturer  
13 and simply wait for them to repair it. Sometimes  
14 they have the car for days. Now, I have to bring it  
15 there and somehow get back to my facility, and then  
16 later pick it up. We're a small used car dealer with  
17 just myself and one employee. I do not sell many  
18 cars a year. In order to bring a car to the dealer I  
19 have to either hire a driver for a short period of  
20 time, or take a taxi back and forth. Either way,  
21 this is very costly. Also, some vehicle  
22 manufacturers have to order parts for the recall, and  
23 it takes a lot of time to receive them. Then there's  
24 the additional time to schedule an appointment.  
25 During this time, I cannot sell the vehicle, and the

2 vehicle sits on my lot. I lose money because by the  
3 time vehicle is complete the price has gone down, and  
4 now the vehicle is now overpriced. This vehicle now  
5 has diminished value.

6           It is NYIADA's -- it is the Independent  
7 Automobile Dealers Association's opinion due to the  
8 current negative experiences of our members in  
9 NYIADA's testimony under this plan of the used car  
10 dealer repairing open recalls prior to sales, this  
11 plan simply will not work. Furthermore, it is  
12 necessary to discuss another component of this issue.  
13 How to enforce the proposed law against dealers who  
14 sell cars illegally in the streets known and  
15 curbstoning. For example, our association was  
16 contacted by a typical defrauded customer who thought  
17 they were buying a car from a New York City dealer,  
18 but in reality was purchasing it from a New Jersey  
19 dealer doing business on New York City streets. This  
20 car was sold for \$1,200, but when the consumer  
21 attempted to get the car inspected, he realized it  
22 needed \$1,400 in repairs to make this car roadworthy.  
23 How many recall could this unsafe vehicle have? We  
24 don't know because it was sold by a curbstoner. A

2 tow program similar to the Scoff Law [sic] would take  
3 care of getting these cars off the road.

4 We ask the committee to please review the  
5 attached information, attached to this testimony  
6 regarding curbstoning. And we would like to discuss  
7 that at a further date. The New York Independent  
8 Automobile Dealers Association is concerned for the  
9 consumers' safety, and we do encourage our members to  
10 urge their consumers to gather all information  
11 available to them during their vehicle purchase.

12 Thank you again for the opportunity to testify, and  
13 we would like to discuss these matters further.

14 CHAIRPERSON ESPINAL: Thank you, Paula.

15 PAULA FRENDEL: Thank you.

16 CHAIRPERSON ESPINAL: Next testimony.

17 I'm just going to set the clock to five minutes.

18 BOB VANCAVAGE: Okay, I don't want to be  
19 redundant. So I've crossed off some of my prepared  
20 testimony that you all have, and I'm sure you'll  
21 appreciate that. Chairman Espinal and members of the  
22 committee, thank you very much for having me here  
23 today. I'm Bob Vancavage from the New York State Auto  
24 Dealers Association. We represent about a thousand  
25 dealers throughout the State of New York, including

2 the same as Greater New York and the City of New  
3 York.

4 I just want to make a couple of points,  
5 and again not to be redundant. I cannot stress  
6 enough that while the dealers members and NYSADA  
7 provide invaluable services to the local communities,  
8 it generates significant economic activity including  
9 but not limited to employment, sales tax revenue, and  
10 property tax revenue. Our members strive to provide  
11 excellent service their communities and customers.  
12 In this respect, the dealer members in NYSADA place  
13 consumer safety as the number one concern.

14 Although automobile sales is one of the  
15 most highly regulated businesses within New York  
16 State, and especially New York City, our members must  
17 contend with a host of laws and regulations  
18 promulgated by federal, state, and local agencies.  
19 Because NYSADA's members are committed to selling  
20 safe vehicles, they accept this burden because of the  
21 importance of the automobile industry to our state  
22 and the public.

23 A lot of the issues that we just talked  
24 about, that were just discussed I have other my  
25 points as well. So I'm not going to belabor you with

2 going through all those again. All excellent,  
3 excellent points, and I strongly agree with  
4 everything that's been said. A couple of points that  
5 I'd like to make to all of you is what's going to  
6 happen with new business in the City of New York.  
7 Right now, and there are different numbers being  
8 thrown around. I heard the DCA say 50 million.  
9 According to Forbes, 52 million. Money says 56  
10 million. Carfax says one in ten vehicles on a  
11 dealer's lot has an open recall, and that up to 20%  
12 of all the cars in the United States right now have  
13 an open recall.

14 Another point. Twenty-five percent of  
15 all consumers never fix the recalls. So there are a  
16 lot of vehicles floating around out there. We have  
17 to figure out which ones are the problems, and that's  
18 where I think we first have to really get together  
19 and work on this. Because as everyone says if it's  
20 just every single recall, this is going to be  
21 unbelievable, and it's going to stop business in its  
22 tracks. There is going to be no business. People  
23 are going to go out of state. You're talking about  
24 the New Jersey guys coming to New York, all of the



2 New York customers are going to go to New Jersey  
3 because they're going to get more for their trade-in.

4           So as everybody's testimony suggested, to  
5 tie up a car, to transport it a hundred miles if  
6 that's the next closest franchise dealer, it's going  
7 to be a lot of time. A lot of times the parts and  
8 the recalls have be remanufactured. They don't even  
9 exist. Because obviously they know there was a  
10 problem. So they have to remanufacture these parts.  
11 They have to make them available, and then they're  
12 going to be transported to the franchise dealers.  
13 The franchise dealers are already going to have the  
14 largest part of some of the laws that they need to  
15 fix. Their customers are going to come in, and  
16 they're going to get fixed.

