

March 21, 2017

The Honorable Lee Beyer  
Chair  
Senate Business and Transportation Committee  
Oregon State Capitol  
900 Court St. NE  
Salem, OR 97301

The Honorable Chuck Thomsen  
Vice-Chair  
Senate Business and Transportation Committee  
Oregon State Capitol  
900 Court St. NE  
Salem, OR 97301

Dear Chairman Beyer, Vice-Chairman Thomsen and Members of the Committee:

The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers and distributors of all-terrain vehicles (ATVs) in the U.S. The Recreational Off-Highway Vehicle Association (ROHVA) is a not-for-profit trade association formed to promote the safe and responsible use of recreational off-highway vehicles (ROVs - also known as side-by-sides) manufactured or distributed in North America.

SVIA and ROHVA are opposed to SB 982, which would regulate ATV and ROV dealer agreements under Oregon's equipment franchise law, as provided under ORS 646A.300 to 646A.322. Passage of SB 982 would impose burdensome regulation on ATV and ROV manufacturers and distributors (OEMs) with the end result being an increase in the costs of doing business in Oregon and the consequent increase of the cost of ATVs and ROVs to Oregon consumers. The Legislature should not dictate contract terms in favor of either OEMs or dealers. Further government intervention into franchise agreements creates an increasingly complicated and difficult business environment.

Oregon's equipment franchise law, including comprehensive amendments under SB 982, is designed for suppliers and dealers of various types of equipment, such as farm and industrial equipment. We do not believe that it is appropriate for ATV and ROV franchisors and dealers to be regulated as equipment dealers and suppliers. The overriding difference between ATVs and ROVs and the other types of equipment is the system through which they are sold. ATVs and ROVs are not primarily sold at retail outlets that deal in the types of equipment included under this law. On average, ATVs are used 75% of the time for recreation and only 25% of the time for a combination of work or chores. ATV/ROV riding is a family recreational activity, far more so than it is a utility application. As a result, there is a divergence between the need for protection of dealers of ATVs and ROVs and those of equipment. The dollar amount of commitment for ATV and ROV products is far less than the dollar commitment of the average equipment dealer. Thus, the exposure to the dealer is inconsequential as compared to the farm equipment dealer, where one tractor can cost hundreds of thousands of dollars.

Many ATV and ROV OEMs are on-highway motorcycle manufacturers as well. On-highway motorcycles fall under the umbrella of the Oregon's motor vehicle franchise law, and creating a different structure for ATVs and ROVs will likely lead to conflicts between the two statutory frameworks.

We also find hollow the suggestion that SB 982 will work to "ensure the efficient and uninterrupted flow of commerce and the smooth functioning of the economy of this state." If this speaks to

ensuring a competitive marketplace, mandating business regulations does not provide for any consumer assurance relative to a competitive marketplace and stating that such will do anything to improve competition runs counter to economic theory. The definition of a competitive market does not presuppose legislative action providing for regulations to ensure anything for consumers. Absence any market failure, there is no need for regulation at all, as such is not a suitable replacement for market competition. Franchise regulations are burdensome and do nothing to bolster competition or benefit consumers. In fact, such regulations accomplish the opposite.

A similar perspective was shared by several academics in the field of economics at a 2016 Federal Trade Commission (FTC) workshop that sought to “explore competition and related issues in the context of state regulation of motor vehicle distribution and how these regulations affect businesses and consumers.” As you know the FTC is charged with a mission “to prevent business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish this without unduly burdening legitimate business activity.” Given the FTC’s concern with state franchise laws, it held this workshop and invited participants representing both OEM and dealer interests as well as several respected academics from the field of economics.

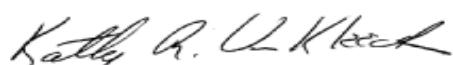
The consensus was clear among all of the economics professors that state franchise regulation is detrimental, does not serve any consumer interest and represents special interest legislation serving only the dealers’ interests, likely at the expense of consumers. In the absence of any significant difference in the motor vehicle distribution market from other consumer markets, these professors all questioned what was the relevant market failure that is unique to the motor vehicle distribution market that necessitates regulation of any sort to correct. Not finding any, they concluded that state interference in these contracts was not deemed as a suitable replacement for market competition and that the market should be allowed to drive the contractual terms of franchise agreements. Most precisely, cited work of Professor Francine Lafontaine, University of Michigan, and former Director for the Bureau of Economics at the FTC, concluded that the net economic effect of franchise laws was the extraction of rent from OEMs that is in turn provided to dealers.

Public policy should strive to balance the best interests of all stakeholders, including consumers, the dealer body and OEMs. OEMs and dealers need the flexibility to adapt to changing market and economic conditions. Over-reaching legislation locks in unworkable business practices in perpetuity. Erecting more barriers through legislation only serves to create an environment for both OEMs and dealers where options become more limited to respond to economic challenges.

Subjecting ATV and ROV OEMs and dealers to the equipment franchise law would do little to enhance the business climate. Again, including ATVs and ROVs in an inappropriate law will only serve to increase the cost of doing business and therefore increase the cost of ATVs and ROVs to consumers.

Thank you for your consideration of our comments.

Respectfully submitted:



Kathy R. Van Kleeck  
Sr. Vice President, Government Relations