August 22, 1984

The Honorable John Ray
Committee on Consumer and
Regulatory Affairs
Council of the District
of Columbia
District Building
Washington, DC 20004

Re: District of Columbia Automobile Consumer Protection
Act of 1984 -- Bill 5-288

Dear Mr. Ray:

I am writing on behalf of the Consumer Affairs Committee of the D.C. Bar, Division 2, to comment on revisions to Bill 5-288, the District of Columbia Automobile Consumer Protection Act of 1984. The Council made these revisions after our earlier comments of November 28, 1983. 1/

The Consumer Affairs Committee believes that the new Section 6 of Bill 5-288, requiring disclosures of known defects in used cars, is needed to address widespread unfair business practices of some automobile dealers selling used cars in the District of Columbia. The disclosure requirements also should apply to the sale of demonstrators and other company cars which often are driven for some time before sale to the first retail customer.

Members of the Bar who represent D.C. residents purchasing used or demonstrator vehicles report case after case of clients buying such vehicles from licensed D.C. dealers, only to find

1/ The views expressed herein represent only those of the Consumer Affairs Committee of Division 2 (Antitrust, Trade Regulation and Consumer Affairs) of the District of Columbia Bar and not those of the D.C. Bar or its Board of Governors.
major mechanical problems which the dealer knew or should have known about. Moreover, in a surprising number of cases, cars may have been in accidents while being driven by a salesman or owner of the dealership, and the dealership itself may have made the repairs - yet failed to disclose the accident to prospective purchasers. Buyers obviously need such facts to make informed decisions about a purchase which for some may be the most expensive they will ever make.

The proposed law is also desirable for technical reasons. While D.C. law presently prohibits certain unlawful trade practices, including the failure to disclose material facts if the failure tends to mislead, it does not specify what constitutes "material" facts. Bill 5-288 will assist all interested parties -- dealers, consumers and their respective counsel -- in understanding the limits and range of dealer responsibility. To this extent Bill 5-288 simply helps clarify the law in the District of Columbia.

The Consumer Affairs Committee believes Bill 5-288 as now drafted provides inadequate incentive for unscrupulous dealers to comply. Fines ranging from $300.00 to $1,000.00 mean little to a dealer who often makes 3 to 5 times that amount on the sale of a single vehicle. In a "hot" used car market such as the District of Columbia, dealers guilty of the unlawful trade practices the Bill is designed to reach are unlikely to modify their behavior. Accordingly, the Consumer Affairs Committee urges the Council to consider increasing substantially the size of the fine, and requiring that a dealer's license be revoked or suspended if the dealer is found to have sold 2 or more cars or demonstrators within a 12 month period without making the required disclosures.

Used car dealers are urging the Council to adopt a provision similar to one in Maryland, which eliminates the implied warranty of merchantability for vehicles with more than 60,000 miles or which are more than 6 years old. Whether or not such a provision is appropriate in Maryland, the Consumers Affairs Committee believes it is completely inappropriate for the District of Columbia. The overwhelming majority of vehicles sold here are used cars; of these, a very high number of older vehicles are sold to low income consumers -- those least able to afford expensive automobile repairs. Yet, if the Council yields to the desires of D.C.'s used car dealers, the low income District residents will be yet further burdened, and unnecessarily so.
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In fact, there is no legitimate need for the type of provision sought by the dealers because under existing law, D.C. Code 28:2-316.1, dealers are free to disclaim the implied warranty of merchantability by informing purchasers of mechanical conditions or damage which they know to exist. This makes for informed purchase decisions and is fair both to the dealer and the consumer. Though used car dealers have an obvious interest in not informing prospective buyers of defects which they know exist, the Council should not legitimize such deceptive practices.

Thank you for this opportunity to comment on Bill 5-288.

Sincerely,

David A. Koplow  
Chairperson  
Consumer Affairs Committee  
of Division 2  
of the D.C. Bar

DAK: mtb