17           And then finally, their competitors, the  
18 other dealers that bring their cars in to be fixed  
19 will get fixed. You know, at some point they're all  
20 going to get fixed, but this time line may be huge.  
21 And it's really going to tie up commerce. It's going  
22 to basically shut down automobile sales. Based on  
23 these facts and how many cars exist out there right  
24 now. I mean as I started researching for this  
25 meeting, I couldn't believe these numbers. I mean

2 we're talking 56 million. A new record. You know, I  
3 think after the ignition switches from General  
4 Motors, there was a knee-jerk reaction. Everybody  
5 started recalling cars for every single thing because  
6 no one wants the liability.

7           So now, we're looking at this huge amount  
8 of cars out there that effectively under this law  
9 would not be able to be sold. So from the aspect of  
10 the dealers and trying to do the right thing to get  
11 them fixed, this is very burdensome. From the aspect  
12 of the consumers that want to trade a car in, the  
13 cars are going to be so under-valued, you know,  
14 thinking about all the time and effort, the parts.  
15 They're going to be tied up. Dealers aren't going to  
16 be able to afford the floor plan to hold cars as long  
17 as these fixes may take to get done.

18           So with that said, we're also opposing,  
19 but look to work with this Council and the DCA to  
20 figure out the fix for this because it's definitely a  
21 problem and we have to get our arms around it just  
22 like the federal government, just like the states are  
23 doing. We need to figure out a fix for this. Thank  
24 you very much.

25                           [Pause]

2 CHAIRPERSON ESPINAL: DCA made a  
3 suggestion that the recall be defined as a safety  
4 recall. Do you feel that that may lessen the burden  
5 on these car dealerships?

6 MARK SCHIENBERG: Council Member I think  
7 you actually-- It's a great question because of the  
8 problem and it was stated I think in all three or  
9 four testimonies was there are different types of  
10 recalls that are out there. And the number I heard  
11 also was that there are 300 million vehicles on the  
12 road, and there are 50 million recalls that are out  
13 there. Most of them are administrative issues. It  
14 was mentioned a couple of times it can be even a  
15 misprint in an owner's manual that's usually  
16 contracted by a manufacturer to some kind of company  
17 to do it. It's put low on the agenda for getting it  
18 repaired.

19 In the meantime, this provision because  
20 it says open recalls, it doesn't say safety recalls  
21 or non-safety would actually put that vehicle in a  
22 situation where you couldn't sell it until a new  
23 owner's manual was reprinted on it, or a label on the  
24 sun visor. So it's a very important question and  
25 distinction that I think that you're making is what

2 are we talking about as far as a problem with the  
3 vehicle? Are we talking about something that again  
4 is not safety related. I don't think anybody would  
5 argue at all that if a car is in a condition where it  
6 can be unsafe to be driven that it should be taken  
7 off the road. I think that's extremely important to  
8 do. But most of these recalls that are there are  
9 non-safety related. And I think that's an issue the  
10 clearly needs to be addressed before such a process  
11 is taking place where consumers and the businesses  
12 are stopped from being able to do vehicle transaction  
13 on it. So think that's an important issue.

14 BOB VANCAVAGE: I would just like to add  
15 in the current safety recall mandated, not the safety  
16 recall, the safety inspection of the vehicle when  
17 it's sold, it gets into every single safety related  
18 item. So I guess when I look at that, and I compare  
19 it to the recalls in general, I don't really  
20 understand the comparison. And I think if you looked  
21 at it for safety recalls specific, I think it would  
22 pretty much mate to the safety inspection that's  
23 already mandated in the State of New York.

24

25

2 CHAIRPERSON ESPINAL: So the safe car  
3 website that was mentioned earlier, does that include  
4 only safety recalls or does it include all recall?

5 BOB VANCAVAGE: And by the way, at one of  
6 the meetings that I had with the DCA when we were  
7 working on this, I had a recall that wasn't a recall.  
8 I had it fixed and it was still listed. I looked at  
9 it right in their office, and it still had the recall  
10 as open. And I had it fixed. So as other people  
11 have mentioned here during the testimony, there's a  
12 huge lag. The data gets updated but that's only the  
13 data they get, and that's supposing that everything  
14 is given to them on a minute-by-minute basis, which  
15 I'm sure is not the case. So often times, these cars  
16 are going to have an open period where it's either  
17 going to show that it's not fixed or it's going to  
18 show that it is fixed, and there's another recall  
19 behind it. Now, this air bag issue we're talking  
20 about, the Takata air bags.

21 I'm just reading that Honda announced  
22 Delaney, their new car model by at least six months,  
23 because they can't-- They don't even know where to  
24 get the air bags from. The car was the major  
25 manufacturer with all the air bags. The list of cars

2 that had recalled air bags is incredibly long. So I  
3 don't know how they're going to fix all this. I mean  
4 all of the cars and effectively sitting somewhere and  
5 the customers are not being able to use them.

6 CHAIRPERSON ESPINAL: Okay. Now if we  
7 only require safety recalls to be addressed, how  
8 would you feel about the idea of giving a consumer a  
9 list of the other recalls the cars have that they can  
10 address on their own with the manufacturer?

