

TESTIMONY ON BEHALF OF ENTERPRISE CAR SALES
NEW YORK CITY COUNCIL CONSUMER AFFAIRS COMMITTEE
HEARING ON INTRO 518 AND INTRO 178
OCTOBER 28, 2014

Chairman Espinal and other esteemed members of the New York City Council Consumer Affairs Committee, thank you for this opportunity to provide written testimony on Intro 518 (sales of used cars with open recalls) and Intro 178 (item pricing on used vehicles).

Greenberg Traurig represents Enterprise Car Sales (“ECS”), a division of ELRAC, LLC, d/b/a Enterprise Holdings (“Enterprise”). Enterprise is the largest rental car operating company in North America.

ECS engages in wholesale transactions—selling anywhere from one to hundreds of vehicles, at the same time—to retail used car dealers who in turn sell those vehicles to the public. ECS also engages in direct retail car sales through more than 130 ECS locations nationwide. ECS’s inventory is composed of used vehicles in over 250 available makes and models, most of them from Enterprise’s own fleet of rental cars. At any given time, ECS’s network has more than 6,000 vehicles for sale across the United States.

Enterprise’s founder, Jack Taylor developed a simple but enduring business philosophy that still guides Enterprise’s efforts: take care of your customers and your employees first, and the profits will follow. For Enterprise, customer safety and protection are critical components of putting our customers first. To this end, Enterprise has actively worked with government at all levels to ensure customer safety and protection. It is also why we are submitting this testimony—we believe that the issues presented by Intro 518 and Intro 178 are vitally important to consumers. However, ECS has concerns about the language in the two bills and urges the Council not to pass the bills as drafted. We discuss those concerns below.

ECS is a member of the Greater New York Automobile Dealers Association (“GNYADA”). To the extent any opinions expressed herein are contradictory to the opinions expressed by GNYADA, they are solely the opinions of ECS and its subsidiaries and should not be attributed to GNYADA or its other members. Also, to the extent GNYADA has not expressed opinions on

the issues outlined below, they are solely the opinions of ECS and its subsidiaries and should not be attributed to GNYADA or its other members.

Intro 518

Intro 518, as written, establishes a prohibition on “any person licensed as a dealer in secondhand automobiles to sell a secondhand automobile that a manufacturer has recalled, without repairing the automobile before it is sold.” It further imposes fines for failing to comply with the rule and potential imprisonment for repeat offenders. We are concerned with Intro 518 for the following reasons:

- *The Council will be most effective by regulating retail sales to customers, not wholesale transfers.* Intro 518, as written would apply to all sales, wholesale or retail. As discussed above, ECS engages in wholesale transfers of entire fleets of vehicles. The wholesale vehicle industry involves dealer-to-dealer bulk sales between sophisticated buyers and sellers. These dealers then sell the vehicles to consumers in retail transactions. Because it is the ultimate retail dealer who interacts with the public, consumer protection should be the responsibility of the retail dealer. The retail dealer is in the best position to perform this function. In addition, it would not be feasible to check or repair recalls on the number of vehicles involved in a wholesale transaction. As an example, wholesale vehicles include, in part, totaled vehicles that are never repaired prior to being sold. The wholesale vehicle industry could not function under these conditions. The bill should be modified to only include retail sales and not wholesale transactions. We believe that the intended consumer protection aspect of this legislation should be the responsibility of the retail dealer who sells directly to the public.
- *The bill lacks specificity on when a vehicle must be checked for recalls.* As written, the bill does not specify when a dealer has fulfilled its responsibility to check the recall status of a vehicle. For example, should the check be performed when a vehicle comes into the dealer’s inventory? If so, what if a recall occurs after a vehicle comes into inventory? Or should the check be performed when a bill of sale is written, when title is transferred or when the consumer takes delivery of the vehicle? Who is responsible for repairs at each step in a transaction is critical and should be clearly addressed so that there is no confusion. All of this is to say that, in order to meet their obligations under the law, dealers will require specific procedures to follow.
- *The imposition of jail time for violators is unduly punitive.* Dealers are corporate entities made up of groups of people. Among them, different people perform different tasks. While it is possible to specify a single compliance officer, sales will no doubt occur while that person is not at the dealership. It would be unfair make that person responsible for compliance of the whole dealership and subject to imprisonment. Financial fines levied at the corporate level should be sufficient for enforcement of this bill.

It should be noted that in addition to complying with federal law, New York State law and New York State DMV regulations, ECS already subjects their vehicles to an extensive safety process: every vehicle sold at retail by ECS has undergone and passed a 109-point inspection.

Beyond safety, Enterprise assures customer satisfaction. Every car ECS sells at retail includes a 12-month/12,000-mile limited powertrain warranty. And if a consumer decides they do not want a car purchased from ECS within seven days (for any reason), the company will buy it back, no questions asked.

Intro 178

Intro 178 would require that second-hand auto dealers display a stamp, tag or label that states the total selling price for a vehicle, including administrative, service or other administrative fees that will be charged by a dealer. We are concerned with Intro 178 for the following reasons:

- *Intro 178 should apply to retail sales, not wholesale.* As discussed in the section above, the parties to wholesale transactions are sophisticated entities who engaged in business transactions. They do not require the same level of protection that an individual consumer requires. Further, often the amount paid by the buyer is an amount negotiated for an entire fleet of vehicles rendering the value of a single vehicle an unimportant and imprecise fraction of the total transaction cost. It would do neither the buyer nor the seller any good to post this number on the vehicle prior to a transaction.
- *A revised bill should specify what fees must be listed on a posting.* For example, bill should indicate that the Council is looking for dealers to disclose the “documentation fee” charged for license and title and not the “fees paid to state agencies.”
- *The definition of total sales price is vague.* The bill states that the stamp, tag, or label must display the total selling price of the vehicle. Taken literally, the customer would not be able to purchase other optional ancillary products or services that are not already listed in the sales price. These optional ancillary products may include extended warranties, protection, LoJack, remote start, stereos, sunroof, etc.

Once again, we would like to note that ECS has always believed in transparent pricing structures like the one envisioned by Intro 178. ECS pioneered “no-haggle” used car pricing. The price shown on an ECS vehicle is the generally the price the customer will pay for the car, excluding registration, title fees or other optional ancillary products requested by the consumer. In addition, as mentioned above, ECS offers to repurchase any vehicle within seven days if the customer is dissatisfied.

Page 4 of 4

Greenberg Traurig Testimony on Behalf of Enterprise Car Sales
New York City Council Consumer Affairs Committee
Hearing on Intro 518 and Intro 178
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I, on behalf of ECS, would like to reiterate my gratitude for the opportunity to present this testimony. We look forward to the opportunity to continue working with ECS on this matter. We have targeted suggestions on how the Council could make these bills more effective. We welcome the opportunity to discuss these matters further and we are willing to meet with you or members of your staff. In the meantime, please feel free to contact me if you have any questions. You may also contact my colleague, John Mascialino at 212 801 9355.

Respectfully,



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