February 28, 2017

The Honorable Joe Hoppe
Chairman
House Commerce and Regulatory Reform Committee
95 University Avenue W.
St. Paul, Minnesota 551551

SUBJECT: HOUSE FIL 740, VEHICLE LAWS – REGULATING MOTOR VEHICLE FRANCHISES

Dear Representative Hoppe:

Global Automakers, www.globalautomakers.org, represents the U.S. operations of international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, regulators, and other stakeholders in the United States. Our goal in Minnesota and elsewhere is to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet.

Global Automakers Position
Global Automakers is writing to inform you of our **strong opposition to HF 740 (Vogel).** In addition, we request, in response to the Minnesota Supreme Court's decision in *Wayzata v. Nissan North America, Inc.*, 875 N.W.2d 279 (Minn. 2016), that Minn. Stat. § 80E.14 be amended to specify the circumstances when an exemption contained in the statute applies.

Efforts to Work with the Dealers
We appreciate the level of engagement and open dialogue we have with Scott Lambert and the Minnesota Automobile Dealers Association. Global Automakers always seeks to reach consensus with dealers, developing public policies that are reasonable and in the best interest of the manufacturers, dealers and consumers. **However, Global Automakers' must oppose this bill for the reasons below.**

Why We Oppose
First, HF 740, if enacted, would make sweeping changes to the warranty reimbursement provision set forth in Minn. Stat. § 80E.04, which currently provides that the warranty labor rate and reimbursement rate for parts "shall not be less than the rate charged by the dealer for like service to nonwarranty customers for nonwarranty service and repairs." HF 740 would repeal this statute and replace it with a complicated and burdensome procedure that would result in a windfall to certain dealers at the expense of Minnesota consumers. For example, the proposed procedure for calculating warranty labor reimbursement rates would allow dealers to receive reimbursement at an exaggerated and artificially high rate. Moreover, a dealer would also be entitled to receive a parts mark-up for warranty parts even if a manufacturer provided those parts to the dealer at no cost or a reduced cost. These types of parts are typically provided to address recall or similar issues and allow consumers to have their vehicles repaired more quickly and efficiently than traditional warranty repairs, without injecting unnecessary costs into the distribution system.

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The legislation would also prohibit our Members from recovering compliance costs by increasing vehicle prices to dealers. Manufacturers have the right to determine the price of products based on evaluating all costs associated with the production, sale and servicing of its vehicles. Otherwise, the economics of offering warranty coverage could become threatened.

Second, HF 740 also includes additional business practices that would be deemed unlawful under Minn. Stat. § 80E.13. Among other things, the bill would require manufacturers, upon request from a dealer, to provide the formula or method used to calculate a dealer's sales objectives, performance standard, or incentive targets and the formula or method used by the manufacture to calculate those items for any other same-line make dealer located within 75 miles of the inquiring dealer. And, if a manufacturer fails to provide this information, its sales objectives, performance standard or incentive targets are presumed to be unreasonable. We are unaware of any other law that requires manufacturers to share confidential information concerning other same-line make dealers with a competing dealer, and we anticipate that many dealers will also object to this provision. We see no basis why it should be unlawful for a manufacturer to refuse to share or disclose confidential dealer information with other same-line make dealers.

Third, we also oppose the amendment to Minn. Stat. § 80E.13(p), which currently provides that a manufacturer may not unreasonably reduce a dealer's assigned area of sales effectiveness without providing notice to a dealer and provides the dealer with a right to challenge the proposed change. The proposed amendment imposes additional requirements on manufacturers and institutes a complicated procedure to determine whether the assignment or change to a dealer's sales effectiveness area is lawful. Specifically, HF 740 establishes a procedure that is more akin to challenging the establishment or relocation of a dealership by identifying eight specific factors a court should take into consideration when determining whether a proposed change is lawful, which procedure is not appropriate or necessary to challenge a sales effectiveness area. The law already has ample safeguards for dealers. Going beyond the current law, by specifying burdensome analyses that manufacturers must undertake before assigning or changing a dealer's sales effectiveness area, would not add to dealer protection; on the contrary, it would simply result in higher costs and more litigation -- all to the detriment of Minnesota consumers.

Lastly, HF 740 adds a provision making it unlawful for a manufacturer to require, by agreement or otherwise, a dealer to make improvements to its facilities if those improvements were previously required and approved by a manufacturer within the preceding twenty (20) years. This provision, if enacted, would be detrimental to motor vehicle consumers as it would give dealers rights to operate from sub-standard facilities contrary to their agreements with manufacturers. At a minimum, the twenty (20) year period specified in the bill should be reduced to five years or less.

For these key reasons, Global Automakers and its member companies strongly oppose this legislation.

Global Automakers Requests That Minn. Stat. § 80E.14 Be Amended

On February 17, 2016, the Minnesota Supreme Court issued a decision concerning a dealer relocation and whether one of the exemptions to the notice requirement contained in Minn. Stat. § 80E.14, subd. 1, applied. *Wayzata Nissan, LLC v. Nissan North America, Inc.*, 875 N.W.2d 279 (Minn. 2016). The exemption at issue provides that:

> The relocation of an **existing dealer** within its area of responsibility as defined in the franchise agreement shall not be subject to this section, if the proposed relocation site is

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> within five miles of its existing location and is not within a radius of five miles of an existing dealer of the same line make.

Minn. Stat. § 80E.14, subd. 1. (emphasis added). In *Wayzata*, the Supreme Court held that the "five and five" exemption did not apply because "notice [of the relocation] is required on the date that a manufacturer develops the intention to authorize a relocation, not on the date of the physical relocation of a dealership." *Wayzata,* 875 N.W.2d at 286. And, because Nissan had developed an intention to relocate a dealership well before the actual ownership transfer, the exemption did not apply because the new owner was not an "existing dealer" at that time. *Id.* at 286-288. The Court's decision, in certain circumstances, will effectively read the "five and five" exemption out of the statute since manufacturers routinely develop an intention to relocate a dealership months and sometimes years before an ownership transfer and relocation actual comes to fruition. The decision may also discourage individuals that wish to purchase and then relocate a dealership from pursuing that transaction if the exemption does not apply. That was clearly not the intent of the legislature when it enacted Minn. Stat. § 80E.14. Accordingly, the statute should be amended to clarify that the status of the relocating dealer (i.e., whether it is an existing dealer) be determined **at the time of relocation**, not when a manufacturer develops an intention to relocate a dealership.

Accordingly, Global Automakers requests that the following provision be added to Minn. Stat. § 80E.14:

> For the purposes of this section, whether a relocating dealer is an "existing dealer" shall be determined as of the time of the proposed relocation, and "relocation of an existing dealer," shall include the relocation of an existing dealership in connection with the sale or transfer of the dealer's franchise, assets, or a controlling interest therein, to a third party, whether or not such relocation is undertaken by the transferor or transferee of the franchise, assets or interest.

We are happy to provide you with additional information and data or answer any questions you may have on this important issue.

Sincerely,

Josh Fisher
Manager
State Government Affairs