11 SEAN PETERSON: Mr. Chairman, if I might.  
12 Again, I think that goes to the issue of disclosure,  
13 and I heard the Commissioner of DCA mention  
14 disclosure being an important component in other  
15 things, and she was specifically addressing the other  
16 bill. But I think disclosure is something that as an  
17 industry we might consider assuming that we can get  
18 these couple different things that we had talked  
19 about. You know, if we're not responsible for the  
20 information that's contained within that recall  
21 information database, then I don't think dealers  
22 would have any problem by and large providing that  
23 information to them. This is what we know to be the  
24 case.

2           But again, we need to have some kind of  
3 assurance that, you know, we're not responsible for  
4 the information that's not ours. It belongs to a  
5 third party and we're just the conduit. Again, that  
6 California model is something that dealers support it  
7 wholeheartedly. Both franchise and independent  
8 dealers support it wholeheartedly, and I believe  
9 that's something that we could explore.

10           MARK SCHIENBERG: And just on the new car  
11 side. If a dealer is a GM dealer and they get a  
12 recall notice from the manufacture, I sort of almost  
13 hate to say this, but the dealer actually likes to  
14 see those things because he's getting paid by the  
15 manufacturer to take care of a problem that they  
16 deemed to be worthy of some kind of repair. Whether  
17 it's safety or again something that's long-term that  
18 they might like to see change in their product. The  
19 problem clearly does come about again when there's  
20 the-- You see a recall, and you don't know if first  
21 of all, if it's still an open recall because there is  
22 such a lag time between when the car is repaired.  
23 The dealer notifies the manufacture. The manufacture  
24 notifies NHTSA.

2 NHTSA finally changes its website that  
3 was referred to that you can do these searches on it.  
4 So it's not true time as far as the kind of  
5 information that's even coming out of the NHTSA  
6 website. And it is in its infancy so it's still new,  
7 and still working out the details. It did crash on  
8 it. So there's things that need to be worked out.  
9 But even in the best of circumstances, it will never  
10 be a true time kind of picture of what is an open  
11 recall and what is safety and what's non-safety?  
12 And I think that that's probably the biggest  
13 challenge that there is.

14 CHAIRPERSON ESPINAL: How difficult would  
15 it be for a mechanic to assess if a part was changed?  
16 Let's say you look into the recall and maybe there  
17 was that lag. Maybe it was repaired. How difficult  
18 would it be for a mechanic to look at the car and say  
19 well this was already done?

20 SEAN PETERSON: I think that's going to  
21 depend on what the recall issue is. Certainly with  
22 these air bags. I mean that's pretty significant.  
23 You've got to pull things apart and get into it. It  
24 wouldn't be something that you could detect very  
25 simply visually.



2                   MARK SCHIENBERG: Well, I was young I  
3 used to be able to tear apart an engine. I could  
4 open up the hood and I can't see anything any more.  
5 So it's sometimes even hard for a technician to  
6 identify something on the surface because sometimes  
7 it could be a recall that's not easily seen on it.  
8 So you're relying on information that is available to  
9 you. I would say that we have some vehicles for our  
10 field people. We've had the work repaired. We took  
11 a look when some of these issues were coming about,  
12 and the work that we had done was still not-- It was  
13 still-- it was an open recall that was still on the  
14 website.

15                   So we knew that it got done, but the fact  
16 is that it was still called and open recall. So for  
17 a dealer they're still now sitting with this car in  
18 the lot. He's trying to sell it, and unable to do it  
19 even though the information-- Even though the  
20 vehicle has been repaired, but the information has  
21 been transferred through the system.

22                   CHAIRPERSON ESPINAL: The majority of  
23 cars, used car dealers you see, where do they come  
24 from? Are they mostly trade-ins or auction cars?  
25 Cars they got at auctions?

2 BOB VANCAVAGE: It's both. For new car  
3 dealers a high percentage are used cars. Of course,  
4 there's a fair amount that they'll get at auction as  
5 well. But a large percentage of the used cars are a  
6 trade-in by the customer. And like I said, 25% of  
7 the customers-- I'll be honest with you. I'm one of  
8 these people that I get these notices, and aren't  
9 very quick to get them fixed. If I don't deem it to  
10 be something significant, I'm not going to take my  
11 time to go sit in a dealership and wait for the thing  
12 to be fixed. You know, that's where I am right now  
13 with my daughter's car. It says the headlight needs  
14 to be fix, and we just haven't gotten around to it  
15 because it still works although there's water in it  
16 so--

17 MARK SCHIENBERG: [interposing] And I  
18 think this is where the causal sales are-- I call  
19 them casual sales. I'm actually not that familiar  
20 with curbstoning, but causal sales is when a car-- a  
21 used car is bought from one individual to another.  
22 If these recalls are not being taken care of by the  
23 consumer, who has been notified by the manufacturer  
24 to come in, these vehicles are still out on the road.  
25 I mean if it's a real safety recall, one of the

2 things I think the federal government should be  
3 looking at is-- or state government. I'm sorry.  
4 It's probably a more state government issue. Is to  
5 not allow the car to be re-registered when it comes  
6 up for registration until an open recall is done by  
7 that consumer who owns the car. Because it will just  
8 be transferred. More than 50% of all used cars are  
9 sold as casual sales on it. Without any knowledge,  
10 without any, you know, of whether there is any  
11 problem in that vehicle at all. And it's a big  
12 concern that's out there not only for these curb kind  
13 of sales.

