



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

[CHRO letterhead]
March 31, 1995

The Honorable **Leonard R. Price**
Minnesota State Senate
235 State Capitol
St. Paul, Minnesota 55155

Dear Senator Price:

The staff of the Federal Trade Commission⁽¹⁾ is pleased to offer this response to your request for comment on Senate File No. 1065. The bill would require that those who offer the service of “brokering” new vehicle sales or leases, and receive a fee for that service from the vehicle seller or lessor, obtain licenses from the state. S.F. No. 1065 does not appear to require licenses for those who provide brokering services that are paid for directly by consumers. One effect of the bill may be to encourage brokering by reducing uncertainty about the legal status of brokers and brokering services. It may be, however, that the bill, by providing for licensing and regulation of brokers paid by dealers, will be applied to discourage or prohibit brokering services paid for directly by consumers. Permitting brokering services of all kinds to compete could benefit Minnesota consumers by saving them money and inconvenience.

I. Interest and experience of the Federal Trade Commission.

The Federal Trade Commission is empowered to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁽²⁾ Consistent with this statutory mandate, the Commission and its staff work to identify restrictions that hinder competition and increase costs without providing countervailing benefits to consumers.

The Commission has long been concerned about restrictions imposed on retailing methods that can be beneficial to consumers. In the retail automobile market in particular, the Commission has ruled that dealers in the Detroit area unreasonably restricted compet

contracts with dealers, and could inclu

statute describes such functions only for licensed brokers paid by dealers. Limitations on how other brokering services could advertise and operate could increase the costs of providing those services and thus might ultimately increase costs to consumers.

Some functions probably could not be performed by a broker or buying service lacking some kind of contract arrangement with a dealer. And it may be that some brokers have engaged in unfair or deceptive practices, in the claims they have made about their ability to make deals on popular models or in their course of dealing with consumers or dealers. The legislature may wish to consider whether unfair or deceptive practices by brokers might best be addressed directly, perhaps under general provisions dealing with such conduct.

The reasons for defining the scope of the oversight by the source of payment are not clear to us. The legislature might be concerned that consumers are deceived by brokering services that advertise themselves as serving consumers' interests but fail to disclose the fact that they are paid by dealers to promote the dealers' sales. The proposal to require disclosure of that interest, where it is present, would alleviate that concern. Otherwise, it is not clear why brokering services require particular regulation, except perhaps to ensure compliance with financial and fiduciary obligations appropriate for such businesses.

If the present statute were being applied to prevent brokering by anyone except licensed new and used car dealers, then establishing the new category of "motor vehicle broker," with fewer requirements for obtaining the necessary license, could represent an improvement over the status quo. It may be that, by authorizing and requiring licensing of brokers that are paid by dealers, the bill is intended to prohibit other kinds of brokering services. As it stands, the bill does not appear to do that, and such a prohibition would be unfortunate. Consumers looking for better deals at lower costs may prefer a broker or buying service that is working directly for them, rather than for the sellers. Competition among brokers working under different arrangements could help ensure that the consumer's interests are served most effectively.

IV. Conclusion.

S.F. No. 1065 deals principally with brokers paid by dealers; as such, it does not appear to prohibit brokering services paid for directly by consumers. Permitting all kinds of brokering services to compete effectively appears more likely to benefit Minnesota consumers by saving them money and inconvenience.

Sincerely,

Steven C. Baker
Director

(1) These comments represent the views of the staff of the Chicago Regional Office and the Bureau of Competition of the Federal Trade Commission, and do not necessarily represent the views of the Commission or any individual Commissioners.

(2) 15 U.S.C. § 41 et seq.

(3) Detroit Auto Dealers Ass'n, Inc., Dkt. 9189, 111 F.T.C. 417 (1989), aff'd in part and remanded in part, 955 F.2d 457 (6th Cir.), cert. denied, 113 S. Ct. 461 (1992); consent orders issued against certain respondents, April 20, 1994 and July 10, 1994.

(4) See Robert P. Rogers, The Effect of State Entry Regulation on Retail Automobile Markets, Federal Trade Commission, Bureau of Economics Staff Report (January 1986). The Report concluded that state laws restricting the number of automobile dealers in an area were costly to consumers.

(5) Comment to Rep. Ted Weggeland (April 29, 1994); see also comment to Sen. Quentin L. Kopp (January 5, 1990).

(6) Comment to Rep. Rick McConnell (February 22, 1994).

(7) Comment to Missouri Sen. J. B. Banks (April 6, 1990); comment to Wisconsin Department of Transportation (November 3, 1989); comments to Illinois Sen. Aldo A. DeAngelis (March 21, 1989), Gov. James R. Thompson (September 8, 1989), and Rep. Woods Bowman (April 24, 1987); and comment to Michigan Sen. Dick Posthumus (September 29, 1988). For other comments on state proposals concerning vehicle sales, see comments to Florida Sen. Gwen Margolis (March 29, 1988); South Carolina Rep. David C. Waldrop, Jr. (March 21, 1988); California Assemblyman Richard Katz (January 29, 1988); and Texas Gov. William P. Clements, Jr. (June 1, 1987).

(8) Minn. Stat. § 168.27 Subd. 1(2). The bill would amend the existing definition of “brokering” to include arranging leases as well as arranging sales.

(9) S.F. No. 1065 Section 1, to add Minn. Stat. § 168.27 Subd. 1(14).

(10) S.F. No. 1065 Section 2, to add Minn. Stat. § 168.27 Subd. 7a. The section of the law under which motor vehicle brokers had been separately licensed, Minn. Stat. § 168.27 Subd. 5, was repealed in 1984. S.F. No. 1065 would reinstate the broker’s license.

(11) S.F. No. 1065 Section 3, to amend Minn. Stat. § 168.27 Subd. 10(6), and to amend and renumber §§ 168.27 Subd. 10(7) and 10(8).

(12) Credit union-sponsored sales may stimulate other business for dealerships, too. Special financing terms and rates may be offered for the sale, and credit union members may shop with pre-approved financing terms. Moreover, these terms may be kept open after the sale ends, so consumers may have the option to obtain a car that was not available at the sale, still under the sale’s financing terms.

(13) “Taking the Hassle out of Car-Buying, Changing Times, Aug. 1988, at 37. See also Kiplinger’s Personal Finance Magazine, Dec. 1992; “Car Buying for Those Who Hate to Haggle,” Business Week, Aug. 30, 1993, at 86.

(14) S.F. No. 1065 § 2, to add Minn. Stat. § 168.27 Subd. 7a: “No person ... shall engage in the business of arranging the sale [or lease of a motor vehicle], for which service the seller or lessor pays a fee, without first acquiring a motor vehicle broker’s license.”

(15) The proposed new definition of “motor vehicle broker,” which describes the business for which a license is required, and the new subsection regulating such brokers specify that a fee is paid by the seller or lessor, but do not state that licensed brokers could not accept compensation from the consumer as well.

(16) Minn. Stat. §168.27 Subd. 1(2).

(17) Minn. Stat. §168.27 Subd. 2(a) and 3; dealer licensees are entitled “to sell, broker, wholesale, or auction and to solicit and advertise the sale, broker, wholesale, or auction” of new or used vehicles.

(18) Minn. Stat. § 168.27 Subd. 2(a).

(19) The term “arranging” was deleted in 1988 from the subsection about new car dealers. The parallel section addressing used car dealers still includes “arranging” used car sales as a function that only a licensed used car dealer can perform. Minn. Stat. § 168.27 Subd. 3.