14 But again for the more normal kind of I'm  
15 selling it to my neighbor, but I've got a problem  
16 with the vehicle. Stop it at registration. You  
17 know, make sure these open notices if they're not  
18 taken care of, are done before they can be re-  
19 registered. Like you go through a safety or  
20 emissions tests, and you can cure a lot of the  
21 problems that way. I mean that's one area to take a  
22 look at.

23 BOB VANCAVAGE: Yeah, and that's one of  
24 the reasons that my suggestion is that this be looked  
25 at more on a federal level. Because right now,

2 what's going to happens is a customer if you tell  
3 them we've got to fix your safety recall if it's just  
4 in New York City, they're going to go to New Jersey.  
5 They're going to with their trade-in to New Jersey  
6 and get more money for it because the New Jersey guy  
7 doesn't have to check it for recall and fix the  
8 recall.

9                   MARK SCHIENBERG: If I might, if I just  
10 might approach that cost. There's a study that shows  
11 that people will save \$100 who will travel 50 miles  
12 to save \$100 on the price of a sale. One of the  
13 problems we have even in the State of New York is  
14 that New York dealers are regulated when they do  
15 registration title work for \$75. In New Jersey, they  
16 can charge an unlimited amount, and that the average  
17 is between \$300 and \$400. So New York consumers are  
18 being advertised on a car that they think that  
19 they're going to get it less.

20                   But they're actually going to pay more  
21 money because of the registration fees in New Jersey.  
22 See, the cross-border issues and what we implement  
23 here as far as requirements that go on it, if it does  
24 raise the price of vehicles, which at some place it's  
25 got to come. This time and effort that's talked

2 about goes into what they need to recover their costs  
3 to make their business run, will only raise the price  
4 of vehicle. It just has to be on it. And then  
5 there's going to be the situation where this consumer  
6 is going to think that they're seeing a similar used  
7 car. There is no exact same used car from place to  
8 place, in another state or out in Nassau County or  
9 wherever it might be. And actually go there to  
10 purchase it only to find that they're paying more  
11 money in the long run. So New York businesses get  
12 hurt, and New York City consumers get hurt at the  
13 same time.

14 CHAIRPERSON ESPINAL: All right, thank  
15 you.

16 FRED DONNELLY: All right--

17 CHAIRPERSON ESPINAL: Speak into the mic,  
18 please.

19 FRED DONNELLY: My name is Fred Donnelly,  
20 President of the New York Independent Auto Dealers  
21 Association. And there's a lot of truth to that  
22 because why you may not be aware of is that there are  
23 a lot of New York dealers who found it too strict to  
24 abide by New York laws. So what they do now is go  
25 over to Jersey. There are warehouses set up with

2 rooms just barely to meet the legal requirements to  
3 get a New Jersey dealer license. They get a New  
4 Jersey dealer license. They come back to New York  
5 and set up on the curbs or in lots, and actually sell  
6 cars here with Jersey licenses to get over on the New  
7 York laws.

8 BOB VANCAVAGE: With curbstoning a lot of  
9 these dealers are so careful that they even put tape  
10 over the backs so in case anyone wants to take  
11 pictures of any identifying marks like a VIN or  
12 there's a sticker on their back license plate, they  
13 have them all covered up, or they've removed the  
14 sticker. I've been to Brooklyn. I lived on Coney  
15 Island Avenue. I've looked at some of these cars,  
16 and they actually put tape or something over the VIN  
17 plate so you can't tell-- you can't tell what the  
18 car is. You see a phone number and you call about  
19 it, but you won't know any more about the car.

20 CHAIRPERSON ESPINAL: Okay, thank you.  
21 And for housekeeping purposes, I also want to  
22 recognize our Vinny Gentile from Brooklyn, who  
23 stopped by a little earlier. Council Member  
24 Richards.

2 COUNCIL MEMBER RICHARDS: Thank you, and  
3 I appreciate you guys coming in and testifying, and I  
4 look forward to obviously having more dialogue as we  
5 move forward. And my honest opinion is if there  
6 weren't a lot of bad actors out there, we wouldn't be  
7 here today. So that's why we're here today. I did  
8 want to raise-- So there were a few things I believe  
9 Mr. Mark Schienberg presented. I just want to ask a  
10 couple of questions. So I know you spoke of-- You  
11 know when you guys hold vehicles, you incur certain  
12 costs. How much a day or on average would a used car  
13 dealership incur? How much money would it cost to  
14 hold?

15 MARK SCHIENBERG: It varies. Actually,  
16 it's a really great question. I don't think--

17 COUNCIL MEMBER RICHARDS: On average, as  
18 an average.

19 MARK SCHIENBERG: Many people don't  
20 realize that new car dealers actually buy vehicles  
21 either whether it's new car vehicles from the  
22 manufacturer or when they go to an auction, and  
23 they're buying it from an auction. They have to go  
24 to a bank and actually buy those vehicles and it's

2 financed on it. So it can vary according to the size  
3 of the dealer.

4 COUNCIL MEMBER RICHARDS: Can you give me  
5 like a straight example. I don't know. A Honda  
6 Accord. I don't know. [laughs]

7 MARK SCHIENBERG: Lucky enough interest  
8 rates are kind of low,

9 COUNCIL MEMBER RICHARDS: [interposing]  
10 Okay.

11 MARK SCHIENBERG: --but if you've got an  
12 inventory of a couple hundred vehicles and it's worth  
13 several million dollars that you're purchasing it,  
14 it's whatever the interest rate they're getting. The  
15 other part of it is, and this is a standard in the  
16 industry. If that car is sitting on the lot for 90  
17 days, you probably lost 10, 15, 20% of the value.

18 COUNCIL MEMBER RICHARDS: Of the vehicle.

19 MARK SCHIENBERG: It's just drops  
20 tremendously on it. So you've got two issues.  
21 You've got the float of the money. You've got to  
22 keep on paying the financial institution that you're  
23 floor planning with. And then you've just got the  
24 valuation of the product that you want to sell.



2 COUNCIL MEMBER RICHARDS: I wanted to  
3 speak to the misprint in the manuals, and I think our  
4 big thing here obviously is safety. So obviously,  
5 you know, if there's a misprint, we don't-- We want  
6 to hold people accountable if they're, you know,  
7 obviously, if they're aware or if they know. But if  
8 you don't know, and in essence-- What I'm getting at  
9 is if we exempted that from-- if there was an  
10 exemption on a particular misprint in manuals in  
11 particular or we gave a certain amount, a window of  
12 days. How long would it take for them to print a  
13 manual to get-- to reprint the manual?

14 MARK SCHIENBERG: Sure.

15 COUNCIL MEMBER RICHARDS: I mean on what  
16 you're dealing with now, can somebody give a solid  
17 example of that.

18 MARK SCHIENBERG: It's such a-- Well, on  
19 owners manuals, by the way, it's such a low priority  
20 on it that, you know, who knows how long it would  
21 take to do that. The other, and I think you put your  
22 finger on exactly the issue is what do we define?  
23 How do we define a non-safety issue so that we're  
24 taking that off of the plates so that again commerce  
25 can be done that way that it does, and consumers can

2 get into vehicles. And I think if we can, you know,  
3 focus in on that, and again the State of New York has  
4 done some of that as far as the inspections and the  
5 requirements for vehicle safety on the use of highway  
6 roads. That is I think what everybody would agree to  
7 is we've got to get off the road the unsafe vehicles  
8 that are out there, but not disrupt commerce in such  
9 a critical way that this bill would do.

10 COUNCIL MEMBER RICHARDS: You guys spoke  
11 of lag time being built into the recall databases.  
12 What is your experience? How much lag time? Can you  
13 give an example? So you said the website crashed  
14 last week. How quickly did they get it back up?

15 SEAN PETERSON: Go ahead.

16 MARK SCHIENBERG: I just think from  
17 personal experience because we had our fleet vehicles  
18 so we checked on it. It close to three or four  
19 weeks, and that was when the site first came up on  
20 August 20th.

21 COUNCIL MEMBER RICHARDS: Which site is  
22 that?

23 BOB VANCAVAGE: The NHTSA website.

24 COUNCIL MEMBER RICHARDS: Okay, so,  
25 that's the one that--

2 MARK SCHIENBERG: [interposing] And I'm  
3 sorry. I apologize. Not only that but when we  
4 contacted the manufacturer to see if the vehicles  
5 that we were repaired in our fleet were actually in  
6 their database, it still wasn't entered in. So the  
7 dealer did the work, transferred it over. The  
8 manufacturer said this work was done on this recall,  
9 and even the manufacturer didn't make the change in  
10 the database.

11 COUNCIL MEMBER RICHARDS: So if there was  
12 a provision in here to exempt it, there was proof, if  
13 you showed adequate proof, that you'd gone above and  
14 beyond to ensure that the repairs are made and the  
15 recalls, you know, obviously are documented, would  
16 that suffice you guys?

17 BOB VANCAVAGE: You know what the other  
18 problem I just want to mention is the other problem  
19 when the dealer takes in a trade in car, they can  
20 run. And we're talking about the lag time, it could  
21 be a week or two weeks. It could be a month or  
22 whatever. When they take the car in on trade  
23 thinking that there is no recall that they're not  
24 going to have to fix anything. And what you're

2 talking about is sometimes these trade-ins become  
3 sales relatively quickly.

4           The dealer's main focus is to get that  
5 vehicle once traded in sold as quickly as possible so  
6 they don't have the interest on those accounts  
7 accruing. So they want to move the vehicle on. So  
8 what happens now that the car is on the dealer's lot  
9 for 30 days with how quickly these recalls are coming  
10 out now, seemingly everyday. Now all of a sudden the  
11 dealer has a car on his lot with a recall he didn't  
12 know was recalled. So now, he has, if we talk about  
13 this bill, they would have to get the recall fixed  
14 before they can sell it, and you get into all those  
15 other issues of--

16           COUNCIL MEMBER RICHARDS: [interposing]  
17 And how many recalls do you deal with every year  
18 because I only hear about a handful. I mean I--  
19 Maybe I'm just, you know, not paying close enough  
20 attention.

21           BOB VANCAVAGE: Well, this year we're  
22 talking upwards of 56 million recalls.

23           COUNCIL MEMBER RICHARDS: On safety?

24           BOB VANCAVAGE: Well, again, NTHSA  
25 doesn't make a determination as to what is safety and

2 what is not. So we're just working late on with  
3 them.

4 COUNCIL MEMBER RICHARDS: So have you  
5 guys been working with them to figure that part out?  
6 Because it would seem that if, you know, you're  
7 having difficulty in this area, have guys made any  
8 effort to work with them to make sure you're getting  
9 adequate information.

10 SEAN PETERSON: We are-- We at NYSADA  
11 are in constant communication with that side.

12 COUNCIL MEMBER RICHARDS: And are you  
13 working with the other-- Sorry to cut you off -- the  
14 other parts of governments so the state and the fed  
15 to ensure that that particular area is something that  
16 they're focusing on?

17 SEAN PETERSON: As I mentioned, you know,  
18 this is an issue that's being discussed all across  
19 the county, and we're in constant communication. And  
20 we work very closely with GNYADA. We're in constant  
21 communication with NHTSA. We participate frequently  
22 with states across the country, the state attorney  
23 general, Department of Consumer Affairs and the  
24 states on this issue. NHTSA does not make the  
25 distinction yet, and every indication that we've

2 gotten from them-- Not speaking for them, but every  
3 indication that we've gotten from them right now is  
4 that it's not their intention to do that. That may  
5 change in the future, but as we sit right now, they  
6 do not make that distinction, and have not indicated  
7 that they're going to.

8 COUNCIL MEMBER RICHARDS: Okay, thank you  
9 Chairman, and you raised a lot of the other things  
10 that I wanted to mention. Thank you.

11 CHAIRPERSON ESPINAL: Council Member  
12 Jumaane Williams.

13 COUNCIL MEMBER WILLIAMS: Thank you, Mr.  
14 Chair. Thank you for your testimony. I do also  
15 agree with a recent statement my colleague made.  
16 There's a lot of bad actors out there, which is why  
17 we're here. All of my cars have been used.  
18 Actually, the ones that I've gotten from major known  
19 dealerships have been fine, those experiences. The  
20 ones that I got from I think the independent smaller  
21 type have always had some problem with either the  
22 vehicle or the sale price that was initially given.  
23 And the bait and switch and all that other stuff.  
24 And so, I think-- I think it was Mr. Peterson that

2 mentioned on some of these things they're experts in  
3 determining some of this stuff.

4           Independent Dealers, for instance it is  
5 the Department of DCA or the Council are not  
6 qualified to make some of these decisions. But I do  
7 think we are elected to use the best information that  
8 we have to actually make some of these decisions.  
9 And I think it's within our purview to actually do  
10 that. So I think that's what we're trying to do  
11 today. And I know that-- I guess the National  
12 Independent Automobile Dealer Association, the New  
13 York State Automobile Association, and the New York  
14 Independent Automobile Association. I think there  
15 are the same. There were no comments on 178. So I  
16 just want to know if there are any opinions on it.

17           SEAN PETERSON: Council Williams just by  
18 point of clarification when I made the statement I  
19 was talking specifically about making a determination  
20 as to whether a vehicle should be recalled.  
21 Certainly, we recognize that this Council has the  
22 capacity to exercise its discretion and consider  
23 these particular issues. I'm talking specifically  
24 about making a determination that there is a vehicle

2 that needs to be recalled. That was the genesis of  
3 my statement.

4           From a national perspective, we do not  
5 have any particular position as it relates to the  
6 other bill. Those are issues that generally our  
7 state associations handle. The recall issue is of  
8 such national importance, and I agree here that it's  
9 something that does need to be considered by Congress  
10 and should probably be addressed there. As opposed  
11 to in the 50 plus jurisdictions that they're  
12 currently considering something like that. So I  
13 would defer to the state association.

14           MARK SCHIENBERG: And if I may make a  
15 comment on behalf of Greater New York on 178, I think  
16 some of the comments that were made by the previous  
17 panel was-- Really needs to be taken a look into  
18 more closely. The idea that when you're buying a  
19 used car, there are consumers when they're buying it  
20 and it's like lots of other products they want some  
21 kind of warranty. This legislation 178 would not  
22 allow for a warranty to be sold to a customer even if  
23 the consumer wants to have an extended warranty on a  
24 used vehicle that they're purchasing. Or again  
25 during the negotiated process if the consumer says



2 listen, I like the car, I love but, you know, those  
3 tires they look like they-- You know, the tread is  
4 not-- I want to-- I'll buy the car, but I want to  
5 have tires put on it.

6           The legislature would make it illegal for  
7 them to do it. So a used car is one of those items  
8 that is constantly negotiated. Somebody wants an  
9 extra piece of equipment. They want a warranty on  
10 it. You can't put an exact price on a used, on a car  
11 until you are sitting down with the consumer and  
12 doing it. Now, I will say on administrative fees,  
13 and we heard that, we're trying to get guidance from  
14 the New York State Attorney-General's Office. This  
15 has been the one issue that I think drives even  
16 dealers crazy. Is that they want to sell a vehicle  
17 whether it's new or used on it. And there are some  
18 that are out there that are charging administrative  
19 fees. What is an administrative fee? Nobody sort of  
20 knows.

21           I think the Attorney-General is coming  
22 down on the side of saying the only time you can  
23 charge an additional price is when you're actually  
24 getting some item or service for that thing, and you  
25 can't bundle. That's been the law for a long time

2 that you get these \$1,000, \$1,500 fees,  
3 administrative fees and it supposedly includes a  
4 whole bunch of things. In New York State that's  
5 illegal to do. You can't bundle. You have to  
6 itemize the items in which you're getting it.

7           So the Department of Motor Vehicles is  
8 silent on administrative fees. The Attorney-General  
9 has historically said it's problematic on it. We  
10 agree that it is problematic. It creates a climate  
11 that's improper in selling cars, and I think they're  
12 working through it. But what we're hearing from at  
13 least the Attorney-General's Office right now is that  
14 the only time you can charge an additional fee is if  
15 it's actually you're getting something for that price  
16 specific.

17           COUNCIL MEMBER WILLIAMS: So you were the  
18 only actual person who testified on 178. So give me  
19 one second.

20           MARK SCHIENBERG: [interposing] Sure.

21           COUNCIL MEMBER WILLIAMS: I just want to  
22 make sure there is no one else that had any comments  
23 on 178.

24           BOB VANCAVAGE: On 178, the New York  
25 State Auto Dealers Association, although not in

2 written testimony, shares the same concerns about the  
3 ability to sell a warranty, upgrade the tires, and  
4 those kinds of things. So we'd have to find, you  
5 know, the middle ground on this as to how you  
6 advertise this, and what you disclose or don't. To  
7 make it so it's equal across the board. I think what  
8 happens is that somebody does something wrong, and  
9 then other people to compete have to do other things  
10 similar.

11 COUNCIL MEMBER WILLIAMS: Yes, that's  
12 what I was explaining to you.

13 BOB VANCAVAGE: And that's a huge  
14 problem. So we just need clear and I think what the  
15 Commissioner of DCA said before transparency, clear.  
16 The roles have to be across the board so everyone can  
17 understand, and make everyone better actors. We keep  
18 talking about bad or good actors. To make everyone a  
19 good actor, I think that's really what we want. And  
20 we want at the end of the day for consumers to be  
21 treated fairly and to know what they're getting into  
22 before they get up in some kind of craziness at the  
23 end of the deal.

24 COUNCIL MEMBER WILLIAMS: So I guess what  
25 you're calling administrative fees is what I was--

2 they were trying to charge me as dealer fees and what  
3 have you. I still have a couple questions. Is there  
4 a menu that can be used so people know how much used  
5 tires cost, how much a warranty costs? So that when  
6 you come to close the deal, you can work out this is  
7 what this costs, and this is the deal I'm giving you.

8 MARK SCHIENBERG: Well, on tires, by the  
9 way, most dealers don't sell tires directly. They  
10 usually go to somebody that's tire company. It just  
11 takes a lot of room, and there are so many different  
12 choices on it. So you tend to go down to a tire  
13 company and to find out, you know, to buy the tire.  
14 So menu purchasing could be somewhat challenging on  
15 it. Again, extended warranties. There are lots of  
16 extended warranties for certain periods of time. I  
17 mean I'm sure there is some place along the line  
18 there is a pricing that a dealer goes by because  
19 they're selling it. If it comes from a particular  
20 manufacturer, manufacturers are really good at giving  
21 specific prices on it. So I would say that there's  
22 probably a way to do it, but just we would probably  
23 need to really get into the leads on this to see how  
24 it could be done.

2 COUNCIL MEMBER WILLIAMS: Well, I would  
3 like to do that because I'm more focused on it. And  
4 they gave suggestions of what we can use. The fee  
5 that I'm concerned about, and not just inspection,  
6 and they put some language here about optional fees.  
7 Which I think registration fees are not really what  
8 I'm trying to get out. What I feel is that if a car  
9 is being advertised, most of the time when it's being  
10 advertised, it's not being advertised with the cost  
11 of the warranty or the cost of the tires to begin  
12 with. And so, when you go up there, the dealer's fee  
13 doesn't include the warranties or the tires. It's  
14 just another fee that doesn't really include  
15 anything.

16 And so, what I'm trying to get the law to  
17 do is actually deal specifically with those things.  
18 I feel based on my experiences I've seen, there are  
19 people losing more than they are gaining from what  
20 you're talking about. They're putting in the tires,  
21 putting in the warranties, which I understand. But  
22 if you see something for \$10,000 and then you get  
23 tacked on an extra five, you probably get tired at  
24 some point and just sit down and make a deal. You're  
25 actually probably losing a lot. So I want to find a

2 way to get to that. If you have specific language  
3 that you think will be helpful, I'd love to see that  
4 sooner than later. If not, we have to try to cull  
5 out based on what you're saying and what DCA is  
6 saying to try to get with that so that we can affect  
7 people who are affected.

8 MARK SCHIENBERG: Yeah.

9 COUNCIL MEMBER RICHARDS: You also said  
10 that it was, you thought it was duplicative. I think  
11 that's the word, duplicate. I want to understand  
12 that a little bit more.

13 MARK SCHIENBERG: Well, again, there's  
14 always already, you know, statutes on the books right  
15 now that DCA has that talks about deceptive business  
16 practices, deceptive advertising. A lot of that we  
17 worked with them on it, and as I mentioned in my  
18 testimony when Bobby Evans was the Attorney-General  
19 in New York State, we put together the first set of  
20 advertising standards in the country on it. Because  
21 dealers said the problem is that we want a clear  
22 understanding of how to go about advertising whether  
23 it's in ads, printed ads, TV ads or even on vehicles.  
24 So part of it is that New York City has extensive  
25 advertising guidelines right now, as New York State

2 does. And what this law does is actually in some  
3 ways a little bit conflicts with each other a little  
4 bit.

5           So you've got a dealer looking at one set  
6 of guidelines, and says okay I'm going to follow  
7 this. And now, there's a different set that's out  
8 there, one by statute, one by regulation potentially.  
9 So I think we would love to see the harmonization of  
10 those regulations, and to make sure that they work  
11 for everybody. And we would be glad to, would love  
12 to sit down with you and go over this. I think you'd  
13 find a very receptive audience with dealers whether  
14 used car dealers or new car dealers. There's a lot  
15 invested in their businesses, and for new car dealers  
16 customer satisfaction is always being looked at by  
17 the manufacturers themselves. So when they see a  
18 road dealer going out and doing something that really  
19 hurts the rest of the industry, you know, the  
20 industry is not in favor of it. So we'd love to work  
21 with cooperatively with on finding the solutions to  
22 it.

23           COUNCIL MEMBER WILLIAMS: So I don't know  
24 that I fully get the duplication, but based on what  
25 you said, and based on what's in testimony I'm not

2 sure how adding something else duplicates what's  
3 there. So you have to more fully explain it or you  
4 have to present to me the language that exists, maybe  
5 I can understand it better. I do think what's  
6 happening is actually pretty persuasive, if not in  
7 Brooklyn and Queens where I've tried to shop. And so  
8 I do think there is more that needs to be done.

9           And it's not one or two bad actors. I  
10 think it's unfortunately pervasive, and I guess-- I  
11 don't know the description is, but it seems like  
12 smaller independent used car shops. It seems like a  
13 pervasive tactic to get people in, and just basically  
14 lie about what was said in the advertisement. So I  
15 do want to find a way to get to that sooner than  
16 later particularly administrative and dealer's fees.  
17 I am sensitive to not trying to prevent you from  
18 conducting a good deal with someone who might gain  
19 something. But I think there's a lot of bad things  
20 happening, and I want to try to--

21           MARK SCHIENBERG: [interposing] And we'd  
22 love to work with you, and one area that we'd love to  
23 add onto this discussion is where we see a huge  
24 problem also is in brokers that are out there. I  
25 mean there's not that much difference between



2 somebody who's selling it on the curbside, and  
3 somebody who's selling it-- There's one in Brooklyn  
4 behind a barber shop, and there's a desk on there.  
5 And they're acting like they are a franchise dealer  
6 that is represented by a manufacturer. But they're  
7 really unlicensed dealers.

8 COUNCIL MEMBER WILLIAMS: Is this  
9 different than the person who goes to the auctions?

10 MARK SCHIENBERG: Slightly different,  
11 yes. Yeah, so the brokers usually are in communities  
12 where there's a language barrier. So they tend to be  
13 set up with people who speak similar languages where  
14 people might feel comfortable. And then they're  
15 finding out they're buying cars from somebody from  
16 out of state. Most of the time it's new, but it's a  
17 lot of used vehicles also that's out there, and there  
18 are websites. You go onto the website, and they're  
19 pretending to give all the warranties. So there's a  
20 real deception that's there, and it's just really  
21 about how you're presenting yourself. So I think it  
22 gets into a lot of the things--

23 COUNCIL MEMBER WILLIAMS: [interposing]  
24 sure.

2 MARK SCHIENBERG: That you're talking  
3 about also.

4 COUNCIL MEMBER WILLIAMS: Sure. Thank  
5 you.

6 BOB VANCAVAGE: I completely agree with  
7 Mark, and some of these places as I mentioned earlier  
8 in Brooklyn, Coney Island Boulevard. If you type in  
9 Brooklyn-- Brooklyn Auto Leasing Companies you'll  
10 see a slew of them that look like they're a franchise  
11 new car dealer, but they're not. So they don't have  
12 to comply with any of the rules that the new car  
13 dealers do because, in fact, they're working normally  
14 with out-of-state dealers to get their cars and to  
15 sell them to a local customer.

16 COUNCIL MEMBER WILLIAMS: Okay. Thank  
17 you very much.

18 [Pause]

19 CHAIRPERSON ESPINAL: Just for  
20 clarification. I think we're having trouble  
21 understanding whether or not curbstoning is fully  
22 legal in New York City. Is anyone exempt from  
23 curbstoning?

24 [Pause]

25

2                   FRED DONNELLY:  Curbstoning in New York  
3 and in New York State is illegal.  Period.  And we're  
4 not really talking about the person who has a-- You  
5 know, the resident who has one car for sale.  
6 Certainly, we're not opposed to that.  We're talking  
7 about somebody who's selling cars everyday on the  
8 street through Craigslist, the same phone number.  We  
9 do have the information now on companies who actually  
10 go out and identify these people, and, you know, it's  
11 a lot easier to do now.  But no it's definitely  
12 illegal.

13                   CHAIRPERSON ESPINAL:  Okay.  Great thank  
14 you.  Thank you.  I think with that being said, I  
15 think that we're going to conclude this hearing.  
16 Thank you for your testimony, guys.

17                   MARK SCHIENBERG:  Thank you, Chairman.

18                   CHAIRPERSON ESPINAL:  I appreciate it.

19 [gavel]

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1 COMMITTEE ON CONSUMER AFFAIRS

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date October 30, 2014